



MINISTRY OF FISHERIES  
Te Tautiaki i nga tini a Tangaroa

# Memorandum

To:	s 9(2)(a)		
CC:	s 9(2)(a)		
From:	s 9(2)(a)		
Date:	11 December 2003	File Ref:	
Subject:	s 9(2)(b)(ii), Carton Weights		
Remarks	<input type="checkbox"/> Urgent	<input type="checkbox"/> Reply ASAP	<input checked="" type="checkbox"/> For your Review <input type="checkbox"/> Please Comment

## 1 Introduction.

- 1.1 This file relates to evidence gathered against s 9(2)(b)(ii) and s 9(2)(b)(ii) after it was suggested that one or the other company had misreported, by under reporting the weight of cartons declared on the Catch Landing Return (CLR) submitted for each vessel

## 2 Background

- 2.1 The issue of under reporting of carton weight has been around for a considerable period of time, and the issue with s 9(2)(b)(ii) dates back to at least 1996 when then Christchurch District Compliance Manager s 9(2)(a) took up the issue with s 9(2)(b)(ii).
- 2.2 The issue was again addressed by s 9(2)(a) and Dunedin staff in 2000.
- 2.3 The basic issue is that s 9(2)(b)(ii) has a system where by a "weight tolerance" is applied to the weight of cartons of fish to be reported as having been landed on the CLR.
- 2.4 The system which is computer based and has been in existence for in excess of 13 years establishes a minimum weight for the cartons and a maximum weight for the cartons. The minimum weight is the nominal net weight, (e.g. 20.4 kilograms) plus the weight of packaging. The maximum weight of the cartons is the nominal net weight multiplied by 1.5% plus the weight of packaging.

- 2.4.1 If the average weight of the cartons landed falls below the minimum weight established the cartons are declared on the CLR at the nominal net weight.
- 2.4.2 If the average weight of the cartons landed falls between the minimum weight established and the maximum weight established then the cartons are declared on the CLR at the nominal net weight.
- 2.4.3 If the average weight of the cartons landed climbs above the maximum weight established the cartons are declared on the CLR at the nominal net weight plus the difference between the maximum weight established and the average weight.
- 2.4.4 This is explained more fully later in this report along with examples of the documentation used as a part of this enquiry.
- 2.5 In 1996 the tolerance used by § 9(2)(b)(ii) was 3.5% and after discussions between the company and the Ministry of Fisheries was reduced to 1.5%
- 2.6 The reasons for the company claiming this tolerance is canvassed in letters dated 17/09/96, 14/02/00 and 3 October 2000. Refer Appendices A, B and C.
- 2.6.1 *“The question was asked by the Ministry how the 1.5% made up. We stated that we had based it on the AQS system and the percentage error noted for the tray/block sizes we pack on our vessels including charters, ie 6.8 kg – 7.5 kg on fillet product to a maximum of 15 kg on dressed or whole product on the charter vessels. A copy of the AQS system was provided for MOF personnel to view”* (Appendix C paragraph 3)
- 2.7 § 9(2)(b)(ii) own and operate a number of fishing vessels, the two vessels concerned with this enquiry are the § 9(2)(b)(ii) and the § 9(2)(b)(ii).
- 2.7.1 The § 9(2)(b)(ii) conducted a fishing trip between the 20<sup>th</sup> December 2002 and the 28<sup>th</sup> January 2003, discharging its catch in § 9(2)(b) on the 28/29<sup>th</sup> January 2003.
- 2.7.2 The § 9(2)(b)(ii) conducted a fishing trip between the 8<sup>th</sup> January 2003 and the 24<sup>th</sup> February 2003, discharging its catch in § 9(2)(b) on the 24/25<sup>th</sup> February 2003.
- 2.8 Both vessels were fishing under the permit held by § 9(2)(b)(ii).
- 2.9 The Licensed Fish Receiver (LFR) who received the fish was § 9(2)(b)(ii) and as such are the company responsible for establishing the greenweight of fish landed as required by the Fisheries (Reporting) Regulations 2001.

2.10 As at the 18<sup>th</sup> March 2003 § 9(2)(b)(ii) was the one and only shareholder of all the § 9(2)(b)(ii) shares.

2.11 CLR's were subsequently submitted for each vessels trip as required by the Fisheries (Reporting) Regulations 2001

### **3 Initial Action**

3.1 The Southern Regional Compliance managers resolved that the only way to satisfactorily deal with the under reporting of carton weights which was seen as an industry wide issue was to test the matter in court.

3.2 § 9(2)(a), Fisheries Analyst was assigned the role of profiling and inspecting landings made by vessels of the major commercial companies operating in the South Island.

3.3 § 9(2)(a) profiled a number of vessel landings, which included the two made by the § 9(2)(b)(ii) and the § 9(2)(b)(ii).

3.4 On Monday 17<sup>th</sup> March 2003 § 9(2)(a) Fisheries Analyst, § 9(2)(a) Fishery Officer and § 9(2)(a) travelled to § 9(2)(b) to inspect the landings made to the § 9(2)(b)(ii) Coolstore in § 9(2)(b).

3.5 This coincided with another landing being made from the § 9(2)(b)(ii). § 9(2)(a) and § 9(2) boarded the vessel and carried out an inspection of the factory area.

3.6 § 9(2)(a) spoke to § 9(2)(a), Coolstore Manager, § 9(2)(b)(ii) and established that the product listed in table 1 below was available for inspection.



§ 9(2)(b)(ii)

Species	State	Nominal Net Weight	Cartons Received	Cartons Remaining	Cartons Sampled	Estimate Overweight	Cartons Seized
HAK	TRF	20.40 kgs	474	175	30		Nil
LIN	TSK	20.40 kgs	1225	1101	30	1.34 kgs	1225
BOE	DRE	22.00 kgs	195	195	30	1.06 kgs	195

§ 9(2)(b)(ii)

Species	State	Nominal Net Weight	Cartons Received	Cartons Remaining	Cartons Sampled	Estimate Overweight	Cartons Seized
HAK	TRF	20.40 kgs	193	51	30	?	51
LIN	TSK	20.40 kgs	789	789	30	0.97 kgs	789
HOK	FIL	22.45 kgs	1769	1769	50	1.42 kgs	1769

Table 1

3.7 Sample weighing was then undertaken of the product available. The species and number of cartons sampled is shown in table 1.

3.8 As a result of sample weighing § 9(2)(a) then made a number of calculations based on the information gathered and estimated an amount that the cartons weighed in excess of that declared on the CLR. The number of cartons seized is shown in table 1

3.9 Based on these calculations § 9(2)(a) believed that the product was overweight and had not been declared correctly on the CLR relevant for each vessel.

3.10 § 9(2)(a) then approached § 9(2)(a) and advised him of the lines of product that he intended to seize. The product was subsequently seized (a total of 3,905 cartons) and a property record sheet prepared. (Refer table 1)

3.11 § 9(2)(a) then went to § 9(2)(b)(ii) and advised them of the action he had taken and left a copy of the property record sheet with a § 9(2)(a).

3.12 The Hake and the Ling samples seized were packed at sea in the following manner.

3.12.1 The fish are packed into shatter-packs, whereby a cardboard liner is placed in a steel pan. The liner is then packed with fresh fish fillets with plastic interleave between each fillet. Nominal net weight 6.80 kilograms per block.

3.12.2 The cardboard liner and fish is then frozen under pressure and after removal from the plate freezer is packed three blocks to a carton, nominal net weight 20.40 kilograms.



3.13 The Hoki samples seized were packed in the following manner:

3.13.1 The fish are packed into blocks, whereby a cardboard liner is placed in a steel pan. The liner is then packed with fresh fish fillets. Nominal net weight 7.484 kilograms per block.

3.13.2 The product is then frozen under pressure and after removal from the plate freezer is packed three blocks to a carton, nominal net weight 22.46 kilograms.

3.14 The Black Oreo Dory samples seized were packed in the following manner.

3.14.1 The fish are packed into blocks, whereby the fish are placed in a steel pan. Nominal net weight 11.00 kilograms per block.

3.14.2 The product is then frozen under pressure and after removal from the plate freezer is packed two blocks to a carton, nominal net weight 22.00 kilograms.

#### **4 Enquiry Phase**

4.1 I was briefed on the seizures by s 9(2)(a) and s 9(2)(a) on the 18<sup>th</sup> March 2003 and commenced the enquiry phase.

4.2 It became apparent very early on that the s 9(2)(b)(ii) held a Vessel Specific Conversion Factor Certificate (VSCFC) for some of the species involved. It was also found that the conversion factors listed in the Fisheries Information System (FIS) for Ling were incorrect. s 9(2)(a) whilst making his calculations had used these incorrect conversion factors.

4.3 The calculations made by s 9(2)(a) whilst at the Coolstore also contained some mistakes, which are listed for each species.

4.4 s 9(2)(b)(ii)

4.4.1 Hoki

- Wrong packaging weight calculated [560 grams]. (Did not allow for three liners per carton and was therefore 360 grams light) [Should have been 920 grams]
- Allowance made for glaze (The product is not glazed)
- Used the wrong net weight in calculations 20.4 when it should have been 22.45?

- Used the wrong conversion factor of 2.65 when the vessel has a vessel specific conversion factor of 2.45.

#### 4.4.2 Ling

- Wrong packaging weight calculated [560 grams]. (Did not allow for three liners per carton or for the plastic interleave in each block [150 grams] and was therefore a minimum of 500 grams light)
- Allowance made for glaze (The product is not glazed)
- Used the wrong conversion factor 3.00 when the correct conversion factor was 2.85

#### 4.4.3 Hake

- Wrong packaging weight calculated [560 grams]. (Did not allow for three liners per carton or for the plastic interleave in each block [90 grams] and was therefore a minimum of 450 grams light)
- Allowance made for glaze (The product is not glazed)
- Used the wrong conversion factor 2.75 when the vessel has a vessel specific conversion factor of 1.85

#### 4.5 § 9(2)(b)(ii)

##### 4.5.1 Black Oreo Dory

- Made no allowance for glaze when the product was glazed.

##### 4.5.2 Ling

- Wrong packaging weight calculated [570 grams]. (Did not allow for three liners per carton or for the plastic interleave in each block [150 grams] and was therefore a minimum of 500 grams light)
- Allowance made for glaze (The product is not glazed)
- Used the wrong conversion factor 3.00 when the correct conversion factor was 2.85

- 4.6 Although the conversion factors used had been incorrect the fact that an allowance had been made for glaze assisted § 9(2)(a) case. The only product to have been glazed was the Black Oreo Dory.

#### 5 Evidential weighing of cartons

- 5.1 After establishing that the § 9(2)(b)(ii) held a VSCFC and the correct conversion factors were established a carton weighing exercise was undertaken at the § 9(2)(b)(ii) Coolstore, § 9(2)(b) .

- 5.2 This exercise was conducted over a number of days and was delayed on one occasion due to a lack of § 9(2)(b)(ii) staff being available to conduct the exercise. § 9(2)(b)(ii) has always had at least one representative present during the process.
- 5.3 Dates that the carton weighing took place were:  
28<sup>th</sup> March 2003, 10<sup>th</sup> April 2003, 16<sup>th</sup> April 2003, 30<sup>th</sup> April 2003, 1<sup>st</sup> May 2003, 2<sup>nd</sup> May 2003 and 7<sup>th</sup> May 2003.
- 5.4 The process used to conduct the evidential carton weighing was as follows
- Prior to weighing § 9(2)(a) identifies random samples and creates list.
  - Each carton is numbered (001 to however many) and photographed.
  - Cartons then weighed across MFish scales, the serial number, pack date codes, and weights are recorded.
  - Cartons then weighed across § 9(2)(b)(ii) scales.
  - Cartons are opened and the fish inspected to ensure the contents are correct.
  - Random samples placed on separate pallet
  - Rest of the cartons are returned to main pallet and returned to freezer
  - Random samples are taken to § 9(2)(b)(ii) at the end of the days weighing.
- 5.5 At the completion of each days weighing, § 9(2)(b)(ii) were provided with a copy of the information gathered.
- 5.6 Data obtained from this exercise was entered into spreadsheets to allow for checking and later analysis.
- 5.7 Photographs taken of each of the cartons were developed and placed in booklets. Some issues were identified with these photographs, one film was not loaded into the camera correctly and in some instances the carton numbers were obscured. These cartons were identified and new photographs taken.
- 5.8 On the 12<sup>th</sup> May 2003 the random samples taken for destructive sampling were transferred from the § 9(2)(b)(ii) stores in § 9(2)(b) to § 9(2)(b)(ii) in § 9(2)(b)(ii).
- 6 Documentation prepared by § 9(2)(b)(ii) and § 9(2)(b)(ii)
- 6.1 On the 28<sup>th</sup> March 2003 a directive to produce certain documentation was served on § 9(2)(a), § 9(2)(b)(ii). Refer Appendix D



- 6.2 Documentation specified included
- A list of all cartons of fish landed but not taken into the Coolstore
  - Documents generated as a result of destructive sampling identifying the weight of fish, carton packaging and glaze
  - Documents recording the number of cartons, carton weight and total greenweight of species landed.
  - Sales invoices for any product sold prior to the 17<sup>th</sup> March 2003
- 6.3 The directive specified similar documentation for each of the landings made on the 28<sup>th</sup> January 2003 and 24<sup>th</sup> February 2003.
- 6.4 s 9(2)(a) replied on the 3<sup>rd</sup> April 2003 forwarding a number of documents along with an explanatory letter.
- 6.5 This documentation although answering some questions also raised a number of other questions and identified a number of cartons as being 'missing'.
- 6.6 These 'missing' cartons made it difficult to establish the exact number of cartons landed, there fore it was difficult to know whether the correct greenweight had been recorded. If it was accepted that the greenweight on the CLR was correct then the nominal weight of the cartons varied, depending on the number of cartons involved.
- 6.7 This is highlighted in the following example.
- 6.7.1 In respect of the s 9(2)(b)(ii) Ling, the figures actually written on the CLR records a total of 1,244,332 cartons using a net weight of 20.44 kilograms per carton, total green weight of 72,137.90 kilograms.
- 6.7.2 Working backwards using the green weight (72,137.90) divided by the conversion factor (2.85), divided by the number of cartons (1,244,332) gives a net weight per carton of 20.34 kilograms. This figure indicated that the cartons had been declared below the nominal net weight.
- 6.7.3 Using the same green weight figure, conversion factor and a net weight of 20.44 as written on the CLR the number of cartons reduces to 1,238,333
- 6.7.4 It was established that 13 cartons were sent for destructive sampling and 1225 cartons were received by s 9(2)(b)(iii).

- 6.7.5 So using the CLR figures and a net weight of 20.34 kilograms there are 6.332 cartons missing.  $1,244.332 - 13 - 1,225 = 6.332$  cartons missing.
- 6.7.6 However using the same figures but a net weight of 20.44 only 0.332 of a carton is missing.  $1,238.333 - 13 - 1,225 = .333$  of a carton missing.
- 6.8 On the 14<sup>th</sup> April 2003 a directive to produce certain documentation was served on s 9(2)(a) at the s 9(2)(b)(ii) Coolstore. Refer Appendix E
- 6.9 Documentation specified included
- Documents recording the number of cartons of Black Oreo Dory and Ling received into the Coolstore from the s 9(2)(b)(ii)
  - Documents recording the number of cartons of Hake, Hoki and Ling received into the Coolstore from the s 9(2)(b)(ii)
  - Sales invoices for any product sold prior to the 17<sup>th</sup> March 2003
- 6.10 s 9(2)(a) replied on the April 2003 providing tally sheets, Export Certification Dockets (E-Cert) and stock movement sheets.
- 6.11 This documentation confirmed the number of cartons received by the Coolstore and confirmed that cartons were still 'missing'.
- 6.12 The location of these 'missing' cartons was not established until the first set of interviews conducted in October 2003.
- 6.13 With the number of cartons firmly established, the correct declared weights per carton could be established.
- 6.14 Copies of other documentation were also obtained from s 9(2)(b)(ii) through out the enquiry.
- 6.14.1 Primarily this consisted of product specification sheets (relating to the species of fish seized) that were located on the bridge of each vessel. There were also Quality Control (QC) records copied from the bridge of the s 9(2)(b)(ii) and from records kept at s 9(2)(b)(ii) for the s 9(2)(b)(ii).
- 6.14.2 Vessel Discharge Tally sheets and Vessel Quality Control sheets were obtained at the time of the interviews.



## 7 Destructive Sampling

- 7.1 Destructive sampling of the cartons was undertaken at § 9(2)(b)(ii) on three days, the 18<sup>th</sup>, 19<sup>th</sup> and 25<sup>th</sup> June 2003.
- 7.2 Again § 9(2)(b)(ii) was represented.
- 7.3 The purpose of the destructive sampling was to establish as closely as possible the actual weight of fish packed into the blocks and then the cartons.
- 7.3.1 There are no weight records kept of every block of fish packed, therefore MFish have to rely on the weight established from destructive sampling to estimate the weight of fish packed.
- 7.3.2 The process involved the removal of all packaging to get to the naked fish. Although the weight of the fish it self was easily identified, the other variables such as increases of weight for packaging due to moisture absorption, transfer of fish to the plastic interleave all had to be accounted for.
- 7.4 The process used to conduct the destructive carton sampling was as follows
- A new set of numbers was established so that each component of a carton could be tracked.
  - For shatterpack fillets (Hake and Ling)
  - Each carton was identified, re-weighed and a new number assigned.
  - Each carton was opened and the three blocks removed.
  - The carton outer and strapping (where appropriate) were then sealed in a plastic bag with the relevant number and stored.
  - One block with the relevant number went to § 9(2)(b)(ii) staff for their own purposes.
  - Another block with the relevant number was retained by MFish as a control sample.
  - The third block was destructively sampled.
  - The block of fish was removed from the inner carton, the relevant number assigned and then the block shattered.
  - The plastic interleave was then removed, the relevant number assigned and then sealed in a plastic bag for storage.
  - The shattered fish fillets were weighed then left with § 9(2)(b)(ii) for re-packing and sale.



- The inner carton from which the fish block was removed had all the remaining ice scrapped from it which was placed in a separate container, the relevant number assigned then sealed in a plastic bag for storage.
- A small sample of ice was also taken for later analysis to establish its composition.
- The inner carton was then sealed in a plastic bag with the relevant number and stored.

7.5 The process was the same for the Hoki fillet block with the following changes:

- The sample of ice taken for later analysis to establish its composition was the only ice sample taken (there was very little ice left in the inner carton).
- The block of fish was not shattered (there is no plastic interleave) it was weighed then repacked into a new carton liner, repacked into cartons and stored. § 9(2)(b)(ii) was advised that these particular cartons would be released for early sale.

7.6 The process for the Black Oreo was slightly different and consisted of:

- Each carton was identified, re-weighed and a new number assigned.
- Each carton was opened and the two blocks removed.
- The carton outer and strapping were then sealed in a plastic bag with the relevant number and stored.
- The blocks were removed from the plastic liner, the liners were then sealed in a plastic bag with the relevant number and stored.
- The two blocks were weighed then repacked into new plastic liners and outer cartons.

7.7 At the completion of each days sampling, § 9(2)(b)(ii) were provided with a copy of the information gathered.

7.8 The packaging items and ice samples not weighed at § 9(2)(b)(ii) were taken back to § 9(2)(a) and later weighed.

7.8.1 The outer cartons were weighed as they were, still sealed in their bags.

7.8.2 The inner cartons were weighed as they were, still sealed in their bags. The inner cartons were then removed, line dried at § 9(2)(a) then re weighed.

7.8.3 The plastic interleaves were weighed as they were, still sealed in their bags. They were then removed, washed and line dried at § 9(2)(a), then re weighed.

7.8.4 The containers of ice (both large and small) were weighed as they were, still sealed in their bags.

7.9 This phase of the operation, drying and gathering the data took a considerable period of time. All work was carried out by § 9(2)(a) and § 9(2)(a). Drying conditions were not perfect with plastic interleave taking 3 to 5 days to dry.

7.10 Data obtained from this exercise was entered into spreadsheets to allow for checking and later analysis.

## 8 Cloning of Computer information.

8.1 During the initial inspection of the § 9(2)(b)(ii) on the 17<sup>th</sup> March 2003 by § 9(2)(a) and § 9(2)(a) it was established that the packed cartons of fish pass across a set of scales, are weighed, the weight recorded on computer and a carton label produced. The label is affixed, the carton strapped shut and then sent to the hold for storage. This computerised weighing and labelling system will be referred to as the Marel System.

8.2 It was also established that this information was transferred to the bridge computer, stored in an Access database and then used to send daily reports to the company.

8.3 I believed that this information would provide an accurate weight of the packed cartons of fish and would be invaluable to this enquiry.

8.4 On the 14<sup>th</sup> April 2003 § 9(2)(a), § 9(2)(a) and myself boarded the § 9(2)(b)(ii) at § 9(2)(b). After inspecting the factory and establishing that the information obtained by § 9(2)(a) on the 17<sup>th</sup> March was in fact correct and also relevant to this vessel, the decision was made to clone the Marel computer and the bridge computer.

8.5 This caused some concern for § 9(2)(b)(ii) but after discussion with § 9(2)(a) and § 9(2)(a), solicitor with § 9(2)(a) representing § 9(2)(b)(ii) the Marel computer was cloned.

8.6 § 9(2)(a), vessel manager § 9(2)(b)(ii), their computer representative was present during the cloning and liaised with § 9(2)(a) who performed the cloning for the Ministry.

8.7 There was an issue with the bridge computer, in that it was later established that the ships crew had played with the computer and both § 9(2)(a) and § 9(2)(a) were unable to establish which hard drive held the correct information.

8.7.1 The issue was resolved by § 9(2)(a) on the 15<sup>th</sup> April 2003 and § 9(2)(a) and myself boarded the § 9(2)(b)(ii) on the 16<sup>th</sup> April 2003 and completed the cloning of the bridge computer.



8.7.2 On the 6<sup>th</sup> May 2003 § 9(2)(a) and myself boarded the § 9(2)(b)(ii) at § 9(2)(b) and the bridge and Marel computers were successfully cloned. Again § 9(2)(a) from § 9(2)(b)(ii) was present.

8.8 On 4<sup>th</sup> and 5<sup>th</sup> June 2003 § 9(2)(a) and I travelled to Wellington where the cloned information from both vessels was restored by § 9(2)(a).

8.9 The information on both bridge computers was then viewed and copies made of information relevant to the two trips from which the product was seized. Primarily this information consisted of the Access Databases for each ship and the onboard Quality Control sampling records that were stored on Excel Spreadsheets for each trip.

8.10 An attempt was made to view the information stored on the Marel computers but the information could not be accessed. It was later established that the Marel System is such that it needs all its component parts attached and operating to view any information.

8.10.1 The cloned Marel information was then loaded onto two separate hard drives, one for each vessel.

8.10.2 On the 21<sup>st</sup> July 2003 § 9(2)(a), § 9(2)(a) and I boarded the § 9(2)(b)(ii) at § 9(2)(b). The hard drive was removed from the computer and each of the cloned hard drives placed into the system one at a time.

8.10.3 This allowed the viewing of the information without interrupting the current system. The relevant data was identified, then exported in a useable format. The data was later transferred to an Excel Spreadsheet.

8.11 At all times during this phase, § 9(2)(a) was provided with copies of the data obtained and any print outs generated.

## 9 Interviews of § 9(2)(b)(ii) Staff.

9.1 A decision was made early on in the enquiry not to question staff about information provided and that any interview conducted would be undertaken with § 9(2)(b)(ii) staff having access to legal representation.

9.2 The first interviews were conducted on the 15<sup>th</sup> and 16<sup>th</sup> October 2003 at Timaru using the Ashley Motor Lodge as the venue. All § 9(2)(b)(ii) staff were represented by § 9(2)(a) (now working for § 9(2)(b)(ii)).



9.3 Interviews were conducted with:

§ 9(2)(a), vessel manager § 9(2)(b)(ii)  
§ 9(2)(a), vessel manager § 9(2)(b)(ii)  
§ 9(2)(a), factory manager § 9(2)(b)(ii)  
§ 9(2)(a), factory manager § 9(2)(b)(ii)  
§ 9(2)(a), QC sampler, § 9(2)(b)(ii)  
§ 9(2)(a), general hand, § 9(2)(b)(ii)  
§ 9(2)(a), Coolstore Manager, § 9(2)(b)(ii)

9.4 The primary purpose of these interviews was to ensure that MFish understood the information that had been provided by § 9(2)(b)(ii) and that it was being interpreted correctly.

9.5 Although these were information gathering interviews rather than confrontational offender style interviews, each person was cautioned and advised of the bill of rights.

9.6 It became apparent during the interviews that each person has a small role to play in the overall operation of the company and had little knowledge of the § 9(2)(b)(ii) system for reporting of green weight on the CLR.

9.7 Both vessel managers returned on the second day of interviews and gave a second statement, clarifying points they had been unable to answer in their initial interviews due to a lack of information immediately to hand.

9.8 The issue of the 'missing' cartons was resolved and the number of cartons, net weight and greenweight intended to be declared for each of the seized species was established.

9.9 It should be noted that § 9(2)(a) was not the factory manager on board the § 9(2)(b)(ii) for the trip from which the cartons were seized. The factory manager at the time had returned to § 9(2)(a). § 9(2)(a) provided useful information in respect of how he operates the factory onboard the vessel but could not answer questions specific to the trip in question.

9.10 The second interviews were conducted on the 27<sup>th</sup> and 28<sup>th</sup> November 2003 at Timaru again using the Ashley Motor Lodge as the venue. All § 9(2)(b)(ii) staff were represented by § 9(2)(a).

9.11 Interviews were conducted with:

§ 9(2)(a), QC Supervisor, § 9(2)(b)(ii)

§ 9(2)(a), Vessel Unload Manager, § 9(2)(b)(ii)

§ 9(2)(a), Deepwater fleet manager, § 9(2)(b)(ii)

§ 9(2)(a), Quota Manager, § 9(2)(b)(ii)

9.12 The primary purpose of these interviews was similar to the first interviews, to ensure that the information was being interpreted correctly and also to seek clarification and answers to questions unanswered or raised in the first interviews.

9.13 Again the staff were cautioned and advised of the bill of rights.

9.14 Although each person has a small role to play in the overall operation of the company, both § 9(2)(a) and § 9(2)(a) had a good working knowledge of the § 9(2)(b)(ii) system for reporting of green weight on the CLR.

9.15 This enabled MFish staff to almost fully comprehend the § 9(2)(b)(ii) system for reporting of green weight on the CLR and it also confirmed that § 9(2)(b)(ii) at the time the fish concerned was landed still applied a 1.5% tolerance as described earlier in the report under the heading 'Background'.

## 10 Analysis

10.1 All data obtained by MFish during the enquiry phase was brought together and forwarded to § 9(2)(a) a statistician currently employed by § 9(2)(b)(ii).

10.2 This data included:

- all weights obtained during the evidential weighing phase of the enquiry
- all weights obtained during the destructive sampling phase of the enquiry
- data obtained from the Marel Systems of each vessel
- data obtained from the QC sampling undertaken onboard both vessels
- data obtained from QC sampling undertaken on shore.

10.3 s 9(2)(a) analysis and final report have yet to be received but the indications to date are that the amount the cartons may have been underreported varies from 0.6% to 1.93% depending on the species and vessel involved.

10.4 One thing that is clear from the information obtained is that there are a number of different weights obtained, depending on the process followed. This is illustrated in tables 2 to 5.

s 9(2)(b)(ii) Ling						
Fish (Block Weight) Kgs						Difference Kgs
	MFish	Marel	QC Ship	QC Shore	CLR	CLR & MFish
	6.920	6.929	6.896	6.798	6.813	0.107 1.57%
Samples	124		133	13		
Ctn Net Wgt	20.76	20.79	20.69	20.39	20.44	0.321 1.57%

Table 2

s 9(2)(b)(ii) Hake						
Fish (Block Weight) Kgs						Difference Kgs
	MFish	Marel	QC Ship	QC Shore	CLR	CLR & MFish
	6.931	6.885	6.940	0.000	6.800	0.131 1.93%
Samples	51		2	0		
Ctn Net Wgt	20.79	20.66	20.82	0.00	20.40	0.393 1.93%

Table 3

s 9(2)(b)(ii) Hoki						
Fish (Block Weight) Kgs						Difference Kgs
	MFish	Marel	QC Ship	QC Shore	CLR	CLR & MFish
	7.529	7.516	7.549	7.681	7.484	0.045 0.60%
Samples	121		88	14		
Ctn Net Wgt	22.587	22.548	22.647	23.043	22.452	0.135 0.60%

Table 4

s 9(2)(b)(ii) Ling						
Fish (Block Weight) Kgs						Difference Kgs
	MFish	Marel	QC Ship	QC Shore	CLR	CLR & MFish
	6.871	6.860	6.878	6.847	6.800	0.071 1.04%
Samples	119		40	8		
Ctn Net Wgt	20.61	20.58	20.63	20.54	20.40	0.213 1.04%

Table 5

10.5 The weights shown in tables 2 to 5 were established in the following way:



#### 10.5.1 MFish.

This is the weight of the frozen, naked blocks of fish determined as a result of the destructive sampling. It assumes that the processed weight of the fish is:

- the weight of fillets after all packaging has been removed,
- plus ice as scraped from the inner carton,
- plus the loss in weight of the inner carton after drying
- plus loss in weight of the Mylar plastic interleave sheeting packed between the fish. (Note this does not apply to the Hoki Fillet Block as there is no plastic interleave)

#### 10.5.2 Marel

Weight of fillets determined by averaging the weights recorded in the system subtracting a tare (960) and dividing by three. (The § 9(2)(b)(ii) Marel information does not show a Tare Weight, § 9(2)(a) has assumed a similar tare weight as recorded by the § 9(2)(b)(ii) )

Weight of fillets determined by averaging the weights recorded in the system subtracting a tare (960) and dividing by three. ( § 9(2)(b)(ii) )

#### 10.5.3 QC Ship

Each vessel carries out QC sampling checks on board the vessel for the major lines being caught. The average weight of fillets is established from the records held on board the vessel. The weights are a “fresh weight” taken after the fish is removed from deconstructed block liners and weighed prior to freezing. In the case of shatter-packs the Mylar has been removed. In the case of Hoki Fillet Block both “fresh” and “frozen” weights are recorded. Refer Appendix F.

The process is outlined briefly in the interview of § 9(2)(a) , pages 19 to 22.

#### 10.5.4 QC shore

§ 9(2)(b)(ii) conduct QC sampling on shore of a limited number of samples. These samples are broken down into their component parts. The weight shown here is the average weight of fillets removed from deconstructed block liners and weighed whilst still frozen. The ice weight recorded has been averaged then added to the fish weight. It is an MFish contention that the ice is fish juice and is there for part of the fish weight. Refer Appendix G.

The process is outlined in full in the interview of § 9(2)(a) pages 6-12

#### 10.5.5 CLR

The weight as recorded on the CLR by working backwards from the Greenweight divided by the conversion factor divided by the number of cartons as provided by s 9(2)(b)(ii) staff at interview.

#### 10.5.6 Misreported Greenweight

Calculated from the number of cartons x MFish weight x conversion factor minus the number of cartons x CLR weight x conversion factor.

#### 10.6 The primary points to note here in each table is the difference between the MFish derived weight and the weight declared on the CLR. These are the differences that MFish believe the fish have been under reported by.

10.6.1 Although the amounts misreported may seem quite small in this particular instance it should be noted that a conservative calculation based on the last fishing years CLR's from 21 vessels operated by s 9(2)(b)(ii), that these vessels have declared as landed (including retained on board at end of year) 51,419 tonnes of fish.

10.6.2 Of this 25,022 tonne is made up of Hoki, and if this amount were under reported by the full 1.5% tolerance this amounts to 375.3 tonne being misreported. Even if the amount was only under reported by 0.60% as indicated by the MFish destructive sampling, this still amounts to 150.1 tonne of Hoki being misreported for a year.

10.6.3 The 25,022 tonne includes all states recorded as being landed. If the processed state TSK is used for the species Hoki the total amount landed is 10,277 tonnes, which equates to 154.1 tonne misreported at 1.5% and 61.6 tonnes at 0.60 %.

10.6.4 For the year the s 9(2)(b)(ii) landed 3,152 tonne of Hoki in the processed state TSK which equates to 47.2 tonne misreported at 1.5% and 18.9 tonne at 0.60%

10.6.5 The Total Allowable Commercial Catch (TACC) for Hoki in the 2002-2003 year was 200,010 tonne of which the 25,022 tonne listed in point 10.6.4 makes up approximately 12.5%.

10.6.6 Obviously there will be a range of zero to 1.5% within which the total amount of misreporting will fall and this could only be established by obtaining all Discharge Summary Sheets for the vessel for the year. However this would only give the details for species that passed through the sampling system.



**11** **s 9(2)(b)(ii) system for reporting of green weight on the CLR**

11.1 Information gathered to establish the greenweight as recorded on the CLR comes from a number of different sources.

- *Daily Tallies* as recorded by the vessel factory manager and entered into the Access Database on the vessel.
- *Discharge Tally Sheets* as completed by the unloading team at the time of a vessel discharge.
- *Carton Compliance Checks* as completed by the unloading team at the time of a vessel discharge
- *Vessel Quality Summary's* generated from Quality Control Sampling as completed after the vessel discharge has been completed and a number of samples delivered to the s 9(2)(b)(ii) Factory for sampling.

11.1.1 *Daily Tallies* are used to complete the first five columns of the "Catch Landing Data" section of the CLR. These columns are headed Fishstock, Landed State, Containers with subheadings Number, Type and Content Weight. Refer Appendix H.

11.1.2 *Discharge Tally Sheets* are completed by the unloading manager using information gathered from a number of points during the discharge. These points include tally sheets, reconciliation with tally sheets produced by the cold store, and truck dockets (recording the number of cartons taken for sampling).

11.1.3 *Discharge Tally Sheets* record the species, state, grade, carton weight (nominal) total cartons, total weight (processed) and the warehouse where it was received (either s 9(2)(b)(ii) or s 9(2)(b)(ii)). Refer Appendix I.

11.1.4 *Carton Compliance Checks* are made on the wharf as the cartons are being unloaded. The person responsible is advised the number of cartons of a particular species that are required to be checked. Cartons are weighed and the weight (gross) and temperature recorded.

*Carton Compliance Checks* also identify and locate a predetermined number of cartons that are taken away for destructive sampling at the s 9(2)(b)(ii) factory.

11.1.5 A *Vessel Quality Summary* is prepared after the destructive sampling process has been completed. The *Vessel Quality Summary* uses information from two main sources to establish standard and average weights as recorded in the “Carton Weight Compliance” section. Refer Appendix J.

11.2 The standard weight of the *Vessel Quality Summary* is established using the following procedure:

- The cartons are QC sampled as per a set § 9(2)(b)(ii) procedure
- The weight of packaging for each of the blocks sampled (Same species and state) is recorded. Refer Appendix G.
- An average weight of packaging is established. (This should vary by a small amount for each fishing trip.)
- The average weight of packaging is then added to the nominal net weight, which establishes the lower “Standard” value. Refer Appendix J, example LIN TSK (20.4 KG) lower standard value 21.48
- The nominal net weight is then multiplied by 1.5%, and then the average weight of packaging added which then establishes the upper “Standard” value. Refer Appendix J, example LIN TSK (20.4 KG) upper standard value 21.79

11.2.1 The method of establishing the average weight of packaging was not canvassed in the interviews. On checking the information provided it is difficult to see how the average weight of packaging was determined. The average weight of packaging identified in documents provided for the § 9(2)(b)(ii) is 1.505 kilograms and for the § 9(2)(b)(ii) 1.445 kilograms. The figures used by § 9(2)(b)(ii) on the *Vessel Quality Summary* are 1.040 and 1.080 respectively.

11.2.2 The average weight on the *Vessel Quality Summary* is established from the carton compliance sampling weights, which record a gross weight for each of the cartons sampled. The average weight is determined and recorded on the *Vessel Quality Summary*. Refer Appendix J, example LIN TSK (20.4 KG) Average value 21.83.

11.3 The *Discharge Tally Sheet* and the *Vessel Quality Summary* are forwarded to the Vessel Manager.

11.4 The vessel manager will check the *Vessel Quality Summary* to ensure that the average weight falls between the lower and upper values identified in the standard weight.

11.4.1 If the average weight falls between the lower and upper values identified in the standard weight then the product will be declared at the nominal net weight.



11.4.2 If the average weight falls below the lower value identified in the standard weight then the product will be declared at the nominal net weight.

11.4.3 If the average weight falls above the upper value identified in the standard weight then the product will be re-declared adding the difference between the upper standard value and the average weight to the nominal net weight. Refer Appendix J, example LIN TSK (20.4 KG) re-declare value 20.44.

11.5 For product that has not been sampled, it is simply declared at the nominal net weight.

11.6 The vessel manager will then use the information already recorded on the CLR, the Vessel Quality Summary and the Discharge Tally Sheet to complete the column headed "Greenweight (kilograms) when advised by LFR" of the CLR

11.6.1 The green weight is established by:

- multiplying the number of cartons (which may now be amended in line with figures obtained from the Discharge Tally Sheet)
- by the nominal net weight (or amended net weight in line with figures obtained from the Discharge Tally Sheet)
- by the conversion factor.

11.6.2 The greenweight is broken up into the particular fish-stock areas from which it was taken.

11.7 The CLR is then forwarded, along with the other documentation to allow an Unloading Docket and Purchase Invoice to be prepared. Refer Appendix K and L. .

11.8 This process is shown in pictorial form in an I2 diagram. Refer appendix M

## **12. Offences**

12.1 Two main issues have arisen from this enquiry.

12.1.1 The first relates to cartons that pass through the carton compliance and QC sampling process where a tolerance of up to 1.5% is applied by s 9(2)(b)(iii) and was applied at the time the product in question was landed.

12.1.2 As can be seen from the previous section, s 9(2)(b)(ii) are aware that the product exceeds the nominal net weight declared, but will not re-declare the product weight up unless the weight obtained exceeds the 1.5% tolerance.

12.1.3 At the time of writing, the make up of the 1.5% tolerance has not been confirmed, although it has been covered in previous discussion and documentation.

12.2 The second issue relates to cartons that do not pass through the carton compliance and QC sampling process and are declared at their nominal net weight, without any weight checks being undertaken by s 9(2)(b)(ii) and was applied at the time the product in question was landed.

12.2.1 This product will generally be of the smaller lines where s 9(2)(b)(ii) considers there are too few samples to weigh.

12.2.2 How can s 9(2)(b)(ii) or s 9(2)(b)(ii) Ltd be sure of the weight of these particular cartons of fish? In short they can't and the LFR can only provide an estimated greenweight established by multiplying the number of cartons unloaded by the nominal net weight.

12.3 Two Fisheries Act offences that would appear to be relevant to this situation are:

**231. Knowingly using false document to obtain benefit or making false statement—**

(1) A person commits an offence if the person knowingly, for the purpose of obtaining any benefit under this Act,—

(a) Makes any false or misleading statement; or

(b) Omits any information—

in any communication, application, record, or return prescribed by or in accordance with this Act, or required for its administration.

(3) Every person who commits an offence against subsection (1) or subsection (2) of this section is liable to the penalty set out in section 252(1) of this Act.



**232. Buying, selling, or possessing fish contrary to Act—**

- (2) Every person commits an offence who buys, sells, or possesses any fish, aquatic life, or seaweed the taking or landing of which has not been recorded or reported in accordance with this Act.
- (4) Every person who commits an offence against subsection (1) or subsection (2) of this section is liable to the penalty set out in section 252(3) of this Act, except that if, in the case of an individual defendant, the defendant establishes that the fish, aquatic life, or seaweed was purchased or possessed otherwise than for the purpose of sale, the penalty shall be as set out in subsection (5) of that section.

12.4 Evidence supporting an offence against Section 231 (1):

- 12.4.1 *Knowingly* can be established through the s 9(2)(b)(ii) “system” designed with a 1.5% tolerance used by staff to generate the relevant documentation. The existence of this system and the tolerance is confirmed in the interviews of s 9(2)(a), s 9(2)(a) and s 9(2)(a).

It is confirmed in the letter dated 3<sup>rd</sup> October 2000. Refer Appendix C

It is confirmed in the product specification sheets (Exhibits 001, 002, 501, 502, 503) where the block specifications are 6.8 to 6.9 kilograms for Hake and Ling and 7.484 with a standard deviation of .04 for Hoki. Refer Appendix N.

It is confirmed in the onboard QC sampling, which shows that all blocks tested meet the minimum weight or exceed it. If a block does not reach the minimum weight then a fillet is replaced to bring the weight of the block above the minimum weight.

- 12.4.2 The *benefit* to s 9(2)(b)(ii) is that by under reporting greenweight, they are able to take more fish than what they would be entitled to. This in turn leads to an increase in the amount of fish they can sell, at the expense of the Quota Management System (QMS).

- 12.4.3 There is also a marketing benefit to s 9(2)(b)(ii) as by the systematic over packing of their blocks and subsequently the cartons, they are ensuring that they are always complying with the relevant trade requirements, particular weights and measures. The relevant regulations are outlined in the two s 9(2)(b)(ii) letters to MFish. Refer Appendix A and B

12.4.4 A *false or misleading statement* can be shown in the way the greenweight is established prior to the CLR being completed.

Vessel	Species	Nom. Net	Standard		Average	Packing	Net	Declared	Difference
			Low	High					
§ 9(2)(b)(ii)	Black Oreo Dory DRE	22.00	N/A	N/A	N/A			22.00	
	Ling TSK	20.40	21.48	21.79	21.83	1.08	20.75	20.44	0.31
§ 9(2)(b)(ii)	Hake FIL	20.40	N/A	N/A	N/A			20.40	
	Hoki FLB	22.48	23.41	23.75	23.41	0.95	22.46	22.46	0.00
	Ling TSK	20.40	21.44	21.75	21.60	1.04	20.56	20.40	0.16

Table 6

As can be seen in table 6 the Ling landed from the § 9(2)(b)(ii) had an average gross weight of 21.83 kilograms. The packaging weighed 1.08 kilograms, leaving a net weight of 20.75 kilograms, 310 grams per carton over the net weight declared, even though the declared weight was increased from the nominal net of 20.40 to 20.44 kilograms. Note this information is derived purely from documentation provided by § 9(2)(b)(ii) however it compares favourably with the MFish assertion that the net weight of this fish is 20.76 kilograms. (Table 2).

The same applies to the Ling landed from the § 9(2)(b)(ii) which had an average gross weight of 21.60 kilograms. The packaging weighed 1.04 kilograms, leaving a net weight of 20.56 kilograms, 160 grams per carton over the net weight declared. This does not compare as favourably to the MFish assertion that the net weight of this fish is 20.61 kilograms. (Table 6).

The declared weight is that which has been recorded on the CLR for each vessel.

12.4.5 *Record, or return* prescribed by or in accordance with this Act, the CLR's submitted by § 9(2)(b)(ii) are records required pursuant to Section 189 (a) Fisheries Act 1996, and which are to be submitted pursuant to Regulation 6, Fisheries (Record Keeping) Regulations 2001.

The Purchase Invoices submitted by § 9(2)(b)(ii) are records required pursuant to Section 189 (d) Fisheries Act 1996, and which are to be submitted pursuant to Regulation 13, Fisheries (Reporting) Regulations 1990.

If MFish allege that the CLR is the record in which a false statement has been made then § 9(2)(b)(ii) was the LFR and as such are the company responsible for establishing the greenweight of fish landed as required by Regulation 13 Fisheries (Record Keeping) Regulations 1990. This information is then entered onto the CLR.



The method by which the greenweight is established is a § 9(2)(b)(ii) method and system used by § 9(2)(b)(ii). The primary document used to establish this greenweight is the Vessel Quality Summary (Appendix J) a document produced by § 9(2)(b)(ii) staff.

§ 9(2)(b)(ii) being the permit holder under whose permit the fish were taken are required to complete the CLR and the staff members completing and entering the greenweight on the CLR were employed by § 9(2)(b)(ii).

At the time of the offending it would appear that § 9(2)(b)(ii) was owned and operated by § 9(2)(b)(ii). However on § 9(2)(b)(ii).

If the Purchase Invoice was considered to be the return in which the false statement was made the same situation applies, the false statement, (ie greenweight) is established from the Vessel Quality Summary, recorded on the CLR then used to create an Unloading Docket, and finally the Purchase Invoice is generated from the data entered off the Unloading Docket.

12.5 In terms of Section 231 (1) Fisheries Act 1996, the question of who knowingly made the false statement arises.

12.5.1 Did § 9(2)(b)(ii) make the false statement, which was then blindly copied by § 9(2)(b)(ii)?

12.5.2 Did § 9(2)(b)(ii) make the false statement, which was then knowingly copied by § 9(2)(b)(ii)?

12.5.3 Did § 9(2)(b)(ii) make the false statement, which was then knowingly copied by § 9(2)(b)(ii)?

12.5.4 Did § 9(2)(b)(ii) make the false statement, which was then knowingly used by them?

12.5.5 It may be necessary to conduct a further interview to confirm that exact order in which the documentation is produced.

12.6 Evidence supporting an offence against Section 232 (2):

12.6.1 Possesses can be proved in that the cartons of fish were caught and processed on board a § 9(2)(b)(ii) vessel. Possession of the fish was then transferred to § 9(2)(b)(ii) the LFR at the time of landing. Although the cartons of fish were primarily stored at § 9(2)(b)(ii), possession and control remained with the LFR.

12.6.2 *Fish* should not be an issue and should be easily proven.

12.6.3 *Landing* again should not be an issue and should be easily proven, using documentation obtained from s 9(2)(b)(ii). (Appendices G to J)

12.6.4 *Reported in accordance with the Act*. MFish would need to be able to prove that the landing of the fish had not been reported in accordance with the act due to the misleading greenweight being declared

12.6.5 This again comes down to the accuracy of the reporting of greenweight on either the CLR or Purchase Invoice. The comments and evidence discussed previously under the headings *false* or *misleading statement* and *record* or *return* apply here.

12.7 s 9(2)(b)(ii) have been advised that their system of allowing a tolerance of 1.5% is not accepted by the Ministry of Fisheries and that it is considered a deliberate under-declaration for quota reporting purposes.

12.7.1 This is outlined in a letter to s 9(2)(a) from s 9(2)(a) dated 14 November 2002. Refer Appendix O.

12.8 s 9(2)(b)(ii) have also committed offences against Regulation 12, Fisheries (Record Keeping) Regulations 1990 in respect of their unload dockets.

#### **Unloading dockets—**

(1) An unloading docket shall be kept where—

- (a) A licensed fish receiver or a person acting as an agent of a licensed fish receiver takes possession of fish from a commercial [[fisher]]; and
- (b) It is not practicable for a purchase invoice to be issued at the time the licensed fish receiver or agent takes possession of the fish.

(1A) An unloading docket must be completed at the time when possession of the fish is taken.]

(2) An unloading docket shall include the following information:

- (e) The number and type of the containers in which the fish were received:



- 12.8.1 The Fish Landing Dockets do not physically record the number of cartons received by the LFR. Refer Appendix L.
- 12.8.2 When questioned at interview s 9(2)(a) admitted that the Fish Landing Dockets were in fact Unload Dockets for the purposes of the Fisheries Act and relevant regulations.
- 12.8.3 s 9(2)(a) said that the Fish Landing Dockets had to be read in conjunction with the Discharge Tally Sheet to establish the number of cartons received. Refer Appendix L.

### **13 Matters likely to be raised in defence**

- 13.1 If any prosecution action were to be taken then a number of matters are likely to be raised by the defence that need to be taken into consideration.
- 13.2 The extent of time this carton weight matter has been allowed to remain unresolved.
- 13.2.1 As mentioned earlier in the report this matter has been around for a considerable period of time, in excess of 15 years possibly although the matter appears to have been taken up with s 9(2)(b)(ii) directly in 1996.
- 13.2.2 There have been a number of attempts since that time to resolve the issue but none have been taken to the final point and the matter resolved satisfactorily. Subsequently s 9(2)(b)(ii) have continued to apply the tolerance although the value may have dropped over time to 1.5%
- 13.2.3 s 9(2)(b)(ii) have also strongly advocated since at least 1999 for an Industry / MFish working group to be established to resolve the carton weight reporting issue.
- 13.2.4 Although the working party had been agreed to in principle by the Ministry it has been slow in getting this group underway. Despite this the Ministry has made it quite clear to industry that they are still required to meet their legal obligations to accurately record and report catch.
- 13.3 Reasonable Grounds.
- 13.3.1 If disclosure were to be made prior to a prosecution it would become immediately apparent that the calculations made by s 9(2)(a) when establishing reasonable grounds to seize the fish were suspect in that incorrect information had been used.

13.3.2 Although I believe this does not affect the reasonable grounds established, s 9(2)(a) will be a crucial witness for the prosecution and his credibility is likely to come under severe attack in any court case.

13.3.3 s 9(2)(b)(ii) through their legal representation did not request or dispute the reasonable grounds established to clone the computers but indicated it would challenge such grounds in any future court case. Grounds for cloning the computers were firmly established and recorded prior to the cloning.

13.4 MFish method of determining the weight of fish in the cartons.

13.4.1 There are a number of different methods of establishing the weight of processed fish prior to the application of a conversion factor to establish greenweight employed by fishing companies in New Zealand.

13.4.2 The MFish method used is just another method although given the effort and number of samples taken is likely to be more accurate than that used by some companies.

13.4.2 s 9(2)(a) will be the prime witness in proving that the MFish method is accurate and the figures obtained reliable.

13.5 Interpretation of Legislation.

13.5.1 Current fisheries legislation does not stipulate a method by which the accurate processed weight of fish is determined in the course of establishing greenweight for QMS purposes.

13.5.2 Therefore it is over to individual companies to develop and refine methods to declare greenweight accurately.

13.5.3 s 9(2)(b)(ii) would argue that the process they have developed is sound and conforms with current legislation.

## 14 Summary

14.1 Sampling processes undertaken by s 9(2)(b)(ii) and MFish show that the net weight of fish packed exceeds the nominal net weight for a particular species and state.



- 14.2 The amount of over packing varies from species to species and vessel to vessel.
- 14.3 MFish asserts that the level of over packing varies from 0.60% to 1.93%.
- 14.4 s 9(2)(b)(ii) apply a tolerance of up to 1.5% before re-declaring over weight cartons.
- 14.5 In my opinion s 9(2)(b)(ii) have committed offences against section 231 (1) and 232 (2) Fisheries Act 1996 and that these offences can be proved.
- 14.6 In my opinion s 9(2)(b)(ii) have committed offences against regulation 12 Fisheries (Record Keeping) Regulations 1990 and that these offences can be proved.

## 15 Recommendations

- 15.1 That this report be forwarded to Regional Compliance Manger s 9(2)(a), Senior Fisheries Prosecutor s 9(2)(a), Fisheries Analyst s 9(2)(a) and District Compliance Manger s 9(2)(a) for their initial information.
- 15.2 That after reading the report a meeting be called to discuss the merits of prosecuting s 9(2)(b)(ii) with Fisheries Act offences.
- 15.3 That if a decision is made not to prosecute s 9(2)(b)(ii) with Fisheries Act offences then Fisheries Regulation charges should not be brought. The carton weight issue is being closely monitored by other fishing companies and a strong deterrent message must be sent to other companies. I do not believe that regulatory charges will do this.

s 9(2)(a)

Fisheries Investigator

Dunedin

## Appendices

**Note:** Appendices F to M refer to the vessel § 9(2)(b)(ii). This has been done to keep the matter as simple as possible. There are of course similar documents for the § 9(2)(b)(ii) that would be used in any prosecution considered.

- A. Letter to § 9(2)(a) from § 9(2)(a), 17/09/96
- B. Letter to § 9(2)(a) from § 9(2)(a), 14/02/00
- C. Letter to § 9(2)(a) from § 9(2)(a), 03/10/00
- D. Letter (Directive) to § 9(2)(a) from § 9(2)(a) 27/03/03
- E. Letter (Directive) to § 9(2)(a) from § 9(2)(a) 13/04/03
- F. Exhibit 1020 On Board QC Sampling, § 9(2)(b)(ii)
- G. Exhibit 1008 § 9(2)(b)(ii) On Shore QC Summary, § 9(2)(b)(ii) Ling
- H. Exhibit 1012 CLR, § 9(2)(b)(ii)
- I. Exhibit 1021 Discharge Talley Sheet, § 9(2)(b)(ii)
- J. Exhibit 1023 Vessel Discharge Summary, § 9(2)(b)(ii)
- K. Exhibit 1011 Purchase Invoice, § 9(2)(b)(ii)
- L. Exhibit 1010 Fish Landing Docket (Unload Docket) § 9(2)(b)(ii)
- M. I2 Diagram showing document flow
- N. Exhibit 002 Specification Sheet, Ling, § 9(2)(b)(ii)
- O. Letter to § 9(2)(a) from § 9(2)(a) 14/11/02