



Application from Fiordland Lobster Company for consent to hold rock lobster quota in excess of aggregation limits

Decision Document

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Contents

Page

1	Executive summary.....	1
2	FLC's application.....	3
3	FLC's current quota ownership.....	4
4	Legislation relating to aggregation limits.....	5
5	Consultation and submissions	6
6	Guidance for decision making	6
7	Willingness and ability of other members of the NZ fishing industry to acquire quota: 60(3)(a)	8
8	The likely effect on the development of any new or existing stock or species: 60(3)(b)(i)	11
9	The likely effect on other quota owners or fishers: 60(3)(b)(ii)	12
10	The likely effect on the processing and marketing of that stock or species: 60(3)(b)(iii)	16
11	Ability of the applicant to take any other stocks or species: 60(3)(b)(iv)	18
12	Efficiency of the NZ industry or any person engaged in the NZ fishing industry: 60(b)(v)	18
13	Such other matters as you consider relevant: 60(3)(c)	19
14	Possible consent conditions	20
15	Conclusions and recommendations	22

Appendix 1: Fiordland Lobster Company's application - August 2015

Appendix 2: Fiordland Lobster Company's amended application - June 2017

Appendix 3: Select Committee consideration of aggregation provisions

Appendix 4: Other matters to consider (section 60(3)(c))

Appendix 5: Existing rock lobster quota aggregation limit exemptions

Appendix 6: Submissions made on FLC's initial application

1 Executive summary

1. Fiordland Lobster Company Limited (FLC) has applied for consent to hold rock lobster quota in excess of aggregation limits in the CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago), and CRA 8 (Southern) rock lobster fisheries. The quota aggregation limit for spiny rock lobster is 10% of the Total Allowable Commercial Catch (TACC) for each stock.
2. FLC's application does not relate to specific proposed purchases of quota shares. Rather, FLC seeks generic consent to hold up to 15% of the quota shares in three fisheries to enable the company to develop its business and continue to be a competitive participant in the quota market (headroom application).
3. The Ministry for Primary Industries (MPI) received 46 submissions on FLC's aggregation proposal namely from rock lobster quota owners and ACE fishers. Of these submissions, 30 submitters opposed the proposal mainly because of concerns with negative impacts of competition for rock lobster quota and Annual Catch Entitlement (ACE) that they considered would result from granting consent. MPI notes that the NZ Rock Lobster Industry Council did not submit given the contentious nature of the proposal and the CRA 8 Management Committee was unable to formulate a position due to the high level of conflicts of interest.
4. Following consultation, MPI provided FLC with an opportunity to consider submitter concerns and amend their application accordingly. FLC initially applied for consent to hold up to 20% of quota in CRA 4, 7 and 8, but after consideration of submitter concerns they have amended their application for consent to hold up to 15% in the three fisheries subject to certain conditions that are supported by statutory declarations (Appendix 2).
5. FLC recognise the importance of supporting new and experienced fishers into the rock lobster industry and, have, therefore, developed conditions as part of the application that demonstrate their on-selling practices. These conditions specify that FLC will offer quota to fishers and will also provide fishers with ACE support for each stock to a specified level on an annual basis. If consent is granted, FLC will provide MPI with an annual report for the next four April fishing years to provide evidence that each condition has been satisfied. The report will include statutory declarations for quota offers and ACE support that have been completed in accordance with the terms of the conditions.
6. When assessing applications for consent to exceed an aggregation limit, you are required to consider a range of matters listed in section 60 of the Fisheries Act 1996 (the Act):
 - Willingness and ability of other members in the industry to acquire quota - 60(3)(a)
 - Likely effect of granting or withholding of the consent on:
 - the development of any new or existing stock or species - 60(3)(b)(i);
 - other quota owners or commercial fishers - 60(3)(b)(ii);
 - the processing and marketing of the stock or species - 60(3)(b)(iii);
 - the ability of the applicant to take other stocks or species - 60(3)(b)(iv);
 - the efficiency of the New Zealand industry and its participants - 60(3)(b)(v);
 - Such other matters as you consider relevant - 60(3)(c) (refer to Appendix 4).

7. MPI considers that the effect of the exemption would be positive to FLC because it will enable them to grow their business and maintain their competitive position within the rock lobster industry. The proposed headroom application may be at best neutral to the fishing industry generally with respect to the majority of your section 60 considerations, but there are risks that negative effects may emerge in quota and Annual Catch Entitlement (ACE) markets. There is a risk that consent may reduce the amount of quota and ACE available to other participants and subsequently drive up the demand for quota and ACE in the future and hence increase prices paid. The extent of any increase is uncertain, which is further exacerbated by the lack of certainty around when quota would be purchased.
8. Each application must be assessed on its own merit. Nonetheless, decisions made on previous applications can provide guidance to support the assessment of this application. MPI (previously the Ministry of Fisheries) has previously recommended that consent without a pending acquisition of quota be withheld (or declined). This position is based on the difficulties associated with assessing the impact of such requests with regard to the statutory criteria in section 60(3) of the Act. The uncertainty is created by the inability to forecast with any certainty likely market conditions and therefore impacts on industry at the time of actual purchase of the quota.
9. This uncertainty in the assessment of future impacts undermines the general policy intent of the aggregation limit provisions to avoid unacceptable effects that could emerge (i.e. anti-competitive behaviour). However, MPI notes there is uncertainty in the assessment of impacts of aggregation limit exemptions regardless of whether an applicant has a pending purchase. This is reflected in the fact that no applications have been declined.
10. As Minister, you are entitled to have a preference of looking more favourably at applications that are based on pending acquisitions when considering an exemption. However, there is no legal requirement to have a pending quota purchase agreement in place before seeking an exemption from the aggregation limit, nor consequently for you to automatically decline such an application.
11. Additionally, approving this application without a confirmed purchase may also provide FLC with a competitive advantage over anyone else who has to go through the approval process (e.g. FLC could offer a “buy now” quota price below that of anyone close to the limit who has to go through the current application process). There is a risk that approval of this application could also give rise to similar applications from other companies or fishers which could be difficult for you to decline on their merits. Such exemptions would further weaken the intent of the aggregation provisions as set out by the Select Committee.
12. With respect to this application, MPI note that:
 - a) Three prospective exemptions have already been approved to facilitate Maori into the business of fishing (which reflected the Select Committee considerations). These exemptions were for rock lobster and paua in the 1990s;
 - b) The rock lobster quota market has had a low level of trading over the last 5 years (quota is tightly held and sold in small lots), which may be a fishery specific factor that could act to limit the extent of precedent;
 - c) The precedent effect of any approval may be limited by the small size of the exemption applied for by FLC (5% above existing limits) and any requirement for conditions relating to the on sale of quota and/or ACE. However, the size of the current

application will not prevent other participants from applying for non-pending applications.

13. You have three decision options relating to FLC's application. You can, approve consent for FLC to exceed the aggregation limit unconditionally, approve consent with conditions, or decline consent.
14. You could chose to decline FLC's application if you consider that risks of granting consent on the quota and ACE markets are material and you are concerned about the level of uncertainty associated with the analysis given the prospective nature of the application. Declining the application would be consistent with past decisions relating to prospective applications.
15. Alternatively, you could choose to exercise your section 60 discretion and approve the application if you consider the benefits of granting FLC consent outweigh any negative precedent effects on quota and ACE markets now and in the future.
16. Regardless of your decision on this application, MPI notes that it is not clear that aggregation limits are a useful tool in terms of getting best value from the use of our fisheries resources. The aggregation limits effectively prevent transfer of quota to those who value it the most and who are, therefore, most likely to derive greatest value from its use. This suggests a review of the aggregation provisions in the Act is warranted. MPI intends to undertake a review of aggregation limits more generally as part of the Future of our Fisheries work programme that is currently being progressed.

2 FLC's application

17. FLC is one of New Zealand's largest exporters of live rock lobsters and have made considerable investments in technology, branding and marketing for live lobster exports.
18. FLC has applied to hold spiny rock lobster quota in excess of the quota aggregation limits. FLC initially applied for consent to hold up to 20,000,000 quota shares (20%), in perpetuity and without condition, in CRA 4, 7 and 8 (Appendix 1). Following stakeholder consultation, MPI met with representatives of FLC to discuss key points raised in submissions and provide an opportunity for FLC to address some of the concerns.
19. FLC has reflected on submitter concerns, namely the importance of supporting new and experienced fishers into the rock lobster industry, and has submitted an amended application (Appendix 2). FLC now request consent to hold up to 15,000,000 quota shares (15%), in perpetuity, but subject to conditions, in CRA 4, 7 and 8. The conditions specify that FLC will offer quota to fishers and will also provide fishers with ACE support for each stock where the proposed exemption will be held (Appendix 2, Schedule 1). The conditions are designed to demonstrate formally what FLC have done to date operationally (namely "that as we grow as a company we also assist our fishers to grow"), and that granting them consent will not be impairing fishers' ability to access quota or ACE. An annual report will be provided to MPI for the next four April fishing years to provide evidence that each condition has been satisfied.

20. FLC's application does not relate to a specific pending purchase of quota shares. Rather, FLC seek generic consent to hold up to 15% of the quota shares in each of CRA 4, 7 and 8 to:
 - a) Enable the company to continue to develop and add value throughout its operations through greater economies of scale;
 - b) Allow FLC to continue its successful strategy of on-selling quota packages to fishers;
 - c) Give effect to FLC's position as the "preferred purchaser" for many vendors;
 - d) Maintain its competitive position within the rock lobster industry.
21. FLC consider that the evaluation of a non-pending purchase application should be no different to that of an application for a pending purchase of quota. For both types of application (generic and pending purchase) the maximum limit on quota share ownership is known (i.e. 15%, as specified in the amended application) and the impact of an entity owning the specified amount of quota is, therefore, able to be evaluated.
22. FLC also consider that there are special circumstances that warrant the granting of their consent. This relates to the high value of rock lobster quota, the requirement for rapid transactions of small quota parcels and business considerations such as certainty, regulatory efficiency and reduced business compliance costs.

3 FLC's current quota ownership

23. FLC, through Deltop Holdings Limited¹, currently hold close to 10% of the quota in CRA 4, 7, and 8. They also own smaller amounts of quota in CRA 3 (0.2%), CRA 5 (5.2%) and CRA 6 (0.07%).
24. Table 1 sets out Deltop's current quota holdings and maximum potential holdings if the consent is granted (expressed in the proportion of the TACC and in tonnes). If FLC is granted consent this could raise their potential quota holdings from 28 to 43 tonnes in CRA 4, 11 to 17 tonnes in CRA 7, and 96 to 144 tonnes in CRA 8.

Table 1: Deltop Holdings current quota holding and maximum potential quota holdings in CRA 4, 7 and 8 if consent is granted for 15% (as at 26 July 2017).

Stock	Current holdings			Maximum that could be held if consent approved for 15%
	2017/18 TACC (t)	Proportion of TACC	Quota weight equivalent (t)	Quota weight equivalent (t)
CRA 4	289	9.85 %	28.48	43.35
CRA 7	112.52	9.52 %	10.71	16.88
CRA 8	962	10.0 %	96.20	144.30

¹ FLC holds 100% of the company shares in Deltop Holdings Limited.

25. Aggregation limits and consents to exceed aggregation limits apply to a person. Section 59(10) of the Act defines person in several ways². Under this section of the Act, Deltop Holdings is not considered to be associated or included with any other persons. Deltop Holdings and FLC have sale and purchase agreements for quota with certain persons. However, based on information provided by FLC and through submissions, MPI does not consider that there is a relationship between Deltop or FLC and certain quota owners that would be sufficient to amount to Deltop or FLC being an “associated person” under section 59(10)(d) of the Act.

4 Legislation relating to aggregation limits

26. Section 59(1) of the Act specifies the maximum amount of quota shares that may be owned by any one person for a particular stock or species. The quota aggregation limits specified are:
- **spiny rock lobster**, no more than 10,000,000³ quota shares (10% of the TACC) in any one Quota Management Area (QMA);
 - **paua**, no more than 20,000,000 quota shares (20% of the TACC) in any one QMA;
 - **bluenose**, no more than 20% of the combined TACC for every stock of that species;
 - **45 species named on Schedule 5 of the Act** (such as hoki, scampi and southern blue whiting), no more than 45% of the combined TACC for every stock of that species;
 - **any other species**, no more than 35% of the combined TACC for every stock of that species.
27. Under section 60(1) of the Act you may consent to any named person holding up to a specified number of quota shares exceeding 10,000,000 for rock lobster in any one QMA. This is after consultation with such persons or organisations you consider are representative of those classes or persons having an interest in the application.
28. Section 60(2) allows you to place certain conditions on any approval for an exemption to the aggregation limits, including any limit on the number of quota shares for any particular stock, and may be given for any specified year or years or generally.
29. Under section 60(3) of the Act, when considering whether to grant any consent for persons to hold quota in excess of aggregation limits, you shall consider—
- a) the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species:

² Section 59(10) of the Act defines ‘person’ to include:

- (a) any person who is in partnership with the person;
- (b) any person who is a director or employee of any company of which the person is a director or employee;
- (c) any person who is a relative of the person as defined in paragraph (c) of the definition of that term, as it was before the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in section YA 1 of the Income Tax Act 2007;
- (d) any person who would be an associated person under subpart YB of the Income Tax Act 2007 as it was before the enactment of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009, to the extent to which those rules apply for the whole of that Act excluding the 1973, 1988, and 1990 version provisions, with the exception that paragraph (e) of the definition of market value circumstance in section YA 1 of that Act does not apply;
- (e) any beneficiary or trustee of any trust of which the person is a trustee or beneficiary.

³ Quota for a fishstock is expressed as shares that are whole numbers. The total number of quota shares for all fishstocks is always 100,000,000 shares.

- b) the likely effect of the granting or withholding of the consent on—
 - i. the development of any new or existing stock or species;
 - ii. other quota owners or commercial fishers;
 - iii. the processing and marketing of that stock or species;
 - iv. the ability of the applicant to take any other stock or species;
 - v. the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry; and
- c) such other matters as you consider relevant.

5 Consultation and submissions

- 30. During April and May 2016, MPI undertook consultation on FLC’s initial quota aggregation limit exemption application to hold up to 20% of the quota in CRA 4, 7 and 8. MPI did not re-consult on FLC’s amended application to hold up to 15% of the quota in the three stocks, because it was for a lesser amount than the initial application, which was consulted on.
- 31. FLC’s initial application (Appendix 1) along with a consultation letter was posted on MPI’s website. Relevant parties, including rock lobster quota owners, ACE fishers, Te Ohu Kaimoana, Seafood New Zealand and national recreational fishing organisations, were alerted to the consultation material via email, in writing or by phone.
- 32. MPI received 46 submissions on FLC’s application from various organisations, groups and individuals. The majority of submissions received were from commercial fishing interests (quota share owners and ACE fishers). 14 submitters supported FLC’s application, 30 opposed and two submitters expressed a neutral position. MPI notes that the CRA 8 Management Committee was unable to formulate a position due to the high level of conflicts of interest (real and perceived) of members of the CRA 8 board through various connections with FLC, or other companies already holding aggregation exemptions. The New Zealand Rock Lobster Industry Council did not submit given the contentious nature of the proposal.
- 33. Full copies of the submissions are available in Appendix 6. Each submission is also discussed below as relevant in the following sections.

6 Guidance for decision making

- 34. Guidance to support the assessment of this application can be drawn from various sources:
 - a) The **purpose of the Act** (Section 8) to “provide for the utilisation of fisheries resources while ensuring sustainability”. This provides the overall context to your decision-making and establishes the context in which to interpret the considerations listed in section 60(3).
 - b) The **information principles** (Section 10 of the Act). These principles direct how decision makers should respond when information is uncertain. Where information is uncertain (i.e. the actual effects consent would have on quota owners or fishers), the level of uncertainty is discussed in this document along with the associated implications for your decision making.

- c) **Applications made by FLC.** These are presented in Appendices 1 and 2 and provide rationale for why FLC considers that you should grant them consent.
 - d) **Submissions made on FLC's initial application.** Relevant issues raised in submissions are addressed in this briefing and copies of the submissions received are contained in Appendix 6.
 - e) **Select Committee reports.** These can be used, as necessary, to help interpret the relevant provisions of the Act and to understand the policy behind them. Appendix 3 sets out the Select Committee position as MPI understands it, along with developments in New Zealand fisheries since aggregation limits were established.
 - f) **Decisions made on previous applications.** These can provide context to your decision on this application.
35. Since the applicant and various submitters raised matters relating to previous decisions on aggregation limits, further explanation is provided here on those decisions.
 36. Since 1988, Ministers of Fisheries have approved (either in whole or in part) about 90 stock and species exemptions from the quota aggregation limits. Only a few applications for aggregation limits have been declined in their entirety; it has been more common for consent to be granted for parts of applications. The main reason for withholding consent for applications (or parts of applications) relates to no proof of a pending purchase, which makes it difficult to assess the impacts you are required to consider under the Act (i.e. effect of consent on quota holders or fishers). However, MPI notes that regardless of whether an applicant has a pending purchase of quota or not, there is uncertainty in the assessment of impacts of aggregation limit exemptions on quota and ACE markets.
 37. There are three instances where previous Ministers have granted an exemption in the absence of a pending transaction. These relate to paua and rock lobster fisheries. The first exemption was to the Ngai Tahu Group in 1997, the second was to the Chatham Islands Enterprise Trust in 1998 and the third was to Moana Pacific Fisheries in 1999. In all these cases, Ministers considered the benefits reflected the position of the Select Committee associated with facilitating tangata whenua into the business and activity of fishing as a relevant matter in the context of the Deed of Settlement and the Maori Fisheries Act 1989.
 38. Thirty eight of all the exemptions granted have related to rock lobster stocks, which reflects the lower aggregation limits (10%) in comparison to other stocks. Twenty one rock lobster stock exemptions are currently in place, with 16 of these exemptions for iwi related companies that were granted to facilitate iwi into the business of fishing. Appendix 5 sets out the approved applications for rock lobster (excluding the statutory exemptions).
 39. For the stocks that FLC have applied for exemption, no non-iwi related companies hold exemptions. Across all rock lobster stocks five non-iwi related companies hold exemptions. Four of these five non-iwi related companies hold exemptions over the 15% that FLC has requested exemption for (CRA 3 – 16.8%, CRA 5 – 26.89%, CRA 6 15.57% and 22.15%). These exemptions were granted based on proof of pending quota purchases.
 40. As Minister, you are entitled to have a preference to look more favourably at applications based on pending transactions. It is not unlawful for you as the decision maker to have preferences as long as this preference is consistent with the specific statutory provisions that a decision is made under and within the purposes of the Act. Each application must be

assessed on its own merits and the decision maker must consider whether, in the particular circumstances, there are good reasons to depart from the past preference.

41. A preference that consent for applications without a pending acquisition of quota should be withheld does not mean that the section 60 discretion of the Act can never be exercised to grant consent in that situation. The policy simply indicates that the discretion is likely to be exercised in a particular way.
42. There is a risk that approval of this application could create a precedent which could make approval of similar applications more difficult. This would lead to a further weakening of the intent of the aggregation limit provisions. However, MPI notes you may consider that there are fishery specific factors in this case that could act to limit the effect of any precedent. For example:
 - a) It is not expected that there will be a significant change in quota ownership or the quota market in the short to medium term because rock lobster quota is tightly held and sold in small lots, which reduces the uncertainty of future impacts and therefore your assessment under section 60;
 - b) The small size of the proposed exemption (5% above existing limits). The size of the current application would not prevent other fishers applying but could be used as a basis for declining other applications that were greater in size;
 - c) The requirement for conditions associated with FLC's proposed consent, which specify how ACE and quota will be made available to other fishers.
43. MPI note that rock lobster has the lowest aggregation limit of any species. The intent of the lower limit was to maintain opportunity for small scale operators to enter and maintain an interest in the fishery. Over time the value of rock lobster quota has increased to the point where the price alone acts as a significant barrier to new entrants. It is not clear that aggregation limits are a useful tool in terms of getting best value from use of our fisheries resources. They effectively prevent transfer of quota to those who value it the most and who are, therefore, most likely to derive greatest value from its use. Regardless of your decision on this application, MPI intends to review the current limits as part of the Future of our Fisheries work programme.

Analysis

44. The following sub-sections (7 to 13) provide MPI's analysis and conclusions on your section 60(3) considerations as they relate to FLC's amended application.

7 Willingness and ability of other members of the NZ fishing industry to acquire quota: 60(3)(a)

45. MPI interprets this matter as the willingness and ability of members of the industry, other than FLC, to acquire CRA 4, 7 or 8 quota at the time of your decision. An open tender is the only conclusive way to determine whether other industry members are willing and able to buy rock lobster quota. In the absence of such evidence, submissions and quota trading history provide information on this matter.

7.1 FLC AND SUBMITTER VIEWS

FLC views	Submitter views
Willingness to acquire rock lobster quota	
<ul style="list-style-type: none"> High willingness for others in the industry to acquire quota. In 2016 FLC were aware of 14 potential purchasers (11 of them fishers) across CRA 3, 4, 7 and 8. 	<ul style="list-style-type: none"> There is a willingness to acquire quota.
Financial ability to purchase rock lobster quota	
<ul style="list-style-type: none"> Small number of NZ fishing companies have sufficient scale and access to capital to be able to purchase quota (particularly larger packages should they come onto the market). If fewer companies have sufficient ability to acquire quota, FLC consider it more important that they be enabled to participate in the quota market so as to mitigate any adverse effects of anti-competitive behaviour that may arise as a consequence of the limited set of quota buyers. 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> Ability of individual fishers to acquire quota will be limited if consent is granted. Individual fishers won't be able to compete with big companies for quota and at prices they can afford. FLC will be given a commercial advantage over other parties that do not have an exemption. Wairarapa Building Society - it is still possible for small and medium fishers to secure finance for quota purchases.
Opportunity to acquire quota	
<ul style="list-style-type: none"> Encourage new fishers into the industry by assisting with the financing of quota parcels and vessels. FLC typically purchases quota, retains a portion itself and splits the remainder into parcels (e.g. of 100-200 kg) for on-sale to fishers or other shareholders. This arrangement suits the sellers (who typically seek a single buyer) and enables fishers to purchase quota that would otherwise be virtually impossible for some. FLC will continue their on-selling quota strategy in CRA 8 and will replicate it in CRA 4 and 7 if consent is granted (currently prevented from doing so by the aggregation limits). 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> Wairarapa Building Society/other opposing submitters - allowing FLC to acquire additional quota would not enhance the ability of small fishers to acquire quota. Wairarapa Building Society - it is unlikely companies already holding in excess of aggregation limits would reduce their holdings, and it is probable that FLC would increase its holdings through purchasing quota from existing smaller fishers. Granting consent will not mitigate any adverse effects of anti-competitive behaviour and there is a risk that it may exacerbate any existing quota access issues. <p><i>Supporting</i></p> <ul style="list-style-type: none"> FLC's strategy of selling/purchasing quota has made it possible for new entrants to enter the industry - would not have been possible without the backing of the likes of FLC.

7.2 QUOTA TRADING INFORMATION

46. Information MPI holds on **average prices paid for CRA 4, 7 and 8 quota shares** for the last five April fishing years is provided in Table 2⁴. The average quota price of CRA 4 quota for the 2016/17 April fishing year was \$743,712 per tonne, \$619,252 per tonne in CRA 7 and \$1,275,969 per tonne in CRA 8.

⁴ CRA 7 has mostly had null to minimal quota trades over the time period, therefore, minimal price information is available for this stock.

Table 2: Prices paid for CRA 4, 7 and 8 quota shares for the last five complete April fishing years.

<i>April fishing year</i>	<i>CRA 4 average (per tonne)</i>	<i>CRA 7 average (per tonne)</i>	<i>CRA 8 average (per tonne)</i>
2012/13	\$ 363,252	-	\$ 534,731
2013/14	\$ 562,308	-	\$ 552,827
2014/15	-	-	\$ 849,473
2015/16	\$ 596,393	-	\$ 1,141,453
2016/17	\$ 743,712	\$619,252	\$ 1,275,969

47. Information MPI holds on quota share trading shows rock lobster has a low level of trading. The proportion of **total quota shares traded** in 2016/17 was 2.98% in CRA 4, 3.07% in CRA 7 and 9.57% in CRA 8. (Table 3).

Table 3: Quota share trading information for CRA 4, 7 and 8 the last five April fishing years.

<i>Stock</i>	<i>April fishing year</i>	<i>Total quota shares traded</i>	<i>Total number of transfers</i>
CRA 4	2012/13	12.92%	28
	2013/14	7.28%	9
	2014/15	0.32%	4
	2015/16	1.92%	8
	2016/17	2.98%	10
CRA 7	2012/13	2.71%	3
	2013/14	-	-
	2014/15	0%	1
	2015/16	-	-
	2016/17	3.07%	3
CRA 8	2012/13	2.28%	17
	2013/14	2.19%	23
	2014/15	1.51%	17
	2015/16	2.49%	21
	2016/17	9.57%	45

7.3 MPI COMMENT

48. MPI considers that FLC is willing and able to purchase CRA 4, 7 and 8 quota and that other industry members are probably willing to purchase quota, but the total number of willing purchasers is unclear because there is no requirement to register such an interest.
49. The ability of some industry members to acquire rock lobster quota is likely to be limited by the high cost of purchase (particularly in CRA 8 at over \$1.2 million per tonne in the 2016/17 April fishing year).
50. The ability to purchase quota may be further affected by the low level of quota trading in rock lobster compared to many other fisheries. Of the three stocks under consideration, the CRA 8 quota market appears to be the most active and diverse in its participants. This suggests there is competitive quota market in CRA 8. In CRA 4 there are fewer quota transfers and CRA 7 has had null to minimal trades over time suggesting the quota markets for these fisheries are more constrained.

51. The ability to buy quota may also be limited because some interests may need to rely on securing lending from financial institutes or other investors. Alternatively, quota transactions facilitated by FLC's on-selling quota policy may be beneficial to smaller industry members because they would not need to go to an established lending agency or financial institution to purchase quota.
52. MPI notes that the aim of FLC's on selling policy is to help ensure a proportion of quota is owned by active fishers. FLC have specified conditions in their amended application that they will follow for offering quota and providing ACE support to fishers if they are granted consent. The purpose of these conditions is provide others in the industry with a greater understanding of the practices they undertake in helping others get into the industry and grow (providing access to quota and ACE) and providing greater uncertainty about those practices (discussed further in section 14 – Possible consent conditions).
53. Since other members of the industry appear to be willing and able to purchase quota, it appears that some members will be affected by this aggregation decision (positively or negatively). The effects on quota holders and fishers are discussed in the following sections, namely under section 60(3)(b)(ii).

8 The likely effect on the development of any new or existing stock or species: 60(3)(b)(i)

54. This matter involves considering the likely effect on the level of utilisation of existing rock lobster stocks, the development of new rock lobster stocks, the provision of information to manage existing rock lobster stocks and the development of new species.

8.1 FLC AND SUBMITTER VIEWS

FLC views	Submitter views
<ul style="list-style-type: none"> • Since FLC's establishment in the late 1980s, it has been at the forefront of the successful management and development of the CRA 8 fishery. • If granted consent it would enable FLC to apply similar management approaches in CRA 4 and 7 and maximise its efforts in the future development and sustainable management of rock lobster fisheries. • FLC suggests they will remain a leader in the sustainable management of rock lobster fisheries if granted consent. 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> • Ngai Tahu Seafoods - FLC's ability to participate in the future development and sustainable management of rock lobster is not unduly affected by limitations on quota aggregation. FLC has a large shareholder base and business relationships - they are already well positioned to maximise its efforts in this regard. • Wairarapa Building Society - there isn't necessarily a connection between FLC's quota ownership and efforts in management and development. FLC's past successes have been achieved while subject to aggregation limits.

8.2 MPI COMMENT

55. MPI expects that granting FLC consent would have minimal effect on the utilisation of existing rock lobster stocks or the development of new rock lobster stocks. This is because New Zealand's wild rock lobster stocks are already fully utilised, fishing occurs in well used coastal waters and does not involve significant bycatch of other species. Granting consent is unlikely to effect the ability of industry to develop new wild species either.

56. MPI notes that quota aggregation can have beneficial effects on information to manage stocks. Under the Quota Management System (QMS), entities that own a large portion of rights to a stock theoretically have a greater incentive to improve stock management. This is because they derive a proportionately larger share of the benefits of improved management.

9 The likely effect on other quota owners or fishers: 60(3)(b)(ii)

57. Granting consent to FLC's aggregation proposal could adversely affect other quota owners or commercial fishers, through for example, changes in quota ownership, increased competition in the quota and ACE markets, and the reduced ability for new entrants to enter the rock lobster industry.

9.1 FLC AND SUBMITTER VIEWS

FLC views	Submitter views
Quota ownership and markets	
<ul style="list-style-type: none"> Quota ownership in CRA 4, 7 and 8 will not change suddenly or rapidly if granted consent - instead evolve incrementally and reflect a business as usual scenario. Consent could have a: <ul style="list-style-type: none"> <i>positive</i> effect on CRA 4, 7 and 8 quota owners who wish to sell quota - bigger quota market, providing the seller with a range of possible purchasers and potentially increasing the price obtained for quota; <i>neutral</i> effect on quota owners who wish to purchase quota but are not currently bound by the aggregation limits, although these quota owners would be operating in a marginally more competitive quota market; <i>neutral</i> effect on rock lobster quota owners who do not wish to buy or sell quota, although the book value of their quota may increase as a consequence of a more competitive quota market. FLC note some industry participants believe that strictly observed aggregation limits are necessary to protect the economic position of small quota owners (or individual fishers). FLC are not a 'price setter' like others. Significant increases in the CRA 8 quota price in recent years occurred when FLC was not actively participating in the market. 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> If granted consent, FLC would be placed in a dominant position and could exhibit "monopolistic" behaviour with respect to the supply of quota or ACE. Consent will increase the level of quota concentration and the market power of FLC, limit the ability for smaller quota owners, including iwi, to compete with FLC, and will drive quota prices up as a result. Fishery is better protected if active fishers have a stake in the fishery (own quota). Wairarapa Building Society - consolidation and aggregation of quota ownership can cause wealth and control over the fishery to be moved out of a local community, resulting in loss of community and damage to existing local institutions. <p><i>Supporting</i></p> <ul style="list-style-type: none"> Ngati Kahungunu Iwi Incorporated - granting FLC consent will have positive impacts on quota owners because there will be a bigger market for the sale of quota.
ACE markets	
<ul style="list-style-type: none"> Consent will ensure there continues to be more than one large supplier of ACE in each fishery - should generally benefit ACE-dependent fishers by improving the competitiveness of the ACE market. Consent could have a: <ul style="list-style-type: none"> <i>positive</i> effect on fishers who fish to FLC or would like to fish for FLC. FLC would be in a stronger position to provide these fishers with additional ACE, and 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> Consent would enable FLC to lock up more of a diminishing pool of ACE. FLC has arrangements with certain interests to ensure a guaranteed access to ACE, which could result in less ACE available for ACE-dependent fishers.

FLC views	Submitter views
<p>encourage and support them into quota ownership in line with company's on-selling quota strategy;</p> <p>- <i>neutral</i> effect on ACE-dependent fishers who do not fish for FLC - relationship between the fisher and relevant quota owner/ACE supplier should not be directly affected by the consent.</p> <ul style="list-style-type: none"> • FLC do not drive the ACE price - prices are set competitively. FLC suggest the price leaders in CRA 8 are typically ACE fishers who are obliged to pay high ACE prices to third party quota owners to obtain the leverage they require to fish. In CRA 4, FLC purchases most of its ACE from eight quota owners who are shareholders of FLC and have supplied FLC with ACE for many years. 	<ul style="list-style-type: none"> • High ACE prices (CRA 8 in particular) have been and continue to be inflated by the behaviour and influence of FLC, and granting consent will exacerbate this. • High CRA 8 ACE prices are putting additional pressure on ACE-dependent fishers to reduce fishing costs. This can result in risky fishing practices to get profit back to the boat. This is of a particular concern because ACE-dependent fishers do not have a stake in the fishery and poor practices could lead to impacts on the long-term sustainability of the fishery. <p><i>Supporting</i></p> <ul style="list-style-type: none"> • Ngati Kahungunu Iwi Incorporated - consent would have a positive influence for fishers, as there will be more than one large supplier of ACE. This should generally benefit ACE-dependent fishers by improving the competitiveness of the ACE market.
Ability to enter the rock lobster industry	
<ul style="list-style-type: none"> • FLC considers that the value of quota is now such that rock lobster can no longer be considered an entry-level fishery unless the entrance of new fishers is actively facilitated by larger quota owners such as FLC. • FLC submit that: <ul style="list-style-type: none"> - Any risks to small operators that might arise with consent are present already as a result of statutory exemptions, granted exemptions and current levels of quota aggregation in CRA 4, 7 and 8; - FLC is a processor and exporter as well as a quota owner - it is as much interested in continuity of supply of lobsters for processing through the supply of ACE to fishers as it is interested in a return on investment as a quota owner; - FLC was founded by fishers, is still substantially owned by fishers, and supports and includes the next generation of fishers. It is not in FLC's interests to control quota or ACE in a manner that disadvantages either ACE-dependent fishers or small quota owners. 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> • Consent would make it harder for new entrants to enter the fishery, particularly if fishers rely on purchasing independent parcels of ACE. Quota owners are under no obligation to make ACE available to fishers. • Wairarapa Building Society - disagrees with FLC's view and notes that rock lobster was a rational choice for Parliament to preserve as a stepping stone fishery because its quota was diversely held (quota is more likely to be traded competitively, regularly, and in smaller packages where it is diversely held). This submitter acknowledges that while cost of quota is high, small package sizes make acquisition possible for small fishers. <p><i>Supporting</i></p> <ul style="list-style-type: none"> • Consent will enable FLC to continue to on sell quota to fishers and actively encourage small ACE-dependent fishers to purchase quota shares.

9.2 QUOTA OWNERSHIP AND MARKETS

58. FLC is already a major quota share owner in CRA 4, 7 and 8. FLC's current quota holdings along with the other **top five quota owners** for the three stocks are shown in Table 4. The aggregation limit exemptions that Aotearoa Fisheries Limited and Ngai Tahu Seafood Resources Limited already have for CRA 4, 7 or 8 are also shown in Table 4. Given their existing quota exemptions, Aotearoa Fisheries and Ngai Tahu Seafoods have the ability to become the top quota owner in CRA 4 and 7, regardless of whether FLC is granted consent.

Table 4: Top five quota holdings for CRA 4, 7 and 8 (as at 26 July 2017) (expressed in total proportion of quota shares (%) owned).

<i>Stock</i>	<i>Client name</i>	<i>Current quota holdings</i>
CRA 4	Aotearoa Fisheries Limited (<i>exemption of 22.96%</i>)	13.5%
	Deltop Holdings Limited	9.9%
	Parininihi Ki Waitotara Incorporation	7.6%
	Kahungunu Asset Holding Company Limited	6.2%
	Wakatu Resources Limited	6.0%
CRA 7	Ngai Tahu Seafood Resources Limited (<i>exemption of 23.32%</i>)	19.0%
	Ngai Tahu Fisheries Settlement Limited	10.0%
	Deltop Holdings Limited	9.5%
	KPF Investments Limited	9.0%
	Damon Cooper	7.7%
CRA 8	Ngai Tahu Fisheries Settlement Limited	10.0%
	Deltop Holdings Limited	10.0%
	Ngai Tahu Seafood Resources Limited (<i>exemption of 13.92%</i>)	4.4%
	Vega Holdings Limited	3.0%
	Hellfire Enterprises Limited	2.4%

59. The existing level of quota concentration can be looked at to assess the impact of any increased aggregation on competition. A concentration ratio indicates whether an industry is comprised of a few large firms of many small firms. A **four-firm concentration ratio** measures the market share of the four largest firms. Economic theory suggests low concentration is between 0% and 50%, indicating the industry is perfectly competitive, medium concentration is 50 % to 80% indicating limited competition, while high concentration is above 80% indicating further limited competition or even a monopoly.
60. Rock lobster has one of lowest quota concentrations in comparison to other species in the QMS. The level of concentration of the four largest entities at the end of the 2016/17 April fishing year was 37% in CRA 4, 47% in CRA 7, and 30% in CRA 8 (not significantly different than 11 years ago) (Table 5). There is also a reasonable number of participants that have **small quota holdings** which is a reflection of the practicalities of the fishery in that there are still small owner operators in isolated communities of New Zealand. This is reflected in the percentage of all quota owners having more than 95% of the quota shares for a stock (60% in CRA 4, 69% in CRA 7 and 59% in CRA 8).
61. If FLC was granted consent, the four-firm concentration for each stock could potentially increase by up to 5% (based on the extra 5% FLC has applied for), but still remain at low levels of concentration for CRA 4 and 8. In the case of CRA 7, it could increase to medium concentration. Maintaining lower levels of concentration reduces the opportunity for a company or individual to hold a dominant market position and gain market power.

Table 5: Quota ownership in CRA 4, 7 and 8 at the end of the 2005/06 and 2016/17 April fishing years.

As at	Stock	No. clients owning quota	Four-firm concentration ratio	No. of owners with 95% share	% owning 95%
End of 2005/06	CRA 4	86	35.8 %	54	62.8 %
	CRA 7	30	46.4 %	21	70.0 %
	CRA 8	108	25.8 %	81	75.0 %
End of 2016/17	CRA 4	92	37.2 %	55	59.8 %
	CRA 7	32	47.5 %	22	68.8 %
	CRA 8	144	29.8 %	85	59.0 %

62. Quota trading information suggests the **average price paid per CRA 8 quota share** has increased over the last five April fishing years (Table 6). This price increase has occurred while few shares were sold or purchased by FLC, which suggests there are other reasons for the price increase that are not necessarily related to the activities of FLC.

Table 6: Average price paid for CRA 8 quota shares for the last five April fishing years, along with quota trading information for FLC.

Stock	April fishing year	Average (per CRA 8 share)	Total CRA 8 quota shares traded	CRA 8 quota shares sold by FLC	CRA 8 quota shares purchased by FLC
CRA 8	2012/13	\$ 5.14	2.28 %	0 %	0 %
	2013/14	\$ 5.32	2.19 %	0 %	0.02 %
	2014/15	\$ 8.17	1.51 %	0 %	0.10 %
	2015/16	\$ 10.98	2.49 %	-0.08 %	0.24 %
	2016/17	\$ 12.27	9.57 %	-1.65 %	1.65 %

9.3 ACE MARKETS

63. The issue of competition is also important in the market for ACE because securing ACE determines who ultimately catches the fish.
64. **ACE transfer information** shows there has been a relative high number of ACE transfers in the last five years with a diverse range of participants. This suggests the ACE market is currently operating reasonably freely in CRA 4 and CRA 8, but less so in CRA 7 (Table 7). However, the average packages of ACE traded are relatively small (between about 2 and 3 tonnes).

Table 7: CRA 4, 7 and 8 ACE transfers and average ACE prices for the last five April fishing years.

April fishing year	CRA 4			CRA 7			CRA 8		
	# of transfers	Avg ACE trade (tonnes)	Avg ACE price (per tonne)	# of transfers	Avg ACE trade (tonnes)	Avg ACE price (per tonne)	# of transfers	Avg ACE trade (tonnes)	Avg ACE price (per tonne)
2012/13	260	3.00	\$ 46,142	65	1.95	-	423	3.11	\$ 46,928
2013/14	329	2.65	\$ 46,740	51	1.76	\$ 24,862	392	3.25	\$ 47,644
2014/15	370	2.28	\$ 47,625	46	2.36	\$ 27,504	402	3.15	\$ 49,722
2015/16	368	2.35	\$ 48,605	76	1.70	\$ 36,970	375	3.19	\$ 52,504
2016/17	326	2.27	\$ 52,349	76	1.79	\$ 41,893	381	3.35	\$ 58,550

65. Table 7 also shows the **average price paid per tonne of ACE for CRA 4, 7 and 8** for the last five April fishing years. The average ACE prices have increased in the last five years for all of these stocks. In the 2016/17 fishing year, the average ACE price for CRA 4 was \$52,349 per tonne, CRA 7 \$41,893 per tonne, and CRA 8 \$58,550 per tonne. The price of ACE is outside of MPI's control and is driven by market conditions and the expectations of individual quota holders

9.4 MPI COMMENT

150. Aggregation of ownership can affect the dynamics of the quota and ACE markets with respect to those choosing to enter and exit the fishery, those wishing to sell a portion of their quota holdings, or those quota owners who don't fish and instead sell ACE. For example, as top firms increase their market share, opportunities for sellers to increase their profits at the expense of the buyers of the product can increase (in this case the product is quota or ACE).
66. There is a risk the consent may drive up the demand for quota in the future. Whether this increase in demand is sufficient to drive an increase in quota price and the extent of any increase is uncertain. If quota prices increase as a result of granting consent this could further impact on the ability of new entrants to enter the fishery because the current high cost of quota is likely to be limiting factor on the present market. Granting FLC consent also has a risk of impacting the ACE market in the future, particularly for CRA8 through less availability and higher prices, but the extent of any impact is uncertain.
67. MPI has considered the current effect of FLC obtaining a further 5% of the quota in CRA 4, 7 and 8. Based on past and current market behaviour, it is unlikely that there will be a significant change in quota ownership or the quota market in the short to medium term because rock lobster quota is tightly held and sold in small lots. Quota concentration levels will remain at relatively low levels for CRA 4 and 8 with the granting of the consent, which limits the ability for FLC to exert market power.
68. Also as part of FLC's amended application they have specified conditions to show that they will provide fishers with access to quota and ACE. MPI notes that these conditions along with the smaller exemption request of 15% (5% above their current holdings) may mitigate against risks associated with granting of the consent on the quota and ACE markets. In addition, there is a likelihood that FLC will be unable to quickly hold up to 15% of the quota (based on current conditions), and that there will still be a number of active participants in the quota and ACE markets.

10 The likely effect on the processing and marketing of that stock or species: 60(3)(b)(iii)

157. This matter requires you to consider the effect of granting or withholding consent on the efficiency of processing and the ability to market product (i.e. find new markets or achieve greater penetration of existing markets).

10.1 FLC AND SUBMITTER VIEWS

FLC views	Submitter views
<ul style="list-style-type: none"> • If consent is granted FLC will be able to: <ul style="list-style-type: none"> - offer greater security of supply to offshore customers; - continue to invest in research, branding and market developments for live rock lobster, with direct benefits to FLC and spin-off benefits for all of NZ's rock lobster exports; - maintain/develop regional employment opportunities in FLC's packing and exporting facilities in the North and South Islands. • If consent is withheld, FLC won't be able to develop economies of scale necessary to sustain and increase its investment in marketing and processing. Therefore, NZ rock lobster industry will not benefit from initiatives made possible only by FLC's investment and innovation. 	<p><i>Opposing</i></p> <ul style="list-style-type: none"> • Consent would erode the pool of independent CRA 8 ACE suppliers, which could then severely impact the ability of small exporters, who rely on such suppliers, to remain in business. • Concerns that an exporter with significant market share would drive down the price suppliers obtain for their catch. • If fishers are supplied ACE through FLC's agreements, then lobster is landed to FLC and exported through them, which could put other exporters at risk and constrain the market. • Ngai Tahu Seafoods - there won't be beneficial effects because rock lobster already passes through the hands of a small number of fully professional and experienced processors/exporters, most of whom are continually striving for success. <p><i>Supporting</i></p> <ul style="list-style-type: none"> • Ngati Kahungunu Iwi Incorporated - consent will contribute to the growth and development of a major exporter, which will provide social and economic benefits, including employment.

10.2 MPI COMMENT

158. FLC is New Zealand's largest exporter of live rock lobster (about 27% of the total exports). The effect of consent to this application on the marketing of rock lobster is likely to be beneficial to FLC. It could enable FLC to ensure a greater continuity of supply to offshore customers as suggested and increase the quantities of rock lobster it could direct to export markets. This strengthened supply could be beneficial to FLC in the marketing of rock lobsters to overseas markets.
159. MPI does not consider that consent will greatly affect the processing of rock lobster, mainly because FLC processes its own catch. The processing of rock lobster is minimal; 95% of rock lobster exports are of live animals to primarily China and other Asian markets (there are little domestic sales).
160. Granting FLC consent should have minimal or neutral benefit on others in the rock lobster processing and marketing industry. However, it could have a negative impact on smaller exporters if they are unable to secure supplies of rock lobster from fishers that do not fish for FLC or other major companies.
161. In relation to FLC's comment that it won't be able to develop the economies of scale necessary to sustain and increase its level of investment in marketing and processing, MPI notes that this is no different to any other company limited by aggregation limits. This raises questions about the level of the current aggregation limit and what is needed to generate economies of scale. This could be considered as part of a review of the aggregation limits more generally.

11 Ability of the applicant to take any other stocks or species: 60(3)(b)(iv)

162. This matter requires you to consider whether or not consenting to this application will affect FLC's ability to take other stocks or species other than rock lobster, or take them more effectively. This matter is also related to the effect on the development of any new or existing stock or species (section 60(3)(b)(i)).

11.1 FLC AND SUBMITTER VIEWS

FLC views	Submitter views
<ul style="list-style-type: none">• Consent won't impact FLC's ability to take rock lobster in areas other than CRA 4, 7 or 8.• It will not have any impact on its ability to take other species, either immediately or in the future.	<ul style="list-style-type: none">• No comments were raised in relation to this matter.

11.2 MPI COMMENT

163. MPI considers that your decision on this application would not affect FLC's ability to take other stocks or species. Total landings of rock lobster will not be affected by granting consent.

12 Efficiency of the NZ industry or any person engaged in the NZ fishing industry: 60(b)(v)

164. This matter requires you to consider the impact of granting or withholding consent on: the efficiency of individuals (i.e. individual quota owners and fishers in the rock lobster fishery, and fishers of other species); and the efficiency of New Zealand's fisheries or fishery management system at a national level. This matter is closely linked to other matters already discussed above. For example, the likely effect on other quota owners or commercial fishers (section 60(3)(b)(ii)).

12.1 FLC AND SUBMITTER VIEWS

FLC views	Submitter views
<ul style="list-style-type: none">• Low rock lobster aggregation limits create inherent inefficiencies for two reasons:<ul style="list-style-type: none">- slow the process of industry consolidation because of the transaction costs involved in seeking/obtaining exemptions;- distort the process and outcome of consolidation through their inequitable application across the industry.⁵	<p><i>Opposing</i></p> <ul style="list-style-type: none">• Ngai Tahu Seafoods – small number of processors/exporters currently handling product already achieve economies of scale while concurrently maintaining sufficient competitive tension on the beach and in the market place that drive the search for further efficiencies.

⁵ FLC considers that the majority of QMS species (where aggregation limits are 35% or 45% of the combined TACCs for the species) are not subject to these inefficiencies and inequities to the same extent. FLC believes as a result of the low aggregation

<ul style="list-style-type: none"> • At a company level, consent will have a positive effect on the efficiency of FLC's operations as a result of increased economies of scale and reduced business compliance costs. • At an industry level, if consent is granted, gradual additional consolidation of quota ownership will occur in CRA 4, 7 and 8. Quota concentration should improve the efficiency of industry collective management initiatives by reducing transaction costs among participating quota owners. 	<ul style="list-style-type: none"> • Iwi Collective Partnership - FLC could achieve its goal of continuing to develop and add value through greater economies of scale through other collaborative ownership/management models that do not require exemption from aggregation limits. If FLC was granted exemption they could quickly grow into a business that would dominate all aspects of rock lobster export from fisheries management to sales.
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12.2 MPI COMMENT

165. The overall efficiency of New Zealand's fisheries is determined by the sum of the efficiency of individual operators, and the efficiency of the system, in this instance the efficiency of management, and of the QMS.

166. MPI considers that the effect on the efficiency of individuals in the rock lobster industry and the overall management system from the exemption is likely to be small. Granting the consent could promote further consolidation of rock lobster quota and lead to increased efficiencies in the long run. This is likely to have a positive effect on the efficiency of FLC's operations increased economies of scale and reduced business costs.

167. The effect on other operators in the industry is likely to be neutral because granting consent is unlikely to make other companies less efficient and is unlikely to change behaviour on its own. It is unknown if consent would prevent other companies investing in future initiatives to improve efficiency.

168. MPI notes FLC could achieve greater economies of scale than present through other approaches rather than seeking exemption (i.e. collaboration or through existing contractual agreements). However, unless long-term arrangements can be secured for quota, this approach is likely to create uncertainties for FLC's operational arrangements (including uncertainties in the future availability of ACE) and could reduce incentives for long-term investments in the fishery.

13 Such other matters as you consider relevant: 60(3)(c)

169. FLC and submitters raised several other matters that they believe to be relevant to the consent, including:

- a) that rock lobster aggregation limits have already been exceeded;
- b) high value of rock lobster quota;
- c) requirement for rapid transactions of small rock lobster quota parcels;
- d) commercial considerations;
- e) purpose of the Act (section 8);
- f) information principles (section 10);
- g) purpose of rock lobster aggregation limits;

limits in rock lobster fisheries, even the largest quota owners are still significantly below the aggregation limits that apply to most other species. The largest quota owners across all rock lobster stocks are Aotearoa Fisheries Limited (9.6% of combined TACCs), Ngai Tahu Seafoods (9.3%) and FLC (5.4%).

- h) the Commerce Act 1986;
- i) the Business Growth Agenda and other relevant Government policy.

170. The relevance of these matters to your decisions are discussed in detail in Appendix 4.

14 Possible consent conditions

171. In making your decision you can impose any conditions on your consent that you consider appropriate in the circumstances, as long as there is a reasonable basis for them. This suggests conditions can be put in place to mitigate any risks you have determined will likely occur on the basis of your considerations under section 60(3) of the Act. Section 60(2) allows you to put in place these conditions, including any limit on the number of quota shares for any particular stock, or granting consent for any specified year or years or generally.
172. The analysis in this briefing has identified potential risks of granting the consent on other quota owners and fishers. Although there are mitigating factors, there are uncertainties on how the quota and ACE markets may change if FLC is granted consent. Much of the assessment of the likely effects of FLC holding excess quota is based on speculation by industry participants of how competition for quota and/or ACE may change. The prospective nature of the application adds to this uncertainty.
173. FLC's application already proposes a limit on quota shares in CRA 4, 7 and 8 (5% above the current limits), therefore, a viable condition you could consider is to limit the consent to a period (i.e. five years - a condition used by previous Ministers). Providing consent for a limited period would reduce the duration of any effect of the consent on the quota and ACE markets. However, FLC submit that it would not be commercially practical for a company to make investment decisions (both capital and expenditure decisions) based on a time limited consent.
174. MPI recognise the impacts of a time limited approval on FLC. These impacts would reduce the benefits being sought. However, given the prospective nature of the application such a condition would act as a strong limiting factor on the extent of any precedent created by approval. It would also allow MPI time to review the policy and application of aggregation limits in their entirety without undermining the outcome such an assessment.
175. As an alternative to a time limited approval, FLC has suggested the following conditions.

14.1 CONDITIONS SPECIFIED BY FLC

69. In FLC's amended application they propose that consent be conditional on several matters (Appendix 2, Schedule 1). FLC consider that to maintain a vibrant and proper functioning industry, fishers must own quota so that the catching sector has a true stake in the long-term sustainability of the fishery. The conditions FLC have specified as part of their application are designed to demonstrate their on-selling practices of quota and ACE in a fair and reasonable way and to recognise the importance of supporting new and experienced fishers into the rock lobster industry.

70. For each April fishing year, FLC propose to:
- a) **Quota offer requirement⁶:** offer to at least five fishers no less than 10% of the aggregate amount of CRA 4 and 8 quota acquired by FLC for that year (given FLC has acquired at least 50,000 quota shares for each stock), and offer no less than 10% of the aggregate amount of quota acquired by FLC in all QMAs (CRA 4, 7 and 8) for that year. Any such offer of quota will be made at a price no greater than the price paid by FLC and may be on any other terms determined by FLC (acting reasonably). FLC will make Statutory Declarations (Quota Offers) to provide evidence that this condition has been satisfied;
 - b) **ACE support:** provide ACE support in relation to at least 50% of the total ACE acquired in each QMA (CRA 4, 7 and 8) for that year. This could be via a loan advanced by FLC to a fisher to assist the fisher to acquire ACE from a person other than FLC, or a sale of ACE by FLC to a fisher. The fishers that have been offered this support will make Statutory Declarations (ACE Support) to provide FLC with evidence that this condition has been satisfied;
 - c) **Annual Reporting for the first four April fishing years:** no later than 30 days after the final day of the April fishing year provide MPI with Statutory Declarations with respect to quota offers and ACE support, along with further details on quota acquisitions by fishers for each area. If the conditions are satisfied in each of the four reporting years, an annual report will no longer be provided. That is not to say that FLC will cease quota and ACE support. FLC note that the point of having the conditions is to provide better understanding and certainty about their operations in the context of this application, but needs to be balanced with the need for ongoing flexibility about how the conditions are structured to meet the evolving needs of fishers in the industry.
71. MPI note there is a risk that approval of this consent could result in a number of similar prospective applications, and if a large number are received this could further weaken the original intent of the aggregation limit provisions. However, the conditions specified by FLC are likely to reduce the risk of any negative effects of granting consent on quota and ACE markets now and in the future. The conditions also enable MPI to monitor the performance of FLC in relation to the specified on-selling conditions. The proposed conditions associated with approval of this consent could also act to limit the effect of the precedent of granting a prospective consent in that you could require any future requests for prospective exemption to also have conditions relating to making quota and ACE available for sale.
72. MPI note that you are not constrained in your ability to impose the conditions above or any other such conditions that you consider reasonable or appropriate.

⁶ As CRA 7 has a small TACC and therefore low sale volumes, the applicant is not proposing a separate offer for CRA 7.

15 Conclusions and recommendations

176. There are three courses of action open to you:

- grant consent for the application without condition – if you believe the net effect, in light of the above considerations, is neutral or positive and outweighs any negative effects on quota and ACE markets;
- grant consent for the application subject to conditions (either those specified in FLC's amended application or otherwise) – if you believe the net effect on the above considerations is likely to be neutral or positive, but have concern(s) about some of the matters discussed under section 60(3), and believe that conditions you could impose would address that/those concern(s); or
- withhold consent for the application – if you believe the net effect, given the above considerations, is negative and you consider the risks of granting consent on the quota and ACE markets is material and you have concerns about the level of uncertainty associated with the prospective application.

177. MPI considers that the effect of the exemption would be positive to FLC and may be at best neutral to the fishing industry generally with respect to the majority of your section 60 considerations, but there are risks that negative effects may emerge in quota and ACE markets, including increased demand for quota and ACE in the future and higher prices paid for quota and ACE.

178. Whether any negative effects on quota and ACE markets result from consent is uncertain, however, MPI notes there are some factors that may mitigate some of the risks identified; including: a small increase of 5% from current aggregation limits in three stocks; and conditions proposed by FLC, to offer quota and provide ACE support to fishers if granted consent to help mitigate any risks to the quota and ACE markets.

179. MPI recommends that you:

Agree to:
EITHER

- i) Grant consent for FLC to hold up to 15% of the TACC in CRA 4, CRA 7 and CRA 8, without condition;

Agreed / Not Agreed

OR

- ii) Grant consent for FLC to hold up to 15% of the TACC in CRA 4, CRA 7 and CRA 8, with the conditions FLC specified in their amended application (Appendix 2, Schedule 1 of the enclosed Decision Document);

Agreed / Not Agreed

OR

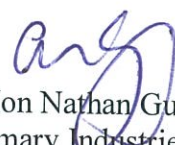
- iii) Grant consent for FLC to hold up to 15% of the TACC in CRA 4, CRA 7 and CRA 8, with conditions that you consider reasonable or appropriate;

Agreed / Not Agreed

OR

- iv) Withhold consent for FLC to hold up to 15% of the TACC in CRA 4, CRA 7 and CRA 8.

Agreed / Not Agreed


Hon Nathan Guy
Minister for Primary Industries

6 / 9 / 2017

Appendix 1: Fiordland Lobster Company's application - August 2015

Minister for Primary Industries

Fiordland Lobster Company Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

1. APPLICATION

1. This is an application by Fiordland Lobster Company Limited (FLC) to hold spiny rock lobster quota in excess of the quota aggregation limits set out in section 59 of the Fisheries Act 1996 (the Act). The quota aggregation limit for rock lobster is 10,000,000 quota shares (10% of the total allowable commercial catch) in any one quota management area.
2. The application is to hold up to 20,000,000 quota shares, in perpetuity and without condition, in each of the following rock lobster quota management areas:
 - CRA 4 (Wellington/Hawkes Bay);
 - CRA 7 (Otago); and
 - CRA 8 (Fiordland).
3. The application does not relate to specific proposed purchases of quota shares. Rather, FLC seeks generic consent to hold up to 20% of quota shares in CRA 4, CRA 7 and CRA 8 to enable the company to develop its business and continue to be a competitive participant in the quota market for the specified stocks.

2. BACKGROUND

Fiordland Lobster Company

4. FLC was established in the late 1980s when fifteen Fiordland rock lobster fishermen formed a partnership with the seafood processing company Mt Maunganui Seafoods, which was pioneering the concept of live lobster exports from New Zealand to Japan. This loose partnership led to the creation of the Fiordland Lobster Company in 1989. Today, FLC remains a privately owned New Zealand company with extensive shareholdings comprising fishermen-shareholders and private investors. The company's head office is in Te Anau and it owns processing and packing facilities and fish-receiving depots throughout the North and South Islands.
5. FLC is New Zealand's largest exporter of live rock lobster, currently accounting for 27% of the country's live lobster exports. The company's *KiwiLobster* brand is recognised internationally for quality lobster and seafood exports. FLC exports around 750 tonnes of rock lobsters from New Zealand per year, primarily to mainland China, but also to other markets including Hong Kong and the Middle East. The value of FLC's rock lobster exports is approximately NZ\$80,000,000 per annum.
6. Continuity of supply of rock lobsters is central to FLC's operations and is secured through direct ownership of quota and long-term relationships with like-minded quota owners and the harvesting sector. Many fishers who land lobsters to FLC also own quota, but some are dependent on ACE supplied by FLC or other quota owners.

7. FLC is a significant regional employer, with fishermen in Fiordland/Southland/South Westland, Otago, Kaikoura, Wellington/Wairarapa, Mahia and other coastal areas supplying lobsters to its export packing facilities in Christchurch, Dunedin, Wellington and Mount Maunganui.
8. The company has invested heavily in research and development with a full time technical manager to design holding tanks that provide ideal conditions to ensure the lobsters reach the export market in premium condition. Live lobsters are exported from Auckland, Wellington and Christchurch.

FLC's management approach

9. FLC was set up by fishing families for fishing families and this ethos still drives the company's management approach today. From the outset FLC has adopted an inclusive culture with a common goal of rebuilding and maintaining healthy, abundant lobster fisheries in Fiordland and in other areas where the company operates.
10. The outstanding marine environment of Fiordland has engendered FLC's strong conservation ethic towards the fish stocks and marine ecosystems that support the company's business. As the company has grown, the conservation values derived from the original fishermen-shareholders have been adopted by management and staff throughout New Zealand.
11. Since its inception, FLC has been at the forefront of innovative management practices to rebuild, maintain and enhance the productivity of New Zealand's rock lobster fisheries. The company's values are expressed through the active involvement of its directors in:
 - The CRA 8 Management Committee's work to develop and implement management strategies for the CRA 8 rock lobster stock, which has enabled CRA 8 to become New Zealand's most valuable inshore fishery;
 - The expansion of this successful management model into other rock lobster fisheries in which FLC has a major stake – in particular, CRA 4 and CRA 7 where FLC is actively involved in management of the fisheries;
 - The establishment of the first two marine reserves in the South Island at Milford and Doubtful Sounds;
 - The formation of the Fiordland Marine Guardians;
 - The organisation and funding of the Fiordland Coastal Cleanup; and
 - The funding of many conservation projects in Fiordland to re-establish iconic species in predator-free areas.

Current FLC quota ownership

12. FLC, through Deltop Holdings Limited (FishServe client number 9490007), is a significant quota owner in CRA 4, CRA 7 and CRA 8. Deltop Holdings also owns quota in CRA 3, CRA 5 and CRA 6.

FLC CRA quota ownership

	Quota shares	ACE equivalent (kg)
CRA 3	210,526	549
CRA 4	9,853,289	46,015
CRA 5	1,342,851	4,700
CRA 6	65,555	236
CRA 7	9,515,469	9,299
CRA 8	9,844,551	94,705

13. For the purposes of section 59(10) of the Act, Deltop Holdings Ltd is not associated or included with any other persons.

3. RATIONALE FOR SEEKING EXEMPTION FROM THE AGGREGATION LIMITS

14. FLC's quota ownership in CRA 4, CRA 7 and CRA 8 is currently constrained by the aggregation limits in section 59 of the Act which restrict an individual quota owner to 10% of quota shares for a single rock lobster stock. Aggregation limits for rock lobster are considerably more restrictive than for any other fishery.⁷
15. FLC requires the ability to purchase quota in excess of the aggregation limits for four main reasons:
- i. **To enable the company to continue to develop and add value throughout its operations through greater economies of scale.** As a small company, the only way in which FLC can increase throughput and achieve economies of scale is through acquisition of additional quota. Although there are no restrictions on aggregation of Annual Catch Entitlement (ACE), rock lobster ACE is tightly controlled through long-term relationships between suppliers and buyers. If a quota package owned by a company supplying lobsters to FLC is purchased by another company, then the associated ACE also moves to the control of the competing company. This tight relationship between quota and ACE makes it difficult for FLC to retain access to sufficient ACE to achieve the necessary economies of scale, let alone purchase additional ACE when it is constrained from purchasing the associated quota.
 - ii. **To allow FLC to continue its successful strategy of on-selling quota packages to fishers.** In the experience of FLC's directors, rock lobster quota is best owned by fishers as this provides the catching sector with a true stake in the long-term sustainability of the fishery and facilitates the effective operation of the Quota Management System (QMS). FLC has for many years encouraged new fishers into the industry by assisting with the financing of vessels and quota packages, including through the purchase and on-selling by FLC of quota packages to fishers. This strategy has ensured that a significant proportion of CRA 8 quota is owned by active fishers. FLC considers the long-term interest that quota ownership provides to fishers has been a major factor in the success of the CRA 8 fishery. It is an approach that FLC wishes to replicate in other fisheries in which it is involved, but which it is currently prevented from pursuing as a result of the operation of the aggregation limits.
 - iii. **To give effect to FLC's position as the "preferred purchaser" for many vendors.** FLC's history of support of the CRA 8 industry means that many potential quota vendors have a long-standing working association with the company and are familiar with FLC's values and approach. This relationship and shared experience brings potential vendors to FLC when they feel the time is right for them to sell. For this reason the majority of lobster quota shares that are offered to FLC are offered on the basis that FLC is the seller's "preferred purchaser", whether in CRA 8 or other CRA stocks. FLC is currently prevented from acting as the preferred purchaser because of the aggregation limits.
 - iv. **To maintain its competitive position within the rock lobster industry.** FLC currently faces constraints in competitiveness and growth that are not shared by equivalent companies.

⁷ Paua is the only other fishery for which aggregation limits operate at a stock level (20% of a stock). For all other fisheries, quota aggregation limits are set at 35% or 45% of the combined TACCs of all stocks in the species or, in the case of bluenose, 20% of the combined TACCs for the species.

In particular, Aotearoa Fisheries Limited (AFL), which is a significant quota owner in North Island CRA stocks, has a statutory exemption from the aggregation limits. In the South Island, major CRA quota owner Ngai Tahu has a partial statutory exemption from the aggregation limits in relation to settlement quota and has been granted further exemptions in CRA 7 and CRA 8. In the fisheries subject to this application, current quota ownership in excess of the aggregation limits is as follows:⁸

- CRA 4: AFL directly owns 13.52% and has an exemption (granted to Moana Pacific Fisheries Ltd) to own up to 22.96% of quota shares;
- CRA 7: Ngai Tahu Fisheries Settlement Limited owns 10% and Ngai Tahu Seafood Resources Limited owns a further 19% of quota shares; and
- CRA 8: Ngai Tahu Fisheries Settlement Limited owns 10% and Ngai Tahu Seafood Resources Limited owns a further 4.385% of quota shares.

In other rock lobster fisheries, significant CRA quota owners (aside from those with statutory exemption) have been able to develop and maintain their position only by virtue of being granted exemptions to the aggregation limits – notably, Gisborne Fisheries in CRA 3 and Burkhart Fisheries in CRA 5. Nearly all other CRA quota owners in all CRA stocks are significantly below the aggregation limits.

16. FLC's application is for generic consent to hold up to 20% of quota shares in CRA 4, CRA 7 and CRA 8, rather than for a specific proposed purchase of quota. FLC notes that there is no legal requirement to have a pending agreement to purchase quota in order to seek an exemption. However, we are aware that the Ministry for Primary Industries (previously Ministry of Fisheries) has in the past expressed a policy preference that applications without a pending acquisition of quota be declined.⁹
17. FLC has not been provided with a copy of MPI's internal policy guidance on this matter, but we infer from a previous advice paper that it derives from a view that "speculative" applications cannot be assessed reliably with regard to the statutory criteria in section 60(3) of the Act.¹⁰ MPI's concern is that it is unable to adequately evaluate such an application against the criteria in section 60(3) because the conditions that would apply at the time of the actual aggregation (i.e., the future point in time when a quota purchase is made) may be different to those which existed at the time of the evaluation.
18. While we understand MPI's caution on this matter, FLC considers that the evaluation of a generic application should be no different to that of an application for a pending purchase of quota. For both types of application (generic and pending purchase) the maximum limit on quota share ownership is known (i.e., 20%, as specified in this application) and the impact of an entity owning the specified amount of quota is therefore able to be evaluated.
19. The quota market is constantly changing in response to conditions in the fishery, the New Zealand economy and export markets. However, when assessing an application MPI must make reasonable predictions about future conditions relevant to the matters in section 60(3). This is true irrespective of whether the timing of the quota transfer is known (for a pending transaction) or not known precisely (for a generic application). For example, an evaluation of a pending quota purchase is not restricted to an analysis of impacts in the days immediately following the

⁸ Report provided by FishServe, 16 July 2015.

⁹ This policy preference is set out in the decision letter from Hon Jim Anderton, Minister of Fisheries (29 September 2008), in relation to an application by Talley's Group Management Ltd for exemption to aggregation limits for elephant fish.

¹⁰ Ministry of Fisheries final advice on *Application for consent for exemption from quota aggregation limits of Fisheries Act 1996 – Talley's Group Management Ltd* (11 September 2008).

purchase, but should also consider how the purchase may impact on quota owners and fishers, the efficiency of the industry, and other section 60(3) matters in the longer term.

20. Future uncertainty is the norm, not the exception, in fisheries management decision-making. This is why section 10 of the Act requires that an evaluation must be undertaken using the “best available information” and that uncertainty should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act. Section 60(3) requires the Minister to “consider” the listed criteria, suggesting a less onerous decision threshold than would be the case if the Minister was required to “be satisfied” in relation to the identified criteria. FLC therefore considers that it is possible to evaluate a generic application for exemption against the criteria in section 60(3). We include information on these matters in Part 4 of this application.
21. Furthermore, FLC considers that there are special circumstances that justify the granting of a generic exemption in this particular case. These reasons include:

- i. **CRA aggregation limits already exceeded.** There are 38 current exemptions to rock lobster aggregation limits recorded on the quota register, the most significant of which are:¹¹

- CRA 3: Moana Pacific Fisheries and associated companies (32.7%)
- CRA 1: Moana Pacific Fisheries and associated companies (31%)
- CRA 5: Burkhart Fisheries and associated companies (26.89%)
- CRA 5: Ngai Tahu (26.76%)
- CRA 7: Ngai Tahu (23.32%)
- CRA 4: Moana Pacific Fisheries and associated companies (22.96%)
- CRA 2: Moana Pacific Fisheries and associated companies (21%)

The impact of the granting of FLC’s application can therefore be readily evaluated as other CRA quota owners already own (or are able to own) quota shares up to and exceeding the limits requested by FLC.

- ii. **Requirement for rapid transactions of small CRA quota parcels.** The CRA quota market is not like finfish, where it is common to see large quota parcels on the market. In contrast, CRA quota is tightly held and sales typically occur exceedingly rapidly, with shares on the market for only a very short time. In CRA 8 in particular, quota is sold in small parcels. FLC cannot recall a parcel of CRA 8 quota larger than 2000 kg being traded in the past six years, and the majority of transactions are in the 500 kg to 1000 kg range. In FLC’s experience, quota transactions are often settled in a single phone call in which the seller offers the quota parcel and requires an instant response from FLC. There is frequently no advance warning of a pending quota transaction, and sellers require settlement within two weeks of the quota being offered. If a purchaser cannot meet these conditions, the quota will be sold elsewhere.

In this intense market environment FLC is unable to maintain its competitiveness because it is required to put a six month “hold” on any purchase agreement in order to apply for an exemption to the aggregation limits. Potential sellers are simply not approaching FLC because they are aware that the company’s quota holdings are constrained by the aggregation limits whereas its competitors’ are not.

¹¹ Report provided by FishServe, 16 July 2015. While 38 separate exemptions to CRA aggregation limits are recorded on the register, some appear to be duplicate exemptions for associated quota owners, resulting in a total of 21 distinct exemptions across all CRA stocks.

- iii. **High value of CRA quota.** CRA quota shares are highly valued, with sale prices recently exceeding \$1 million per tonne. If FLC is not able to participate on an equal footing in the quota market, only one or two other quota owners will have sufficient scale and capital to purchase quota, resulting in a restricted market with higher potential for anti-competitive behaviour. The high value of CRA quota is driven in part by strategic quota ownership by a small number of companies. FLC, like iwi-owned companies, is in the rock lobster business for the long-haul and, as a result, places a higher value on quota than many other quota owners. A generic exemption from the aggregation limits would enable FLC to participate on the same basis as its major competitors, with positive effects on the operation of the quota market and (because of the tight relationship between rock lobster quota and ACE) the ACE market.
- iv. **Commercial considerations.** A generic exemption will provide FLC with **greater certainty** than requiring the company to apply for a series of smaller exemptions for each pending quota purchase. Certainty is vital for FLC's ability to continue to invest and develop its processing, marketing and export business.

Each application for exemption from the quota aggregation limits requires the preparation of an application, a public consultation process, preparation of analysis and final advice by MPI, a decision by the Minister and preparation of a Gazette Notice, and takes at least six months to process.¹² Given the very low aggregation limits in rock lobster fisheries and the small size of quota parcels typically on offer, **regulatory efficiency** is better served through the granting of generic exemptions where possible.

A generic exemption from aggregation limits would also reduce FLC's **business compliance costs** associated with managing the legal risk of quota forfeiture from inadvertent breach of aggregation limits through association with other entities.

While certainty, regulatory efficiency and business compliance costs are not specific decision criteria listed in section 60(3) of the Act, they are "other matters" that the Minister may consider relevant, particularly in light of the Government's Business Growth Agenda, in which these three matters are part of the platform for building a more productive and competitive economy.

22. It is also pertinent to note that while FLC's application must be addressed on its merits, there are at least three precedent-setting cases in which previous Ministers have granted exemptions in the absence of pending transactions. These exemptions all related to rock lobster and paua, and were granted to the Chatham Islands Enterprise Trust, Ngai Tahu and Moana Pacific Fisheries.¹³
23. FLC's request to own up to 20% of quota shares in specified stocks is based on a review of the current level of aggregation of quota ownership in rock lobster stocks. A 20% limit would place FLC on a competitive basis with other major quota owners, while not providing FLC with any undue advantage in the rock lobster business as other entities already own (or are able to own) quota shares in excess of the limits requested by FLC.

4. LEGAL REQUIREMENTS

24. Section 60(3) of the Act sets out the matters that must be considered by the Minister when making a decision on an application to hold quota in excess of the aggregation limits. These matters are considered below.

¹² This application was lodged with MPI in August 2015.

¹³ As cited in Ministry of Fisheries final advice on *Application for consent for exemption from quota aggregation limits of Fisheries Act 1996* – *Talley's Group Management Ltd* (11 September 2008), page 9.

Section 60(3)(a) the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species

25. The number of quota shares traded annually in CRA 4, CRA 7 and CRA 8 has been decreasing over time, as shown in the table below, which compares the average percentage of quota shares traded over the last three complete fishing years with the equivalent period ten years ago.

Average percentage of CRA quota shares traded annually

Fishing years	CRA 4	CRA 7	CRA 8
2002/03 – 2004/05	12.9	18.3	6.5
2012/13 – 2014/15	7.1	0.9	2.6

26. FLC can only speculate on the willingness and ability of other members of the rock lobster industry to purchase quota in CRA 4, CRA 7 and CRA 8, but the relatively low number of trades suggests that the market is becoming constrained. As noted above, only a small number of New Zealand companies currently have sufficient scale and access to capital to be able to purchase rock lobster quota. This is particularly the case should larger packages of CRA quota come onto the market.
27. There has already been a level of quota aggregation in CRA 4 and CRA 7 and, to a lesser extent, in CRA 8. In future (i.e., during the time period in which FLC would purchase packages of quota under a generic exemption) the trend towards industry consolidation is likely to continue. If fewer companies have sufficient ability to acquire CRA quota, it is even more important that FLC be enabled to participate in the quota market so as to mitigate any adverse effects of anti-competitive behaviour that may arise as a consequence of the limited set of quota buyers.

Section 60(3)(b)(i) the likely effect of granting or withholding of the consent on the development of any new or existing stock or species

28. Since its establishment, FLC has been at the forefront of the successful management and development of the CRA 8 rock lobster fishery. The company is committed to applying similar management approaches in other fisheries including CRA 7 and CRA 4. The withholding of consent would limit FLC's stake in CRA 4, CRA 7 and CRA 8 to current levels and will not allow the company to maximise its efforts in the future development and sustainable management of rock lobster fisheries.

Section 60(3)(b)(ii) the likely effect of granting or withholding of the consent on other quota owners or commercial fishers

29. When assessing the impacts of FLC's application on other members of the rock lobster industry, it should be noted that granting the consent would not have an immediate impact on any industry parties. Because the requested consent does not relate to a specific transaction, quota ownership in CRA 4, CRA 7 and CRA 8 will not change suddenly or rapidly. It will instead evolve incrementally over time, as is currently the case. Other industry parties will therefore have more time to adjust to any changes than would be the case if FLC's request related to a specific pending quota purchase. It is also likely that FLC's quota holdings in CRA 4, CRA 7 and CRA 8 will fluctuate over time (within the requested limits) as a result of the company's policy of purchasing and on-selling packages of quota to fishers.

30. With respect to impacts on other quota owners, FLC considers that the granting of the consent would have:

- A positive effect on quota owners in CRA 4, CRA 7 and CRA 8 who wish to sell quota, as there will be a bigger market for the sale of their quota, providing the seller with a range of possible purchasers and potentially increasing the price they obtain for their quota;
- A neutral effect on quota owners who wish to purchase quota but are not currently bound by the aggregation limits (whether by virtue of statutory exemption or the level of their current quota holdings), although these quota owners would be operating in a marginally more competitive quota market; and
- A neutral effect on rock lobster quota owners who do not wish to buy or sell quota, although the book value of their quota may increase as a consequence of a more competitive quota market.

31. With respect to impacts on commercial fishers, FLC considers that the granting of the consent will ensure that there will continue to be more than one large supplier of ACE in each rock lobster fishery, which should generally benefit ACE-dependent fishers by improving the competitiveness of the ACE market. Granting the consent would therefore have:

- A positive effect on fishers in CRA 4, CRA 7 and CRA 8 who fish for FLC or who would like to fish for FLC, as FLC will be in a stronger position to:
 - provide these fishers with ACE; and
 - encourage and support them into quota ownership, in line with the company's strategy;
- A neutral effect on ACE-dependent fishers who do not fish for FLC. As is currently the case in rock lobster fisheries, the position of ACE-dependent fishers will continue to depend primarily on the strength and stability of the relationship between the fisher and the relevant quota owner or ACE supplier. These relationships should not be directly affected by granting consent to FLC.

32. Although FLC considers that the effect on other industry members of granting the consent will be neutral to positive, we are aware that some industry participants believe that strictly observed aggregation limits are necessary to protect the economic position of individual fishers or small quota owners. The reality, however, is that any risks to small operators that might arise from the generic exemption sought by FLC are present already as a result of statutory exemptions, granted exemptions and current levels of quota aggregation in CRA 4, CRA 7 and CRA 8. Smaller operators should derive some comfort from the fact that FLC is a processor and exporter as well as a quota owner – this means the company is as much interested in continuity of supply of lobsters for processing through the supply of ACE to fishers as it is in return on investment as a quota owner. Furthermore, the company was founded by fishers, is still substantially owned by fishers, and supports and includes the next generation of fishers. It is therefore not in FLC's interests to control quota or ACE in a manner that disadvantages either ACE dependent fishers or small quota owners.

33. Finally, if the consent is granted, some of the efficiencies and investments that may arise from FLC's ability to purchase additional quota shares are likely to benefit all quota owners and fishers in CRA 8, CRA 7, CRA 4 and potentially also in other rock lobster fisheries. These benefits include spinoffs from the enhanced ability of FLC to invest in fisheries management, product research and development, and the strengthening of New Zealand seafood brands in overseas markets.

Section 60(3)(b)(iii) the likely effect of granting or withholding of the consent on the processing and marketing of that stock or species

34. As New Zealand's largest and most successful exporter of live rock lobsters, FLC has made considerable investments in technology, branding and marketing for live lobster export. New Zealand is a relatively small global producer of seafood and ongoing investment is necessary if we wish to retain the premium reputation of our products and expand our market share. However, FLC cannot continue to increase its level of investment in marketing and processing without the improved economies of scale that will come from additional quota holdings. Given FLC's leading position, flow-on effects from the granting of the consent will have a beneficial effect on the processing and marketing of rock lobsters for all participants in the New Zealand industry.
35. As noted above, certainty is vital for investment in processing and marketing, and a generic exemption will provide FLC with a stronger basis for investment than a series of case-by-case applications for pending quota purchases.

Section 60(3)(b)(iv) the likely effect of granting or withholding of the consent on the ability of the applicant to take any other stock or species

36. The granting of the consent would not have any impact on FLC's ability to take rock lobster in areas other than CRA 4, CRA 7 or CRA 8 and will not have any impact on FLC's ability to take other species, either immediately or in the future.

Section 60(3)(b)(v) the likely effect of granting or withholding of the consent on the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry

37. FLC considers that the low aggregation limits in rock lobster fisheries create inherent inefficiencies for two reasons. First, the aggregation limits slow the process of industry consolidation because of the transaction costs involved in seeking and obtaining exemptions. Second, the aggregation limits distort the process and outcome of consolidation through their inequitable application across the industry. The granting of a generic exemption to FLC will help alleviate some of these inherent inefficiencies.¹⁴
38. At a company level, the granting of the consent will have a positive effect on the efficiency of FLC's operations as a result of increased economies of scale and reduced business compliance costs.
39. At an industry level, if the consent is granted, gradual additional consolidation of quota ownership will occur in CRA 4, CRA 7 and CRA 8. Concentration of quota ownership is expected to improve the efficiency of industry collective management initiatives by reducing transaction costs among participating quota owners. Efficient collective decision-making will enhance the industry's ability to improve the utilisation of rock lobster resources while ensuring sustainability.

Section 60(3)(c) such other matters as the Minister considers relevant

40. The following matters may be considered relevant by the Minister.

¹⁴ The majority of QMS species (where aggregation limits are 35% or 45% of the combined TACCs for the species) are not subject to these inefficiencies and inequities to the same extent. As a result of the low aggregation limits in CRA fisheries, even the largest quota owners are still significantly below the aggregation limits that apply to most other species. The largest quota owners across all CRA stocks are AFL (9.6% of combined TACCs), Ngai Tahu (9.3%) and FLC (5.4%).

- i. **Purpose of the Act** (section 8). The purpose of the Act, which is to provide for utilisation of fisheries resources while ensuring sustainability, provides context for decision-making. The requested exemption will help achieve the purpose of the Act by:
- removing barriers to the efficient utilisation of fisheries resources;
 - enhancing the industry's capacity for collective management of rock lobster fisheries;
 - enabling FLC to continue its management approach of ensuring the sustainability of rock lobster fisheries, with benefits for all quota owners in CRA 4, CRA 7 and CRA 8; and
 - facilitating the effective operation of the QMS.
- ii. **Information principles** (section 10). The Act's information principles require that the absence of, or any uncertainty in, any information should not be used as a reason for postponing or failing to take any measure to achieve the purpose of the Act. This is directly relevant to the assessment of FLC's application, given that actual quota purchases undertaken subject to the requested exemption may occur under conditions that differ from those of today.
- iii. **Purpose of aggregation limits.** Although the purpose of aggregation limits is not specified in the Act, the most widely accepted purpose (based on Select Committee reports) is not to prevent quota concentration *per se*, but rather to avoid the unacceptable effects that could emerge from quota concentration, such as anti-competitive behaviour and disadvantage to small fishing operations. As noted elsewhere in this application, FLC considers that:
- the current pattern of ownership of CRA quota shares is such that anti-competitive behaviour is more likely to emerge if consent to FLC's application is withheld; and
 - small fishing operations would be advantaged by FLC's ability to purchase additional quota packages as a result of FLC's strategy of assisting new fishers into the fishery and into quota ownership.
- An old Ministry of Fisheries advice paper indicates that lower aggregation limits were set for rock lobster, paua and bluenose because these were seen by the Select Committee as "nursery fisheries where new fishers can enter the industry".¹⁵ However, the value of CRA quota is now such that rock lobster can no longer be considered an "entry level" fishery unless the entrance of new fishers is actively facilitated by larger quota owners such as FLC.
- iv. **The Commerce Act 1986.** Independently of Fisheries Act requirements, the Commerce Act in Part 2 prohibits behaviour that restricts competition (i.e., anti-competitive or restrictive trade practices) and in Part 3 prohibits mergers and acquisitions that substantially lessen competition in the market. If consent is granted to FLC to exceed the aggregation limits, the Commerce Act constraints would continue to apply in relation to individual quota purchases (although the new limits requested by FLC are still considerably below the levels that would require Commerce Commission scrutiny).
- v. **The Business Growth Agenda (BGA) and other relevant government policy.** FLC's application is consistent with the BGA, as it will support the growth and development of a major exporter of premium New Zealand seafood, with spin-offs for the positive

¹⁵ Ministry of Fisheries final advice on *Application for consent for exemption from quota aggregation limits of Fisheries Act 1996 – Talley's Group Management Ltd* (11 September 2008) Appendix F.

reputation of New Zealand seafood exports generally. Granting the application will provide social and economic benefits, including employment, in the regions in which FLC operates, consistent with the BGA's focus on regional economic growth.

5. SUMMARY

41. FLC requires exemption from the aggregation limits to enable the company to develop its business and continue to be a competitive participant in the quota markets for CRA 4, CRA 7 and CRA 8. FLC therefore seeks consent to own up to 20% of quota shares in CRA 4, CRA 7 and CRA 8. Consent is sought in perpetuity and without conditions.
42. A generic exemption rather than exemption for a pending quota purchase is required because of the special circumstances of the CRA quota market (high values, small quota parcels, rapid sales) and business considerations such as certainty, regulatory efficiency and reduced business compliance costs. The impacts of a generic consent can be readily evaluated by MPI as other quota owners currently own or are able to own CRA quota up to and in excess of the limits requested by FLC.
43. The granting of the application would have a positive effect on other participants in the rock lobster industry, primarily because the current status and trends in CRA quota ownership are such that granting consent to FLC will reduce future risk of anti-competitive behaviour in both the quota and ACE markets. Granting consent will also better achieve the purpose of the Act with respect to providing for utilisation and ensuring sustainability of rock lobster fisheries.
44. If further information is required in relation to this application, please contact:

Mark Peychers: mark@flc.co.nz

Appendix 2: Fiordland Lobster Company's amended application - June 2017

8 June 2017

Hon Nathan Guy
Minister for Primary Industries
Parliament Buildings
Wellington

Copy: Steve Halley
Director: Fisheries Management
Ministry of Primary Industries
Pastoral House
25 The Terrace
Wellington
New Zealand
By email steve.halley@mpi.govt.nz

By Courier

Dear Minister

Amendment to application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

1. Further to our application dated 21 August 2015 for consent to hold spiny rock lobster quota in excess of the aggregation limit for rock lobster set out in section 59 of the Fisheries Act 1996, we set out below some proposed amendments to that application.

Reasoning for amendments to our application

2. We have reflected on the executive summary of submissions made in response to the Ministry of Primary Industries' consultation process on our application. While we do not agree with the concerns raised in some of the submissions, what has struck us is that one of the key themes raised in the submissions - namely the importance of supporting new and experienced fishers in this industry, is closely aligned with our practices. This has been our practice and our core value for our entire 28 year history.
3. We think the historical view of the rock lobster industry species as being predominantly an entry level industry suitable for small new entrants can no longer be sustained. Nor does it reflect the current structure of the industry or the realities of the capital requirements and costs involved in this industry. And the rock lobster industry requires players of scale if New Zealand's export aspirations are to be achieved and regions are to achieve strong economic development from this species.
4. But importantly we think that this does not need to be to the detriment of new and experienced fishers. FLC both through its business structure and practises is a strong example of why this is the case.
5. FLC is a quota owner, processor and exporter. It is not vertically integrated. It owns no fishing vessels and relies on independent fishers to harvest its quota and supply it with additional lobster for processing and export. The company's supply arrangements are either informal or, if formal, negotiated annually. So FLC's suppliers are able to switch to supplying alternative processors if they wish.

6. We recognise the changing nature of this industry and its potential impact on new entrants and experienced fishers. This includes increasing capital requirements and cost impact. In response to that we have long practised an approach that can best be described as "as we succeed we take steps to support our fishers to succeed". We have consistently done that through a series of measures including supporting wide ranging community and conservation projects, funding support for fishers to acquire boats and through a program of on sale of part of the acquired quota at cost price.
7. These actions reflect a company that is strongly grounded in the communities and industry it operates within. Through our entire history, we have recognised that with necessary growth comes the need to re- invest in those who fish. To maintain a vibrant and proper functioning industry, fishers must own quota so that the catching sector has a true stake in the long term sustainability of the fishery and supports the effective operation of the QMS. Our shareholders come from those communities and include people involved in fishing including a strong shareholding of Maori with a strong fisheries involvement.
8. Some of the submissions appeared to recognise the consistent efforts our company has taken to date in supporting new and experienced fishers. Sadly others have not. Nor have those latter submitters recognised the strong presence of quota owning companies holding far larger quota than we would be seeking to hold. As a company we are more than satisfied that our growth, directly advances New Zealand's aspirations for regional development. But we also support those who fish for rock lobster. And our track record here (for our entire history) is, at least, as good as that of owners of quota in excess of what we were applying for.
9. However we place value on the industry better understanding the way we operate. To that end we would seek to accommodate the submissions which expressed concern by:
 - a. reducing the quota excess we are seeking; and
 - b. providing the industry with a greater understanding of the practices we undertake in helping others grow with us , and providing greater certainty about those practices, by making the performance of specified aspects of those practices conditions of the application.
10. The company views these two amendments to the application, which we set out in more detail below, as a case of progressing at a pace that helps build confidence and better understanding of what our growth means for the industry. We think that by offering up some of our current practices as conditions to the quota application, submitters will have better opportunity to understand how we operate and that provides a better basis for wider understanding if we sought further quota approval in the future.
11. In taking this step, the company is conscious that it is offering up restraints (in the form of the conditions) that others have not made. But given these are practices we have adhered to, for all of our history and given that our application has to date taken 22 months to be assessed, the directors are willing to take this step in the desire to achieve a speedy resolution one way or the other.

Proposed amendments to our application

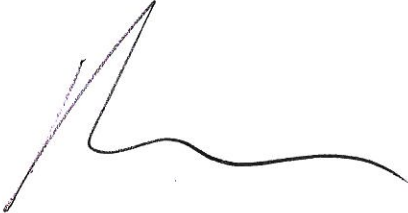
(i) Quota excess

12. The application is amended to hold up to 15,000,000 quota shares, in perpetuity, but subject to the conditions set out below, in each of the following rock lobster quota management areas being CRA 4 (Wellington/Hawkes Bay); CRA 7 (Otago); and CRA 8 (Southern).

13. The application continues to be a head room application, that is it does not relate to specific proposed purchases of shares. The reasoning for that is set out in our application but can succinctly be summarised as the sale history in this industry has increasingly been characterised by small volumes that are sold within very short time periods.
 14. The impact of this is that a vendor would almost never agree to delay a sale for more than a very few days in favour of an applicant whose ability to enter the transaction was dependent on obtaining consent to exceed its quota aggregation limits. The Company has sought on occasions in the past, to secure sales conditional on quota excess consent but have been declined. In the current market the effect of a policy requiring a specific transaction is to defeat the benefit of having a section 60 consent process, since the pre-condition required (a specific transaction) cannot practically be procured.
- (ii) *Conditions*
15. We propose that consent be conditional on the matters set out in schedule 1, being demonstrated in the manner, and at the annual intervals set out in schedule 2. The purpose of:
 - a. these conditions is to demonstrate formally what we have done to date operationally, namely that as we grow as a company we also assist our fishers to grow, and that by exceeding the current aggregation limits we will not be impairing our fishers' ability to access quota or ACE, rather we will be continuing to actively support them in their aspirations;
 - b. shaping these conditions as bright line tests is to provide certainty to the Company, the broader industry and to the Minister in assessing compliance, what is required and how will performance be determined.
 16. We propose that the conditions:
 - a. cease to apply in respect of any quota shares, that we acquire from the period we give you notice of acquisition, in the manner and at the intervals set out in schedule 1 and continue only to apply to the remaining amount of head room for further quota shares (up to the maximum amount of 15,000,000);
 - b. otherwise apply for four reporting years (being the years ending 31 March 2018 through to the year ending 31 March 2021) in respect of any remaining head room for quota shares (up to the maximum amount of 15,000,000) and then cease to apply if the conditions are satisfied in each of those four reporting years.
 17. That is not to say that FLC will cease performing similar industry support functions at the end of the 4 reporting years (our long history to-date of support firmly answers that concern), rather that the point of having them as conditions is to provide better understanding and certainty about them in the context of a quota aggregation consent, but this needs to be balanced with the need for ongoing flexibility about how these are structured to meet the evolving needs of fishers in the industry.
 18. We do not propose amending the application for the consent to be in perpetuity (or more precisely we do not propose that the consent be time limited) as we do not think it commercially practical for a company to make investment decisions (both capital decisions and expenditure decisions) based on a time limited consent. This would make it difficult not only for the Company to have certainty but also our customers and the staff we employ. This would directly undermine the benefit of the quota approval and mean we would be forced into short term decision making and sub optimal investment and expenditure decisions.

19. If there any questions in respect of our amendments to our application please contact the writer.

Yours sincerely



Bryan Henderson

Board Chairman

Fiordland Lobster Company

SCHEDULE 1 – PROPOSED CONDITIONS TO S 60 CONSENT

The table below sets out:

- (i) the proposed conditions for a consent to allow Fiordland Lobster Company Limited to acquire up to 15,000,000 spiny rock lobster quota shares in certain quota management areas; and
- (ii) what is required to evidence that the consent conditions have been satisfied.

CONDITION	NATURE OF CONDITION	EVIDENCE OF SATISFACTION
1. Quota offer requirement	<p>FLC must, in each Relevant Year:</p> <ul style="list-style-type: none"> (a) offer to at least five Fishers in aggregate an amount of CRA 4 Quota that is no less than 10% of the aggregate amount of CRA 4 Quota acquired by FLC during that Relevant Year; (b) offer to at least five Fishers in aggregate an amount of CRA 8 Quota that is no less than 10% of the aggregate amount of CRA 8 Quota acquired by FLC during that Relevant Year; (c) offer in aggregate an amount of Quota that is no less than 10% of the aggregate amount of Quota acquired by FLC in all quota management areas during that Relevant Year,ⁱ provided that: (d) the requirement in paragraph (a) shall only apply where FLC has acquired at least 50,000 quota shares in CRA 4 (Wellington/Hawkes Bay) during that Relevant Year; (e) the requirement in paragraph (b) shall only apply where FLC has acquired at least 50,000 quota shares in CRA 8 (Southern) during that Relevant Year; and 	<p>This condition shall be deemed to be satisfied for each Relevant Year, on receipt by the Chief Executive of a Statutory Declaration (Quota Offers) which has been completed in accordance with its terms and which shall certify that the quota offer conditions of the Consent have been met, to be received by the Chief Executive no later than 30 days after the final day of the Relevant Year in question.</p>

	<p>(f) any such offer of Quota:</p> <ul style="list-style-type: none"> (i) must be made at a price per quota share no greater than the price paid by FLC for the quota share that FLC is offering for sale; and (ii) may be on any other terms or conditions determined by FLC (acting reasonably), which, for the avoidance of doubt, may include any terms or conditions which FLC has applied to an offer of Quota by FLC to a Fisher prior to the date the Consent is granted. 	
2. ACE Support	<p>FLC must, in each Relevant Year, provide ACE Support in relation to at least 50% of Total ACE acquired in each Area during the Relevant Year.</p>	<p>This condition shall be deemed to be satisfied for each Relevant Year, on receipt by the Chief Executive of a Statutory Declaration (ACE Support) which has been completed in accordance with its terms and which shall certify that the ACE Support condition of the Consent has been met, to be received by the Chief Executive no later than 30 days after the final day of the Relevant Year in question.</p>
3. Reporting	<p>FLC must provide the following information to the Chief Executive no later than 30 days after the final day of each Relevant Year:</p> <ul style="list-style-type: none"> (a) a Statutory Declaration (Quota Offers) which has been completed in accordance with its terms and which shall certify that the quota offer conditions of the Consent have been met; (b) a Statutory Declaration (ACE Support) which has been completed in accordance with its terms and which shall certify that the ACE Support condition of the Consent has been met; (c) the following details in relation to each completed acquisition of Quota in any of the Areas during the Relevant 	<p>This condition shall be deemed to be satisfied for each Relevant Year on receipt by the Chief Executive of the Annual Report no later than 30 days after the final day of the Relevant Year in question.</p>

	<p>Year:</p> <ul style="list-style-type: none"> (i) the name of the vendor; (ii) the amount of Quota acquired; (iii) the quota management area to which the Quota relates; and (iv) the date of the acquisition, <p>together, the <i>Annual Report</i>.</p>	
<i>Application of conditions</i>		
<ul style="list-style-type: none"> (i) If the Consent conditions are satisfied for each of the first four Relevant Years, then the conditions shall cease to apply, and the Consent shall be unconditional, on and from the date that the Consent conditions for the fourth Relevant Year are satisfied. (ii) If FLC provides the Chief Executive with notice of an acquisition by FLC of Quota in any of the Areas as part of its properly completed Annual Report (Notified Acquisition) the Quota acquired in respect of the Notified Acquisition shall no longer be subject to the Consent conditions. 		

Definitions - capitalised terms used in this table have the meanings given to them below, unless defined earlier in the table.	
ACE	Means annual catch entitlement (in kilogrammes) for Lobster.
ACE Support	<p>Means either:</p> <ul style="list-style-type: none"> a) a loan advanced by FLC to a Fisher to assist the Fisher to acquire ACE from a person other than FLC, where that loan is: <ul style="list-style-type: none"> (i) for the full value of the ACE being acquired by the Fisher in the particular acquisition of ACE to which the loan relates; (ii) interest free for at least nine months from the date the loan is advanced by FLC to the Fisher; and (iii) otherwise on any other terms or conditions determined by FLC (acting reasonably), which, for the avoidance of doubt, may include any terms or conditions which FLC has applied to a similar loan made by FLC to a Fisher prior to the date the Consent is granted; or b) a sale of ACE by FLC to a Fisher, where that sale of ACE is conducted on the following terms: <ul style="list-style-type: none"> (i) the Fisher is not required to pay for the ACE which is the subject of the sale until Lobster caught by the Fisher under that ACE is sold to FLC; and (ii) the unpaid purchase price does not accrue any interest for a period of at least: <ul style="list-style-type: none"> A nine months following the date the ACE is transferred to the Fisher; or B the date the ACE is transferred to the Fisher to the date the Fisher pays for the ACE which is the subject of the sale, whichever is the shorter; and (iii) otherwise on any other terms or conditions determined by FLC (acting reasonably), which, for the avoidance of doubt, may include any terms or conditions which FLC has applied to a similar sale of ACE from FLC to a Fisher prior to the date the Consent is granted.
Areas	<p>Means the following quota management areas:</p> <ul style="list-style-type: none"> (a) CRA 4 (Wellington/Hawkes Bay);

	<p>(b) CRA 7 (Otago); and</p> <p>(c) CRA 8 (Southern).</p>
Chief Executive	Means the Chief Executive of the Ministry for Primary Industries.
Consent	Means the consent for FLC to acquire up to 15,000,000 Lobster quota shares in each of quota management areas CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago) and CRA 8 (Southern) granted by the Minister for Primary Industries pursuant to section 60(1) of the Fisheries Act 1996.
CRA 4 Quota	Means individual transferrable quota for Lobster in quota management area CRA 4 (Wellington/Hawkes Bay).
CRA 8 Quota	Means individual transferrable quota for Lobster in quota management area CRA 8 (Southern).
Fisher	Means any person involved in the catching, taking, or harvesting of Lobster, or any Representative of such a person.
FLC	Fiordland Lobster Company Limited and its subsidiaries.
Lobster	Spiny rock lobster.
Relevant Year	Means the period starting on 1 April and running to 31 March in the following year, with the first Relevant Year being the period running from 1 April 2017 to 31 March 2018.
Representative	Means any person who holds Quota or ACE on behalf of a Fisher, or for the purposes of enabling a Fisher to utilise the benefit of that Quota or ACE (whether as a trustee, nominee or otherwise).
Statutory Declaration (ACE Support)	Means a statutory declaration in relation to FLC's compliance with condition two of the Consent, in the prescribed form.
Statutory Declaration (Quota Offers)	Means a statutory declaration in relation to FLC's compliance with condition one of the Consent, in the prescribed form.

Total ACE	Means, in respect of an Area, the aggregate of: (a) ACE in that Area that FLC acquires during the Relevant Year; and (b) ACE in that Area that a Fisher acquires during the Relevant Year using ACE Support (other than ACE acquired by a Fisher from FLC).
Quota	Means individual transferrable quota for Lobster.

ⁱ As CRA 7 has a very small TACC and therefore low sale volumes, the applicant has historically had to work hard to ensure it has sufficient access to quota to maintain supply for its current fishers. Accordingly, the applicant is not proposing a separate offer for CRA 7, rather is proposing an offer of 10% based on all quota management areas.

SCHEDULE 2 – STATUTORY DECLARATIONS

STATUTORY DECLARATION (QUOTA OFFERS)

I <FULL NAME, OCCUPATION AND PLACE OF RESIDENCE> solemnly and sincerely declare that in relation to the period between <DATE> and <DATE> (the *Period*):

1. FLC offered at least five Fishers Quota during the period;
2. the offers of Quota made by FLC to Fishers during the Period were for an aggregate amount of:
 - (a) [CRA 4 Quota no less than ten per cent of the total CRA 4 Quota that FLC acquired during the Period;]*
 - (b) [CRA 8 Quota no less than ten per cent of the total CRA 8 Quota that FLC acquired during the Period; and]*
 - (c) Quota no less than ten per cent of the total Quota that FLC acquired during the Period,

(together, the *Minimum Threshold*); and
3. in relation to offers of Quota by FLC to Fishers which count toward FLC meeting the Minimum Threshold, all of those offers were made at a price per quota share no greater than the price paid by FLC for the quota share that FLC is offering for sale.

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Unless defined herein, capitalised terms used in this statutory declaration have the meanings given to them in the consent for FCL to acquire up to 15,000,000 spiny rock lobster in each of quota management areas CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago) and CRA 8 (Southern) granted by the Minister pursuant to section 60(1) of the Fisheries Act 1996 on <DATE>.

*** [Drafting note – only required if FLC has acquired at least 50,000 quota shares for Lobster in the relevant Area during the Period]**

STATUTORY DECLARATION (ACE SUPPORT)

I <FULL NAME, OCCUPATION AND PLACE OF RESIDENCE> solemnly and sincerely declare that in relation to the period between <DATE> and <DATE>, FLC has provided ACE Support in relation to at least 50% of Total ACE acquired in each Area during the Period.

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Capitalised terms used in this statutory declaration have the meanings given to them in the consent for FCL to acquire up to 15,000,000 spiny rock lobster in each of quota management areas CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago) and CRA 8 (Southern) granted by the Minister pursuant to section 60(1) of the Fisheries Act 1996 on <DATE>.

Appendix 3: Select Committee consideration of aggregation provisions

The Select Committee that reported to Parliament on the Fisheries Bill (as it was before becoming the 1996 Act) explained that:

“Aggregation limits on quota holdings are provided for in the Fisheries Act 1983 to prevent monopolistic behaviour and to protect smaller fishing operations. The Bill continues the existing aggregation limits.”

The Committee also recorded that there was a divergence of views between smaller operators and larger enterprises. Smaller operators submitted that “the aggregation limits safeguarded their continuing access to quota, prevented dominance, ensured competition in each of the catching, processing and marketing sectors, and kept processing of fish within New Zealand.” Larger enterprises considered that aggregation limits were an unnecessary constraint on investment, etc, and requested that the Commerce Commission be employed to address issues of market dominance.

The Committee recommended (and Parliament later enacted) a regime with low aggregation limits for paua, rock lobster and bluenose because they are “nursery fisheries where new fishers can enter the industry” and higher limits for other species. The Committee also recognised that “other fisheries, particularly deepwater fisheries, require a substantial investment to enter” and that “to be internationally competitive in many fisheries requires holding enough quota to achieve economies of scale”.

Aggregation limits, with the allowance of different levels of aggregation according to the nature of the species, were created to achieve the objective of Parliament. As reported in Committee, “We have made provision for some considerable rationalization at the top end of the quota and the business end but we have protected the nursery opportunity for fishermen”.

From this legislative history, it is clear that Parliament’s rationale for aggregation limits was not to prevent quota concentration *per se*, but rather to avoid unacceptable effects that could emerge: anti-competitive behaviour, and disadvantage to small fishing operations in those fisheries in which access is easier (lower input costs, little to no processing required, no requirement for development of international market, etc.).

Developments since aggregation limits were established

There has been considerable development in New Zealand fisheries and the fisheries management system since aggregation limits were established, and the levels of permissible aggregation were determined. A key summary effect of these changes is that the imposition of limits on the amount of quota held by an individual does not directly limit control over access to a fishery:

- a) The quota ownership right was separated from the catching right with the introduction of ACE in 2001, and there is no limit on the amount of ACE that may be held by one person or company (theoretically a person or company could hold 100% of ACE in any given stock or species for any one year). Aggregation limits were introduced at a time when quota equated to the harvesting right and the legislation has not been amended to refer expressly to matters concerning the ACE market.

- b) The catch balancing regime introduced by the 1996 Act ensures that control of quota – and later ACE – does not impose a legal limit on commercial access to the fishery and it is not a criminal offence to fish without ACE for most stocks (for rock lobster, 3 tonnes of ACE is required before a fisher may take any stock (section 74 of the Act)). A fisher must ensure catch is balanced against ACE for that stock, or else deemed values must be paid. The control of quota does not give a legal ability to control access – all that is required is that a person holds a fishing permit. Commercial access for directed fishing activity will almost certainly be made uneconomical if ACE is unavailable, or too high in price, or the deemed value is set at a rate that renders fishing economical.

MPI considers the relevance of the level of quota ownership/aggregation on the matters that you are required to consider under s 60(3) of the 1996 Act and Parliament's rationale behind prescribing aggregation limits (limiting market power and the protection of small quota holders) is considerably less than it was at the time aggregation limits were first introduced.

However, since quota generates ACE at the start of each fishing year, a quota holder in a dominant position in the fishing rights market can influence the economic viability of other fishers, even though access cannot be prevented. Since deemed values should be set to ensure that the TACC is not over-caught (while providing some measure of flexibility), the availability of quota/ACE at a reasonable price may in effect be the only way to access the fishery. As such, quota ownership at the very least can exert control over the ACE market and access to fish.

Appendix 4: Other matters to consider (section 60(3)(c))

FLC and submitters raised several other matters that they believe to be relevant to the consent. These are analysed in detail below.

ROCK LOBSTER AGGREGATION LIMITS ALREADY EXCEEDED

FLC's state that the impact of granting their exemption can be readily evaluated as other rock lobster quota owners already own (or are able to own) quota shares up to and exceeding the limits requested by FLC. The most significant of which are (see Appendix 5 for all rock lobster exemptions):

- CRA 3: Moana Pacific Fisheries and associated companies (32.7%);
- CRA 1: Moana Pacific Fisheries and associated companies (31%);
- CRA 5: Burkhart Fisheries and associated companies (26.89%);
- CRA 5: Ngai Tahu (26.76%);
- CRA 7: Ngai Tahu (23.32%);
- CRA 4: Moana Pacific Fisheries and associated companies (22.96%);
- CRA 2: Moana Pacific Fisheries and associated companies (21%).

Submitter Ngati Kahungunu Iwi Incorporated considers that there are special circumstances that justify the granting of a generic exemption because thirty eight rock lobster aggregation limits have already been granted. Wakatu Resources also suggest the existing exemptions have not had a detrimental effect on the fishery or the industry. MPI is not aware of any negative impacts the existing rock lobster aggregation limit exemptions have had on the rock lobster industry in general.

MPI considers the relevance of the level of quota ownership/aggregation on the matters that you are required to consider under section 60(3) of the Act and Parliament's rationale behind prescribing aggregation limits (limiting market power and the protection of small quota holders) is considerably less than it was at the time aggregation limits were first introduced. However, a quota holder in a dominant position in the quota and ACE markets can influence the economic ability of other fishers.

HIGH VALUE OF ROCK LOBSTER QUOTA

FLC state that if it cannot participate on an equal footing in the quota market, only one or two other quota owners will have sufficient scale and capital to purchase quota, resulting in a restricted market with higher potential for anti-competitive behaviour. FLC consider that a generic exemption from the aggregation limits would enable it to participate on the same basis as its major competitors, with positive effects on the operation of the quota market and the ACE market.

Submitter Wairarapa Building Society disagrees that FLC's inability to compete for the purchase of quota is a special circumstance justifying the granting of a generic exemption. This submitter considers that is exactly what the aggregation limits are designed to do as intended by Parliament.

This matter is closely linked to other matters already discussed above 60(3)(a): willingness and ability, and 60(3)(b)(ii): effect on other quota owners and fishers.

RAPID TRANSACTIONS OF SMALL ROCK LOBSTER QUOTA PARCELS

FLC suggest that the rock lobster quota market is not like finfish, where it is common to see large quota parcels on the market. Rock lobster quota is instead tightly held and sales typically occur exceedingly rapidly, with shares on the market for only a very short time (i.e. sales are often settled in a single phone call).

FLC state that it is unable to maintain its competitiveness because it is required to put a “hold” on any purchase agreement in order to apply for an exemption to the aggregation limits. Potential sellers are simply not approaching FLC because it is aware that the company’s quota holdings are constrained by the aggregation limits whereas its competitors’ are not.

MPI acknowledges that rock lobster quota parcels are generally sold in small lots and sell quickly. The current process for seeking aggregation exemption can take time and does not enable FLC to act quickly to secure quota purchases in CRA 4, 7 and 8.

COMMERCIAL CONSIDERATIONS

FLC consider that a generic (prospective) exemption will provide the company with greater certainty than requiring them to apply for a series of smaller exemptions for each pending quota purchase. Certainty is vital for FLC’s ability to continue to invest and develop its processing, marketing and export business.

Each application for exemption from the quota aggregation limits requires the preparation of an application, a public consultation process, preparation of final advice by MPI, a decision by you (granting or withholding consent), and preparation of a *Gazette* Notice. Given the low aggregation limits in rock lobster fisheries and the small size of quota parcels typically on offer, FLC considers that regulatory efficiency is better served through the granting of generic exemptions where possible.

A generic exemption from aggregation limits would also reduce FLC’s business compliance costs associated with managing the legal risk of quota forfeiture from inadvertent breach of aggregation limits through association with other entities.

MPI notes that applications for aggregation limit exemptions are not necessarily responsive to the needs of an applicant and can result in a lengthy process. Granting of a generic exemption to FLC would reduce some administrative burden for MPI, but it is not a strong reason on its own to grant or withhold consent.

PURPOSE OF THE ACT (SECTION 8)

FLC consider that the requested exemption will help achieve the purpose of the Act by:

- removing barriers to the efficient utilisation of fisheries resources;
- enhancing the industry’s capacity for collective management of rock lobster fisheries;
- enabling FLC to continue its management approach of ensuring the sustainability of rock lobster fisheries, with benefits for all quota owners in CRA 4, 7 and 8;

- facilitating the effective operation of the QMS.

The broad concerns over utilisation and sustainability are stated in the purpose of the Act. Those utilisation and sustainability concerns are relevant to your assessment of the likely effect on quota holders under section 60(3)(b)(ii), and of the likely effect on the efficiency of the New Zealand fishing industry under section 60(3)(b)(v).

INFORMATION PRINCIPLES (SECTION 10)

The Act's information principles direct how decision makers should respond when information is uncertain. FLC consider that these information principles are directly relevant to the assessment of their application, given that actual quota purchases undertaken subject to the requested exemption may occur under conditions that differ from those of today. In this document, MPI has endeavoured to present the best available information and note where uncertainties remain in relation to FLC's application.

PURPOSE OF ROCK LOBSTER AGGREGATION LIMITS

Rock lobster aggregation limits were originally set to prevent companies buying a large portion of quota for a stock, thereby gaining an unfair competitive advantage over smaller companies. Despite this limit, there are 38 current exemptions to rock lobster aggregation limits recorded on the quota register (Appendix 5).

A number of submitters commented on the original purpose of aggregation limits. Some submitters noted that aggregation limits must be adhered to, to protect the economic position of individual fishers and the limits were established in consultation with the industry when lobster came into the QMS. Other submitters suggest that a generic review of rock lobster aggregation limits should be progressed as the "horse has already bolted" and are no longer appropriate in the current environment. It has also been suggested that the Act should be amended to set an aggregation limit of 20% across all rock lobster stocks to minimise any advantages held by companies who already hold exemptions, which can lead to manipulation of ACE prices. New Zealand Sport Fishing Council on the other hand consider that aggregation limits granted by New Zealand law are already too high, with 2% to 5% limits representing a normal range in offshore jurisdictions (no examples were provided, however).

MPI notes that a review of rock lobster aggregation limits in general is outside of your relevant considerations on FLC's application for consent. MPI is currently considering whether a review of aggregation limits could be progressed as part of the Future of our Fisheries programme.

MPI notes that most of the benefits suggested by FLC in relation to the proposed exemption would be generic to any other company seeking exemption. Therefore, FLC's application and issues raised during consideration of it point to the need to review the aggregation limits more generally.

THE COMMERCE ACT 1986

The Commerce Act 1986 prohibits behaviour that restricts competition (i.e. anti-competitive or restrictive trade practices) and prohibits mergers and acquisitions that substantially lessen competition in the market, independently of Fisheries Act requirements. FLC note that if their

consent was granted the Commerce Act constraints would continue to apply in relation to individual quota purchases.

Wairarapa Building Society believes that Parliament chose to restrict aggregation to 10% of the TACC in rock lobster fisheries in 1996, 10 years after the Commerce Act, and that this provides evidence that Parliament did not believe ordinary competition law of itself was sufficient to achieve its intentions. MPI does not consider that it is accurate to infer that Parliament did not consider that ordinary competition law was sufficient, rather that specific fisheries law may have been preferred. MPI understands that rock lobster aggregation limits were originally put in place with the support of the rock lobster industry.

One individual submitter considers that agreements that FLC has with its investors (other quota holders) appears to be in contravention of Section 27 of the Commerce Act (i.e. no person shall enter into a contract or arrangement that is likely to have the effect of substantially lessening competition in a market). Based on information provided in other submissions and discussions with FLC, MPI has no information to suggest that the agreements that FLC have with other quota holders are at a level that would require Commerce Commission scrutiny.

BUSINESS GROWTH AGENDA AND OTHER RELEVANT GOVERNMENT POLICY

FLC consider that their application is consistent with the government's Business Growth Agenda, as it will support the growth and development of a major exporter of premium New Zealand seafood, with spin-offs for the positive reputation of New Zealand seafood exports generally. Granting the application in FLC's eyes would provide social and economic benefits, including employment, in the regions in which FLC operates, consistent with the growth agenda's focus on regional economic growth.

MPI realises that granting consent to FLC might have social and economic benefits at the national and regional levels, that are consistent with the growth agenda. This matter is linked to section 60(3) considerations of effects on quota holders and fishers (60(3)(b)(ii)), effects on processing and marketing of rock lobster (60(3)(b)(iii)), and the efficiency of industry (60(3)(b)(v)). MPI has already considered these aspects in previous sections.

Appendix 5: Existing rock lobster quota aggregation limit exemptions

Overall there have been 38 separate aggregation limit exemptions granted for rock lobster. Currently there are 21 distinct exemptions across all rock lobster stocks because of company mergers and associated quota owners. Of the 21 current exemptions, one applies in CRA 4 and two apply in each of CRA 7 and 8.

Stock code	Count of current distinct exemptions	Client name	Quota aggregation limit exemption (%)
CRA 1	1	Te Ohu Kaimoana Trustee Limited Moana Fishing Limited Moana Pacific Fisheries Limited	31
CRA 2	2	Te Ohu Kaimoana Trustee Limited Moana Fishing Limited Moana Pacific Fisheries Limited	21
	3	Te Ohu Kaimoana Trustee Limited	10.48
CRA 3	4	Moana Fishing Limited Moana Pacific Fisheries Limited	32.7
	5	Te Ohu Kaimoana Trustee Limited	23
	6	Gisborne Fisheries 1955 Limited	16.8
CRA 4	7	Te Ohu Kaimoana Trustee Limited Moana Fishing Limited Moana Pacific Fisheries Limited	22.96
CRA 5	8	Dennis Lindsay Burkhart Trevor Milton Burkhart Lanfar Holdings (No 4) Limited Burkhart Fisheries Limited	26.89
	9	Ngai Tahu Seafood Products Limited Ngai Tahu Seafood Resources Limited	26.76
	10	Te Ohu Kaimoana Trustee Limited	18
CRA 6	11	Te Ohu Kaimoana Trustee Limited	24.03
	<i>Expired</i>	<i>Chatham Island Packing Company Limited</i>	22.62
	12	Chatham Quota Owner Limited	22.15
	13	Fastforward Holdings Limited	15.57
CRA 7	14	Ngai Tahu Seafood Products Limited Ngai Tahu Seafood Resources Limited	23.32
	15	Te Ohu Kaimoana Trustee Limited	12
CRA 8	16	Te Ohu Kaimoana Trustee Limited	19
	17	Ngai Tahu Seafood Products Limited Ngai Tahu Seafood Resources Limited	13.92
CRA 9	18	Port Tarakohe Limited	12.48
	19	Te Ohu Kaimoana Trustee Limited Moana Fishing Limited Moana Pacific Fisheries Limited	12
	20	Ngai Tahu Seafood Products Limited Ngai Tahu Seafood Resources Limited	10.994
CRA 10	21	Te Ohu Kaimoana Trustee Limited	15

Appendix 6: Submissions made on FLC's initial application

Summary of submissions received, including an indication on whether the submitter supported or opposed FLC's application (✓ = support, ✗ = oppose, - = neutral).

I & PM Boyce Family Trust	✗
Wairarapa Building Society	✗
H.G. (Joe) Cave – Southern Seafoods	✗
Te Ohu Kaimoana Trustee Limited	✗
David Jones	✗
William McWilliam	✗
Ernest Cave	✗
A. Heineman	✓
Ngai Tahu Seafood, Ngai Tahu Seafood Resources Limited and Ngai Tahu Seafood Products Limited	✗
Ngati Toa	✗
Bill Hansen	✓
Phil Hawkins	✗
CRA 8 Management Committee Incorporated (CRAMAC 8)	-
Birchall Family	✗
Peter Borrie	✗
Southern Ocean Lobster Limited	✗
Ngati Kahungunu Iwi Incorporated	✓
Johnson Family Trust	✗
Te Atiawa (Taranaki) Holdings Limited	✗
Iwi Collective Partnership	✗
Leigh Lobster Limited	✗
Russell and Jan Keen	✗
EM Gray and RA Voice	✗
S J Cave Limited	✗
Bruce Matthews	✓ (assumed)
New Zealand Sport Fishing Council	✗
RG & RL Haggerty Family Trust	✓ (assumed)
L & B Taspac	✓
Wakatu Resources Limited	-
Helen Cave – Southern Seafoods	✗
J E L Investments Limited	✓
EBD (S.I.) Limited	✓
Pahaoa Fishing Limited	✓
Noel Anderson	✓
GN & Wa Burkhardt Partnership and Manaia Reef Trust	✓
Neil & Leanne Bramley and Seamed New Zealand Limited	✗
Burkhardt Fisheries Limited, Lanfar Holdings (No 4) Limited, and The Dam Vineyard Limited	✓
Roderick McRae	✗
CJ & HC Peychers	✓
Schuck Enterprises Limited	✗
Karen Simcox	✗
TL Brosnahan	✗
Geoff & Paula Price	✗
Bergin Barry Quota Holdings Limited	✗
West Hotel Limited	✗
Individual identified as "garth.janine"	✗
Geoffrey & Kim Basher	✓

Submission to :- Inshore Fisheries Management
Opposing Finland Lobster's application for an
increase in their quota holding in excess of
the aggregation limit.

I have been involved in the fishing industry
since 1957. In that time I have sat on Scallop,
Crabfish and wet fish committees and appeared at
select committee hearings.

When the quota management system was
instigated the independant catching sector fishermen
applauded the concept of an aggregation provision.
This gave an assurance that independant fishermen
would be able to catch fish without the pressure
of the large companies forcing them to fish to their
own terms.

In the time that I have been involved in
the fishing industry I have witnessed a number
of instances where large companies have
eliminated competition by using standover tactics
to secure the major portion of the product.

As I was an independant fisherman, I was
and still am, totally opposed to any increase in
the 10% aggregation clause that is in the CRA quota
allocation.

Therefore I opposed Finland Lobster's
application to increase their CRA holdings in
CRA 4, CRA 7 and CRA 8. In behalf of I + Pm Boyle
Family Trust.
V. Boyle
9792877



SUBMISSION IN OPPOSITION

by Wairarapa Building Society

on **Fiordland Lobster Company Limited – application for consent to hold rock lobster in excess of aggregation limits in CRA 4, CRA 7 and CRA 8.**

To: Minister for Primary Industries

Date: 26 May 2016

Name: Kim McCabe
Chief Executive Officer

SUBMISSION IN OPPOSITION TO FIORDLAND LOBSTER COMPANY LIMITED APPLICATION FOR CONSENT TO HOLD ROCK LOBSTER QUOTA IN EXCESS OF AGGREGATION LIMITS IN CRA 4, CRA 7, AND CRA 8.

Introduction

1. Wairarapa Building Society ("WBS") has significant business lending into CRA 4. It is important to WBS that the business of its client debtors, who are primarily small to medium sized fisheries businesses, is not threatened by anti-competitive or restrictive trade practices. Much of WBS's lending is secured against quota. If too much aggregation occurs, quota would become an unstable form of security because movements in its value would be too susceptible to the trading practices of a few major quota holders. For this reason, it is important to WBS that quota is widely held.
2. WBS has had the opportunity to read draft submissions of Neil & Lea Bramley & Family (9/5/2016), E M Gray & R A Voice, and M W Schuck of Schuck Enterprises Ltd (5/5/2016)¹.
3. WBS objects to the Fiordland Lobster Company ("FLC") application for an exemption and submits that the application should be declined.

Rationale for aggregation limits

4. Individual transferable quota ("ITQ") based fisheries management systems offer significant advantages²; but they may also create negative social consequences. ITQ has a tendency to lead towards industry consolidation and aggregation³. As well as creating barriers to entry and reducing competition, consolidation and aggregation of quota ownership can *"cause wealth and control over the fishery to be moved out of a local community (Palsson and Helgason 1996), resulting in loss of community and damage to existing local institutions (Schlager 1990; McCay and others 1998)"*⁴.
5. The solution to this problem in New Zealand has been aggregation limits on the amount of quota that any one person can acquire. MFish considered that *"Parliament's rationale for aggregation limits was not to prevent quota concentration per se, but rather to avoid unacceptable effects that could emerge: anti-competitive behaviour, and disadvantage to*

¹ Though WBS has no reason to doubt the veracity of these draft submissions WBS does not share in the allegations (including that Fiordland Lobster Company ("FLC") may engage in anti-competitive business practices and arrangements) contained therein. However it considers the existence of such uniform allegations from three separate parties highly concerning, and believes it is important for the purposes of s 60 of the Fisheries Act 1993 to consider the probable implications of their being correct and if necessary investigate them further.

² Primarily successful exploitation of fisheries resource stock without occasioning a "tragedy of the commons" through the creation of tradable property rights in the resource flow.

³ Yandle, T. and Dewees, C. M. (2008) "Consolidation in an Individual Transferable Quota Regime: Lessons from New Zealand, 1986 – 1999", *Environmental Management*, vol 41, no 6, pp 915 – 928.

⁴ Ibid.

*small fishing operations in those fisheries in which access is easier (lower input costs, little to no processing required, no requirement for development of international market, etc.)*⁵

6. The spiny rock lobster ("lobster") fishery is particularly important in this regard. Though the Fisheries Act 1983 contained provisions limiting aggregation, the introduction of ITQ in New Zealand nevertheless led to *"inshore fishery consolidation and aggregation of quota ownership... coupled with a substantial decline in the number of small-scale fishers."*⁶ When Parliament enacted the Fisheries Act 1993 ("Act"), it deliberately made aggregation limits more restrictive for lobster than for other fisheries. Hon Jim Sutton observed at the time that:

*"Nobody can own more than 10 percent of the spiny rock-lobster in any one quota management area. That is very significant in terms of what we might call the small-scale fishing industry in small settlements around the New Zealand coast. It prevents someone getting large monopolies, or even regional monopolies, and dominating what is really the stepping-stone part of the fishing industry for many people."*⁷

7. FLC claims at para 40(iii) of its submission that this rationale is no longer valid because *"the value of CRA quota is now such that rock lobster can no longer be considered an 'entry level' fishery."* WBS disagrees; lobster was not chosen because its quota was inexpensive. Eric Roy MP noted:

*"We have looked after that; we have kept it [CRA quota] as an opportunity and it is still in diverse hands. Much of the other quota has been accumulated but certainly rock lobster and paua are in diverse ownership."*⁸

8. Lobster was a rational choice for Parliament to preserve as a 'stepping stone' fishery because its quota was diversely held. Quota, or the annual catch entitlement ("ACE") that it generates, is more likely to be traded competitively, regularly, and in smaller packages where it is diversely held. Quota cost is not a barrier to entry because a fisherman can purchase ACE for a significantly cheaper price than quota. It should also be noted that the cost of kit for the lobster fishery is significantly lower than that for deep sea fishing. These rationales have not changed. Even were this not so, WBS submits that if Parliament believed there was no longer a rationale to restrict aggregation in the lobster fishery it could amend the Act.

FLC's business and practice

9. FLC is a vertically integrated company. It appears from its website that while the company owns quota it does not fish this itself, but rather *"contracts fishermen suppliers"*⁹. As noted in the FLC submission at para 31, there are ACE dependent fishers who fish for FLC using ACE supplied by FLC. Many of FLC's shareholders own quota in their own right. Once lobsters are supplied to FLC by fishers, FLC prepares them and exports them. According to FLC's submission at para 5, FLC is New Zealand's largest exporter of live lobster; accounting for 27%

⁵ "Application for consent for exemption from quota aggregation limits of Fisheries Act 1996 – Talleys Group Management Ltd (Client ID 9760117)" 10 September 2008.

⁶ Above, n 3.

⁷ NZ Hansard, Wednesday, July 31, 1996.

⁸ Ibid.

⁹ <http://www.lobster.co.nz/our-product/the-process/>

of New Zealand's live lobster exports (according to FLC's website, this figure is 35%¹⁰). This suggests that FLC's supply of lobster must also be sourced from third parties.

10. Fishing itself appears to be outsourced and a cost of FLC's business operations. FLC's income appears to be generated through export sales of lobster; acquired through ACE that it controls and otherwise.
11. Unlike quota, there are no aggregation limits on ACE and there are multiple ways that FLC may control ACE. First, ACE is generated through the quota that FLC holds. Second, many of FLC's shareholders are quota owners and fishermen. According to the submission of ex-CEO of FLC, M W Schuck, FLC owns 9.9% of Quota in CRA4 and its shareholders own an additional 16.7%. Given that FLC's shareholders have an interest in FLC it is rational that FLC would be the preferred purchaser of lobster fished on their ACE. Third, according to M W Schuck, FLC gain control of ACE through quota that they on-sell. Mr Schuck attaches, as Appendix 1 to his submission, what appears to be an FLC Agreement for Sale and Purchase of Quota. Clause 11 of that document states:

11. Quota to be fished or Leased to FLC

11.1 If the Purchaser is fishing the ACE generated by the Quota itself then from 1 April 2011 and for the next 5 fishing years (ending 31 March 2016) the Purchaser will cause all the fish caught in respect of the ACE generated by the Quota to be sold to FLC or its nominee upon such reasonable market beach prices and terms of payment as are being offered by FLC or its nominee at that time.

11.2 If the Purchaser chooses not to fish all or any of the ACE generated by the Quota in any of the above fishing years, the Purchaser will grant to FLC or its nominee the first option to lease any of the ACE generated by the Quota for that fishing year at a fair market rental for such quota for that fishing year. The option to lease the ACE generated by the Quota must be exercised by FLC by notice in writing to the Purchaser within one calendar month of the Purchaser giving notice.

11.3 The Purchaser will give FLC notice in writing of any intention of the Purchaser to fish the ACE generated by the Quota for the following fishing year on or before 1 March of the immediately preceding fishing year.

12. Mr Schuck claims that as a result of FLC's business strategy, "If FLC gets an exemption and purchased up to 20% of the TACC as well as continuing to sell quota to shareholders then it could easily control 50% or more of the quota in these fisheries."
13. FLC describes its on-selling strategy at paras 15(ii), 15 (iii), and 29 of its submission. It claims that "FLC has for many years encouraged new fishers into the industry by assisting with the financing of vessels and quota packages, including through the purchase and on-selling by FLC of quota packages to fishers." It also claims that because "many potential quota vendors have a long-standing working association with [FLC] and are familiar with FLC's values and approach" that FLC is the 'preferred purchaser' for many sellers.

¹⁰ <http://www.lobster.co.nz/our-ethos/about-us/>

14. However, the submission of E M Gray and R A Voice argues that:

"FLC say they support the small fishermen by selling them bundles of quota. What they don't say is that these parcels come with strings attached. For instance you MUST fish that quota into them. That is not FREE enterprise."

15. E M Gray and R A Voice also argue that FLC are the 'preferred purchaser' for many quota owners because they *"continually offer the highest rate and money up front."* The business model described by them (as well as by Neil and Lea Bramley, and M W Schuck) is one where FLC offers competitive prices in order to secure quota and then on-sells it to fishermen at a lower price with collateral contracts to ensure FLC retains the supply of ACE generated.
16. WBS has nothing to add to these submissions except to say it finds it implausible that FLC would *"encourage new fishers into the industry"* through finance and the on-selling of quota without receiving some benefit in return. Engaging in such practices without receiving benefit would likely be a breach of director's duties for FLC's directors, who must act in the best interests of the company.

Anti-competitive practice

17. As noted above the primary purpose of the aggregation limits is not to prevent aggregation of quota *per se* but to prevent wider anti-competitive behaviour, and detrimental effects on small fishers, that could emerge as a result of quota becoming aggregated. The aggregation of quota obviously increases the potential for anti-competitive behaviour in the quota market itself, however depending on how quota is utilised it may have anti-competitive effects (and disadvantage smaller fishing operations) in other markets as well.
18. Throughout its submission FLC suggests that FLC itself is a victim of anti-competitive behaviour or effects. Examples include:
- a) para 15 (iv) *"FLC currently faces constraints in competitiveness and growth that are not shared by equivalent companies";*
 - b) para 21(ii) FLC claims that *"potential sellers are simply not approaching FLC because they are aware that the company's quota holdings are constrained by the aggregation limits whereas its competitors are not";*
 - c) para 21(iii) FLC argues that *"A generic exemption from the aggregation limits would enable FLC to participate [in the quota market] on the same basis as its major competitors";*
 - d) para 23 *"A 20% limit would place FLC on a competitive basis with other major quota owners";*
 - e) para 27 *"It is even more important that FLC be enabled to participate in the quota market so as to mitigate any adverse effects of anti-competitive behaviour that may arise as a consequence of the limited set of quota buyers."*
19. These arguments are misconceived.

FLC's ability to compete commercially

20. FLC's claim that it faces constraints to its competitiveness and growth as a result of the aggregation limits is overstated. FLC does not only operate at the bottom of the supply chain. As noted above, FLC is a vertically integrated company that ultimately receives its revenue from export sales. Despite its purported constraints, FLC has become New Zealand's chief exporter of live lobster, and accounts for at least 27% (and up to 35%) of that market. This is because FLC's ability to compete and expand depends on its supply of lobster, which depends not only on its quota holdings but on its ability to control ACE. As noted above, in addition to the ACE generated by its quota, FLC may also be able to rely on the supply of ACE generated by its quota owning shareholders, as well as the ACE of fishermen it has on-sold quota to under agreements as described by Mr Schuck. Further, there is nothing stopping FLC from entering into agreements with third party fishermen to secure their supply. If FLC continues to operate as a quality and competitive exporter it will remain an attractive choice for suppliers.
21. FLC notes that there are already a number of companies that have exemptions to hold quota in excess of the aggregation limits. FLC argues it must gain an exemption in order to successfully compete with these companies, but it is not necessarily the case that these companies are competitors.
22. The company with the second largest exemption is Burkhart Fisheries Limited (which has 26.89% of the quota in CRA5). Burkhart Fisheries Ltd is 96.66% owned by Dennis, Trevor, Barbara, and Catherine Burkhart¹¹. The same four members of the Burkhart family are the owners of Lanfar Holdings (No. 4) Limited¹². This company has a 16.5% shareholding in FLC and is FLC's second largest shareholder. The ultimate controllers of FLC's second largest shareholder also ultimately control the company with the second largest exemption. Potentially Burkhart Fisheries Limited, rather than being a competitor to FLC, may be one of FLC's suppliers.

FLC's ability to compete in the quota market

23. FLC's comments at paras 21(ii) and (iii) relate specifically to its ability to compete in the quota market. The argument is that when quota appears on the market, FLC is unable to compete for it. FLC believes that were it able to acquire that quota it would be the preferred purchaser. As noted above, E M Gray and R A Voice submit that this is because FLC is willing to pay a premium for quota. FLC's inability to compete for the purchase of quota is not a 'special circumstance' justifying the granting of a generic exemption as FLC submits at para 21. On the contrary, it is exactly what the aggregation limits are designed to do. Any person who has reached their aggregation limit would be in exactly the same position, and this is what Parliament intended.
24. Further, given FLC's admitted strategy of "on-selling quota packages to fishers" FLC is able to, and does, purchase quota on an ongoing basis. According to Mr Schuck, over the past ten

¹¹ <https://www.business.govt.nz/companies/app/ui/pages/companies/119788/shareholdings>

¹² <https://www.business.govt.nz/companies/app/ui/pages/companies/480534>

years FLC has purchased 13.1% of the TACC in CRA4 and on-sold 3.3%. In CRA 7 and 8 this on-selling is more pronounced.

The current market is anti-competitive

25. FLC also argues that because exemptions have already been granted anti-competitive practices already exist. At para 25 FLC provides a table that demonstrates a drop in the volume of CRA quota traded over the last three fishing years as compared to a decade ago. FLC claims at para 26 that this suggests the quota market is becoming constrained due to few companies having the scale and access to capital required to purchase quota.
26. It is possible for small and medium fishing enterprises to secure finance for quota purchases. FLC's claim conflicts with its acknowledgement at para 21(ii) that CRA quota is sold in small parcels. While the cost of CRA quota may be high, the small package sizes make acquisition possible for small fishers, particularly as they can extend their catch in the interim by purchasing ACE at a significantly cheaper price. Further, at para 15(ii) FLC claims that it routinely finances small fishers to obtain quota packages.
27. Even if trade has decreased due to the market becoming constrained this is not relevant for the purposes of s 60(3)(a). Section 60(3)(a) considers willingness to acquire. FLC notes at para 21(ii) that *"sales typically occur exceedingly rapidly"* and that *"if a purchaser cannot meet these conditions, the quota will be sold elsewhere."* That is good evidence of a strong demand for quota in the market.
28. By way of contrast, s 60(3)(a) was relevant to the partial approval Sanford Ltd's application to hold patagonian toothfish quota in excess of the aggregation limit. MFish considered it relevant that only two parties submitted bids on the quota, and that only Sanford's bid was above the reserve price¹³. A general unwillingness on the part of fishers to acquire quota meant that rejecting Sanford's bid may have made it unlikely that a toothfish fishery could develop at all. There is no such unwillingness in the CRA fisheries.
29. Section 60(3)(a) also involves a consideration of ability to acquire. Financial ability is addressed above. MFish has also considered that ability includes 'the opportunity' to acquire quota¹⁴. The fundamental problem with FLC's submissions here (and elsewhere where it claims that existing anti-competitive practice justifies its application) is that there is no reason to believe allowing FLC to acquire additional quota would enhance the ability of small fishers to acquire quota. It is unlikely the companies that already hold in excess of the aggregation limits would reduce their holdings, and there is no reason to suspect FLC's entrance would make them more likely to. It is at least equally probable that FLC would increase its holding through purchasing quota from existing smaller fishers. Neil and Lea Bramley claim in their submission that *"to the contrary of FLC's application; FLC has a history of selling minimal amounts of quota shares to fishers"* and that *"this sell down has been motivated by aggregation limits only."* Granting FLC an exemption would not mitigate any adverse effects of anti-competitive behaviour and that there is a risk it may exacerbate any existing access to quota issues.

¹³ MFish, "Application by Sanford Ltd to hold patagonian toothfish in excess of aggregation limit", 12 April 2011, para 34.

¹⁴ Ibid.

Potential consequences of granting FLC the exemption

30. FLC argues at para 20 that the Minister should rely on the 'best available information' and at para 19 that:

"An evaluation of a pending quota purchase is not restricted to an analysis of impacts in the days immediately following the purchase, but should also consider how the purchase may impact on quota owners and fishers, the efficiency of the industry, and other section 60(3) matters in the longer term."

31. Yet at para 29 FLC argues that *"when assessing the impacts of FLC's application on other members of the rock lobster industry, it should be noted that granting the consent would not have an immediate impact on any industry parties."*

32. FLC cannot have it both ways. Increased uncertainty in evaluating the likely effect of granting or withholding consent in the case of a generic application is exactly why MFish has noted:

[the minister is entitled to hold] a policy preference for looking more favourably at pending transactions as the basis for the exemption decision: it is not unlawful for the decision maker to have policy preferences as long this preference is consistent with the specific provision that a decision is made under and the purpose of the Act, and the preference is not followed without genuine assessment of the merits of the particular application.¹⁵

33. The Minister should continue the policy of declining generic consents, and s 60(3)(b)(ii) is concerned with both the immediate effects *and* the long term effects on fishermen.
34. As noted earlier, other submitters have presented evidence that suggests FLC may have a level of control over ACE well in excess of what its quota holdings suggest. Competition in the fishery is not just a question of whether fishers can obtain quota (though this is relevant), it is also a matter of whether there is competition further up the supply chain, so that fishers have choice as to whom they sell their catch to. There may be little difference between a person contracted to fish someone's ACE for a fixed wage, and a quota owning person who is contractually obliged to sell their ACE to a predetermined supplier at a price the supplier deems reasonable¹⁶. In both cases, the person is not realising the true value of the catch, as they would if buyers had to compete for their supply.
35. If FLC is engaged in these practices, the ability to acquire a further 10% of quota may lead to control of ACE well in excess of 20%. Mr Schuck claims FLC's control could increase to 50% or more. The anti-competitive effects could be severe. If other exporters own quota as FLC does, or engage in similar business practices to those alleged, the pool of independent suppliers may already be small. Mr Schuck runs an export business in competition with FLC and claims that:

¹⁵ Ibid.

¹⁶ Mr Schuck's submission also notes, and the contract in its Appendix 1 appears to evidence at clause 12, that FLC imposes on those it sells its quota to, a right of first refusal if the purchaser decides to subsequently sell the quota.

"If FLC is permitted to extend their aggregation limit then I expect they will offer to purchase quota from quota owners that supply FLC's competitors. This would have a significant impact on my business."

36. Evan Gray and Raewyn Voice make similar points in their submission. They argue:

"Surely it is better for the whole industry if exporters get their fish because of their merits NOT their quota holding. If exporters don't hold Quota shares they can still find markets and if they offer the best price they will get the business so long as no one exporter controls that ACE. This is how they should grow their business. On merit NOT control."

37. If the pool of independent suppliers is already small and FLC's application is successful FLC could potentially, through strategic purchases, erode much of the independent supply. This could severely impact the ability of small exporters, who rely on such suppliers, to remain in business. The advantage of eliminating competition may incentivise FLC to offer such suppliers premium prices to acquire their quota.
38. An exporter with significant market share would be able to drive down the price suppliers could obtain for their catch. Such an exporter might also be able to exert dominance over the price of quota. If it chose to hold its ACE rather than fish it the price of quota would increase as fishermen would be less able to rely on ACE to fish. If it flooded the market with its ACE the price of quota would correspondingly decrease. There is no evidence that FLC would choose to operate in this fashion, but approving FLC's application may create the undesirable situation where it could have the ability to do so.
39. FLC claims at para 40(iv) that the Commerce Act 1986 ("**Commerce Act**") and its prohibitions on anti-competitive or restrictive trade practices sufficiently protect against such eventualities. The Commerce Act and the aggregation limits serve different, but complimentary purposes. The aggregation limits are a preventative mechanism in a way that the Commerce Act is not. Parliament chose to restrict aggregation to 10% of TACC in CRA fisheries in 1996, ten years after the Commerce Act. This evidences that Parliament did not believe ordinary competition law of itself was sufficient to achieve its intentions. Given that the limits on aggregation are expressly aimed at preventing anti-competitive behaviour, if Parliament had considered the Commerce Act sufficient they would not have been required.

Miscellaneous comments

40. The following are additional comments in reply to specific points raised in FLC's submission:

- a) FLC notes that there are already other significant exemptions to the aggregation limit and argues at para 21(i) that this means *"the impact of granting FLC's application can therefore be readily evaluated."* However each application must be assessed on its individual merits. Past applications may have had markedly different actual and potential impacts. In the successful Burkhardt Fisheries Ltd application, MFish noted at para 27:

"Given the additional amount of aggregation sought by Burkhardt is small (1.854%), and the lack of evidence of anti-competitive behaviour on the part of Burkhardt under its

current aggregation consent, the risk of adverse affects is likely to be low...No submitters expressed concern about the effect of the existing or proposed aggregation level on the ability of new entities to enter the fishery."

The generic application sought by FLC for an additional 10% of quota in three quota management areas is significant; and issues have been raised regarding FLC's current business practices.

- b) FLC's argument's that its application for a generic exemption should be granted because it would provide FLC greater certainty, and reduce its business compliance costs, are self serving and are not matters the Minister should consider relevant. It could just as easily be argued that FLC can choose to avoid uncertainty and business compliance costs by not routinely applying for exemptions or associating with other entities. Further, if FLC's application for a generic exemption was granted, these same issues would manifest again when FLC reached the 20% limit.
- c) FLC at para 22, while acknowledging that each application must be addressed on its merits, considers it relevant that *"there are at least three precedent-setting cases in which previous Ministers have granted exemptions in the absence of pending transactions."* If these cases are in fact precedent setting, FLC's application can be distinguished. According to MFish:

"The first exemption was to the Chatham Islands Enterprise Trust (the "Trust"), which reflected the Select Committee considerations of facilitating the involvement of the Trust. The second exception was to the Ngai Tahu Group in 1997 with respect to paua. The third was to Moana Pacific Fisheries in 1999. In both these cases, the Minister considered the development by Maori into the business and activity of fishing as a relevant matter in the context of the Deed of Settlement and the Maori Fisheries Act 1989¹⁷.

There are no similar statutory rationales in FLC's case to justify departure from the policy of not granting generic consents.

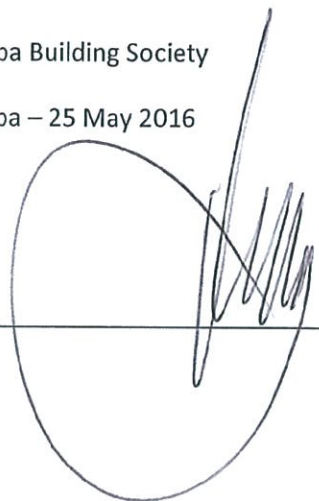
- d) Section 60(3) includes considerations other than the likely effect of granting or withholding consent on other quota owners or commercial fishers. FLC claims to have *"been at the forefront of the successful management and development of the CRA8 rock lobster industry"*, and that *"the withholding of consent would limit FLC's stake in CRA 4, CRA5, and CRA8 to current levels and will not allow the company to maximise its efforts in future development and sustainable management of rock lobster fisheries."* However there is no necessary connection between FLC's quota ownership and its efforts in this area, given the past successes FLC claims in this area were achieved while subject to the aggregation limits. MFish policy is that:

¹⁷ MFish, "Application for consent for exemption from quota aggregation limits of Fisheries Act 1996 – Talleys Group Management Ltd (Client ID 9760117), 10 September 2008.

"When the considerations of impact on competition versus possible sustainability and utilisation are closely balanced, legislative intent might be interpreted to place a presumption on the side of protecting competition."¹⁸

Wairarapa Building Society

Wairarapa – 25 May 2016



K. McCabe
CEO

¹⁸ Ibid.

Joe Cave
Southern Seafoods Ltd.

Fiordland Lobster Company Limited's Application for exemption from Quota Aggregation Limits

Preamble.

We initially wanted to go through Fiordland's application point by point. However it quickly became apparent that this document is self-serving and a number of points raised by Fiordland Lobster apply equally to other lobster companies. Just for the record, Southern Seafoods was the first company to export lobsters directly from Southland and we would regard our company as being at least an equal, as regards to innovation, to others.

Addressing Section 60(3a)

The quota price has been rising every year and this has been driven by demand. Fiordland Lobster's desire to lock in ACE has been at the forefront of creating this strong demand. Their lawyer has actively sought investors since 2004. The practice of purchasing quota under Deltop Holdings Ltd and then subsequently divesting those quota shares to investors with an agreement to lease that quota back to them (Fiordland) as ACE has been going on for at least the last 10 years. Naturally this demand for quota had the inevitable result of increasing the value of quota shares, simply a supply and demand equation. It is very doubtful that the yearly rise in quota shares would have occurred had Fiordland not sought to buy quota shares so vigorously. Should Fiordland be allowed to increase their quota holding by 100% they will be in the unchallenged position to buy from the open market and simply outbid any competition by using the profits from their integrated position. This year they leased over 200 tonnes of ACE and that would have allowed them to export at least 400- 450 tonnes of live lobster from CRA 8. That is around half the current TACC for CRA 8.

Addressing Section 60(3b ii)

All Lobster companies seek ACE as a means to attract fishermen and normally a "one to one" ratio is used, i.e if a fisher holds ten tonnes of quota shares then he would expect the company into which he is landing lobster to match that on a one to one basis, the company would be expected to lease the fisher 10 tonnes of ACE. This ratio is not hard and fast ratio but it is one that is commonly used. There are a number of fishers who are faced with the decision of either realising their asset by selling or by leasing out the ACE. As the current price is very attractive, around \$1.25 million per tonne, some are choosing to sell. The current aggregation limit prevents Fiordland from buying more quota shares and becoming even more dominant.

Logically the way to increase a company's ability to lease ACE is to own quota shares. The Aggregation Act was designed to avoid one company gaining control of a fishery, however it was never envisaged that ACE could be used to obtain control. If the Aggregation limit of 10% stays in place, and Section 27 of the Commerce Act is enforced, Fiordland Lobsters practice of locking in valuable ACE by buying quota shares for investors with a concurrent agreement to supply the ACE back to Fiordland Lobster will be curtailed. The amount of available ACE that can be obtained from non-fishers is very limited and if Fiordland is granted exemption that company will lock up a further 10% of that diminishing pool of ACE. As an example, consider non-fishers quota shares represent 35% of the total quota shares, this is the available ACE. However a sizeable amount of this ACE is

already locked up by FL with existing lease back arrangements with investors. I would estimate "locked in" investors and non-fishers would total at least 10% but more likely around 15% ACE. Even taking the former figure of 10% that leaves just 25% "available ACE", and that is a generous figure. Should FL be allowed to purchase a further 10% of total quota shares that will have a very damaging effect on the remaining three companies who wish to obtain ACE, that pool of ACE has been dramatically reduced to just 15% by allowing the exemption. Naturally there is also a follow on effect simply because that extra 10% of quota shares will allow FL to lure fishers from other companies.

Addressing Section 60(3b ii) (v)

If the exemption is granted our position at Southern Seafoods would become untenable and we would probably close our factory at Stewart Island with the loss of a number of jobs. The landing of cod is only supported by our involvement with lobster and we certainly could not justify continuing the factory at Stewart Island relying solely on the cod fishery.

Should Southern Seafoods cease lobster exporting for the above reasons it is likely that at least one other company would do likewise and Fiordland would completely dominate the CRA 8 lobster exporting and we firmly believe that would be to the detriment of the lobster fishing community with regard to beach prices.

Addressing Section 60(3c)

Southern Seafoods is happy to compete with any company but currently it is not a level playing field as the supply agreement that Fiordland has with its investors appears to contravene Section 27 of the Commerce Act.

Finally Fiordland Lobster portray themselves as a little family company, however quite to the contrary, they are a multi-million dollar company attempting to completely dominate the Industry.

Yours Faithfully

H.G. (Joe) Cave

20 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140.

FMSubmissions@mpi.govt.nz

Tena koe,

Introduction

This submission is from Te Ohu Kai Moana Trustee Ltd (Te Ohu Kaimoana) in its role as corporate trustee of Te Ohu Kai Moana Trust. Te Ohu Kai Moana was established under s.31 of the Maori Fisheries Act 2004. The purpose of the trust is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities.

This submission responds to an application by Fiordland Lobster Company Limited to hold spiny rock lobster quota in excess of the quota aggregation limits of the Fisheries Act 1996 (The Act).

Te Ohu Kaimoana respects the rangatiratanga of iwi with each free to determine their own development including any business arrangements they consider best advance their aspirations. We do not intend for this submission to derogate from or override any submissions iwi may decide to make in their own right.

In developing this submission we have taken on board the views of iwi both within and outside the CRA4, CRA7 and CRA8 quota management areas. The application has relevance to all 58 iwi given the decisions that will flow from the application.

Background

Fiordland Lobster Company (FLC) has made an application to the Minister of Fisheries to hold spiny rock lobster quota in excess of the quota aggregation limits set out in section 59 of the Act. FLC say this will enable it to develop its business and continue to be a competitive participant in the quota market for rock lobster. FLC owns roughly 155 tonne and currently exports 750 tonne per annum with a market value of \$80,000,000. This represents 27% of the country's live rock lobster exports. FLC is the largest exporter of New Zealand rock lobster.

FLC is currently prevented from holding more than the 10% aggregation limit on rock lobster stocks. FLC now holds just under 10% of the quota shares in CRA4, CRA7 and CRA8. The application is for consent for FLC to hold up to 20% of the quota shares, in perpetuity and without condition, in each of these three quota management areas (QMAs). FLC also holds quota shares in CRA3, CRA5, and CRA6 (see Table 1).

The application does not involve any actual transaction to purchase quota shares at this time. The consent being sought is to enable FLC to acquire 20% of the quota shares over time, as and when it becomes available. FLC has requested there be no conditions attached to any consent that is approved.

Table 1 Fiordland Lobster Company interests in rock lobster

Quota Management Area	Quota Shares (100,000,000 shares in each stock)	ACE Equivalent (kg)
CRA3	210,526	549
CRA4	9,853,289	46,015
CRA5	1,342,851	4,700
CRA6	65,555	236
CRA7	9,515,469	9,299
CRA8	9,844,551	94,705

Our Recommendations

Te Ohu Kaimoana recommends the application be declined on the following grounds:

1. reserving a 10% aggregation exemption is not possible under the legislation
2. the ability of other members of the New Zealand fishing industry, including iwi, to acquire quota of the relevant species will be disadvantaged if the application is approved
3. the likely negative effects of granting the consent on other quota owners or commercial fishers is too great

COMMENTARY

Reserving a 10% aggregation exemption is not possible under the legislation

Our first concern relates to whether or not MPI can legally process the application. We do not consider FLC is able to apply to “reserve” itself 10% exemptions from the aggregation limits in CRA4, CRA7, and CRA8, or any other QMA.

It is not clear to us how speculative applications can be assessed reliably with regard to the statutory criteria in section 60(3) of the Act. It is not clear how MPI will be able to adequately evaluate such an application against the criteria in section 60(3) because the

conditions that would apply at the time of the actual aggregation may be different to those which existed at the time of the evaluation.

The application also raises questions about MPI policies. What are those policies? Is there a limit on how many exemptions can be approved for each stock? Should exemptions relate to a pending sale (which is how we read the legislation)? Should FLC be able to reserve a 10% exemption? In our view there should be a time frame, an actual potential purchase on the horizon, and there should be conditions attached to any consent to reflect these and other matters considered important. If none of these things are relevant then one has to question the purpose of aggregation limits.

The ability of other members of the New Zealand fishing industry to acquire quota of the relevant species.

Our second concern relates to section 60(3) (a) of the Act which requires the Minister to take into account *"the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species"*. We understand there is a willingness by members of the New Zealand fishing industry, including iwi, to acquire rock lobster quota. However their ability to acquire quota will be impaired if the FLC reservation application is approved.

The ability of FLC to exceed the aggregation limit by 10% without any further approval process will give them a commercial advantage over other parties who do not have an exemption. First, it will incentivise it to pay premium prices for quota shares in order to meet its objective of acquiring more rock lobster from the 3 QMAs. This will disadvantage other smaller quota owners such as iwi and prevent them from being able to offer the high prices that FLC is likely to be able to meet. The fact they could conclude a transaction more quickly than other parties will also give them an advantage.

The likely negative effects of granting the consent on other quota owners or commercial fishers is too great.

Our third concern is captured by section 60(3) (b) (ii) of the Act which requires the Minister to consider *"the likely effect of granting or withholding of the consent on other quota owners or commercial fishers."*

Our concern is FLC will be in a position to influence ACE and quota prices to achieve its own ends. As a major player in the rock lobster industry FLC already influences ACE and quota prices and we would expect this influence to significantly increase if it is granted consent.

If FLC is successful in its application it would have the potential to increase its quota to more than 300 tonne (provided the key fisheries do not go into decline). FLC would undoubtedly have the ability to leverage this quota beyond the 750 tonne it currently accesses. These will provide FLC with significantly more ability to influence.

Exemption not necessary to achieve outcomes sought by FLC

FLC has demonstrated in its application that it does not need to own all the quota. This is evidenced by the fact it owns 155 tonne but sells more than 750 tonne annually. FLC has also indicated it helps finance others into rock lobster quota ownership.

An alternative approach available to FLC is to continue its practice to partner with others including iwi having manawhenua in the areas in which it wishes to access greater quantities of rock lobster. Its partners could purchase and own the quota shares, and operate under a similar agreement on how FLC could access the ACE on an ongoing basis. Approaching it in this way would deal with the issues raised in this submission. We are aware that some iwi already have interests in FLC and would be open to this approach.

Please feel free to contact the writer if you would like to discuss this submission.

Noho ora mai

A handwritten signature in black ink, appearing to be 'Alan T Riwaka', with a long, sweeping horizontal line extending to the right.

Alan T Riwaka

Senior Fisheries Management Advisor

13/15/2016

Fiordland Lobster Company Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

I am a Cra 4 Quota Holder

Thanks for the initial email I received regarding the above. I do receive my communications in this way , unlike many of us rural folk.

I was told by a representative of our CRAMAC 4 that a ballot form was to be sent out to get the response from us Cra4 fishers regarding the submission above.

I was happy to wait for this so we could respond as a group under our Cramac organisation.

However this never eventuated so here I am , hoping others will not have left it too late to respond!


I totally OPPOSE the above application.
Independence is crucial for the ongoing success of our local inshore lobster industry.

This application will remove opportunity for people such as myself and especially new entrants to continue to run our fishing businesses.

I am part of a small rural / coastal community.

Having been one of the first Cra4 fishermen to work with Fiordland Lobster Company , I know how poorly they treated me ; with no regard for families or communities , they suddenly decided there was to be no more quota coming my way.
I was only notified of this decision at very start of the new season. I had already of course spent time and money preparing pots , boat and other gear necessary to be ready.

I have moved on, purchased some independent Quota and am actively fishing.
I am completely opposed to any exemption by any applicant to be granted consent to hold lobster quota in excess of the existing limit of 10%.


DAVID JONES

16/5/16

Fiordland Lobster Company Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

I am a relatively young , relatively NEW ENTRANT to the inshore rock lobster fishing business .
I do now own my own vessel , pots , bulldozer and other equipment.

Source INDEPENDENT ACE to give options and to help maximise the return back to the business.

I can fish when I like , to whom I like.
I have FREEDOM .

Over the next two years the goal is to purchase quota shares to further build the business and ensure independence.

This is becoming increasingly difficult as the big players snap it all up , then try to sell it back to us with lots of strings attached. Supply contracts , first right of refusal etc.

This is no incentive for young fishermen.

It is a demanding job with huge financial outlay and commitment , but I love my job.

I look at my fishing business as a long term career and am grateful to be under the QMS , which appears to be working well for the resource.

However this loophole of big companies being able to apply for consent to over-ride the aggregation LIMIT of 10% does not work well for any new entrant nor I imagine for existing fishermen who rely on leasing in independent parcels of ACE.

Approval of this application will jeopardise our future.

On these grounds I do NOT SUPPORT the application by FLC .

I do NOT SUPPORT ANY EXTENSION to the aggregation limit , set under our QMS.

Name: *William McWilliam*

Date: *20 May 2016*

Signed: *William*

Submission against the application by FLC to exceed Rock Lobster quota aggregation limits by E C Cave.

I am a retired rock lobster fisherman with 25 years experience. I was actively involved in Federation of Commercial Fishermen & contributed to the development of the management of the fishery. I own 8883 kg of rock lobster quota in CRA 8.

The original aggregation limits were established in consultation with members of the rock lobster industry & **were a condition of the industry acceptance of the fishery becoming part of the QMS**. Rock lobster fishers were very aware of the disadvantages to a fishery & it's participants, created by companies with large quota holdings. These disadvantages had become evident in the sectors of the fishing industry which had originally been put under the QMS some years earlier and are still in evidence today.

As a stake holder, aware of the condition highlighted in the paragraph above, I was appalled to discover that the aggregation limits had been exceeded both by statute & as a result of successful applications to the minister, without industry wide consultation & notification.

The strategy by companies to increase quota holdings has contributed to the present unrealistically high & I believe, unsustainable quota & ACE lease prices. The very high lease prices are placing fishers dependent on ACE, under pressure to reduce the costs of their fishing operations, which could have an impact on the long term sustainability of the fishery in which they do not have a stake, as they do not own quota. A view implied by the highlighted sentence below from para (15ii) of their application.

The fears that FLC has of another company buying the quota of one of FLC's suppliers (15i) will be experienced by other companies operating in the fishery, if FLC is granted permission to buy more quota for themselves.

I do not understand how FLC, attempting to double it's quota holding in multiple CRA management areas "...in perpetuity & without conditions", is consistent with their stated belief "that rock lobster quota is best owned by fishers as this provides the catching sector with a true stake in the long-term sustainability of the fishery and facilitates the effective operation of the Quota Management System (QMS)". (15ii)

Fiordland Lobster Company are to be congratulated for their contributions to the fishery & growing be the largest exporter of live rock lobster in the country. As such, they should have no fears about their competitive position in the rock lobster industry without the increased quota holding they now seek.

Thank you.

Ernest Cave

From: Heineman [heinemah@xtra.co.nz]
Sent: Wednesday, 18 May 2016 9:09 p.m.
To: FMSubmissions
Subject: FLC Submission_Heineman

Re: Application for exemption from Rock Lobster Quota Aggregation Limits from 10% to 20% Fiordland Lobster Company Limited

As a quota share owner of CRA 7 we write in support of Fiordland Lobster Companies application to lift its holdings in areas CRA 4, 7 and 8 to 20%.

I have been involved in the CRA7 fishery since 1966

When FLC first entered the CRA7 area, our landed lobster was being frozen and sold as 'whole green', this was achieving low returns for the fishers. Over the subsequent seasons FLC built 2 plants that each time improved the quality and then finally with the employment of a full time technical employee they were able to move the smaller lobster to the Asian markets with very low mortalities. This in the past had proved to be major obstacle as many of the smaller grades found in CRA7 had shown to be susceptible to handling stress. This was only made possible because of the scale of the business that allowed them the ability to invest in technical staff which supports their application, whereby scale allows the larger companies to invest in research and plant/equipment.

The company has a known history of fisheries management that supports well managed lobster stocks and there is no better example of that than CRA8. While CRA7 has proven to be a fishery that is prone to fluctuations because of its reliance on puerulus settlement, Fiordland Lobster has willingly supported the CRAMAC and continues to do so today.

A number of company's have effectively overcome aggregation limits and we feel it would be beneficial if all quota holdings were transparent.

Yours faithfully

A Heineman

Sent from my iPad

17 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140
FMSubmissions@mpi.govt.nz

SUBMISSION: in relation to the application from Fiordland Lobster Company Limited (FLC) for consent to hold rock lobster quota in excess of aggregation limits in CRA4, CRA7 and CRA8

This submission is made on behalf of Ngāi Tahu Seafood and its subsidiary companies, being Ngāi Tahu Seafood Resources Limited and Ngāi Tahu Seafood Products Limited (NTS). It is also made in consultation with Ngāi Tahu Fisheries Settlement Limited and Te Rūnanga o Ngāi Tahu, though it should be noted that Ngai Tahu Fisheries Settlement Limited (a wholly-owned subsidiary of Te Runanga o Ngai Tahu established as an Asset-Holding Company under the Maori Fisheries Act to hold fisheries settlement quota) is not part of the Ngāi Tahu Seafood Group.

In summary, our submission opposes the application from FLC to hold spiny rock lobster quota in excess of the quota aggregation limits set out in section 59 of the Fisheries Act 1996 (the Act), and in particular their application for a generic consent to hold up to 20% of quota share in CRA4, CRA7 and CRA8.

FLC seeking an exemption in a speculative manner, rather than in respect of a specific proposed transaction is unusual, if not unique. In our view, this is not the way in which s.60 of the Act was intended to operate, and the Minister will have great difficulty properly assessing the matters set out in s.60(3) in the absence of a concrete proposal.

We acknowledge that Ngāi Tahu Seafood holds aggregation exemptions in respect of CRA7 and CRA8. These exemptions were granted as far back as 1997 and were sought as a result of concerns that settlement quota arising from the 1992 fisheries settlement, when combined with quota Ngāi Tahu entities held previously, could create aggregation issues. As it turned out, this issue was addressed in the Maori Fisheries Act 2004 by a statutory exemption, the objective of which we understand was to prevent iwi from being effectively punished for having purchased quota in their own right prior to receiving settlement quota.

These exemptions were provided at the time for the right and genuine reasons. As part of its intergenerational portfolio, Ngāi Tahu Seafood continues to invest and hold quota shares in excess of aggregation limits for the benefit of current and future generations, *“mō tātou, a, mō ka uri a muri ake nei – for us and our children after us”*

While CRA4 is outside of the Ngāi Tahu rohe, we do own quota shares in this area. We also have relationships with iwi who have interests in that area who are interested in increasing their holdings in Area 4. Giving one of the largest exporters a licence to extend their dominance in that area will disadvantage these iwi.

MPI's consultation document requests that the matters for consideration under section 60 (3) of the Act are specifically addressed. Accordingly, we submit to some of those points as follows:

(a) The willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species:

NTS, like FLC, can only speculate as to the willingness of other members of the New Zealand fishing industry to acquire quota, however, we believe that if the exemption being requested were to be granted, it would potentially limit the ability of individual fishers in some areas to purchase quota.

As FLC's application indicates, Rock Lobster quota is very valuable and seldom traded. The market for such quota is highly competitive. While new entrants already face significant barriers to entry, any measure that increases the dominance of the incumbent major players can only increase those barriers.

(b)(i) The likely effect of the granting or withholding of the consent on the development of any new or existing species:

We note from the application that FLC claim that the withholding of consent would not allow them to maximise their efforts in the future development and sustainable management of Rock Lobster fisheries. Given that Rock Lobster is already a well-developed and sustainably managed fishery, we do not believe this factor is particularly significant in the present case.

We believe FLC's ability to participate in both of these areas is not unduly affected by limitations on quota aggregation. A number of CRAMACs have boards and appointees who are voted on by class of membership, all of whom look at the development and sustainability of fisheries. FLC's only limitation in this regard is their ability to be voted on or appointed to these committees which is not directly tied to their ability or need to aggregate quota.

At present we believe that through their large shareholder base and its likeminded business relationships, FLC is in fact already well positioned to maximise its efforts in this regard.

(b)(ii) The likely effect of the granting or withholding of the consent on other quota owners or commercial fishers:

We believe that the granting of this consent will affect the ability of other quota owners and commercial fishers by decreasing their ability to participate and compete in acquiring quota shares. In their application, FLC refers to quota already being concentrated. The granting of exemptions to FLC would result in a greater level of concentration of quota shares and ACE, and a reduction in the ability for others to acquire quota, and in particular, the ability of commercial fishers to purchase quota.

The applicant states within their application that they have a strategy of on selling to fishermen. We question this on the basis that a number of quota share sales from FLC have been made to non-fishers over the years and to non-fishing shareholders of the FLC. This has resulted in further consolidation of ACE and potential control over what can occur with the quota shares from those sales. We understand that quota shares are being on sold with a requirement that the ACE is landed to FLC which provides an avenue for FLC to gain scale and remain a competitive business.

The applicant also states that they believe the granting should generally benefit ACE dependent fishers. We do not agree with this statement and believe that a greater level of quota concentration, and therefore ACE, could in fact create a potentially unbalanced ACE market in terms of ACE dependent fishers who rely on private ACE to match company held ACE. Having a smaller pool of private ACE from which to leverage and purchase ACE will provide a constraint on fishers.

(b)(iii) The likely effect of the granting or withholding of the consent on the processing and marketing of that stock:

The applicant states that the flow on effects from the granting of the consent will have a beneficial effect on the processing and marketing of Rock Lobster for all participants.

We do not believe that there will be any beneficial effect on the processing and marketing of Rock Lobster as a result of FLC being granted an exemption. All Rock Lobster stock already passes through the hands of a small number of fully professional and experienced processor / exporters, most of whom are continually striving for success.

(b)(v) The likely effect of the granting or withholding of the consent on the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry:

We do not agree that granting the application would have a positive impact on the efficiency of the Rock Lobster industry as a whole.

The small number of processor / exporters currently handling product already achieve economies of scale while concurrently maintaining sufficient competitive tension on the beach and in the marketplace that drive the search for further efficiencies.

(c) Such other matters as the Minister considers relevant:

We believe the following matters may be considered relevant by the Minister:

- FLC currently exports 27% (approximately 750 tonnes) of Aotearoa's live lobster exports. They have gained this scale through their network of ownership and control of quota shares and ACE that they own or have on-sold to other interests. They have achieved this scale without having an exemption to the current 10% limit. The argument that FLC needs approval to exceed aggregation limits to remain a competitive business in the rock lobster industry is not well founded.
- Quota share prices and ACE lease prices in Area 8 have been, and continue to be, inflated by the behavior and influence of FLC and the investors they are attracting, some of whom are non-fishing related. This behavior and influence on price is not in the interests of the lobster industry, the catch sector and the local communities they support. It is now very difficult for a new entrant to get started in the CRA8 industry with ACE/lease prices at \$65,000 per tonne and quota at \$1.3million per tonne.

If you require any further information or clarification in terms of the above submission, please contact the writer on 027 243 5241 or joseph.thomas@ngaitahu.iwi.nz.

Ngā mihi

Joseph Thomas
CE
Ngāi Tahu Seafood

From: Leana Barriball <leana.barriball@ngatitoa.iwi.nz>
Sent: Tuesday, 24 May 2016 3:15 p.m.
To: FMSubmissions
Subject: RE: Submission for FCL aggregate limit increase

Tēnā koe

Ngāti Toa would like to make a submission. Hopefully this submission will still be considered. In summary, Ngāti Toa does not support the submission on the grounds outlined below:

1. The request is to increase the aggregate limit to double the allowable limit (20%). 'Aggregation limits prohibit any person (including any legal entity and "associated persons") from holding more than a specified amount of quota shares' (<http://fs.fish.govt.nz/Page.aspx?pk=81&tk=423>). Our view is that increasing the aggregation limit to double for one company sets a precedence against the intentions of the Rule for Aggregate Limits under the QMS and therefore do not support the request.
2. Our view is that with this request FLC will hold a monopoly in the CRA areas and will thus have a detrimental effect rather than a neutral effect on Quota Owners.

If you have any questions please don't hesitate to contact me. Ngā mihi.

Leana Barriball
Manager, Resource Management and Communications
Te Rūnanga o Toa Rangatira
Waea: (04) 238 4952
Waea pūkoro: 022 618 2440



From: FMSubmissions [mailto:FMSubmissions@mpi.govt.nz]
Sent: Tuesday, 17 May 2016 3:57 p.m.
To: Leana Barriball <leana.barriball@ngatitoa.iwi.nz>
Subject: RE: Submission for FCL aggregate limit increase

Good afternoon

A late submission will be accepted up to 5pm Friday, 20 May.

Kind regards
Inshore Fisheries

From: Leana Barriball [mailto:leana.barriball@ngatitoa.iwi.nz]
Sent: Tuesday, 17 May 2016 3:49 p.m.
To: FMSubmissions <FMSubmissions@mpi.govt.nz>
Subject: Submission for FCL aggregate limit increase

Tēnā koe

Ngāti Toa were informed late of this application and thus did not meet the deadline for submissions, however we are very keen on submitting. Is there provision for late submission by an affected iwi in your process. Please advise ASAP.

Nga mihi

Leana Barriball

Manager, Resource Management and Communications

Te Rūnanga o Toa Rangatira

Waea: (04) 238 4952

Waea pūkoro: 022 618 2440



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The Ministry for Primary Industries accepts no responsibility for changes made to this email or to any attachments after transmission from the office.

I am writing in support of Fiordland Lobster Companies (F.L.C.) application to own up to 20% of quota shares in CRA 7&8.

I have been involved in the commercial fishing industry for the past 42 years as an active lobster fisher. I am still owner operator of the F.V. Amazon.

As a past president of the Fiordland Fishermans Association I have also been involved with some of the decision makings in our industry. I feel proud that throughout the years (some turbulent with quota cuts) we have produced a healthy fishery for which we should be proud of.

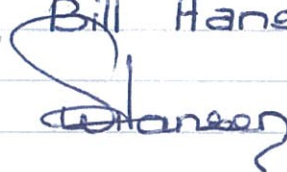
I personally have been involved in several projects F.L.C. has sponsored including the Fiordland Golf & Gun Club tournaments, an event set up to raise funds for search & rescue in N.Z. This event drew fisherman together for 12 years from throughout N.Z to Te Anau. During this period we raised over \$100 K & distributed funds around N.Z.

Another project was with the directors of F.L.C. delivering seafood to elderly people at christmas. This is the responsibility shown by the company and its directors. There are still ongoing initiatives being undertaken by the company with various community based projects.

I believe that F.L.C will continue to show responsibility in all social & economic management of the lobster industry. I fully support F.L.C. application to own up to 20% of cray 7&8 fishery.

Yours faithfully.

Bill Hansen

A stylized handwritten signature of Bill Hansen, featuring a large, looping 'S' shape that starts under the 'B' and ends under the 'n'.

3105 74181

11 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140

Secretaries: McCulloch & Partners
PO Box 844
Invercargill 9840
Phone (03) 218 6179
Fax (03) 218 2238
Email murray.rankin@mcp.co.nz

Executive Officer: Malcolm Lawson
Email cra8@xtra.co.nz

Application for Exemption from Quota Aggregation Limits Fiordland Lobster Co Ltd

The CRA8 Management Committee Inc. ("the Committee") is a fully constituted and incorporated society that is recognised as the commercial stakeholder organisation representing the interests of the commercial rock lobster industry in the southern South Island including South Westland, Fiordland, Stewart Island, Foveaux Strait and adjacent islands.

Under normal circumstances the Committee would make a submission on issues affecting the CRA8 industry. However in this case I write to inform you that due to the high level of conflicts of interest (real and perceived) borne by members of the CRA8 board through various connections with the Fiordland Lobster Co Ltd, or other companies already holding exemptions from quota aggregation limits, it is not possible for the board to formulate a position on this application on.

The notice from the Ministry has been widely circulated amongst the CRA8 industry and it is left up to the members to make their own submission.



Malcolm Lawson
Chief Executive Officer

15/5/16

Fiordland Lobster Company Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

We are the Birchall Family.

We have only just heard about this application???

We now take this opportunity to OPPOSE the above application to increase aggregation from 10% to 20% for this FLC monopoly

Our family has been engaged in the cray industry for many years. As it is an inshore fishery there is always huge reliance on small isolated coastal communities and independence has maintained this balance

These communities have also helped in the safety of our fishermen being out there on the coast.

We need independence in the industry as this has been the backbone of building our QMS.
We need absolutely NO change to the 10% aggregation limit

Minister we ask that no more applications for excess of aggregation limits be considered .
We are now, after many years of hard work , in a position of good stock maintenance thanks to our QMS. However monopolies are now coming in to milk all this hard work.

Which of our independent fishers would ever be asking for such an increase in aggregation limits???

Please REFUSE this application on these grounds and many others which we have not had the time to even consider .

Thankyou

K Birchall

Kimberley Birchall

Raymond Birchall



Fiordland Lobster Company Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

I am a Quota Share owner in Cra4.

I absolutely OPPOSE the above application from FLC to be granted an extension of the quota aggregation limit from 10% to 20 %.

In fact I oppose any application to be granted consent to hold rock lobster quota in excess of aggregation limits.

Thankyou , Peter Borrie

Signed :

A handwritten signature in black ink, appearing to read 'P. Borrie', written over the 'Signed :' text.

Southern Ocean Lobster Limited

Fairfax, No 3 R.D

Otautau 9683

1 03 225 8257

M 0274 842 661

12 May 2016

Minister For Primary Industries,
PO Box 2526
Wellington

Dear Sir,

Re Fiordland Lobster Company Limited application for exemption from quota aggregation limits

We wish to oppose the above application on the following grounds:

That granting a generic consent for Fiordland Lobster Company Ltd (FLC) to exceed the threshold of 10,000,000 CRA8 shares will have a detrimental effect on fishermen, quota holders and the industry as a whole.

The original purpose of the aggregation limits were to prevent large parcels of quota being owned and controlled by a few to control the market by driving down competition, creating a monopoly. The long term future of the lobster industry is dependent on young fishermen being able to enter the industry at an affordable level, catch their own ACE, resulting in a diversity of ownership of quota and ACE being spread, thus creating a healthy competitive market. The long and short term future of these key fishermen and their families working at the coal face is vital to the future success and health of the industry. Clearly FLCs application does not promote this diversity of competition, but wants to control even more market share, making ownership of quota by fishers even more out of reach; driving the high price of quota even further; currently small quota holders competing with the corporate resources of FLC to increase their small holdings, - a case of simply the big wanting to get bigger.

As quota holders we know the value of this asset. To have independent fishers with their own quota and no conditions of who they supply their catch to enhances the markets and industry. Fishermen who are bound by condition of purchase of quota from FLC to supply FLC are not operating in a free market. Therefore to further increase this market share of quota to FLC is detrimental.

To say quota owners who wish to sell their quota will be affected in a positive way is incorrect, as the consistently high demand for quota shows clearly there is no shortage of individuals wanting to invest further in this industry. The value of CRA8 quota shares has doubled in the last three years.

We urge you to keep the status quo rule of limited quota aggregation in respect to FLCs application, as there are no extenuating circumstances for it to be approved.

Yours Faithfully

Southern Ocean Lobster Limited

10 Haratua (May) 2016



Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

Ngāti Kahungunu Iwi
INCORPORATED

Tēnā koe e te Minita, me ngā kaimahi katoa o tou tari

RE: NGĀTI KAHUNGUNU IWI INCORPORATED SUBMISSION REGARDING THE ROCK LOBSTER AGGREGATION LIMITS

Whakataukī Tīpuna o Kahungunu:

"Tūmanako koura, e kore ai"

Wishing for koura, begets none.

- 1) He mihi tēnei ki ngā mātua tīpuna o tātou katoa e noho wairua ana i tua o te Ārai. Moe mai rā. Anei hoki te mihi whānui mai a Ngāti Kahungunu mō ō koutou mahi, huri noa ki ngā kaimahi, ngā kaitiaki katoa o ngā hua moana, ngā hua whenua, me ngā hua mahi a te ira tāngata. Tēnā tātou.
- 2) Ngāti Kahungunu Iwi Incorporated (NKII) is a mandated iwi organisation. Ngāti Kahungunu has the third largest iwi population (62,000¹) and the second largest tribal rohe and coastline, from Paritū and extending inland across the Wharerata ranges in the north to Turakirae in South Wairarapa.
- 3) Ngāti Kahungunu maintains an independent position to protect and advocate the mana whakahaere, tikanga, kawa, kaitiakitanga, whanaungatanga, me ngā rawa o Ngāti Kahungunu (the mana, interests, rights, values, beliefs and practices of Ngāti Kahungunu) whānau, hapū and iwi. This includes a responsibility and obligation as kaitiaki to care and protect the taiao, including our people as an integral element of te taiao, for future generations.
- 4) Ngāti Kahungunu Iwi Incorporated received fisheries settlement assets as a result of the Treaty of Waitangi Fisheries Settlement of 1992, the Maori Commercial Aquaculture Settlement Act 2004 and the implementation of the Māori Fisheries Act 2004. These settlements provide a significant opportunity for our economic development aspirations, which we continue to fuse with our existing obligations as kaitiaki to te taiao and our iwi. Ngāti Kahungunu views these commercial fishing assets as an integral part of a successful seafood industry.
- 5) Nga hapū o Ngāti Kahungunu have maintained customary use of marine resources out to and beyond the EEZ 12 nautical mile limit. Customary use and hapū authority has been acknowledged and gazetted along the majority of our coastline via the 1998 Fisheries (Kaimoana Customary Fishing) Regulations. Hapū boundaries are included in these regulations and in some cases are applicable out to 200 nautical miles.
- 6) The Ngāti Kahungunu Asset Holding Company is the fourth largest shareholder within the Fiordland Lobster Company Limited (FLC), with a total of 131,590 shares. A Director from the Kahungunu Asset Holding Company is appointed on the Board of the FLC to strengthen the relationship between the two companies. FLC have leased the entire Ngāti Kahungunu rock lobster quota for ten years and a

¹ 2013 Census of Population and Dwellings, New Zealand Kahungunu population only.

recent agreement has been entered into to continue this lease for a further five years. Ngāti Kahungunu has entered into a ten year lease arrangement with FLC for a newly refurbished rock lobster processing factory in Auckland. It is in the interests of Ngāti Kahungunu that the FLC remains a competitive business in the rock lobster industry. Ngāti Kahungunu have built an excellent relationship with FLC and aspires to continue developing this for future generations.

Support for Fiordland Lobster Application to Exceed Quota Aggregation Limits

- 7) Ngāti Kahungunu supports the application by FLC to hold spiny rock lobster quota in excess of the quota aggregation limits set out in section 59 of the Fisheries Act 1996 (the Act). Ngāti Kahungunu do not believe this would have a negative effect on our interests in the rock lobster fishery. We consider it will have a positive effect on the future development of the fishery, given the FLC expertise and leadership in the industry.
- 8) Ngāti Kahungunu supports the request by FLC to increase its aggregation limits for the following reasons:
 - a) To enable the company to continue to develop and add value throughout its operations through greater economies of scale;
 - b) To allow FLC to continue its successful strategy of on-selling quota packages to fishers; and,
 - c) To maintain its competitive position within the rock lobster industry.
- 9) Ngāti Kahungunu understands FLC's application is for generic consent to hold up to 20% of quota shares in CRA 4, CRA 7 and CRA 8, rather than for a specific proposed purchase of quota. The quota aggregation limit for rock lobster is 10,000,000 quota shares (10% of the total allowable commercial catch) in any one quota management area, so we appreciate that FLC seek to hold up to 20,000,000 quota shares, in perpetuity and without condition, in the three requested areas.
- 10) It is in the strategic interests of Ngāti Kahungunu, that FLC remains a competitive business in the rock lobster industry. Ngāti Kahungunu appreciates the constraints FLC currently faces in competitiveness and growth that are not shared by equivalent companies. In particular, Aotearoa Fisheries Limited (AFL), which is a significant quota owner in North Island CRA stocks, has a statutory exemption from the aggregation limits. In the South Island, major CRA quota owner, Ngāi Tahu, has a partial statutory exemption from the aggregation limits in relation to settlement quota, and has been granted further exemptions in CRA 7 and CRA 8. In the fisheries subject to this application, current quota ownership in excess of the aggregation limits is as follows:
 - a) CRA 4: AFL directly owns 13.52% and has an exemption (granted to Moana Pacific Fisheries Ltd) to own up to 22.96% of quota shares;
 - b) CRA 7: Ngāi Tahu Fisheries Settlement Limited owns 10% and Ngāi Tahu Seafood Resources Limited owns a further 19% of quota shares; and,
 - c) CRA 8: Ngāi Tahu Fisheries Settlement Limited owns 10% and Ngāi Tahu Seafood Resources Limited owns a further 4.385% of quota shares.
- 11) Ngāti Kahungunu understands that in other rock lobster fisheries, significant CRA quota owners (aside from those with statutory exemption) have been able to develop and maintain their position, only by virtue of being granted exemptions to the aggregation limits - notably, Gisborne Fisheries in CRA 3 and Burkhart Fisheries in CRA 5. Nearly all other CRA quota owners in all CRA stocks are significantly below the aggregation limits.

- 12) Further to this, Ngāti Kahungunu considers there are special circumstances that justify the granting of a generic exemption in the case put forward by FLC. We understand there are already 38 rock lobster aggregation limits already exceeded on the on the quota register including:
- i) CRA 3: Moana Pacific Fisheries and associated companies (32.7%);
 - ii) CRA 1: Moana Pacific Fisheries and associated companies (31%);
 - iii) CRA 5: Burkhart Fisheries and associated companies (26.89%);
 - iv) CRA 5: Ngai Tahu (26.76%);
 - v) CRA 7: Ngai Tahu (23.32%);
 - vi) CRA 4: Moana Pacific Fisheries and associated companies (22.96%); and,
 - vii) CRA 2: Moana Pacific Fisheries and associated companies (21%).
- 13) Ngāti Kahungunu is aware there are at least three precedent-setting cases in which previous exemptions related to rock lobster and paua have been granted to the Chatham Islands Enterprise Trust, Ngāi Tahu and Moana Pacific Fisheries.
- 14) When assessing the impacts of FLC's application on other members of the rock lobster industry, Ngāti Kahungunu is of the view this will have a positive effect on quota owners, as there will be a bigger market for the sale of their quota. There will be a positive influence for commercial fishers, as there will be more than one large supplier of ACE in each rock lobster fishery, which should generally benefit ACE-dependent fishers by improving the competitiveness of the ACE market.
- 15) Ngāti Kahungunu considers the FLC's application will contribute to the growth and development of a major exporter, which will provide social and economic benefits, including employment. This is a positive outcome for Ngāti Kahungunu.
- 16) It is not well known that 51% of FLC's shareholders are Māori, with four of the seven FLC Directors being Māori. Ngāti Kahungunu believe that support for these whānau and individuals is integral in the bigger picture of developing the industry responsibly, creating more success for Māori business and successfully exporting value-added products to the market place, all of which bodes well for the success of the country. Indeed, the Finance Minister Hon. Bill English pointed this out at the opening of our lobster processing plant in Auckland on 15 April 2016. It is the view of our Iwi that supporting us in this application is positive for all concerned.
- 17) Ngāti Kahungunu Iwi Incorporated are supportive of other Ngāti Kahungunu iwi, Taiwhenua and hapū organisations submitting on this matter. Please ensure that all queries and further communication is sent to Jonathan Dick, Pouarataki/Director of Environment and Natural Resources, jonathan@kahungunu.iwi.nz

Nāku noa
Nā



Dr Adele Whyte
KAIWHAKAHAERE MATUA/CHIEF EXECUTIVE
Ngāti Kahungunu Iwi Incorporated

15/5/2016

SUBMISSION IN REGARDS TO THE APPLICATION FOR EXEMPTION FROM QUOTA
AGGREGATION LIMITS FOR CRA 4,7,8 - FROM FIORDLAND LOBSTER COMPANY (FLC)

We ; the Johnson Family Trust , owners of quota shares equivalent to approximately 5 tonnes of Cra 4 ACE for the 2016/17 season, have been involved in the cray business since the 70's.

WE STRONGLY OBJECT TO THE ABOVE SUBMISSION.

We believe that aggregation is of the utmost importance to ensure a balance of ownership and independence across all participants in the industry.

It also protects the small rural communities that support much of the local fishing industry.

We are distraught to have only just found out about the above submission.
Why was this and why was it not posted out to us like all other MPI information?
It begs the question what other interested parties were not informed?

Please Minister ,The Honorable Nathan Guy , do not allow the protection that aggregation limits give to this inshore industry; be removed or further tampered with in any way.

It is an important guardian to our QMS structure under the Fisheries Act of 1996.

Yours Sincerely
Johnson family.

Signed by:

Colin J. Johnson



Te Atiawa (Taranaki) Holdings Limited

35 Leach Street | New Plymouth | 4310

PO Box 280 | Taranaki Mail Centre | New Plymouth 4340

Phone 06 759 7318 (Office) | Email tathl@teatiawa.iwi.nz

13 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140.

FMsubmissions@mpi.govt.nz

Tēnā koe,

Submission to the Fiordland Lobster Company Limited's application for exemption from quota aggregation limits.

This submission is from Te Atiawa (Taranaki) Holdings Limited (THL). THL is a subsidiary of Te Atiawa (Taranaki) Settlements Trust and is charged with the responsibility of managing THL's fisheries Treaty Settlement assets. As such, we have an interest in the application put forward by Fiordland Lobster Company Limited to hold spiny rock lobster quota in excess of the quota aggregation limits of the Fisheries Act 1996 (The Act).

Summary of THL's position

Te Atiawa (Taranaki) Holdings Limited has considered the information provided in the application and has decided to **not support** the application.

We do not believe Fiordland Lobster Company should be allowed to make an application without there being an actual proposed purchase. This should apply across all QMAs.

We also believe the effects of Fiordland Lobster Company gaining an approval on ours and others ability to obtain quota shares will be huge.

If you have any questions on the content of this submission, please contact Maureen Hannan Ph (06) 759 7318 or email maureen@teatiawa.iwi.nz.

Nāku noa, nā

The Directors

Te Atiawa (Taranaki) Holdings Limited

(Signed on behalf by Maureen Hannan
Executive Administrator)



IWI COLLECTIVE
PARTNERSHIP

Maru Samuels
General Manager
Iwi Collective Partnership
AUCKLAND

13 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6160

Email: FMSubmissions@mpi.govt.nz

Tēnā koe,

**FIORDLAND LOBSTER COMPANY LTD – APPLICATION FOR CONSENT TO HOLD ROCK LOBSTER
QUOTA IN EXCESS OF AGGREGATION LIMITS IN CRA 4, CRA 7 AND CRA 8**

1 BACKGROUND

- 1.1 Fiordland Lobster Company Limited (FLC) has applied for consent to hold rock lobster quota in excess of aggregation limits in the CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago), and CRA 8 (Southern) rock lobster fisheries.
- 1.2 The Fisheries Act 1996 (FA1996) states that no person can own more than 10,000,000 quota shares (10%) for any one rock lobster quota management area (fishery). FLC has applied to hold up to 20,000,000 quota shares (20%) in each of CRA 4, CRA 7 and CRA 8.
- 1.3 The application does not relate to a specific purchase of quota shares but rather seeks a generic consent "*in perpetuity and without conditions*"¹ where quota purchases can be made at any time in future until the exemption limit applied for, is reached.²
- 1.4 FLC is a significant quota owner in CRA 4, CRA 7 and CRA 8 and also owns quota in CRA 3, CRA 5 and CRA 6.³ In addition to its significant quota ownership, FLC controls the export of 750 mt of rock lobster per year accounting for 27% of the country's live exports and circa NZ\$80 mill in revenues per annum.⁴
- 1.5 If consent were granted, FLC would have a legal right to acquire, trade and leverage an extra 30,000,000 quota shares of rock lobster more than what is permitted as of right pursuant to the FA1996. It would be able to further leverage those additional quota shares to obtain greater control of additional ACE. It also retains the legal right to maximise its quota ownership in all rock lobster fisheries nationally.

¹ FLC Application at paragraph 41.

² Ibid at paragraph 3.

³ Ibid at paragraph 12.

⁴ Ibid at paragraph 5.

- 1.6 Our organisation received a letter dated 15 April 2016⁵, from the Ministry for Primary Industries (MPI) inviting submissions from persons or organisations having an interest in this application. We are one such organisation.
- 1.7 The Iwi Collective Partnership (ICP) and our 12 Iwi Members who own rock lobster quota shares, collectively oppose FLC's application. We submit that the Minister exercise his discretion to decline consent to the application on the grounds set out in this submission.

FLC CRA quota ownership

	Quota shares	ACE equivalent (kg)
CRA 3	210,526	549
CRA 4	9,853,289	46,015
CRA 5	1,342,851	4,700
CRA 6	65,555	236
CRA 7	9,515,469	9,299
CRA 8	9,844,551	94,705

2. INTRODUCING THE ICP

- 2.1 The Iwi Collective Partnership, or ICP, is a limited partnership of 14 Iwi Members. Our members are legal entities established under the Maori Fisheries Act 2004 (MFA2004) to receive and manage fisheries settlement assets on behalf of their respective Iwi. Their assets include a portfolio of quota shares for the various species within the New Zealand Quota Management System, including for rock lobster. Some of our Iwi Members have since acquired general quota to grow and further diversify their quota portfolios.
- 2.2 As quota owning entities, none of our Iwi Members are older than 10 years. As emerging entities they are beginning to establish themselves in the New Zealand seafood industry. They are doing this as individual Iwi and also through their collective efforts under the umbrella of the ICP. All of our Iwi Members have aspirations to grow their asset portfolios and for the same good reasons set out in FLC's application, they have a particular interest in rock lobster quota.
- 2.3 Our Iwi Members come from towns and rural communities located throughout the North Island of New Zealand. Their respective organisation purposes are similar and include the creation of economic returns to fund social, cultural and environmental initiatives within their rohe (traditional communities). As part of this, our Iwi Members possess a strong focus on creating sustainable jobs and supporting existing jobs, particularly those within their rohe which benefit their local communities. In terms of tax status, our Iwi Member legal entities are a mix of New Zealand registered charities and Maori Authorities.
- 2.4 The ICP's purpose is to manage the ACE that derives from the quota owned by our 14 Iwi Members. For the April and October 2015 fishing seasons, our Iwi Members generated circa 16,000 mt of ACE which the ICP managed on behalf. This included 26,336 mt of rock lobster ACE spread across five North Island fisheries – CRA 1, CRA 2, CRA 3, CRA 4 and CRA 9. Our CRA 4 ACE component amounted to 4.4 mt. Our Iwi Members do not own any rock lobster in South Island fisheries.
- 2.5 All of the ICP's rock lobster ACE is managed through our rock lobster limited partnership called, "ICP Koura Operations LP" (ICP Koura). ICP Koura is a limited partner in the Port Nicholson

⁵ Letter addressed to "stakeholder" and signed by Dave Turner, Director Fisheries Management.

Fisheries (PNF) business. ICP Koura's has a sister limited partnership, ICP Koura Facilities, which owns a third of PNF.⁶ Although the ICP is made up of 14 Iwi Members, only 12 own rock lobster quota. 10 of the 12 are limited partners of ICP Koura and the other two supply their rock lobster ACE direct to PNF. The following table provides details of our 12 Iwi Members that own rock lobster quota.

Iwi Members	Rohe (Region)	Limited Partner Entities
Te Arawa	Bay of Plenty	Te Arawa Fisheries ICP
Ngati Tuwharetoa	Bay of Plenty	Ngati Tuwharetoa Fisheries Holdings
Ngai Te Rangi	Bay of Plenty	Ngai Te Rangi Fisheries AHC
Whakatohea	Bay of Plenty	Whakatohea Fisheries Asset Holding Company
Ngati Awa	Bay of Plenty	Ngati Awa Holdings
Ngaitai	Bay of Plenty	Te Kumukumu
Ngati Ruanui	Taranaki	Ngati Ruanui
Nga Rauru Kaitahi	Whanganui / Taranaki	Te Pataka o Tangaroa
Taranaki Iwi	Taranaki	Taranaki Iwi Fisheries
Ngati Porou	Gisborne	Ngati Porou Fisheries
Te Aitanga a Mahaki	Gisborne	Te Aitanga a Mahaki Trust Asset Holding Company
Rongowhakaata	Gisborne	Rongowhakaata Iwi Asset Holding Company

Table 1: ICP Iwi Members who own rock lobster quota

- 2.6 PNF exports circa 600 mt of rock lobster making it the second largest New Zealand exporter to FLC. As a business, PNF has similar objectives to those of FLC however, its legal structure and quota ownership model are markedly different. The main difference is that PNF does not own any quota. It is simply an ACE manager. All of PNF's product is derived from quota that is owned by its Iwi limited partners like ICP Koura, and other quota owners. The PNF model was founded on and promotes local and regional quota ownership. The model creates a healthy tension whereby, in the case of the ICP, PNF must negotiate satisfactory terms and demonstrate ongoing value in order to retain the supply of ICP's rock lobster ACE. It is very much a whanau operation where quota ownership is not in itself a goal.

3. ASSESSING THE APPLICATION

- 3.1 Section 60 of the FA1996 gives the Minister a discretion to consent to persons holding quota in excess of the aggregation limits. Subsection (3) sets out a list of matters that the Minister must consider in exercising his discretion. These are:

- (a) *the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species:*
- (b) *the likely effect of the granting or withholding of the consent on—*
 - (i) *the development of any new or existing stock or species:*
 - (ii) *other quota owners or commercial fishers:*
 - (iii) *the processing and marketing of that stock or species:*
 - (iv) *the ability of the applicant to take any other stock or species:*
 - (v) *the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry:*
- (c) *such other matters as the Minister considers relevant.*

⁶ Other limited partnerships include 'ICP ACE Holdings' and 'ICP Inshore ACE', and our general partner is called 'ICP General Partner Ltd'.

3.2 Before we assess FLC's application it is worth noting that their application does not relate to a specific purchase of quota shares in CRA 4, CRA 7 or CRA 8. The application applies to a future right to exceed the aggregation limits as and when quota purchase opportunities arise. While we understand FLC's reasons for applying for such a wide reaching right, at the same time it presents unique challenges in writing this submission. How is one to properly consider and comment on the factors listed in subsection (3) without having a specific quota share volume to consider? Furthermore, paragraph 17 of FLC's application notes that MPI policy is against such an approach.⁷ Whatever the case the Ministry has accepted the application and advertised for comment. Therefore our submission comments on each matter listed in subsection (3) under a scenario that assumes FLC has an immediate opportunity to acquire a total of 30,000,000 shares across CRA 4, CRA 7 and CRA 8 on the basis that if consent were granted, FLC would have a legal right to make such a purchase.

3.3 (a) the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species:

- Our individual 12 Iwi Member quota owners have both a willingness and the ability to acquire rock lobster quota in all fisheries throughout New Zealand. While PNF is primarily a North Island business, it does have interests in CRA 6 and CRA 5. Our Iwi Members would be more inclined to purchase CRA 4 in the short term but could easily invest in CRA 7 and CRA 8 in partnership for example, with South Island Iwi interests. Our intentions and ability are evidenced by our decision in 2012 to purchase a third of the PNF business including rock lobster quota. This was done at substantial cost.
- It is common knowledge within the industry and noted in FLC's application that the sale of rock lobster quota on the open market is a rare occurrence. Our Iwi Members are relatively new to the seafood industry and are only beginning to establish themselves through quota purchases and collaboration. The current aggregation limits act to constrain the larger quota owners from shutting smaller quota owners out of the quota purchase market. If FLC were granted exemption, particularly given the open timeframe and unfettered nature of the consent applied for, their size as the largest national exporter would make it much more difficult, if not impossible, for our Iwi Members to compete on quota purchase price. This would not only apply to CRA 4, CRA 7 and CRA 8 but would further strengthen FLC nationally and its ability to dominate quota purchases in all fisheries. Would our small emerging Iwi quota owners have the opportunity to grow in competition with the largest New Zealand exporter?
- While FLC says it is at risk of other companies purchasing quota belonging to its current ACE suppliers, the nature of ACE supply relationships means this risk is very low,⁸ and in fact paragraph 15(iii) of FLC's application appears to contradict this claim. FLC's application also says that it wishes to support its fishers into quota ownership.⁹ Although a great objective in our view, it is not unique to FLC. We have and continue to support fishermen in the business of fishing, and the fact that FLC currently owns the maximum quota volumes in CRA 4, CRA 7 and CRA 8 means it already has sufficient quota to achieve this outcome.

⁷ A copy of MPI's policy was not provided as part of FLC's application.

⁸ FLC Application at paragraph 15(i).

⁹ FLC Application at paragraph 15(ii).

3.4 (b) the likely effect of the granting or withholding of the consent on—
(i) the development of any new or existing stock or species:

- We make no comment on this matter specifically.

(ii) other quota owners or commercial fishers:

- As noted above, if consent were granted, the open timeframe nature would only exacerbate the challenges for small quota owners, such as our Iwi Members, to acquire rock lobster quota because FLC's size would prevent our Iwi from competing on price.

(iii) the processing and marketing of that stock or species:

- We make no comment on this matter specifically.

(iv) the ability of the applicant to take any other stock or species:

- We make no comment on this matter specifically.

(v) the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry:

- FLC's aspiration to "develop and add value throughout its operations through greater economies of scale" are not unique. All processing - exporter companies focused on quality and long-term sustainability, hold similar aspirations. The aspiration is, in our view, achievable through other ownership / management models that do not require exemption from the aggregation limits. Collaborative models can be adopted where ownership remains diverse and spread throughout different fisheries and sector interests – Iwi, fishermen, locals, and yet consolidation and cost-efficiencies are still achieved via collaboration. As noted above, this is in fact the model followed by the ICP and PNF.
- FLC's quota owner entity, Deltop Holdings Ltd, is not associated with or included with any other persons for the purposes of s 59(10) FA1996.¹⁰ Therefore, FLC's family of quota owners, fishers and ACE suppliers would be free to acquire quota. An aggregation exemption is not required.

3.5 (c) such other matters as the Minister considers relevant.

- If consent were granted, the reality is that small quota owners such as our Iwi Members would struggle to compete with FLC in the market for the extra 30,000,000 shares that FLC would be entitled to purchase within CRA 4, CRA 7 and CRA 8. Notwithstanding that FLC is able to purchase up to the aggregation limit in all other rock lobster fisheries. It could quickly grow into a business that would dominate all aspects of rock lobster export, from fisheries management to sales.
- Furthermore, the future exercisable value of a consent of the nature applied for, would likely add economic value to FLC's balance sheet. A value that could be realised via the sale of FLC shares. Our view is that it is inappropriate for a consent to hold economic value. Only quota shares should hold economic value within this context. This is another reason why the ICP does not support the open ended, unfettered nature of the application.

¹⁰ Ibid at paragraph 13.

4. VALIDITY OF AGGREGATION LIMITS FOR ROCK LOBSTER

- 4.1 FLC's application has referred to the relative strictness of rock lobster aggregation limits under the FA1996, and refers to 38 separate and 21 distinct exemptions granted to date.¹¹ The question of whether the current aggregation limits for rock lobster are fair and whether other exemptions ought or ought not to have been granted, should not form any part of the consideration of this application. The aggregation limits are current law and some of the existing exemptions were provided under statutory right. FLC has a democratic right to challenge the validity of such arrangements but any discussion on the appropriateness of these should be discussed in a separate forum specifically set up for that purpose. FLC's application is not the forum for such discussion.

5. CONCLUSION

- 5.1 For the reasons outlined above we do not support FLC's application for exemption and we ask the Minister to decline consent.
- 5.2 Rather than focus on quota ownership we would prefer to see a discussion amongst rock lobster quota owners looking first at the market needs and then adapting fishery ownership and management models to better suit the market needs, all while protecting the emerging quota owners as well as the established. The ICP would welcome discussions to this end with anyone.

Ngā mihi,



Maru Samuels
General Manager
Iwi Collective Partnership

Em: maru@iwicollective.co.nz

Ph: 

¹¹ Para 14.



13th May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140

Leigh Lobster Limited
P O Box 201-007
Auckland Intl Airport
New Zealand
Tel +64 - 9- 275-3360
Fax +64 - 9- 275-3385

To whom it may concern,

Re Fiordland Lobster Company Limited's application for exemption from quota aggregation limits in CRA4, CRA7 and CRA8

Leigh Lobster Ltd is a lobster sourcing & processing company who currently own lobster quota in CRA1, CRA2 and CRA6, and are also active in CRA3, CRA4 & CRA5.

While sympathetic to aspects of Fiordland Lobster Company Ltd's application, we object to a generic concession to them being granted as proposed.

There are already many inequities in the ability of some companies being able to own more than 10% and claim an unfair commercial advantage in the industry. Granting a generic ability for Fiordland Lobster Co to do the same in the proposed areas would only create another.

We believe a more suitable way for them to progress their aspirations would be to propose an industry wide (all CRA areas) increase to the aggregation limits of the 20% they seek. This would put the whole industry on the same footing and would likely have wider industry support.

Yours sincerely,

Geoff Creighton
Managing Director
Leigh Lobster Ltd

EM Gray & R A Voice
1321 Pack Spur Rd
R D 9
Masterton
Ph 06-3726772
email emg@xtra.co.nz

SUBMISSION OPPOSING Fiordland Lobster Company Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 4, CRA 7 and CRA 8

I started rock lobster fishing in 1977 so have now been involved in the Crayfish industry for nearly 40 years. I was involved in consultations from the inception of the quota system.

When the Fisheries Act was brought in, the aggregation limit was considered one the 10 Commandments of the industry. It was set in place to protect the whole industry, the fishermen, the exporters, the quota holders and the fishery itself. And we all believed these rules were set in stone for our protection. This still applies today. To allow anyone to hold more than 10 percent of the shares is like pulling a building brick from the foundation of the industry and allowing it to slowly collapse.

It seems ridiculous that anyone can actually apply to break the law. In fact, in the past others who have acquired more than their fair share have been forced to sell their holding, Port Nicholson Fisheries being one I know of.

Don't let us follow down the road of the likes of Fonterra and other big monopolies that promise better prices on the world market and deliver well for a time. But if their markets decline, all those who rely on them suffer. It is better to have competition within the industry and various exporters continually seeking out new markets.

If one exporter holds a large amount of quota shares in any area they start to control that area and we are already seeing this now in CRA 4. There are many small fishermen we have spoken to who would love to speak out against this proposal but are unable to for fear of retribution from these larger exporters. There are already so many who rely on FLC quota that they are too scared to speak up. FLC decide who gets the ACE. Upset them and rest assured it won't be you!

FLC already control the lease price. They continually offer the highest rate and money up front to attract the highest number of quota shares possible but this doesn't benefit the fishermen or the industry as a whole, only the investors. The fishermen generally are unable to finance such deals. It means the ones who actually do the work get the least share of the profit. This will in the end discourage anyone from actually putting their boat in the water and catching the fish. With this and all the new regulations being thrown at them by Maritime NZ, the small fisherman now has so many costs it is becoming uneconomic to fish and we are already seeing fisherman leave the industry.

FLC say they support the small fishermen by selling them bundles of quota. What they don't say is that these parcels come with strings attached. For instance you MUST fish that quota into them. That is not FREE enterprise.

The main reason fishermen hold Quota shares is to ensure the continuity of their business. If they don't hold quota, they rely on the large companies for ACE. This means that every year they risk going out of business because for some reason or another they are not allocated any ACE.

All this control by large companies is making it hard to come into the industry. No banks will lend on the basis of setting up business at great expense when there is no guaranteed ACE and therefore no guaranteed continuity of business.

The solution to this for most fishermen is to buy their own quota shares. We have already seen the price of quota skyrocket and FLC are directly responsible for this in our area by competing to get hold of as much quota as they can and paying above market price. And yes as FLC has quoted, this makes them the "preferred" buyer of shares. Anyone who offers the best price would be. It's not rocket science. They have also put a lot of pressure on the vendors to sell to them often using time out tactics to avoid other prospective purchasers getting a look in. Sure, we too can benefit from this high price but the industry as a whole does not. Newcomers need to find around \$2million just to get started.

FLC say that they will increase employment. There is a finite amount of quota available to fish in any given season so it is ridiculous for anyone to say that increasing their holding will increase employment. Employment levels remain the same, just the employers change.

As exporters, if they hold the ACE they control the market so it makes sense as a business that they will demand the fish are exported through them. This puts other exporters at risk and prevents a FREE market situation. Surely it is better for the whole industry if exporters get their fish because of their merits NOT their quota holding. If exporters don't hold Quota shares they can still find markets and if they offer the best price they will get the business **so long as no one exporter controls that ACE. This is how they should grow their business. On merit NOT control.**

I doubt if you have had a submission from Cramac as there are too many on the committee who stand to lose by doing so. I do notice however that FLC representative did NOT get re-elected onto the committee this year. This suggests to me that there are many voters who oppose this proposal.

It makes sense for anyone in business to continually try to grow that business and like it or not this will always affect others in the same business. If I owned FLC I would be trying to grow the business too and even possibly build it to a stage where I could publicly list the company. That's good business. However, it is NOT is good for the industry or other stakeholders and even FLC's well written submission (most probably put together by a paid legal team) fails to convince me that it is a good idea for the industry. In fact the proposal will only have a detrimental effect on the industry and fishery as a whole. They have to convince us that this proposal is good for the industry as a whole when if they are really honest about it, this application is purely based on economics (theirs) NOT supporting others nor the fishery as a whole. Let's face it FLC are really just a group of investors looking to make a buck.

Keeping small holdings keeps small communities alive. If the small holders of quota shares are taken over by the big companies they will most likely spend their money in the cities where they live and small communities such as those in the Wairarapa will suffer tremendously. At present there are many people and businesses in this community who benefit from the fishermen's income.

CRA 4 instigated a management plan for the fishery long before FLC became large holders of quota shares in the area. FLC are relatively new comers in the CRA 4 area. At the time of inception of the management plan CRA 4 was mostly by small holders. These are the people who instigated the management plan. They don't need any big business to ensure its continuity.

It seems ridiculous that anyone can apply to break the law and that any government department may choose to facilitate this. The law was set in place for a reason. **LEAVE IT ALONE!**

Yours sincerely

E.M. Gray RAVoice

Evan Gray and Raewyn Voice

Bruce and Vicki Matthews

To: FMSubmissions@mpi.govt.nz
Subject: Fiordland Lobster Company Limited's application for exemption from aggregation limits.

To whom this may concern

My dealings with FLC over the years have shown the company to be very proactive in all matters concerning the Cra4 lobster industry. Mostly, is the willingness to offer new entrants to the fishery or in fact experienced fisherman as well, the chance to buy Cra4 quota shares at a reasonable market price. It is imperative that this happens as the horse has bolted as such and large companies are the only players that can afford the large amounts paid for descent size quota parcels. As long as fisherman have some hold on quota, the big companies will not have total control. We have three LFRs receiving lobster in Cra4, we need at least that number for competition for prices paid etc. The main concern for fisherman is the threat of monopolization. Port Nick/AFL fisheries have now amalgamated and are aggressive quota purchasers. FLC want to compete and cannot because of their aggregation limit. It seems to be the case that many other companies have already broken through the 10% threshold from previous applications. FLC is in for the long haul and as such are not going anywhere. FLCs quality control mechanisms for exporting lobster are strict and second to none, enhancing NZs export dollars plus the prices paid to their fisherman.

Bruce Matthews
Tide Partnership

Phil Appleyard
President
NZ Sport Fishing Council
PO Box 207-012
Hunua 2254
secretary@nzsportfishing.org.nz



Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140
FMsubmissions@mpi.govt.nz

13 May 2016

NZ Sport Fishing Council submission to the Fiordland Lobster Company's application for exemption from quota aggregation limits.

Submission: The New Zealand Sport Fishing Council opposes the Fiordland Lobster Company Limited's application for exemption from the aggregation limit of 10% applicable to CRA 4, 7 & 8.

NZ Sport Fishing Council - LEGASEA

1. The New Zealand Sport Fishing Council and our outreach LegaSea (the submitters) appreciate the opportunity to submit on the application by the Fiordland Lobster Company Ltd (FLC) for exemption from the quota aggregation limit of 10% applying to CRA 4, 7 and 8. The Ministry for Primary Industries (MPI) advised of the release of the FLC application document and accompanying MPI advice letter on 15 April 2016 with submissions due by 13 May. There is no indication of when a Ministerial decision will be made.
2. The New Zealand Sport Fishing Council (NZSFC) is a national sports organisation with over 32,000 affiliated members from 57 clubs nationwide. The Council has initiated LegaSea to generate widespread awareness and support for the need to restore abundance in our inshore marine environment. Also, to broaden NZSFC involvement in marine management advocacy, research, education and alignment on behalf of our members and LegaSea supporters. www.legasea.co.nz
3. We are committed to ensuring that sustainability measures and environmental management controls are designed and implemented to achieve the Purpose and Principles of the Fisheries Act 1996 (the Act), including "maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations..." [s8(2)(a) Fisheries Act 1996]
4. The submitters continue to object to the Ministry's tight consultation timetable. There are 19 working days from the time of MPI advice (on 15 April) to the submission deadline of 13 May 2016. This limited timeframe does not allow for adequate consultation, it is particularly offensive for non-commercial organisations such as ours that need to consult with a range of interests and volunteers. In our opinion this truncated timeframe is most likely unlawful as judged by the Court of Appeal¹.
5. NZSFC representatives are available to discuss this submission in more detail if required. We look forward to positive outcomes from this process and would like to be kept informed of future developments. Our contact is Dave Lockwood, secretary@nzsportfishing.org.nz.

¹ International Airport Ltd and Air New Zealand (CA 23/92, 73/92[1993] 1 NZLR 671).

Legislative requirements

6. Copied from the MPI stakeholder letter, page 1 –

When considering whether to grant any consent to hold quota above aggregation limits, the Minister is required to consider the matters specified in section 60(3) of the Act. They are:

- a) the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species:
NZSFC: There are plenty of investors within the commercial fishing industry willing and able to purchase shares.
- b) the likely effect of the granting or withholding of the consent on –
 - i. the development of any new or existing stocks or species:
NZSFC: Irrelevant to this application.
 - ii. other quota owners or commercial fishers:
NZSFC: Reduce competition and expose ACE (Annual Catch Entitlement) fishers to monopoly pricing empower rent seeking.
 - iii. the processing and marketing of that stock or species:
NZSFC: Consolidates marketing and processing in fewer hands, which restricts innovation and stifles competition.
 - iv. the ability of the applicant to take any other stock or species:
NZSFC: Not relevant.
 - v. the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry:
NZSFC: Not relevant.
- c) such other matters as the Minister considers relevant.
NZSFC: See below.

Proposals

- 7. The Ministry for Primary Industries (MPI) has received an application from the Fiordland Lobster Company Limited to hold rock lobster quota in excess of aggregation limits in the CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago), and CRA 8 (Southern) rock lobster fisheries.
- 8. Under the Fisheries Act 1996 no person is entitled to own more than 10,000,000 quota shares (10%) for any one rock lobster quota management area. This is known as an aggregation limit.
- 9. The Fiordland Lobster Company Limited (FLC) has applied to hold up to 20,000,000 quota shares (20%), in perpetuity and without condition, in CRA 4, 7 & 8.

Submission

- 10. The submitters oppose the application by the Fiordland Lobster Company Limited for exemption from the aggregation limit of 10% applying to all rock lobster fish stocks.
- 11. The submitters also oppose the application for quota in excess of existing aggregation limits to be issued without condition and in perpetuity. Perpetual quota enables private, commercial interests to wield an unreasonable level of power over the management of fish stocks. The rock lobster fish stocks are not there for just commercial exploitation; crayfish are considered a taonga, a treasure by recreational, customary and non-extractive marine interests and must be available in the water to provide for non-commercial fishing and environmental interests.

12. Those parties currently holding shares in excess of 10% of a rock lobster fish stock need to be compelled to divest shares so as to comply with s59 of the Fisheries Act 1996.
13. Competition drives value only when applied to product trading. Quota aggregation stifles competition and creates monopolies, confounding the very markets depended upon for value creation and efficiency.
14. By any international comparison, the aggregation limits granted by New Zealand law are already too high. Limits are used to maintain competition, with 2% to 5% limits representing a normal range in offshore jurisdictions.
15. Generally, the New Zealand Quota Management System suffers from the diminishing pool of Total Allowable Commercial Catch (TACC) shareholding owners. There is no merit in enabling monopolies to evolve, which is the inevitable result from failing to maintain low aggregation limits.
16. The aggregation limits are an integral part of the Quota Management System and providing exemptions allows control of fisheries to become vested in a single company, enabling that entity to manipulate the market for both ACE and price. This current request is an application to create uncompetitive conditions in the TACC sharemarket.

To Submissions,
M.P.I.

My name is Garth Haggerty , I am a trustee and fish for RG & RL Haggerty Family Trust.

We think there are existing anomalies in the quota system concerning aggregation.

We agree with the principle of aggregation rules.

We think Fiordland Lobster Co. is unfairly disadvantaged being restrained by aggregation limits set when others have exemptions.

Our thoughts are aggregation limits should be set at 20% with no exemption.

We have fished, purchased ACE and quota shares from F L C for a number of years and found them a very fair and trustworthy company to deal with.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Garth Haggerty', with a large, stylized loop at the end.

Garth Haggerty



Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140.

FMSubmissions@mpi.govt.nz

Re: Application For Exemption From Rock Lobster Quota Aggregation Limits

Sir / Madam,

L & B Taspac and NZ Packers Ltd have been involved in exporting Live Lobster and many other seafood species since 1988 and continue to be stakeholders in both the Rock Lobster sector and seafood Industry as a whole.

These businesses and their owners fully support the Fiordland Lobster Company Application to for Exemption from Rock Lobster Quota Aggregation Limits and to hold up to 20,000,000 quota shares (20%) in CRA 4, CRA 7 and CRA 8.

Our rationale is based on the current system failing its original purpose in that it has become increasingly ineffective by allowing one sector to operate outside the aggregation limits and as dispensations have been granted.

After 30 years of the QMS our perspective is that given the evolution of CRA quota ownership it is now time for a complete overhaul of the aggregation rules, with a view to removing them in the longer term.

In the short term and until a complete overhaul is conducted we fully support this application and believe that the aggregation regulations should be changed for all CRA areas / Zones to 20%, this being in line with other fish species limits.

Yours sincerely

M D Burnett
Director



WAKATU

INCORPORATION

12 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140

By Email Only

E te rangatira, tēnā koe,

Exemption from Quota Aggregation Limits - Fiordland Lobster Company

I refer to your letter of 15th April regarding the above and now write outlining Wakatu Resources' position on this matter.

We feel that this matter is wider than this one application. We are aware that a number of exemptions to the quota aggregation limits exist currently. This does not seem to have had a detrimental effect on the fishery or the industry, indeed larger quota holders are often most incentivised to adopt any necessary TACC reduction or other management actions due to their level of investment in terms of quota and the industry in general, this facilitates a long term fishery management strategy.

Rather than supporting or opposing any single exemption application, Wakatu Resources is of the view that legislation should be amended with the quota aggregation limit being increased to 20% for all quota owners in any one quota management area.

This would ensure a level playing field and would simplify the process going forward in addition it would remove barriers from smaller quota owners pooling their quota for management purposes.

If you have any queries please do not hesitate to contact me on the number below.

Nāku noa, nā ,

Iain Sheves, MRICS

General Manager - Property

DD: 03 539 1773

Email: iain@wakatu.org

11 May 2016

Inshore Fisheries Management
Ministry for Primary Industries
PO Box 2526
Wellington 6140

**Application for Exemption from Quota Aggregation Limits
Fiordland Lobster Co Ltd**

I would like to submit in favour of the Fiordland Lobster Co being granted an exemption from aggregation limits in the CRA areas applied for.

I am a fisher Quota holder in CRA 8. My family and I are involved with commercial lobster right through the supply chain, from Quota ownership through to shareholding in several processing companies including FLC.

The basis for my submission is simply the unfair advantages held by companies and processors who already hold exemptions.

These entities can create a very unfair playing field, whereby they can tie up huge portions of quota and therefore ACE, this creates a monopoly and can then lead to a manipulation of ACE and landed beach prices.

I would have not have been in favour of this exemption had no other exemptions been granted but, in my opinion the horse has well and truly bolted.

FLC has a wide and varied shareholder base which includes many current fishers. It is also very supportive of industry groups, (CRAMAC's, Fiordland marine Guardians, Fiordland Coastal clean up.) It has a positive record like no other company in NZ, therefore it is a good industry citizen and would be every bit as worthy as other exemption holders.

Regards
Jerry Excell



From: sonja <jason.sonja@xtra.co.nz>
Sent: Thursday, 12 May 2016 11:59 a.m.
To: FMSubmissions
Subject: Qutoa Shareholding Application

Re: Fiordland Lobster Company - application to increase its quota share holdings in CRA 4, 7 and 8

As a quota share owner and fisherman in CRA8 I am writing in support of Fiordland Lobster.

Fiordland Lobster have been actively involved in the management of the CRA8 fishery for many years contributing to what is certainly the best managed inshore fishery in NZ. They are also involved in many conservation projects throughout Fiordland as well as being a major sponsor to the Fiordland coast clean-up that has been running for the past 15 years.

We see them as a responsible company that will continue to do the best for the lobster fisheries and fisherman that they are involved with.

Jason Jukes
9791998 EBD (S.I) Limited

Fiordland Lobster Company application for quota exemption.

As a CRA4 quota owner/fisherman I am writing in support of Fiordland Lobster for their increase in maximum allowed quota shares.

I have been fishing the Wairarapa area of CRA4 for 14 years and fishing to Fiordland Lobster for the last 9 of those. The basis for supporting FLC's application is that in it they state that, the increase in quota shares will allow them to continue to on sell quota shares to fisherman. I have on 2 occasions bought quota from them which has allowed me to increase my stake in the industry. Without them it would have been an almost impossible task to find a quota owner willing to sell the amounts that I was wanting to purchase.

Finally, they have a very good reputation for their involvement in fisheries management, especially CRA8 which is very important to me.

Regards

Dugald Cameron
Pahaoa Fishing Ltd

From: Noel Anderson <noelriverton@xtra.co.nz>
Sent: Wednesday, 11 May 2016 3:33 p.m.
To: FMSubmissions
Subject: Submission FLC

Re: Application for exemption from Rock Lobster Quota Aggregation Limits from 10% to 20% Fiordland Lobster Company Limited.

As a quota share owner of CRA 8 we write in support of Fiordland Lobster Companies application to lift its holdings in areas CRA 4,7 and 8 to 20%.

We have been involved in the CRA 8 fishery for the past 26 years, during that time we have developed a business that transport landed lobster from the south coast of CRA 8 through to TeAnau and Dunedin.

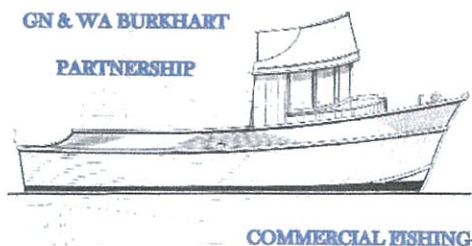
To date I have been actively involved with Marine Search and Rescue with Riverton Coastguard for 44 years. Also as a foundation Board Member for the Southern Region. As with all Coastguard vessels we are constantly searching for sponsors to maintain the vessels to the required standards as well as updating the vessels equipment and motors. In the mid 90's on behalf of Riverton Coastguard I approached FLC for sponsorship, we were seeking funding to replace both motors on the coastguard vessel which was a substantial amount of money at that time. Not only did the company wish to make a donation but ended up funding the full cost of both motors. FLC is also a current sponsor of Bluff Coastguard.

FLC have also been main sponsors of the Fiordland / Stewart Island Coastal clean - up, this operation removes huge amounts of rubbish and lost fishing gear from our southland coastal area and I was fortunate to be able to attend as a volunteer recently. These are just 2 examples of its involvement in community base projects.

We submit that by judging the company on its past performance it is a suitable owner of increased quota shares in the areas it has applied for and believe it will be a benefit for the lobster management with its increased stake in the industry. They have shown to be leaders in fisheries management, a feat that is unrivalled by any other fishing company in NZ.

Regards
Noel Anderson. Q.S.M

Sent from my iPad



191 Manaia Road

R D 5

MASTERTON 5885

Telephone 06 377 1044

Grant 027 2382850

burkhart@xtra.co.nz

9 May 2016

Re: Application for exemption from Rock Lobster Quota Aggregation Limits from 10% to 20%
Fiordland Lobster Company Limited

We wish to support FLC in their application to increase aggregation limits.

We are commercial Rock Lobster fisherman and Quota Share Owners in CRA4.

FLC is one of two companies in CRA4 that actively encourages small ACE dependent fishermen to purchase Rock Lobster shares. If allowed to increase aggregation limits, more fishers will be able to purchase shares in small quantities from the Company. Without this allowance most ACE dependent fishers will never be in a financial position to purchase shares.


After reading the application from FLC, we find it difficult to understand why some entities are allowed exemptions and others not. (38 exemptions already allowed for Rock Lobster Quota aggregation.) How is a company supposed to compete on an even playing field when they are held back by these restrictions?

We understand the reason why 10% allocation limit was initiated on the implementation of the Quota Management system for Rock Lobster, but believe the steady rise in value of Quota shares has now made it impossible for new entrant fishers and ACE dependent fishers to purchase these shares without the backing of the likes of FLC. We are the recipients of this scheme along with a number of other FLC fishermen in CRA4.

We believe the current legislation is outdated in the present economic environment.


GN & WA Burkhardt Partnership

QRN 9240043


Wendy Burkhardt.

Manaia Reef Trust

QRN 9792688


Wendy Burkhardt

9/5/2016

SUBMISSION IN REGARDS TO THE APPLICATION FOR EXEMPTION FROM QUOTA
AGGREGATION LIMITS FOR CRA 4,7,8 - FROM FIORDLAND LOBSTER COMPANY (FLC)

Neil & Lea Bramley & Family are submitting independently as owners of approximately 5 Tonnes of Cra 4 Quota shares . Also we are submitting on behalf of our fishing company (Seamade NZ Ltd) that caught and helped market 24 Tonnes of CRA 4 ACE for the 2014/15 season. Three other independent fishing operations depend on us to help run their fishing businesses which employ numerous participants. Our family has been heavily involved in the CRA industry since 1983 and have dedicated our life to the Cray industry. We have fished, processed, marketed and been involved on every level possible.

THE ABOVE GROUP STRONGLY OBJECTS TO THE APPLICATION FOR AN EXEMPTION & ASKS THE MINISTER TO DECLINE THE ABOVE APPLICATION FOR THE FOLLOWING REASONS

1/ FLC already has major control & influence on all levels of the CRA industry. Approving this application would severely compromise any future opportunity for existing or new entrants . Therefore the strict adherence of aggregation is essential to protecting the industry as a whole.

2/ To the contrary of FLC's application; FLC has a history of selling minimal amounts of quota shares to fishers. This sell down has been motivated by aggregation limits only. Statistics prove this. Some ACE dependant fishers have been forced into a position where by if they don't purchase offered quota shares off FLC, any future ACE won't be guaranteed from FLC. Supply contracts are a compulsory component of all these sales to purchasers that I have spoken with.

3/ Approval will reduce efficiency of our NZ Rock lobster industry. It is a perfect medium size business industry. Reasons being that it is primarily an inshore fishery & accessed through many small remote communities. Big companies including FLC have got a history of being irresponsible & unsympathetic to this aspect by removing or placing large amounts of ACE in & out of some of these areas to suit their operations for logistical & commercial reasons. This has had dire consequence for some families & communities.

4/ As FLC has increased in size & obtained more control we have witnessed reduced margins back to industry members & more returns directed to their shareholders. So FLC'S aggressive approach has had a negative impact on all other commercial sectors associated with their operation.

5/ To be able to understand the dynamics behind this push by FLC to break aggregation limits it is important to understand that FLC began its life as a Fishermans Co -operative. It was well supported by active fishermen in CRA8 and then in CRA4 under the premise that independent quota share fisherman are of the up most importance.

This emphasis changed swiftly with a board decision to dramatically increase shareholder numbers, more interested in higher share appreciation & share dividends than continuing to maintain the balanced cray industry. We have all provided considerable scientific and hands on investment building our QMS. This FLC monopoly initiative has instigated wide spread speculation. It has been mooted amongst FLC directors, that FLC with partners are trying to drive the company to a size that is big enough to publicly float thereby attracting overseas investment.

6/ Finally we can't identify one point in FLC'S application that meets the criteria specified in section 60(3) of the Act.

Allowing this application is likely to lead to the dismantling of yet another NZ primary industry.

SUMMARY

FLC has been getting around aggregation by having supply contracts attached to their quota share sales for years, along with 'right of refusal' agreements on share sales & 'right of refusal' on ACE if an owner chooses not to fish. Also it's compulsory landing to FLC if they do fish.

This may be legal but it would have to be the closest thing to breaching the aggregation law and a snub at the intention of this law. Many of FLC'S share holders hold substantial amounts of shares /ACE in the said areas.

In the past, I'm aware of supply contracts FLC have had with share holders to ensure guaranteed access to ACE - up to approximately 30% in Cra 4 & 8, another snub to the intention & integrity of the framework of aggregation.

Another method FLC is using, is swapping CRA 8 with Burkhart Fisheries for CRA 5 (who are major share holders of FLC)to assist each other in staying under the aggregation limits.

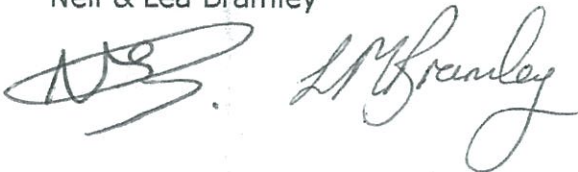
We have spoken to many members of our industry who are in support of submitting against FLC'S application but feel they are unable to do so as the stand will lose them access to FLC'S ACE. I've also spoken with CRAMAC 4 & asked that on behalf of it's members could they submit but 8 out of the 12 representatives are associated with FLC . I believe that in CRAMAC 8 the situation is even worse. I was on the CRAMAC 4 management group for six years and resigned because of these stand over tactics. Should FLC get more control this situation will worsen.

We now ask our Minister The Honourable Nathan Guy, on behalf of all the industry, to take this opportunity to investigate these issues & look at our options to close these "legal" loop holes which have been manipulated & motivated on nothing but greed.

Aggregation was put in place as part of the QMS to protect this primary products national interests for all of the people of New Zealand.

Finally , should this application be given any favourable consideration ; then we request that our Minister, the honourable Nathan Guy hold a Public Hearing so fair opportunity is given, to defend our industries independence.

Yours Sincerely
Neil & Lea Bramley

The block contains two handwritten signatures in blue ink. The signature on the left is a stylized, cursive 'NB'. The signature on the right is a more formal, cursive signature that appears to read 'Lea Bramley'.



10th May 2016

Inshore Fisheries Management.
Ministry for Primary Industries.
FMSubmissions@mpi.govt.nz

Re: Application for exemption from Rock Lobster Quota Aggregation Limits from 10% to 20% for Fiordland Lobster Company Limited. in CRA 4, CRA 7 and CRA 8.

To whom it may concern,

Burkhart Fisheries Ltd (BFL) with Lanfar Holdings (No4) Ltd (Lanfar) and The Dam Vineyard Company Ltd whom are "associated" Quota owning and Fish processing Companies; also Lanfar and Burkhart Family group hold approx. 19% of FLC Shares.

Fully supports Fiordland Lobster Company Limited. (FLC) application to increase aggregation limits allowing FLC to own up to a total of 20% of the TACC Quota shares in Cra areas 4, 7 & 8.

The Associated Lanfar-Burkhart Family Group; currently holds an Aggregation dispensation within Cra 5 of 26.89%

The current 10% aggregation allowance is no longer relevant or practical especially with the current rules around applying for various Cra area dispensations.

It is duly noted that the FLC application is very different than any proceeding applications in that FLC is applying for a "general speculative allowance" covering non-specific purchases of Cra Quota like those in the past had to contend with when applying for aggregation dispensations.

The original purpose of the aggregation regulations after 30 years of the QMS has well past and has basically been totally ineffective re protecting individual owner operator fishers basically from its inception due to another overriding law that allowed one section of the fishing community to operate outside the "individuals" aggregation clauses. This advantage assisted to kick start the Treaty Iwi's involvement and this group now overall holds a very dominant position within the Cray Industry in New Zealand and rightfully so. But that advantage we believe is no longer required in the Cray Industry.

The time has come for the Cray Industry with the most restrictive total individual aggregated regulations around ownership set at 10% to evolve and become more-fit for purpose as the numbers of Processors and operators have significantly reduced. Those remaining in the Rock Lobster business require security of supply to continue to invest in new generation people to maintain Quality Facilities and operators to ensure the Cray Industries returns to New Zealand as a whole continue to be the "Gem" of the NZ fishing Industry always. Companies such as FLC and BFL have helped create NZ Rock Lobster as the Rolls Royce of this earths Lobster surpassed by none.

The FLC application if granted can be a major move forward our group believes but suggest that the 20% limit should be applied over all of the Cra Areas in a basic general "updating" of the clauses to bring Cray into line with many other fish species Quota Aggregation limits. Also with a medium term objective to totally disregard the aggregation limits altogether.

Regards,

Dennis Burkhart
Managing Director

From: Roddy McRae <roddycandy@gmail.com>
Sent: Tuesday, 10 May 2016 11:08 a.m.
To: FMSubmissions
Subject: Aggregation limits

Sent from my iPhone

I am putting in this submission voting against raised aggregation limits, as I feel this is not healthy for the Cray Industry. I feel raising the limits would give an unhealthy monopoly, and it should remain 10 per cent.

Roddy McRae

Quota owner CRA 4

PO Box 7200,
Taradale
HAWKES BAY

6th May 2016

Ministry for Primary Industries
PO Box 2526
Wellington 6140
New Zealand

REF: Fiordland Lobster Co's application for quota holding exemption

We are quota holders for both CRA4 and CRA8 areas and have traditionally leased our quota to FLC. We would not lease quota to an entity we perceived as acting against the long term interests of the industry.

FLC behaves responsibly in my opinion and has a reputation second-to-none in the industry. They also support environmental projects such as native bird preservation in Fiordland, in fact I had the pleasure and good fortune to be involved with one such trip shifting saddleback and mohua onto a predator-free island.

Having some insight into the setting of quota limits, it is apparent the company exhibits a high level of responsibility of conserving fish stocks, especially in the CRA8 region. They are happy to see limits set at a very conservative level so that should never be issue about depleting the resource.

FLC's operation is very efficient and they routinely deliver high quality product to the foreign market well within the time limits required to keep live fish at peak condition. I have seen their new processing plant in Auckland and besides adding employment opportunities to the local community, it further enhances their ability to export product in peak condition.

We therefore support their application for an exemption to allow a 20% holding in quota for areas CRA4, 7 and 8.

Yours sincerely,

C.J Peychers

H.C. Peychers

SUBMISSION TO THE MINISTER FOR PRIMARY INDUSTRIES

SUMMARY

I submit that the Minister should **decline** Fiordland Lobster Company's (FLC) application to hold rock lobster quota in excess of aggregation limits of 10% in CRA4, CRA7 and CRA8.

In their application FLC has not explained the full extent of their control of CRA quota in the above areas.

FLC's level of control is already greatly affecting other fishery participant's ability to acquire quota and ACE. Allowing FLC to own up to 20% will make it even harder for existing competitors of FLC and would shut out new entrants to the fishery.

In addition to FLC's direct ownership of CRA quota, CRA quota is also owned by FLC shareholders and by other parties, many of whom have purchased quota off FLC.

Both shareholders and non-shareholders have, in many instances, purchased CRA quota off FLC with sale and purchase agreements that have clauses that require the purchaser to supply ACE to FLC and to offer FLC first right of refusal should the purchaser sell the quota.

BACKGROUND

From 1999 to 2010 I was CEO at FLC. During this time I purchased CRA quota for FLC as part of my duties. As FLC approached the 10% aggregation threshold the Board of Directors of FLC instructed me to continue to purchase quota but to sell equivalent quantities of quota prior to each purchase. This was to avoid breaching the aggregation limits while at the same time maintaining control of the quota. The sale of the quota was to include written agreements for the sale and purchase of the quota that would allow FLC to maintain control of the quota being sold.

The agreements for sale and purchase of quota were written by FLC's solicitor, Anderson Lloyd. Bryan Henderson was the partner from Anderson Lloyd representing FLC and is also a Director of FLC. He is currently is the Chairperson of Directors at FLC.

The first significant agreement for sale and purchase of quota that I can recall signing, while CEO of FLC, was for the sale of 1,794,014 CRA8 quota shares to Fast Lobster Holdings Limited on 19 April 2007.

A copy of another agreement for sale and purchase of quota is contained as Appendix 1 to this submission. This agreement was provided to me by the purchaser of the quota and is dated 16 September 2011. Clause 11 causes all ACE to be supplied to FLC for 5 years. Clause 12 requires the purchaser to offer FLC right of first refusal "at any time". I recall that the Fast Lobster agreement is very similar. The attached agreement was for a small amount of CRA8 quota (126kg) indicating the importance of these agreements to FLC.

As FLC sold quota to Fast Lobster in 2007 with an a supply contract and was still entering into similar agreements in 2011 it can be suspected that most, if not all, sales of quota since 2007 have had similar agreements.

Three years after leaving my employment at FLC I began my own live lobster exporting business. At the commencement of each season I compete in the market for CRA8 ACE. I find it difficult to obtain ACE because of the amount of quota controlled by FLC.

CRA QUOTA OWNED BY FLC AND FLC SHAREHOLDERS

The table below is a summary of quota own by FLC and its shareholders:

Stock	FLC	FLC Shareholders	Total
CRA4	9.9%	16.7%	26.6%
CRA7	9.5%	14.3%	23.8%
CRA8	10.0%	20.3%	30.3%

If FLC is permitted to extend their aggregation limit then I expect they will offer to purchase quota from quota owners that supply FLC's competitors. This would have a significant impact of my business.

If FLC gets an exemption and purchased up to 20% of the TACC as well as continuing to sell quota to shareholders then it could easily control 50% or more of the quota in these fisheries.

Appendix 2 lists the CRA4, CRA7 and CRA8 quota currently owned by FLC and their shareholders.

FLC QUOTA TRADING

Over the past ten years FLC has traded the quota listed below:

Stock	%TACC purchased	%TACC Sold
CRA4	13.1%	3.3%
CRA7	6.5%	5.7%
CRA8	2.6%	3.7%

By being a prominent purchaser of quota then selling quota to shareholders and others, FLC has managed to increase its control of quota while staying under the 10% aggregation limit.

Appendix 3 is a record compiled from FishServe's registry database that lists the purchases and sales of quota by FLC over the past ten years.

EFFECT ON OTHER QUOTA OWNERS AND COMMERCIAL FISHERS

If FLC gets more control of quota it will dominate the CRA fisheries. New entrants will find it more and more difficult to acquire quota. As FLC's shareholders sell their quota they will offer it to FLC. This will be in their interest to maintain dividends from FLC.

FLC application claims that it needs the exemption because of "special circumstances of the CRA quota market". FLC has been a major purchaser of quota in the past so why do they need a generic exemption? An exemption would give them a competitive advantage over all others industry participants.

An exemption for FLC would simply give them an unfair advantage over all others.

A handwritten signature in black ink, consisting of a stylized 'M' and 'S' followed by a long horizontal line.

MW Schuck

Director and Owner of SCHUCK ENTERPRISES LTD T/A CRA8 FISHERIES.

5 May 2016

Appendix 1

AGREEMENT FOR SALE AND PURCHASE OF QUOTA

between

Deltop Holdings Limited

and

Bergin Barry Quota Holdings Limited

and

Fiordland Lobster Company Limited

ANDERSON

Agreement For Sale And Purchase Of Quota

Date: 16 September

2011

Parties

1. Deltop Holdings Limited ("Vendor")
2. Bergin Barry Quota Holdings Limited ("Purchaser")
3. Fiordland Lobster Company Limited ("")

Background

The Vendor agrees to sell and the Purchaser agrees to purchase the Quota in terms of this agreement.

Agreement

1. Interpretation

- 1.1 In this agreement unless the context otherwise requires:

"ACE" means Annual Catch Entitlements, as defined in the Fisheries Act 1996.

"Encumbrance" includes a mortgage, charge, security interest, caveat, pledge, lien, lease, licence, assignment, option or right of first refusal in respect of the Quota.

"Fish" includes all finfish, shellfish, and rock lobster as defined in the Fisheries Act 1996.

"Individual Transferable Quota Shares" and "Overseas Person" have the meanings attributed to them in the Fisheries Act 1996.

"Levies" means any charges imposed in respect of the Quota by the Crown or the Ministry of Fisheries or its successor pursuant to the Fisheries Act 1996 or any regulations under that Act.

The "Quota" means 13,098 Individual Transferable Quota Shares for Rock Lobster, designated CRA8 by the Ministry of Fisheries, representing 126 kilograms of ACE.

The "Vendor" and the "Purchaser" include their executors, administrators, successors and assigns.

- 1.2 Words importing the singular number include plural and the masculine gender, the feminine or neuter and vice versa and words importing persons include companies. Any covenants or agreement on the part of 2 or more persons are deemed to bind them jointly and severally.

2. Price and quantity

- 2.1 The Vendor agrees to sell and the Purchaser agrees to purchase the Quota subject to clause 3.4 for the sum of \$64,260 plus GST, if any ("Purchase Price") to be paid in cash in one sum in cleared funds on Friday 16 September 2011.

3. Settlement and title

- 3.1 The Vendor agrees to take all such steps and sign all such documents as may be necessary to transfer the Vendor's legal interest in and title to the Quota to the Purchaser on the date (the "Settlement Date") on which the Purchaser makes the payment of the Purchase Price plus any other sums required to be paid by the Purchaser under this agreement.

- 3.2 The Purchaser will register the transfer of the Quota to the Purchaser with the Ministry of Fisheries immediately after upon receiving title to the Quota.
- 3.3 The Purchaser must not catch the Quota until that transfer has been registered.
- 3.4 Notwithstanding anything else in this agreement the Purchaser will pay the Purchase Price to the Vendor's solicitor on the Settlement Date but only if the Purchaser's solicitor receives from the Vendor's solicitor a personal undertaking not to disburse the Purchase Price until the transfer of the Quota from the Vendor to the Purchaser has been registered with the Ministry of Fisheries. The Vendor's solicitor will hold the Purchase Price as stakeholder. In any other event, the Purchase Price will only be payable by the Purchaser to the Vendor upon registration of the transfer of the Quota with the Ministry of Fisheries.

4. Apportionments

- 4.1 As between the Vendor and the Purchaser there is to be no apportionment of Levies to the Ministry of Fisheries or any similar payment in respect of the Quota upon settlement.

5. Penalty interest

- 5.1 If either party fails to make payment to the other party in terms of this agreement the party in default agrees to pay interest on the full amount owing to the other party at a rate 5% above the base rate of the ANZ National Bank Limited calculated on a daily basis until payment is made in full, including payment of interest under this clause. This clause is without prejudice to any other rights or remedies of that party.

6. Power of attorney

- 6.1 If the Vendor fails to perform any provision of this agreement the Vendor irrevocably appoints the Purchaser to be the Vendor's attorney for the purpose of giving full effect to the provisions of this agreement to enter into and execute any deeds, agreements and documents, and to do any acts in the name of and on behalf of the Vendor as that attorney thinks necessary for these purposes. The production of this agreement will be conclusive evidence of the consent of the Vendor to any act or thing done by the Purchaser under the powers conferred by this agreement.

7. Vendor's warranties

- 7.1 The Vendor warrants that:
 - a. The Vendor will be the owner of the Quota on the Settlement Date with title to it to the exclusion of all others.
 - b. The Quota will be free from Encumbrance on the Settlement Date.
 - c. The Vendor has received no notification of withdrawal or cancellation of the Quota or any part of it by the Crown or any other authority and there is no unsatisfied requisition relating to the Quota.
 - d. The Vendor has done nothing that may in any way jeopardise or interfere with the ownership, extent or nature of the Quota.
 - e. The Vendor has neither committed nor been charged with the commission of any offence under the Fisheries Act 1996 or any Regulations under those Acts and will not commit any such offences before the Settlement Date.

- f. The Vendor is not aware of any offences in respect of the Quota committed or charged under the Fisheries Act 1996 or any regulations under those Acts or any Act in respect of or substitution of those Acts.
 - g. The Vendor has paid and will pay all Levies or any similar payments in respect of the Quota which are payable before the Settlement Date.
 - h. The Quota has nil kilograms of ACE available to catch for the fishing year ended March 2012.
 - i. The Vendor is not an Overseas Person.
- 7.2 The warranties given in clause 7.1 will be deemed to also be given on the Settlement Date.
- 7.3 The Vendor acknowledges that the Purchaser has entered this agreement in reliance on the warranties in clause 7.
- 7.4 Between the date of this agreement and the Settlement Date the Vendor will do nothing that would constitute or cause a breach of the warranties in clause 7.
- 7.5 The Vendor agrees to disclose to the Purchaser immediately anything that becomes known to the Vendor which is inconsistent with the warranties in clause 7 or which might constitute or cause a breach of these warranties.
- 8. **Purchaser's warranty**
- 8.1 The Purchaser warrants that the Purchaser is not an Overseas Person.
- 9. **MFish information**
- 9.1 The Vendor agrees to make available to the Purchaser any Ministry of Fisheries records relating to the Quota that the Purchaser demands. The Vendor hereby authorises the Purchaser to obtain from the Ministry of Fisheries any information relating to the Quota including information relating to Fish caught under the Quota as the duly authorised agent of the Vendor, whether such information is confidential to the Vendor or not. The Vendor irrevocably appoints the Purchaser to be the Vendor's attorney to execute any documents or to take any action on behalf of the Vendor as that attorney thinks necessary for the purposes stated in this clause.
- 10. **Default by purchaser**
- 10.1 If the Purchaser defaults in payment of any instalment of the Purchase Price or of interest due under this agreement or in the performance of any other term contained in this agreement and such default continues for 14 days then the Vendor may at the Vendor's option without prejudice to the Vendor's other remedies exercise all or any of the following remedies:
 - a. Cancel this agreement and any moneys paid by way of deposit or instalments of Purchase Price (but not exceeding in all 10% of the Purchase Price) will in that case be absolutely forfeited to the Vendor as liquidated damages.
 - b. Re-enter upon and take possession of the Quota without the necessity of giving any notice or making any formal demand.
 - c. Resell the Quota either by public auction or private contract for cash or on credit and upon such other terms and conditions as the Vendor may think proper with power to vary any contract for sale, buy in at any auction and resell. Any

deficiency in price which may result and all expenses attending a resale or attempted resale are to be made good by the Purchaser and will be recoverable by the Vendor as liquidated damages, the Purchaser receiving credit for the deposit and any payments made in reduction of the purchase money. Any increase in price on resale after deduction of expenses will belong to the Vendor.

- d. Sue the Purchaser for specific performance.

11. Quota to be Fished or Leased to FLC

- 11.1 If the Purchaser is fishing the ACE generated by the Quota itself then from 1 April 2011 and for the next 5 fishing years (ending 31 March 2016) the Purchaser will cause all fish caught in respect of the ACE generated by the Quota to be sold to FLC or its nominee upon such reasonable market beach prices and terms of payment as are being offered by FLC or its nominee at that time.
- 11.2 If the Purchaser chooses not to fish all or any of the ACE generated by the Quota in any of the above fishing years, the Purchaser will grant to FLC or its nominee the first option to lease any of the ACE generated by the Quota for that fishing year at a fair market rental for such quota for that fishing year. The option to lease the ACE generated by the Quota must be exercised by FLC by notice in writing to the Purchaser within one calendar month of the Purchaser giving notice.
- 11.3 The Purchaser will give FLC notice in writing of any intention of the Purchaser to fish the Ace generated by the Quota for the following fishing year on or before 1 March of the immediately preceding fishing year.

12. Right of First Refusal

- 12.1 a. If at any time the Purchaser wishes to sell any of the Quota in whole or any part the Purchaser will give notice in writing to FLC ("Notice") specifying the sale price and terms of sale. FLC or nominee will have the first option to purchase those shares at the sale price and on those terms.
- b. The Notice must provide for a date for settlement in full of the purchase not earlier than 2 calendar months after the date of the service of the Notice.
- c. This option may be exercised by FLC or nominee giving notice in writing within one calendar month of the Purchaser giving the Notice by giving notice in writing.
- d. If FLC or nominee fails to exercise the option as described in this clause the Purchaser may (at any time within 3 calendar months after the service of the Notice on the Purchaser) sell that quota at a price not less and on terms, other than the date for settlement, no less favourable than specified in the Notice, but not otherwise without first giving Notice again in terms of this clause.

13. Execution

- 13.1 Execution of a facsimile copy of this agreement is due execution.
- 13.2 This agreement will be binding on the Vendor and the Purchaser immediately upon the Purchaser or the Purchaser's duly authorised agent executing this agreement and the Vendor or the Vendor's duly authorised agent executing a copy of this agreement.

14. Arbitration

- 14.1 All differences and disputes between the parties touching or concerning the subject matter of this agreement are to be referred to arbitration of a single arbitrator if the parties can

agree upon one or otherwise of 2 arbitrators, one to be appointed by each party (excluding any guarantors) and an umpire to be appointed by the 2 arbitrators prior to entering into consideration of the matter. Any reference will be a submission to arbitration within the meaning of the Arbitration Act 1996 and its amendments and the decision of the arbitrator(s) or of the umpire is final.

15. Notices

- 15.1 All notices required or permitted under this agreement are to be served as provided in sections 352 to 361 of the Property Law Act 2007, or by fax, in which case notice is deemed to be given the day after sending. In addition, service of any notice on the solicitor for any party is deemed to be sufficient service. Notices served on behalf of a party by that party's solicitor who is deemed to have served by that party personally

16. Non-merger

- 16.1 The terms and warranties in this agreement do not merge upon settlement, but remain enforceable in full notwithstanding any rule of law to the contrary.

Signed by

Signed for and on behalf of **Deltop Holdings Limited** as Vendor by its duly authorised signatory in the presence of:

Op McDonald

Signature of witness

Deirdre McDonald

Name of witness

Legal Secretary

Occupation

Arrowtown

Address

[Signature]
Signatory's Signature

Byron Russell Henderson

Signatory's Full Name

Signed by **Bergin Barry Quota Holdings Limited** as Purchaser by:

[Signature]
Director's signature

Melissa Jane Barry
Director's full name

[Signature]
Director's signature

MICHAEL KELLY BERGIN
Director's full name

Signed for and on behalf of Fiordland
Lobster Company Limited as by its duly
authorised signatory in the presence of:

D McDonald
Signature of witness

Deirdre McDonald
Name of witness

Legal Secretary
Occupation

Arrowtown
Address

[Signature]
Signatory's Signature

Bryan Russell Henderson
Signatory's Full Name

APPENDIX 2: Quota (ACE Equivalent kg) owned by FLC and FLC Shareholders

Fiordland Lobster 100% owned quota holding company:		Quota Owner (FishServe Client Number)	CRA4	CRA7	CRA8
Fiordland Lobster Shareholders		Detlop Holdings Limited (9490007)	39,118	9,299	96,195
Lanfar Holdings (No 4) Limited	Kenneth Ritchie Anderson, Fern Annette Anderson, Roger Neil Wilson	Lanfar Holdings (No 4) Limited (8960133)	11,349		5,046
Kenneth Ritchie Anderson, Fern Annette Anderson, Roger Neil Wilson		Kenneth Ritchie Anderson, Fern Annette Anderson, Roger Neil Wilson (9190021)		2,175	6,314
Kahungunu Asset Holding Company Limited		Kahungunu Asset Holding Company Limited (9791755)	26,148		
Fast Lobster Holdings Limited		Fast Lobster Holdings Limited (9791950)		440	17,258
Craig & Susanne Smith		Alamo Fishing Company Limited (9160069)			16,807
Te Anau Fishing Company Limited		Te Anau Fishing Company Limited (9791854)			5,095
Phillip & Shirley O'Sullivan		O'Sullivan Limited (9791921)			11,620
Luke Thomas Beange, Carol Jane Beange		Luke Thomas Beange, Carol Jane Beange (9793130)			2,655
Grace Kathryn Beange, Carol Jane Beange		Grace Kathryn Beange, Carol Jane Beange (9793131)			2,655
Carol Jane Beange		Carol Beange (9730065)			2,654
Hrisula Peychers, Christopher John Peychers		Hrisula Peychers, Christopher John Peychers, WTR Trustee (2013) Limited (9792741)	425		588
South City Management (1990) Limited		South City Management (1990) Limited (9792483)			944
J E L Investments Limited		J E L Investments Limited (9790078)			8,826
Brett Harry Flintoff, Noel Dawson Anderson		Noel Dawson Anderson, Judith Elizabeth Anderson, Brett Harry Flintoff (9792561)			1,916
Desmond Patrick King-Turner, Julie Olive King-Turner		Desmond Patrick King-Turner, Julie Olive King-Turner (8493404)			542
Robert Joseph White, Karen Gaylene White		Big Bay Fishing Limited (9160071)			5,141
Ernest Peter Excell, Jeremy William Excell		Robert Joseph White (8492620)			13,460
Jocelyn Lesley Hodges, Robynne Olive Peacock		Ernest Excell, Jeremy Excell (9490039)			15,316
Piko Limited		Jocelyn Lesley Hodges, Robynne Olive Peacock (9792513)			944
Rosina Basile, John Clayton Meo		Piko Limited (9793590)	2,125		8,650
Damon Jon Cooper		Rosina Basile, John Clayton Meo (9791732)		6,293	
T T F Limited		Damon Jon Cooper (9580010)			1,174
William Hansen		T T F Limited (9792164)			8,873
Giovanni Antonio Basile, Margaret Ann Basile		William Hansen (8460980)			
Kieran John Eggleing, Fay Lynette Eggleing		Giovanni Antonio Basile, Margaret Ann Basile (9791735)	2,389		
Rockfish Trust Limited		Kieran John Eggleing, Fay Lynette Eggleing (9760081)			8,372
Michael Victor Burkhardt, Donna Louise Burkhardt		Rockfish Partnership Limited (9792009)		1,602	
Trevor William James, Vanessa Patricia Brace		M V Burkhardt Limited	21,043		
Brent Ballanlyne		Trevor William James (8461209)			2,003
Hansen Fishing Company Limited		Rambler Holdings Limited (9290032)			9,912
Wendy Anne Burkhardt, Grant Nigel Burkhardt		Hansen Fishing Company Limited (9791877)			3,759
Ate Heineman, Colleen Heineman		Manala Reef Trustee Limited (9792688)			
Glen Leith Investments Limited		Ate Heineman, Colleen Heineman (8483479)	1,457		
Darren Robert King-Turner		Glen Leith Investments Limited (9790029)		3,461	
Andrew Phillip Brookland, Royn Louisa Haggerty, Ronald Garth Haggerty		Saracen Quota Limited (9792131)			12,896
D S MacGibbon Limited		Ronald Garth Haggerty, Robyn Louisa Haggerty (9490002)			10,330
Shirley Marie O'Sullivan, Michael Paul O'Sullivan		D S MacGibbon Limited (9792666)	1,190		9,414
EBD (S.L.) Limited		Shirley Marie O'Sullivan, Michael Paul O'Sullivan (9792494)			250
		EBD (S.L.) Limited (9791998)			396
			66,126	13,971	1,024
					194,834
QUOTA OWN BY FLC SHAREHOLDERS					
TOTAL FLC AND SHREHOLDERS			105,244	23,270	291,029

APPENDIX 3 : FLC purchases of CRA4, CRA7 & CRA8 over past ten years

<u>Date</u>	<u>QRN</u>	<u>Stock</u>	<u>Quota Shares</u>
2007-2008	9740127	CRA4 Neil Lionel Bramley, Leanne Mary Bramley, Douglas Cherswud Bramley	519,930
2008-2009	8451919	CRA4 Kerry William Pike	252,860
2008-2009	9740110	CRA4 Hylton Raymond Wylie, Marion Elaine Wylie, Lesley Jeanette Christian	346,620
2008-2009	9740232	CRA4 Wayne David Phelps, Dianne Rose Phelps, Paul Valentino Debernardo	346,620
2008-2009	8442024	CRA4 Robert Arnold Reriti, Carol Ann Reriti	1,771,577
2008-2009	9790832	CRA4 Andrew Philip Vallance, Ronald Douglas Bruce, Marie Jean Bruce	519,931
2008-2009	9740132	CRA4 Philip Raymond Hawkins, Susan Therese Hawkins	184,749
2010-2011	9340054	CRA4 Neville David Robinson, Jean Robinson	3,284,575
2010-2011	9790937	CRA4 Ocean Beach Fishing Limited	240,602
2010-2011	9791746	CRA4 Taimaha Holdings Limited	102,015
2011-2012	9240017	CRA4 Medea Corp Limited	667,504
2011-2012	9240017	CRA4 Medea Corp Limited	239,145
2011-2012	9740178	CRA4 Blue Buoy Limited	215,035
2011-2012	9740178	CRA4 Blue Buoy Limited	214,254
2011-2012	9790728	CRA4 Luigi Salvatore Ruocco, Luisa Ruocco, John Clayton Meo	160,634
2011-2012	9790937	CRA4 Ocean Beach Fishing Limited	563,394
2011-2012	9792204	CRA4 Fishery Developments Ltd	120,579
2011-2012	9792308	CRA4 Southern Cross Fishing Company Limited	120,578
2012-2013	9140025	CRA4 Tony Muollo	1,510,051
2012-2013	9792210	CRA4 Rehu-Tai Quota Limited (Phillips,Hinds & Broughton)	1,386,482
2013-2014	9740104	CRA4 Bruce Donald Matthews, Vicki Ann Matthews	60,036
2014-2015	9740104	CRA4 Bruce Donald Matthews, Vicki Ann Matthews	26,552
2015-2016	9740037	CRA4 Nigel Ian Emerson, Tanya Emerson	107,088
2015-2016	9740104	CRA4 Bruce Donald Matthews, Vicki Ann Matthews	180,451
2007-2008	9790044	CRA7 John Hector Steffens	2,079,867
2008-2009	9791424	CRA7 John Bruce Scott, Brian Patrick Hailles	4,437,295
2008-2009	9790048	CRA8 Michael David Shand, Kaye Marie Shand	103,520
2008-2009	9791698	CRA8 Michael McLaughlin Coll, Jacqueline Coll	31,056
2008-2009	9790499	CRA8 Garry Edward Neave, Gwen Meyer Neave	834,331
2008-2009	9791698	CRA8 Michael McLaughlin Coll, Jacqueline Coll	25,880
2010-2011	8493468	CRA8 Hellfire Enterprises Limited	196,271
2010-2011	9790159	CRA8 D P Nyhon Holdings Limited	392,542
2010-2011	9790719	CRA8 Lee Alexander Gilbert, Dawn Gilbert	196,271
2010-2011	9791698	CRA8 Michael McLaughlin Coll, Jacqueline Coll	16,879
2010-2011	9792009	CRA8 Rockfish Partnership Limited	51,760
2010-2011	9792265	CRA8 Gioia Company Limited	98,135
2011-2012	8493468	CRA8 Hellfire Enterprises Limited	124,740
2011-2012	8493468	CRA8 Hellfire Enterprises Limited	31,185
2011-2012	9791746	CRA8 Taimaha Holdings Limited	103,950
2013-2014	9791803	CRA8 Aotearoa Quota Brokers Limited	20,582
2014-2015	9791698	CRA8 Michael McLaughlin Coll, Jacqueline Coll	103,950
2015-2016	9760186	CRA8 Balas Investments Limited	135,138
2015-2016	9791698	CRA8 Michael McLaughlin Coll, Jacqueline Coll	103,995

FLC Sales of CRA2, CRA7 & CRA8 over past ten years

<u>Date</u>	<u>Stock</u>	<u>QRN</u>	<u>Buyer</u>	<u>Quota Shares</u>
2008-2009	CRA4	9791755	Kahungunu Asset Holding Company Limited	346,620
2008-2009	CRA4	9791854	Te Anau Fishing Company Limited	346,620
2010-2011	CRA4	9790454	Richard Gordon Hymers	60,150
2011-2012	CRA4	8960133	Lanfar Holdings (No 4) Limited	1,071,321
2011-2012	CRA4	9792666	D S MacGibbon Limited	214,179
2011-2012	CRA4	8451639	Roger James McMillan	214,179
2011-2012	CRA4	9140075	Wairarapa Building Society	107,089
2011-2012	CRA4	9740104	Bruce Donald Matthews, Vicki Ann Matthews	180,451
2011-2012	CRA4	9791431	Pahaoa Fishing Limited	84,815
2011-2012	CRA4	9792307	Sean Julian, Karyn Lynda Julian, Leigh Joseph Horton	214,179
2011-2012	CRA4	9792692	Elan Fishing Ventures Limited	214,179
2012-2013	CRA4	9792666	D S MacGibbon Limited	85,671
2012-2013	CRA4	9792741	Hrisula Peychers, Christopher John Peychers, Michael John Wenley, Morris Wayne Williams	40,694
2012-2013	CRA4	9792741	Hrisula Peychers, Christopher John Peychers, Michael John Wenley, Morris Wayne Williams	33,198
2012-2013	CRA4	9792741	Hrisula Peychers, Christopher John Peychers, Michael John Wenley, Morris Wayne Williams	33,198
2012-2013	CRA4	9791431	Pahaoa Fishing Limited	21,418
2013-2014	CRA4	9791431	Pahaoa Fishing Limited	20,012
2007-2008	CRA7	9190021	Kenneth Ritchie Anderson, Fern Annette Anderson, Roger Neil Wilson	415,973
2007-2008	CRA7	9792009	Rockfish Partnership Limited	831,947
2007-2008	CRA7	9792118	Megan Louise Willans	831,947
2008-2009	CRA7	8483479	Heineman, Ate & Heineman, Colleen Lynne	403,616
2008-2009	CRA7	9190021	Kenneth Ritchie Anderson, Fern Annette Anderson, Roger Neil Wilson	807,233
2008-2009	CRA7	9792009	Rockfish Partnership Limited	807,233
2008-2009	CRA7	9792118	Megan Louise Willans	807,233
2008-2009	CRA7	9792172	Gavin Shane Heineman	807,233
2007-2008	CRA8	9791950	Fast Lobster Holdings Limited	1,794,014
2008-2009	CRA8	8492620	Robert Joseph White	207,039
2008-2009	CRA8	9290032	Rambler Holdings Limited	103,520
2008-2009	CRA8	9290032	Rambler Holdings Limited	103,520
2008-2009	CRA8	9792009	Rockfish Partnership Limited	51,760
2008-2009	CRA8	9792181	Bergin Barry Quota Holdings Limited	25,880
2008-2009	CRA8	9792182	Murray Willans, Tania Maree Willans, Leigh Horton	51,760
2008-2009	CRA8	9792182	Murray Willans, Tania Maree Willans, Leigh Horton	103,520
2010-2011	CRA8	9160069	Alamo Fishing Company Limited	98,136
2010-2011	CRA8	9290032	Rambler Holdings Limited	147,203
2010-2011	CRA8	9791877	Hansen Fishing Company Limited	49,068
2010-2011	CRA8	9791921	O'Sullivan Limited	85,378
2010-2011	CRA8	9792483	South City Management (1990) Limited	98,135
2010-2011	CRA8	9792513	Jocelyn Lesley Hodges, Robynne Olive Peacock	98,135
2010-2011	CRA8	9792561	Noel Dawson Anderson, Judith Elizabeth Anderson, Brett Harry Flintoff	147,203
2010-2011	CRA8	9791746	Taimaha Holdings Limited	49,068
2010-2011	CRA8	9791746	Taimaha Holdings Limited	41,609
2010-2011	CRA8	9790092	Craig Colin Leith, Cheryl Ann Leith	49,068
2010-2011	CRA8	9160072	Shane Warren Metcalf	49,068
2011-2012	CRA8	9792561	Noel Dawson Anderson, Judith Elizabeth Anderson, Brett Harry Flintoff	51,975
2011-2012	CRA8	9792666	D S MacGibbon Limited	25,988
2011-2012	CRA8	9792741	Hrisula Peychers, Christopher John Peychers, Michael John Wenley, Morris Wayne Williams	61,123
2011-2012	CRA8	8492509	W & A Bourke Limited	51,975
2011-2012	CRA8	9792735	Jane Linda Woollard, Sam James Darling, David Quintin Hogg	70,894
2011-2012	CRA8	9792735	Jane Linda Woollard, Sam James Darling, David Quintin Hogg	10,603
2011-2012	CRA8	9792181	Bergin Barry Quota Holdings Limited	13,098
2015-2016	CRA8	8960133	Lanfar Holdings (No 4) Limited	84,200

P.O. Box 17241

Karori

Wellington.

16.4.16.

Dear Inshore Fisheries Management,

I was very alarmed to read Fioriland Lobster Company has applied to hold excess aggregation limits of rock lobster.

- When the quota system was set up we were promised no person can own more than 10% in any management area.

- There are already too many that have been given an exemption of this rule.

- Fishing should not be put at the mercy of company rule and the 10% limit ensures that this doesn't happen.

- I am against any more exemptions being given for excess of aggregation limits.

Karen Simcox.

quota owner - CRA4.

FIN. 9740212.

PO Box 17241

Koroti

WNT.

Dear Managers

I'm vehemently
opposed to any relaxation of the 10%
aggregation rule in Cra 4.

Part of the acceptance of the Quota
system by the original fishers was
the implied contract between the
fishers and the Government that no one
person or company could own more
than 10% of the fishery.

Any relaxation of this rule would
be a breaking of this contract.

Yours faithfully
T L BROSWAMMAN (tin/8440288)
Quota owner.

TL Broswamman

From: Paula Price <paulaprice@orcon.net.nz>
Sent: Wednesday, 27 April 2016 12:29 p.m.
To: FMSubmissions
Subject: Fiordland Lobster Aggregation Limit

Re Fiordland Lobster,

This particular company is greedy, aggressive and controlling.

They manipulate the market and in general are very unpopular with fishermen.

We are cray 4 fishers and up until a few years ago, we landed our crays into their factory.

We decided to sever our ties with Fiordland because one of their director's became very nasty and obnoxious during a conversation regarding our own quota.

Also on several occasions, when we wanted to land crays when the price was high, we were told we couldn't land them. Then when the price had dropped, we were told that we could now land the crays. This was not acceptable to us.

The aggregation limit was introduced for a very good reason, and that is, no one entity could gain control over having any influence on the way the fishery was managed. It also stops competition between the factories on paying a fair price for the fish.

Geoff and Paula Price [Masterton]

From: Michael Bergin <mike.melissa@xtra.co.nz>
Sent: Monday, 2 May 2016 4:45 p.m.
To: FMSubmissions
Subject: Fiordland Lobster Company Limited Application for exemption from rock lobster quota aggregation limits

Dear Sir

I would like to lodge my objection to this application.

This aggregation process has been in place for 20years and seen to be working perfectly. I feel that if one large company is allowed an exemption it will set a precedent for others to follow to the detriment of smaller shareholders like ourselves.

At the moment small amounts of Quota in CRA8 are very hard to come by and should the exemption be granted will become next to impossible to acquire. The last parcel we bought thru FLC had to leased back to them for a five period thus giving them access to quota above their aggregation limit. I am sure that I would not be the only one that this contract applied to.

Your Sincerely

Michael Bergin

Bergin Barry Quota Holding Co Ltd

19/4/16.
PO Box 17241
Kororua
Wellington

Dear Managers
as the sole director
of West Hotel (Fin 8940081) I have
been instructed by the owners to
object to any relaxation of the
aggregation law in Cra 4.

Yours faithfully
T. L. Bromahan (Director)
TL Bromel

From: garth.janline@xtra.co.nz
Sent: Friday, 15 April 2016 11:56 a.m.
To: FMSubmissions
Subject: Re: Application for exemption from rock lobster quota aggregation limit

No. The aggregation limit was put there for a good reason, with which I agree. Exemption is the thin edge of the wedge. The powerful companies would end up with all the quota and control over the fishers.

Sent from Outlook Mobile

On Thu, Apr 14, 2016 at 2:18 PM -0700, "FMSubmissions" <FMSubmissions@mpi.govt.nz> wrote:

Dear all

The Ministry for Primary Industries (MPI) invites submissions from persons or organisations having an interest in an application for exemption from rock lobster quota aggregation limits.

Fiordland Lobster Company Limited has applied to hold rock lobster quota in excess of aggregation limits in the CRA 4 (Wellington/Hawkes Bay), CRA 7 (Otago), and CRA 8 (Southern) rock lobster fisheries.

Under the Fisheries Act 1996, no person can own more than 10,000,000 quota shares (10%) for any one rock lobster quota management area. Fiordland Lobster Company has applied to hold up to 20,000,000 quota shares (20%) in CRA 4, CRA 7 and CRA 8.

Further details of Fiordland Lobster Company's application and the consultation process are available on the MPI website at:

<http://mpi.govt.nz/news-and-resources/consultations/application-for-exemption-from-rock-lobster-quota-aggregation-limits/>

The consultation period closes at 5pm on Friday 13 May 2016.

Kind regards

Inshore Fisheries Management

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The Ministry for Primary Industries accepts no responsibility for changes made to this email or to any attachments after transmission from the office.

18 April 2016

Inshore Fisheries Management
Ministry for Primary Industries

**Submission in support of Fiordland Lobster Company Limited's
application for exemption from quota aggregation limits.**

This submission is from Geoff and Kim Basher.

My husband Geoff and I are commercial rock lobster fishers and quota owners in CRA 5. We have been in the industry since 1983.

Geoff has been a member of the CRA 5 management committee since 1993, and has been chairperson since 2011.

We would like to add our support to FLC's application to hold rock lobster in excess of aggregation limits in CRA 4, CRA 7 and CRA 8.

FLC has demonstrated an ability to support localized fishing industry and communities, and has a strong conservation ethic towards fish stocks and the marine environment.

We believe that FLC holding 20% of the quota shares in the areas applied for will have a positive effect on all sections listed in section 60(3) of the Fisheries Act 1996.

We believe the aggregation limits of all areas should be brought into line with wet fish at 20%.

We have seen and worked with the positive effects of holdings of over the aggregation limits in CRA 5. Ngai Tahu Fisheries Ltd holds 26.76% and Burkhart Fisheries Ltd holds 26.89%.

As fishers we feel this level of holding provides stability to the market and allows a significant level of commitment to the industry, community and environment to develop.

Geoffrey and Kim Basher