

## **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)
<b>CRA 3</b>	210,526	549
<b>CRA 4</b>	9,853,289	46,015
<b>CRA 5</b>	1,342,851	4,700
<b>CRA 6</b>	65,555	236
<b>CRA 7</b>	9,515,469	9,299
<b>CRA 8</b>	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.<sup>1</sup>

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

<sup>1</sup> 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 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. 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:<sup>2</sup>
- 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.<sup>3</sup>

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

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<sup>2</sup> Report provided by FishServe, 16 July 2015.

<sup>3</sup> 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

assessed reliably with regard to the statutory criteria in section 60(3) of the Act.<sup>4</sup> 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 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:<sup>5</sup>
    - 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%)

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<sup>4</sup> 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)

<sup>5</sup> 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.

- 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.

- 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.<sup>6</sup> Given the very low aggregation limits in rock lobster fisheries and the small size of

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<sup>6</sup> This application was lodged with MPI in August 2015.

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.<sup>7</sup>
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.

##### **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

<sup>7</sup> 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

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.<sup>8</sup>
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.
- 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:

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<sup>8</sup> 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%).

- 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”.<sup>9</sup> 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 reputation of New Zealand seafood exports generally. Granting the application will provide social and economic benefits, including

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<sup>9</sup> 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

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](mailto:mark@flc.co.nz)