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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.