

20 May 2016

Inshore Fisheries Management  
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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

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