



Dear [REDACTED]

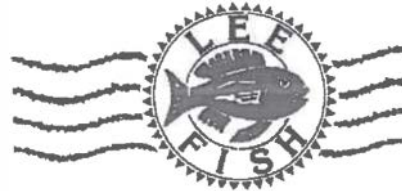
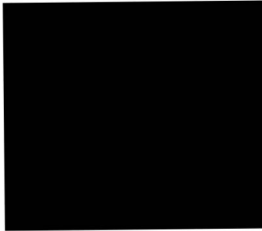
Lee Fish Ltd wishes to continue with its application dated from 31st July 2018 in regards to increased aggregation limits for CRA1.

Leigh Fisheries Ltd/Fisheries 19 was put into liquidation so it could run an asset sale of the business for its shareholders. Subsequently the business has been sold and was bought by Foodstuffs NI.

Due to the business being put into liquidation it no longer has the name Leigh Fisheries Ltd.

Under the new ownership Lee Fish Ltd wishes to continue with its application.

*Kindest regards,
Greg Bishop
CEO
Leigh Fisheries Ltd.*



24 July 2018

Hon. Stuart Nash
Minister of Fisheries
Parliament Buildings
Wellington

By Courier and Email

Email: s.nash@ministers.govt.nz

Dear Minister

**APPLICATION FOR CONSENT TO HOLD ROCK LOBSTER QUOTA IN EXCESS OF AGGREGATION LIMITS
FOR CRA 1**

1. Introduction

- 1.1. This is Leigh Fisheries Limited's (FishServe client number 8620020) (Leigh) application to hold spiny rock lobster quota in excess of the aggregation limits specified in s.59 of the Fisheries Act 1996 (Act). The application is made pursuant to s.60 of the Act.
- 1.2. The quota aggregation limit as set out in s.59(1)(b) of the Act is 10,000,000 shares in any one spiny rock lobster management area (CRA), which is equivalent to 10% of the total allowable commercial catch in each CRA. Leigh currently holds 9,999,847 shares in the CRA 1 rock lobster management area (CRA 1).
- 1.3. Leigh seeks consent to hold up to 20,000,000 quota shares (being 10% above the current aggregation limit) in CRA 1. The application is to hold the CRA 1 quota in perpetuity without condition or restriction.
- 1.4. The overall rationale for requesting consent to increase Leigh's quota is to ensure a sufficient and reliable supply of lobster to enable it to meet its export and domestic commitments and to facilitate business growth in a sustainable manner. This will allow Leigh to maintain its

place as a viable Northland based fisheries company in the increasingly competitive seafood industry.

- 1.5. Please direct any enquiries to Greg Bishop, Chief Executive Officer, [REDACTED]

2. Company background

- 2.1. Leigh is a longstanding and internationally respected participant in the fishing industry. It was founded in 1956 and together with its sister companies in Europe, the United States and Asia forms the Lee Fish group. The company is based in Leigh, Cape Rodney in Northland. This is the heart of the group's global operations.
- 2.2. The Lee Fish brand is recognised around the world as a leader in the industry and as a prime source for premium quality live and chilled seafood. Leigh is widely considered to be the nation's leading exporter of sustainable, wild-caught, premium seafood.
- 2.3. The same export-grade product is also supplied to New Zealand's top restaurants. Lee Fish NZ (the domestic trading arm of Leigh) distributes to over 120 restaurants, lodges and hotels nationwide, targeting the best chefs to showcase our product. All product is graded, packed and processed in Leigh's state-of-the-art EU and FDA approved export facility.
- 2.4. Leigh directly employs 30 New Zealanders and indirectly employs many more. Forty independent boats (directly employing approximately 120 fishers) fish for Leigh from ports in the North Island (particularly in the CRA 1 fisheries area which is an important part of the company's business) with around 30 staff working at the base processing, sorting, and packing the fish. Leigh also has a dedicated transport operation which also employs 18 drivers and staff based at Leigh.
- 2.5. Leigh maintains a close involvement with its local community. It is a major sponsor of the Leigh pre-school, Leigh primary school and the Matakana primary school. Most sport and recreational groups in the Leigh and Warkworth area are supported by Leigh Fisheries. Leigh also supports the local iwi and, with the assistance of MPI, has established pataka for their customary fishing.
- 2.6. [REDACTED]

3. Approach to fisheries management

- 3.1. While Leigh is owned by numerous private shareholders, it conducts its business with a family feel to it. This is because Leigh recognizes that it takes a huge effort from the fishers,

¹ Please treat the information in this paragraph as commercially confidential.

factory staff and marketing subsidiaries to make Leigh a "standout" producer of fresh seafood.

3.2.



3.3. Leigh is one of only two New Zealand fishing companies certified by Friend of the Sea, a European based non-profit, non-governmental organisation whose mission is the conservation of the marine habitat. Friend of the Sea is a leading international certification project for products originating from sustainable fisheries and aquaculture.

3.4. Our aim is to fish as sustainably as possible and to catch product in the most humane way. We do not employ any trawlers as we believe they are unnecessary in the inshore fishery in which we operate. All of our product is sold live or chilled, domestically and internationally. Due to the value of quota we must extract premium value and produce a product second to none. We see our business as being for the very long term, in partnership with our Iwi partners, and the methods we employ are aimed at ensuring the fishery remains sustainable in perpetuity.

4. Current quota

4.1. Attached as Schedule 1 is a printout of the quota stock ownership for CRA 1. The largest CRA 1 quota owner is Iwi owned Aotearoa Fisheries Limited (AFL) with just under 23% of the total. As noted above Leigh holds just under 10%. Leigh Lobster Limited, which for the purposes of s.59(10) of the Act is not included with Leigh, also holds just under 10%. There are approximately 31 other smaller CRA 1 quota holders.

4.2. In addition to the approximately 13,100 kgs of rock lobster quota it owns in CRA1, Leigh also owns lobster quota in CRA2 (1,544) kgs and PHC (5,550kgs).

4.3. As mentioned at paragraph 3.2 above, Leigh also leases in quota and acquires catch entitlement from third parties as necessary to successfully operate its business. A good portion of the leased in quota and ACE is accessed through Iwi partners.

² Please treat this information as commercially confidential.

- 4.4. We are seen as the fishing company in the North. We work with all Northland Iwi not just trading ACE but assisting with development of their youth and best use of their fishing asset. Through Ngati Whatua and MPI we have developed a PATAKA (Pantry) system which is being used by many Iwi and Runanga for their people. We have been in this area for over 50 years and believe we are assisting to have and develop a sustainable CRA 1 fishery for generations to come. We have worked now with three generation of catchers in this area. We have
- employed Data Loggers on vessels to report and get an understanding of the fishery to enable the right science evidence to be collated. With our fishers we monitor the catch in different areas within CRA 1 and will move quota around if we see an area declining and needing to be rebuilt.

5. Reasons for seeking exemption from the aggregation limit

- 5.1. The aggregation limit for rock lobster is relatively low compared to the limits for most other species. Leigh is currently at the limit of its quota ownership for CRA 1.
- 5.2. Leigh's application is based on four main grounds:
- 5.2.1. To provide greater security of product supply so that Leigh can ensure that it maintains a viable business that can meet its obligations to its domestic and international customers.
- 5.2.2. To enable Leigh to continue a sustainable business model in providing the region's fishers with competitively priced quota/ACE packages.
- Leigh does not own or operate fishing vessels. It uses independent operators and leases quota to local fishers. This means that ACE will remain with the fishers and not Leigh.
 - Leigh has always encouraged new fishers into the industry and seeks to provide quota lease packages, as described above, to new fishers.
 - Leigh wants to continue to be able to replicate its offerings to other fishers but is currently restricted in pursuing further business because of the aggregation limits.
- 5.2.3. To enable Leigh to develop and add value across its lobster operations through greater economies of scale.

- Leigh is relatively small company focused on Northland. Its only secure avenue for achieving greater economies of scale in the lobster fishery is through the purchase of additional quota.
- Constraints are currently hindering growth and over the industry as a whole. Leigh's understanding is that quota packages are regularly being sold to competing entities, mainly the larger corporate companies or lwi companies which have the advantage of no aggregation and a more favourable tax regime.

5.2.4. To enable Leigh to maintain a competitive position in the rock lobster market.

- The current aggregation limit is not equally applicable to all competitors.
- Leigh's biggest competitor, AFL, has a statutory exemption from the aggregation limits. AFL currently holds a total of 22,775,482 quota shares for the CRA 1 region and an estimated ACE of 29,850 kg. It holds similar quantities of quota in CRA 3, CRA 4, and CRA 6.
- In other CRA areas quota owners of a similar size to Leigh have been permitted exemptions to the 10% limit in order to facilitate a sustainable level of competition and allow business development which benefits the respective regions fisheries. (Gisborne Fisheries (Gisborne Fisheries (1955) Ltd) – CRA 3; Burkhart Fisheries (Lanfar Holdings (No.4) Ltd) – CRA 5; Fiordland Lobster Company (Deltop Holdings Limited) - CRAs 4, 7 and 8).

5.3. Leigh's application is for a general consent to hold up to 20,000,000 (20%) of quota shares in CRA 1 rather than for an exemption in relation to a specific purchase of quota. Whilst there is no legal impediment to the granting of authorisation for quota aggregation in excess of specified limits where a proposed quota purchase is not identified, we understand MPI has in the past signaled a policy preference for applications to be made where a specific quota purchase is pending. Leigh understands that the intention of this preference is to discourage speculative applications being made and because such generic applications are difficult to assess against the statutory criteria in s.60 of the Act due to the variance in conditions that may exist between the time of the evaluation and the point at which the purchase of quota is eventually made.

5.4. We understand MPI's desire for caution, however, the policy presents very significant difficulties in practice because the process for seeking exemption is (understandably) a relatively lengthy one. CRA 1 quota owners wanting to sell seek immediate sales, and are not generally prepared to wait whilst exemption applications are determined. One of the reasons why Leigh now seeks a "generic" consent is that it has lost a potential purchase

which could not be advanced because of the need to seek an exemption and the delay inherent in that process.

5.5. As a matter of principle, we cannot see why there should necessarily be a distinction between a “generic” application (such as Leigh’s to hold a 10% above the current limit) and an application in respect of a specific proposed transaction. In both circumstances the maximum limit on the quota sought to be acquired is known so that the impact of allowing a particular entity to hold quota at that level can be evaluated. MPI is well versed in assessing the changing fishery, economic conditions and export markets and must make reasonable predictions as to future conditions when considering the factors set out in s.60(3). In this context we note that uncertainty of itself is not a reason to postpone or fail to take measures to achieve the purpose of the Act³. Whether an actual quota purchase transaction subsequently occurs is not, in our view, particularly relevant in undertaking that type of analysis. It is difficult to see any adverse consequences which might arise if consent were granted to aggregate to a particular level on a generic application and that level of aggregation did not subsequently eventuate.

5.6. Circumstances that justify the granting of a generic exemption in Leigh’s case are as follows:

5.6.1. Aggregation limits in other CRA regions have already been exceeded. The impact of permitting Leigh to exceed the aggregation limit in this case can be helpfully assessed by looking at the effects of aggregation exemptions in other CRA regions.⁴ In so far as Leigh is aware the level of aggregation permitted to date has not resulted in any adverse effects.

5.6.2. Requirement for rapid transactions of small CRA quota parcels. CRA quota is tightly held and shares are sold quickly. Quota is sold in small parcels and in most cases there is no warning of a pending quota transaction (which, as noted above, makes transaction specific applications problematic). For the most part, sellers do not bother contacting Leigh because they know it is unable to purchase further shares without making the purchase conditional on successfully applying for and gaining an exemption. Instead, business is going directly to Leigh’s competitors who do not have aggregation restrictions.

5.6.3. High cost of CRA quota. CRA 1 quota shares are highly valued but in the current environment there are in reality only a limited number of other quota holders who have the capital to purchase further quota. As a result, it can be said that the current aggregation limits mean that the market is in fact restricted in a manner which is not

³ See s.10.

⁴ See FLC application (August 2015) which notes that there were at that time 38 exemptions to the rock lobster aggregation limits recorded on the quota register.

conducive to quota sales. A generic exemption from the aggregation limits would allow Leigh to compete on the same basis as its major competitors.

5.6.4. Commercial reasons:

- A generic exemption will give Leigh commercial certainty around the future of its business, without the need to apply for small exemptions with each pending quota purchase. This will allow the company to further invest in the business and develop efficiencies in its processing and export activities.
- Given the low aggregation limits for rock lobster, it is more efficient from a regulatory perspective (and from the perspective of industry participants) to grant a single exemption, rather than having to go through the consultation/analysis/advice/decision process for every proposed purchase of quota.
- The above are not specific criteria mentioned in s.60(3) of the Act, but could fall under the "other matters".

6. Assessment against Fisheries Act criteria

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

- 6.1. Leigh's understanding is that the number of quota shares being traded annually is decreasing. The market is becoming constrained and there are only a few companies that have the scale to be able to purchase at the prices now demanded for CRA quota.
- 6.2. The trend in other CRAs is towards industry consolidation and aggregation. It is important that Leigh is able to continue to participate in the rock lobster market so that it can make access to ACE available to fishers at reasonable rates, so that they do not need to have capital tied up in quota. Leigh has a strong track record of supporting its fishers in this regard.

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

- 6.3. Leigh has a long and successful history of managing and development of fisheries generally and in particular from the CRA 1 region. The withholding of consent would limit Leigh's stake in the area, and deny the company the opportunity to further contribute to the sustainable management of rock lobster.

- 6.4. Granting of Leigh's application would have no impact on other species.

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

- 6.5. Leigh is confident that there will be no long term detrimental effects on other participants in the rock lobster fishery in the CRA 1 region if consent is granted. The increase sought is relatively modest and would be implemented over time so that any changes would evolve incrementally giving other participants more time to adjust.
- 6.6. Leigh's only other spiny rock lobster quota is 1,544 kgs, held in in CRA 2. This equates to approximately 2% of CRA 2 quota. It gives Leigh a small quota base in the area immediately adjacent to its principal spiny rock lobster fishery. Accordingly if Leigh was permitted to increase its quota holdings in CRA 1 that would not result in sales of quota holdings in other areas.
- 6.7. Leigh considers that the granting of the consent sought would:
- 6.7.1. Have a positive effect on other quota holders in CRA 1 who are looking to sell quota. This would be due to there being a larger and more competitive market for further quota sales (in the sense that there would be more players of scale in a position to acquire quota at higher prices) and therefore increasing the potential value of any sales made.
 - 6.7.2. Have a neutral effect on quota owners not bound by the aggregation limits.
 - 6.7.3. Have a neutral effect on quota owners who do not wish to buy or sell quota. Their quota value may, however, increase due to an increase in market competition (in the sense that there would be additional larger players in the market able to pay higher prices).
- 6.8. Leigh believes that there will not be any negative impact on commercial fishers as notwithstanding the granting of consent, the current balance of the market would not be significantly affected.
- 6.9. Leigh considers that positive effects on commercial fishers would include:
- 6.9.1. Leigh would be better able to provide continuity of supply of ACE to its existing fishers and to any other fishers who would like to fish for the company.

6.9.2. Leigh would be better able to continue assisting commercial fishers in entering into quota ownership or leasing arrangements. As outlined above, Leigh currently uses the quota it owns to subsidise leases to independent local fishers. Local fishers would otherwise not be able to afford the ACE price on the open market.

6.10. In relation to ACE dependent fishers Leigh submits that

6.10.1. If consent is granted, the effect on ACE-dependent fishers who do not fish for the company would be positive. Having more than one large supplier of ACE (i.e. in addition to AFL) in CRA 1 would potentially benefit ACE-dependent fishers by improving market competitiveness.

6.10.2. The effect of granting consent (if any) on fishers and quota owners or ACE suppliers who wish to continue with existing relationships will not be significant.

6.11. Leigh acknowledges that this application may be opposed by other participants in the rock lobster industry who believe that the aggregation limits are to be strictly adhered to. That belief is usually on the basis that the limits are required to offer protection to small or independent fishers and quota owners.

6.12. In our view, however, any risks or adverse effects arising from a “generic” exemption are already present in the rock lobster market due to statutory exemptions and granted exemptions, which vary the levels of quota aggregation across the rock lobsters regions. Leigh has a proven track record in dealing fairly and equitably with the fishers who fish for the company. It is a processor and exporter of rock lobster and does not own or operate any fishing vessels. Its business is dependent on the supply by its fishers of lobster for processing and sale. The company thus has a strong interest in ensuring the future supply of lobsters to be processed via the supply of ACE to fishers. Leigh would in fact be harming its own business if it was to control or manage quota or ACE in any way that prevented fishers or small quota owners from operating viable businesses.

6.13. In addition to the above, the granting of consent would create further efficiencies for Leigh which is likely to benefit others in the CRA 1 region. With the scope to purchase further quota shares, several flow-on effects are anticipated:

6.13.1. Further investment in research and development;

6.13.2. More exposure for New Zealand seafood brands in the export market; and

6.13.3. Enhanced management of sustainable fisheries.

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

6.14. Leigh needs secure access to lobster to safeguard its business and the interests of the many who rely on it. It cannot continue to increase its investment in the industry without greater economies of scale. Continued investment is required by companies like Leigh in order for the relatively small New Zealand rock lobster industry to compete in the global export market. The exemption sought would assist Leigh to ensure the continued economic viability of its operations (and those of its fishers) and to futureproof them, and allow investments to be made in further processing infrastructure, technology and marketing with some degree of certainty. Ultimately this will be of benefit to all participants in the lobster fishery.

6.15. In addition, it is worth noting that CRA 1 is a well-managed fishery and has remained constant with very little in the way of new entrants. This has allowed for excellent reporting and, on the whole, a group of fishers wanting to enhance their fishery and maintain it for future generations. The granting of consent would give Leigh further reason to continue to uphold those standards.

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

6.16. The granting of consent would not adversely impact Leigh's ability to take rock lobster in other areas, nor affect its other fisheries.

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

6.17. At a company level, granting consent will provide enhanced security of supply and have a positive effect on the efficiency of Leigh's operations due to increased economies of scale.

6.18. At an industry level, the incremental increase in quota would be positive for the industry. The aggregation limits in rock lobster fisheries in New Zealand create inherent inefficiencies because they slow the process of industry consolidation due to the costs required to seek exemptions, and also because they distort the process and outcome of consolidation through their inequitable application across industry.

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

6.19. The purpose of the Act⁵ is to provide for the conservation, use, enhancement, and development of fisheries resources to enable people to provide for their social, economic, and cultural wellbeing while at the same time ensuring sustainability. In Leigh's view achieving the purpose of the Act necessitates removing barriers to efficient utilization of

⁵ Section 8.

resources and enhancing industry's capacity for collective management, but always with an eye to ensuring sustainability.

- 6.20. No purpose is stated in the Act with regard to the purpose of the aggregation limits, although the general view is that they are in place to avoid anti-competitive behaviour. For the reasons outlined above, Leigh considers that, somewhat perversely, they can have the opposite effect and that in our case an anti-competitive effect is more likely if the status quo is maintained and consent withheld. The fact that provision is made for exemptions is of itself evidence that a "one-size fits all" approach is not always appropriate.
- 6.21. Whilst we accept that this application is not necessarily the place for general consideration of the appropriateness of the current CRA aggregation limits, we note in this context that both the restrictive nature and the effectiveness of the s.59 aggregation provisions have previously been questioned in MPI information papers and decisions.⁶ In our view competition issues are, or should be, the domain of the Commerce Act 1986 and its Part 2 and 3 prohibitions on behaviour which may restrict competition, or mergers/acquisitions which may restrict competition.
- 6.22. Leigh's operations provide significant social and economic benefits to the people of Northland and to the wider economy. Retention of a sufficient quota base by Leigh will assist in guaranteeing the availability to local fishers of access to sufficient catching rights and provides ongoing benefits of employment in the fishing industry. Similarly, a sound commercial quota base will ensure adequate supply of product to our processing factory resulting in stability of employment for our staff and continuity of supply for our customers.

7. Conclusion

- 7.1. Leigh is seeking an unconditional exemption from the aggregation limits in order to allow it to own 20% of CRA 1 quota, being 10% above the current aggregation level. Given the nature of the CRA 1 quota market and the CRA quota landscape generally, Leigh seeks a generic exemption.
- 7.2. For the reasons outlined in this letter, granting of the request sought would allow the sustainable growth of Leigh's business and maintain its position as a competitive player in the export market for rock lobster.

⁶ See FLC case and other decisions.

If you require any further information or wish to discuss and aspect of this application please let us know.

Yours faithfully

Leigh Fisheries Limited

A handwritten signature in black ink, appearing to read 'G. Bishop'.

Greg Bishop
Chief Executive

CC.

Director: Fisheries Management
Ministry for Primary Industries
Pastoral House
25 The Terrace
Wellington

Email: info@mpi.govt.nz

Quota Owned by Stock



Date as at: 13 July 2018

Stock: CRA1 - Spiny Red Rock Lobster

Client	Account	Total shares	Estimated ACE	Restricted	Transferable
8410582 - Alan Dawn, Gaylene Elma Dawn	Normal	2,552,227	3,345		2,552,227
9791292 - Aotea Fisheries Limited	Normal	22,775,482	29,850	22,775,482	
9900100 - Christopher Kenneth Kimber, Russell Howard Manning, Lynda Marie Matthews, Robert Matthews	Normal	5,557,675	7,284	5,557,675	
9900011 - Coral Layon Goldie, Ian Goldie	Normal	762,998	1,000		762,998
9792132 - Cray Meta Fishing Company Limited	Normal	1,068,197	1,400	1,068,197	
9720290 - DSM Limited	Normal	326,563	428		326,563
9792859 - F N G Trustee Company Limited	Normal	2,110,452	2,766		2,110,452
9900095 - Glen John Coulston	Normal	766,050	1,004		766,050
8410038 - Grant Ronald Lyford, Kim Lorraine Lyford, Laurence James MacBrayne	Normal	1,144,497	1,500		1,144,497
8411403 - Hilton James Leith	Normal	1,210,877	1,587		1,210,877
9010051 - John Wayne Goodwin	Normal	1,065,907	1,397	1,065,907	
8820020 - Leigh Fisheries Limited	Normal	9,999,847	13,106	5,449,329	4,550,518
9720173 - Leigh Lobster Limited	Normal	9,999,847	13,106	9,581,724	418,123
8411434 - LM & EV Frear Limited	Normal	6,026,156	7,898		6,026,156
9210023 - Neville Frank Vallance, Sophie Vallance	Normal	762,998	1,000		762,998
9791666 - Ngaitakoto Holdings Limited	Settlement	797,918	1,048		797,918
9110042 - Ngapuhi Asset Holding Company Limited	Settlement	1,362,931	1,785		1,362,931
9791229 - Ngati Kahu Fisheries Limited	Settlement	962,796	1,262		962,796
9792311 - Ngati Whare Holdings Limited	Normal	1,144,496	1,500		1,144,496
9791664 - Ngati Whatua Fisheries Limited	Settlement	1,146,464	1,503	1,148,484	
9900107 - Ngati Whatua Moana Quota Limited	Normal	1,866,293	2,446		1,866,293
9210001 - Ngatiwai Fishing Limited	Normal	3,431,964	4,498	3,431,964	
9791876 - Ngatiwai Holdings Limited	Settlement	1,725,910	2,282		1,725,910
8410350 - Norman Donald Byrne	Normal	2,819,276	3,895		2,819,276
8412123 - Quentin Russell Sanderson	Normal	769,101	1,008		769,101

8400107 - Riiyo Holdings Limited	Normal	344,875	452	344,875	
8411448 - Robert Harold Lovell	Normal	3,814,988	5,000		3,814,988
9410037 - Sandersons Quota Holdings Limited	Normal	2,288,992	3,000	2,288,992	
9792133 - Te Aupouri Fisheries Management Limited	Settlement	797,917	1,046		797,917
8600300 - Te Ohu Kai Moana Trustee Limited	Settlement	924,730	1,212		924,730
9792530 - Te Urungi O Ngati Kuri Limited	Settlement	797,917	1,046		797,917
9791777 - Tuhoe Fish Quota Limited	Normal	1,144,496	1,500		1,144,496
9793430 - Wai Shing Holdings Limited	Normal	1,144,496	1,500		1,144,496
8412524 - Waitere Fisheries Limited	Normal	5,798,019	7,599		5,798,019
9791506 - Whaingaroa Fisheries Company Limited	Settlement	786,650	1,031		786,650

If you have any queries regarding this report please contact the FishServe helpline stated below.