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11 March 2020

Email: [REDACTED]

Received by

13 MAR 2020

MPI

[REDACTED]
Ministry for Primary Industries
Charles Fergusson Building
34-38 Bowen Street
Pipitea
Wellington 6011

Dear Sir,

RE: Pelco NZ Limited

1. We act for Pelco NZ Limited.
2. We are pleased to **enclose** a copy of Pelco NZ's application for consent to hold quota over aggregation limits.
3. A copy has been sent direct to the office of the Minister of Fisheries.

Yours faithfully

OCEANLAW NEW ZEALAND


Karyn van Wijngaarden BSc LLB
Associate

Email: [REDACTED]



11 March 2020

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Email: [REDACTED]

[REDACTED]
Parliament Buildings
Wellington 6160

COPY

Dear Sir

RE: Pelco NZ Limited Application under s60 of Fisheries Act 1996

Introduction

1. We act for Pelco NZ Limited ('Pelco NZ').
2. This application relates to the purchase of quota (the Divested Quota Package) consisting of blue mackerel and kahawai that was previously owned by Pelco NZ.
3. As at 1 January 2019 Pelco NZ, a company that focuses primarily on fishing pelagic species using the method of purse seine fishing, held a total of 13.5% of blue mackerel quota shares and 11.3% of kahawai quota shares. That quota holding was within the aggregation thresholds set out in s59 of the Fisheries Act 1996 (Fisheries Act).
4. As outlined in the **attached** application, Pelco NZ was approached in late 2018 by Sanford notifying that its pelagic fishery assets were for sale, inclusive of both vessels and associated quota package ('Sanford Asset Package'). Pelco NZ had identified prior to this approach from Sanford a need to expand its fishing operations and increase quota holding in these pelagic species in order to strengthen the long term prospects of the company.
5. Unfortunately, the time frame within which Sanford required Pelco NZ to complete the purchase of the Sanford Asset Package did not allow Pelco NZ enough time to make an application under s 60 of the Fisheries Act to exceed the aggregation limits under

the Fisheries Act. Given the critical importance of purchasing the Sanford Asset Package to the company's long term future, it was decided that Pelco NZ would divest itself of sufficient quota then held by the company to enable sufficient head room for the incoming Sanford Asset Package.

6. That Divested Quota Package was sold to an unrelated third party under a contract for sale, which included an option to re-purchase that quota package in the event Pelco NZ made a successful application to exceed the aggregation limits under the Fisheries Act.
7. Pelco NZ is a subsidiary of Pelco Holdings Limited, as is Pelco Quota Holdings Limited. While Pelco NZ has secured the right to re-purchase the Divested Quota Parcel, Pelco Quota Holdings Limited holds the quota that was acquired from Sanford. As the companies are subsidiaries of Pelco Holdings Limited, they are therefore associated entities in terms of s59(10) of the Fisheries Act, and sYB of the Income Tax Act 2007.
8. As a result of this sequence of transactions Pelco NZ, on its own behalf, and on behalf of Pelco Quota Holdings Limited and Pelco Holdings Limited now applies to the Minister under s60 of the Fisheries Act for the purposes of reacquiring the Divested Quota Package.
9. The attached application accordingly relates to a genuine prospective purchase (in this case re-purchase) of an existing quota package. The grounds for the application are set out in full in the attached application and supporting material. Obtaining Ministerial consent to hold quota shares in excess of the aggregation limits is critical to the future profitability of Pelco NZ (a Māori-owned family company). The application document itself is supported by an affidavit of the director of Pelco NZ and additional supporting statements from various other persons.
10. For convenience sake however, we have set out below a brief summary of the principle grounds supporting the application.

Summary of Grounds

11. In submitting this application for approval, Pelco NZ relies on the following aspects:
 - a. Pelco NZ has made a large investment in the purchase of the Sanford Asset Package, increasing its fleet of vessels, the number of permanent employees, and economic contribution to the local economy;

- b. Pelco NZ's profitability relies on continued access to the Divested Quota Package over the long term;
- c. The long-term continuation of the positive impact on economic wellbeing that has been bought about with the expansion of the business, by improving security of business activities relies on access to the Divested Quota Package over the long term;
- d. Similarly, the granting of the aggregation consent will have wide-reaching impacts on social wellbeing on the people of the wider Bay of Plenty area. In particular, the beneficial impact on members of the local iwi that have relationships with Pelco NZ will be enhanced by the granting of the aggregation application. Those iwi that sell ACE packages to Pelco NZ will continue to have a purchaser for those packages. In addition, iwi members will continue to be able to gain employment with Pelco NZ. Numbers have already increased dramatically and Pelco NZ is hopeful that those numbers will continue to increase over time, affording employment opportunities to iwi members that otherwise would not exist;
- e. The ability for iwi to have profitable sales of Treaty settlement quota will continue to enhance cultural wellbeing by ensuring that the quota assets of the iwi realise a return, enabling each iwi to fund initiatives in its own rohe as it sees fit;
- f. Finally, Pelco NZ takes the sustainability of the species it fishes very seriously. Having the ability to fish in accordance with its Small Pelagic Fisheries Plan (drafted in consultation with MPI) allows for enhanced sustainability initiatives to be implemented that has not been possible when the assets were owned by Sanford. Two operators naturally created competition – one operator affords a unique opportunity to approach sustainability in a novel way that accords with the purposes of the Fisheries Act.

Additional Matters

12.

a.

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

13. [REDACTED]

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

14. [REDACTED]

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

Conclusion

15. Pelco NZ has made a significant investment in its future, taking up an opportunity that presented itself with the exit of its respected and trusted competitor.
16. The Divested Quota Package is critical to the success of the investment that Pelco NZ has made. Pelco NZ's long term viability and profitability rests with its ability to obtain consent to hold quota in excess of the aggregation limits.
17. Pelco would like to take this opportunity to extend an invitation to you to visit its premises in Mount Maunganui, meet members of staff and see how the operation runs.
18. If any additional information would assist you in reaching a decision, please do not hesitate to contact us.

Yours faithfully

OCEANLAW NEW ZEALAND


Karyn van Wijngaarden BSc LLB
Associate

Email: [REDACTED]
[REDACTED]

Application to the Minister
of Fisheries for consent to
hold quota shares in blue
mackerel (EMA) and
kahawai (KAH) in excess of
aggregation limits

PELCO NZ LTD

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Executive summary

Pelco New Zealand Limited, Pelco Quota Holdings Limited and their parent company Pelco Holdings Limited seek Ministerial consent to hold quota in excess of aggregation limits (as set out in paragraph 3 below), pursuant to s.60 of the Fisheries Act 1996 (the "Act"). The consent is necessary because, in order to increase profitability and security in its business, Pelco New Zealand Limited (Pelco) purchased Sanford Limited's (Sanford) Tauranga based pelagic operations for [REDACTED] in December 2018 (the "Sanford Asset Package"). That purchase included a package of assets encompassing quota share holdings in key pelagic fisheries (blue mackerel, jack mackerel, kahawai and trevally) along with processing equipment and three purse seine fishing vessels (*San Tortugas*, *San Columbia* and *Western Ranger*).

There was insufficient time available between Sanford notifying Pelco that its pelagic fishery assets were for sale to apply for an exemption under s.60 to enable the purchase to go ahead within the timeframe required by Sanford. In order to secure the Sanford Asset Package, prior to settlement Pelco divested itself of some of its existing quota holdings to a third party to ensure it remained in compliance with the aggregation limits set out in s.59(i) of the Act (the "Divested Quota Package"). The sale of the Divested Quota Package included Pelco having a contractual option to re-purchase all of the divested quota shares, conditional upon Pelco obtaining an aggregation consent before the expiry of the option. The sale of the Divested Quota Package subject to the option for Pelco to re-purchase option comprises quota shares in two species, kahawai and blue mackerel. Exercising the option to re-purchase would increase Pelco's total quota ownership in these species to a level in excess of the aggregation limits set under s.59 (i) of the Act. The re-purchase of the Divested Quota Package is essential to Pelco's future as it underpins the viability of Pelco's acquisition of Sanford's Tauranga-based pelagic operations. Accordingly, Pelco is applying for Ministerial consent to exceed the aggregation limits in these fish stocks to enable the exercise of the option to re-purchase the Divested Quota Package.

More particularly, the aggregation limit for the combined total allowable commercial catches (TACC) for every stock of blue mackerel is 45% and 35% for kahawai. If Pelco is permitted to exercise the option to re-purchase the Divested Quota Package, it would then own 55.304% of all blue mackerel (EMA) quota and 45.993% of all kahawai (KAH) quota. Given that Pelco's quota holdings are not evenly distributed between quota management areas (QMAs) for each species, there is also potential for the aggregate holdings to increase or decrease as a result of TACC changes in individual stocks. In addition to Pelco seeking Ministerial consent to hold quota shares in blue mackerel and kahawai to the amount calculated (rounded up) above, Pelco is seeking authorisation to hold an additional 5% margin to accommodate future TAC/TACC changes. **Accordingly, Pelco is applying for consent to hold quota shares in blue mackerel (EMA) up to 61 % and in kahawai (KAH) up to 51%.**

It is Pelco's submission that consent to exceed the aggregation limits in these fisheries, in accordance with the terms of this application, is justified in meeting the purpose of the Act and based on consideration of specific factors outlined in s.60(3) of the Act.

Consent to hold quota in excess of the aggregation limits will enable economic wellbeing by improving efficiency of harvesting and processing and by improving the security of business activities. It will enable social wellbeing by retaining regional employment in the Bay of Plenty and by direct communication between commercial and recreational fishing activities to reduce conflicts between

sectors. The long term security of Pelco, through the aggregation consent, will ensure that there is continued cultural wellbeing through maintaining a sustainable and profitable outlet for Treaty Settlement quota as well as continuing to provide employment opportunities for iwi members. The aggregation consent will also help to ensure sustainability by enabling improved compliance with sustainability limits and by maintaining and increasing use of an environmentally friendly fishing technique.

In respect of the specific matters that the Minister is required to consider under s.60(3) of the Act, Pelco notes that this application is not speculative in nature and is underpinned by an existing purchase agreement.

The re-purchase of the Divested Quota Package will enable better development of pelagic fisheries by improving catch efficiency and profitability through rationalisation of fishing effort. Sanford's sale of its existing pelagic operations was largely driven by issues of profitability. Sanford's decision to exit these pelagic fisheries underscores the fact that profitability is a barrier to growth in these low value species and that the sustainable utilisation objectives of the Act are best served by allowing for expansion of the sole remaining pelagic fishing business in New Zealand, Pelco, to enable the increase in profitability derived from larger scale operations.

Granting this application will not affect other fishers. That is because the Sanford Asset acquisition simply transferred an existing business operation in its entirety to Pelco. The Divested Quota Package was previously owned by Pelco itself and was only divested for the purposes of complying with the aggregation limits until the application could be advanced. Pelagic fish are a low value international commodity market and Pelco is a price taker on this market, so there is no potential for monopoly activity (positive or negative). It will increase opportunities for Pelco to harvest pelagic species, including the species subject to this application, and reduce potential for inter-sectoral conflict because fishing will be better coordinated across different stocks throughout the year. Withholding consent has the potential to reduce overall economic efficiency, threatening the viability of pelagic fishing in New Zealand, given the need to maintain scale in catching and processing capacity in these low-value fisheries and in light of the relatively small size of fishing opportunities. It will also reduce New Zealand's ability to maintain its interests in highly migratory stocks of skipjack.

These considerations are discussed in detail within this application.

Pelco History

Pelagic Company New Zealand Limited (Pelco) is a family owned and family run business that has a strong affiliation to the community of Tauranga. In addition, the Director and senior managers of Pelco have strong connections to their hapū and iwi. The Rolleston family whakapapa to a number of iwi across the greater Bay of Plenty region and beyond. Pelco estimates that upwards of 70% of its staff are Māori. Because it is a family business, Pelco conducts its operation with the wellbeing of its staff at the forefront. The concept of 'whanau' at Pelco is widely inclusive, where staff become not just employees but also members of the family. This is borne out in many practices at Pelco; staff are paid significantly above minimum wage and family members of existing staff are able to gain employment easily. Pelco provides flexible working arrangements for all its staff – from management through to factory production staff. That Pelco has employees who have been in the company since its inception is a testament to how well this ethos is maintained. The Managing Director of Pelco has taken this approach to Pelco since day one and continues to abide by these principles as the company has expanded to its current size, after the acquisition of the Sanford Asset Package.

Figure 1: Pelco's processing plant and cool store in Mount Maunganui



Pelco is a fully New Zealand owned and regionally based seafood catching and processing company, a medium-sized enterprise with an annual turnover of around [REDACTED] in 2017, located in Mount Maunganui. Pelco currently employs 43 full-time staff and 4 casual staff as well as up to 33 Te Arawa contractors and 10 local contract employees in its processing and marketing operation. In addition, Pelco operates three purse seine vessels fishing out of Tauranga, the *Matariki II*, the *Western Ranger*, and the *Columbia II*, which collectively contract a further 26 fishermen and 2 apprentice fishermen.



Figure 2: Pelco's processing plant and cool store in Mount Maunganui

Processing operations

Pelco is an operation that catches, processes and exports fish, supplying high volume, low value pelagic species frozen for export. In operation for more than 25 years, Pelco invests in quota shares and fishing vessel capacity to ensure a secure fish supply. Pelco's fish are mostly sourced from the fisheries located on the eastern seaboard of the North Island (Fishery Management Areas 1 and 2) using purse seine fishing methods. Pelagic fish targeted and sold include jack mackerel, blue mackerel, kahawai, trevally and skipjack which are all pelagic schooling fish that can be caught using the purse seine fishing method.

Most fish are exported in whole frozen form. Fish are largely supplied for secondary processing into canned product or shipped frozen to developing countries, in particular in West Africa. Pelagic species, such as mackerel and kahawai, are preferred in these countries as this oily fish is highly nutritious and can be preserved by smoking, so it can enter the complex West Africa distribution chain without high costs of refrigeration that is often not available. The fish is sold by distributors directly from containers to local buyers. In some cases, the fish is sold to European countries to supply West African immigrants who favour this type of fish. No part of the fish is wasted as it is sold whole for smoking and direct consumption.



Figure 3: Pelagic fish processed by Pelco is often sold for consumption in West Africa. It contributes to food security, and there is no waste.

Fish sold by Pelco therefore plays an important role in the supply chain as a source of nutrition in a number of developing economies that supplements dwindling local fish catch due to unregulated and unsustainable overfishing of local stocks. Sale of these species into low value developing country markets is, however, highly competitive with similar fish species harvested on a much larger scale in countries such as Chile. These pelagic species consequently have a low value per kilogram when compared to white-fleshed fish which are often preferred fish for eating, at least in Western markets.

Pelagic fish processed by Pelco had an overall export value of around [REDACTED] per annum in 2018.

Fishing operations

Pelco's purse seine fishing operations for the four main pelagic stocks of jack and blue mackerel, kahawai and skipjack, are spread across the fishing year. Fishing for blue mackerel and kahawai generally occur over winter and skipjack, a non-quota species, is targeted over the summer when it migrates down the Pacific. Jack mackerel is fished all year round when vessels are not targeting other stocks (see Figure 4). The schools of fish are spotted using fixed wing aircraft and surrounded by the purse seine net for harvest.

In the 2017/2018 fishing year, Pelco reported [REDACTED] tonnes of fish caught and landed including [REDACTED] tonnes of JMA, [REDACTED] tonnes of EMA, [REDACTED] tonnes of KAH and [REDACTED] tonnes of SKJ. In the 2018/2019 fishing year, Pelco reported [REDACTED] tonnes of fish caught and landed including [REDACTED] tonnes of JMA, [REDACTED] tonnes of EMA, and [REDACTED] tonnes of KAH and [REDACTED] tonnes of SKJ. The comparative increase between the 2017/18 and 2018/19 fishing years occurred because of the increased catching capacity

of the two additional Sanford vessels that were operating from April 2019 for the remainder of the 2018/19 fishing year. All fish landed was processed by Pelco's facility.

In 2017, Pelco employed 10 full-time staff and 25-30 part-time staff in its processing and marketing operation. In addition, prior to the Sanford Asset acquisition, Pelco operated one purse seine vessel fishing out of Tauranga, the *Matariki II*, which employs a further seven seagoing crew.

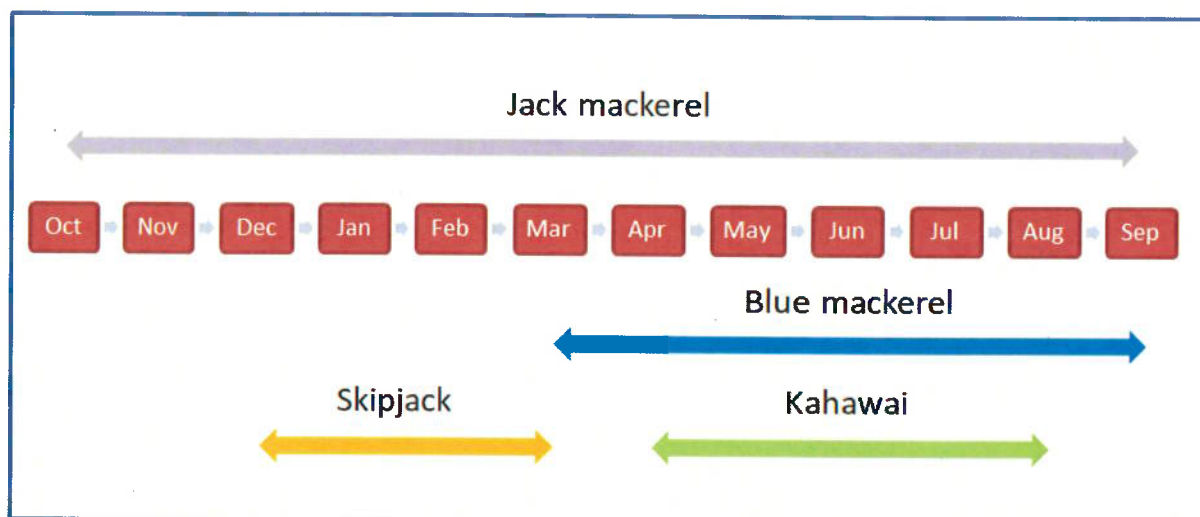


Figure 4: Purse seine fishing seasons for pelagic species

Pelco now operates three purse seine vessels, all harvesting pelagic fish with an expected annual catch in excess of [REDACTED] tonnes, representing a significant increase in catch. The factory also processes whole fish on behalf of other fishing businesses; however, at this stage, Pelco expects that the increase in supply of fish from the vessels will significantly increase the number of days the factory operates. As a result, Pelco has been able to offer a number of casual staff permanent positions.

Interactions with the environment

Fishing using purse seine nets has a low level of bycatch of non-target species.¹ The purse seine fishing method has no contact with the sea floor and is therefore not damaging to benthic species and habitats. Pelco adheres to a policy of full retention of fish on board and to the United Nations International Plan of Action for Conservation and Management of Sharks (IPOA-SHARKS) which controls the objectionable practice of shark finning.

Purse seine fishing does not utilise hooks and bait and so interactions with sea birds are low. The risk to sea bird mortality in purse seine fishing in New Zealand across all fishing was assessed by the Department of Conservation as low or negligible² in 2010 and few interactions have been recorded in the last fifteen years. Risk to marine mammals is also low in New Zealand with only one recorded capture of a fur seal in the last fifteen years and no record of dolphin mortalities.³ Dolphins are

¹ Target catch of the key pelagic species of jack mackerel, blue mackerel and skipjack are between 96 and 99% of total catch by weight. Ministry for Primary Industries, 2018, *Advice for recreational and commercial fishers and information on purse seine fishing in New Zealand*.

² Department of Conservation, 2013, *Level 1 risk assessment for incidental seabird mortality associated with fisheries in New Zealand's Exclusive Economic Zone*. DOC Marine Conservation Services Series 10, p49. <https://www.doc.govt.nz/Documents/science-and-technical/dmcs10entire.pdf>

³ Ministry for Primary Industries, 2017. *Aquatic Environment and Biodiversity Annual Review, 2017: A summary of environmental interactions between the seafood sector and the aquatic environment*. Only capture of a fur

occasionally trapped in the purse seine when it is first closed. In such cases, the marine mammals can be observed and released unharmed (for example, the 2017 Stuff News report on accidental catch of dolphins by the *San Columbia* which, at the time, was owned and operated by Sanford).⁴



Figure 5: Dolphins encircled in a purse seine net operated by the *San Columbia* and later released unharmed (Source Stuff News, 2017)

Fish stock sustainability

Purse seine fishing operations targeting pelagic fish are often wrongly perceived to be unsustainable due to the large quantity of fish observed caught in single events. They are in fact highly sustainable both from the perspective of environmental impact as noted above and from a stock management perspective. Blue and jack mackerel, kahawai and trevally species are managed under the QMS and subject to TACC limits set at sustainable levels. Pelco's fishing activity is bound by these sustainability limits which are set by the Minister of Fisheries based on best available scientific information.

The Ministry for Primary Industries' (MPI) assessment of the status of kahawai and trevally stocks is that there is a 90% probability that they are being managed at, or above, target levels.⁵ While insufficient information is available to formally assess the status of blue mackerel stocks, in terms of whether harvesting is at target levels, based on historical catch records the most recent stock assessment advice is that current commercial fishing mortality can be sustained⁶. New Zealand's fishing of skipjack tuna, which is a non-QMS species, forms a very small proportion (0.6%) of total catch in the Western Central Pacific, and maintaining catch history by New Zealand vessels in this species remains important for securing New Zealand's future interests in this fishery. Current catch of skipjack is thought to be sustainable⁷. Pelco also remains committed to fishing this species without the use of Fishery Aggregation Devices (FADs) therefore limiting bycatch of more vulnerable stocks such as bigeye tuna.

Jack mackerel stock status, encompassing three species, is less certain relative to target reference points and is complicated by the apparent reduction in abundance of the invasive Chilean jack

seal was recorded in all purse seine fisheries between 2001 and 2015, p114. There were no observed common dolphin captures in the purse seine fishery during the same period, p180.

⁴<https://www.stuff.co.nz/national/90979228/dolphins-saved-from-purse-seiner-fishing-net-off-tauranga-coast>

⁵<https://www.mpi.govt.nz/dmsdocument/34419-the-status-of-new-zealand-fisheries-report-2018-final>.

⁶<https://www.mpi.govt.nz/dmsdocument/18331-fisheries-assessment-plenary-may-2017-volume-1-introductory-section-to-groperp179>

⁷Ministry for Primary Industries, 2018 Information Sheet – *Advice for Recreational and Commercial Fishers, and information on purse seine fishing in New Zealand*. <https://www.mpi.govt.nz/dmsdocument/27363-2018-purse-seine-fishing-fact-sheet>

mackerel (potentially due to fishing on this stock outside of New Zealand waters).⁸ Potential future TACC changes in the jack mackerel fisheries place even greater importance on this application as catching rights to the mackerel fishery will affect annual fishing plans and profitability of the Pelco purse seine fleet as a whole. In this respect, specialist purse seine operations have fewer options for redeployment of effort across fisheries than, for example, trawl fishers enjoy.

Pelco is committed to a science based approach to management of pelagic fisheries and to that end has developed a Small Pelagics Fisheries Plan, as referred to in the Affidavit of Andrew Rolleston, that actively supports and supplements the collection and analysis of scientific data used to assess the status of stocks and inform management decisions.

Interactions with recreational fishers

Pelco maintains an active and constructive relationship with recreational fishers aimed at minimising fishing conflicts and raising awareness of the sustainability of Pelco's operation. Pelco is improving its relationships across the recreational sector and is adapting its fishing plan to eliminate active competition during the height of the recreational activity. Purse seine fishing operations are, as far as possible, carried out offshore, away from key recreational fishing grounds at times of the year when the fish school further out (see timings noted above). Pelco abides by MPI's recommendations for managing interaction with recreational fishing and avoids fishing on schools where recreational fishing is already occurring.⁹ Pelco takes its association with the recreational sector seriously. There has been an ongoing relationship with members of the recreational fishing community for a number of years, most recently through the Sports Fishing Council. That relationship remains an important focus for Pelco.

Interactions with customary fishers

Pelco operates as a key partner for iwi and considers the partnership to be of the utmost importance. While Pelco is generally in the market for pelagic species ACE, it is recognised that a number of species that iwi hold ACE for are generally not caught and therefore are of very little value. For that reason, Pelco purchases ACE as a package. The package includes the species that Pelco fish as well as species, for example, anchovies that are not caught by Pelco or any other fishing company. For many years, Pelco purchased an ACE package of approximately [REDACTED] tonnes of inshore species of Annual Catch Entitlement ("ACE") from Te Arawa iwi for inshore species and [REDACTED] tonnes of ACE from the Iwi Collective Partnership (ICP). Securing Pelco's future in the manner that the purchase of the Sanford Asset Package and the Divested Quota Package has done has wider benefits for iwi in the Bay of Plenty area. The ongoing purchase of [REDACTED] tonnes of ACE annually from Ngati Ranginui iwi, Pare Hauraki iwi and Whaingaroa iwi has a positive impact on these iwi who are ICP members. In addition, Pelco has an ongoing contractual commitment to provide employment opportunities to Te Arawa iwi. The current increase in demand for casual employees will only be sustainable with access to the Divested Quota Package. Those casual employees are sourced predominantly from Te Arawa iwi, as detailed in the affidavit of Marc Andrew Tauwhitu Rolleston. Pelco also employs a large number of Māori living in the Bay of Plenty. As at 20 January 2019, 78% of workers employed by Pelco were Māori. [REDACTED]

⁸<https://www.mpi.govt.nz/dmsdocument/18334-fisheries-assessment-plenary-may-2017-volume-2-hake-to-pilchard> pp575-599

⁹Ministry for Primary Industries, 2018 Information Sheet – *Advice for Recreational and Commercial Fishers, and information on purse seine fishing in New Zealand*.

Commercial viability of Pelco pre purchase

The commodity nature of pelagic fish species, and the low and competitive margins available, means that fishing and processing operations on pelagic fish in New Zealand are required to be highly efficient and have security of supply to compete internationally over the long term. Maximising efficiency necessitates sufficient scale in both harvesting and processing operations, as well as diversity across fishing portfolios to optimise use of vessel capacity. Security of supply requires access to quota shares at least at a level to maintain profitability of core assets, which in Pelco's case, now includes the newly acquired vessels and processing operations.

The relatively limited size of New Zealand stocks of pelagic species also means that only one or two such medium to large scale operations can remain viable with the amount of fish sustainably available each year. Pelco, along with Sanford, were the only companies that maintain a dedicated pelagic fishing operation in key pelagic fisheries located within New Zealand. Pelco is the only company in New Zealand that solely specialises in pelagic fisheries.

Prior to the purchase of Sanford's pelagic business, Pelco owned 13.5 % of blue mackerel quota shares and 11.3% of kahawai quota shares (in aggregate). In addition, Pelco holds a small holding in jack mackerel (2.6%) and other minor shareholding in bycatch species, particularly trevally. To make operations profitable, access to fish supply was supplemented through purchase of ACE on an annual basis, particularly from local iwi. In 2018, Pelco purchased an additional [REDACTED] tonnes of ACE in total, including ACE equal to [REDACTED] of the annual ACE available in the blue mackerel fishery and [REDACTED] of the ACE available in the kahawai fishery. The granting of this application will not affect the ACE supply market as Pelco has already factored into its operations the purchase of similar quantities of ACE on the open market. In that regard it is noted that ACE is not subject to aggregation limits.

Total ACE purchased	[REDACTED]
EMA ACE purchased	
JMA ACE purchased	
KAH ACE purchased	

Table 1: ACE purchased by Pelco in 2017/2018

Pelco's profit margin in 2018 before tax was approximately [REDACTED]. This profitability was, however, returned in an environment highly reliant on access to iwi ACE and with strong price and exchange rate conditions with a relatively modest capital investment (i.e. one vessel). In order to build business resilience and expand the scope of the operation, Pelco determined it was necessary to increase the scale of its business thereby enabling efficiencies in fishing (operating one fishing vessel limits opportunities for collaboration and rationalisation of effort) and processing (using one rather than two plants).

Prior to 2018, as Pelco identified future growth opportunities might be available, it became apparent that all future growth opportunities were limited by ACE supply and catching capabilities. Pelco was considering purchasing a further vessel to support harvesting activities. Such a significant investment carried high risk without also securing fish supply through purchase of quota shares. Previously the

opportunity for Pelco to secure its supply through purchase of quota shareholdings was limited because a large proportion of the pelagic quota was held and fished by Sanford, including 42% of all New Zealand blue mackerel quota and 34.7% of all kahawai quota¹⁰.

The purchase of the Sanford Asset Package has not increased Pelco's profitability or potential future growth opportunities as it was necessary for Pelco to divest itself of a substantial portion of its pre-existing quota holdings in order to accommodate the Sanford Asset Package within applicable legal constraints. If anything, the Sanford Asset Package has increased the overall costs of Pelco's operations and decreased profitability, unless Pelco obtains Ministerial consent to reacquire the Divested Quota Package. The re-purchase of the Divested Quota Package is critical to Pelco's future development and profitability.

Purchase of Sanford pelagic business

In 2018, Pelco became aware that Sanford intended to divest itself of its pelagic fishing operations in Tauranga.

Sanford was acutely aware of the difficulties associated with smaller scale pelagic fishing operations evidenced by the offers to purchase the Pelco operation on several occasions¹¹. The crucial factor in Sanford seeking to acquire Pelco assets and ultimately divest their own, was the tight margins and profitability barriers inherent in the pelagic fishery. That was part of a wider organisational restructure aimed at focusing on value-added products in high value species. Sanford's Tauranga-based pelagic operations included three purse seine fishing vessels, *San Tortugas*, *San Columbia* and *Western Ranger*, a 42% parcel of quota shares in blue mackerel, a 16.5 % parcel of quota shares in jack mackerel, and a 34.7 % parcel of quota shares in kahawai. In addition, there was processing plant and equipment associated with its Tauranga pelagic operation that was also to be sold. The annual fishing capacity of the three vessels of approximately tonnes is largely serviced by the ACE derived from the quota parcel that was part of the package for sale as the Sanford Asset Package. The quota parcel represented approximately tonnes of ACE in 2018.

Selling this part of its operations as a package provided the best opportunity to Sanford for a successful and well-priced sale as it included both quota and fishing vessel capacity suitable to fish the ACE derived from the quota in the package. Separating the vessels from the quota shares for sale or disaggregating the shareholdings for sale would reduce the overall value both in terms of the value of the vessels and the quota shares. Sanford estimated that separating the assets for the purposes of sale would reduce the overall value by approximately NZ\$ million.¹²

The sale of the Sanford Asset Package was driven by Sanford's view that there was limited potential for growth in its pelagic operations and the limited profitability of these operations. Sanford's assessment of its pelagic operations largely reflected Pelco's own assessment of Pelco's operations prior to the acquisition of the Sanford Asset Package.

Ownership of the two packages (Sanford Asset and Divested Quota) will provide Pelco with a unique opportunity to expand its pelagic business in a way that not only secures future ACE supply to its

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vessels, but also ensures supply of fish to markets at sustainable levels. In addition, the acquisition of the quota packages and vessels enables catching and processing efficiencies to be introduced. Importantly, it also removes the need for Pelco to buy an additional vessel in the short term which would otherwise increase overall purse seine capacity in the fishery needlessly. [REDACTED]

In order to secure the Sanford Asset Package in its entirety, as was necessitated by the circumstances, Pelco was required to divest itself of a package of quota to ensure it remained in compliance with the aggregation limits set out in the Act.

The Divested Quota Package was sold to a third party, and is currently held by the purchaser, subject to a contractual option to re-purchase this quota, upon the obtaining of an aggregation consent.

The re-purchase of the Divested Quota Package will increase Pelco's shareholdings in two key pelagic species, namely kahawai and blue mackerel, across a range of quota management areas. Table 2 below summarises Pelco shareholdings of these species in terms of percentage of total available tonnage held before the Sanford Asset acquisition and in the event the option to re-purchase is exercised ([REDACTED]).

Species	% before purchase	% after purchase excluding Divested Quota Package	% including Divested Quota Package
Blue mackerel	13.477	45.00	55.304
Jack mackerel	02.599	19.057	19.057
Kahawai	11.293	35.00	45.993
Trevally	00.410	12.141	12.141

Table 2: Pelco quota share aggregation by species before and after purchase of Sanford quota

Commercial viability of Pelco post purchase

The purchase of Sanford's pelagic operations together with the re-purchase of the Divested Quota Package has important consequences for Pelco;

- i) It enables Pelco to secure its supply base through the purchase of quota shares. From a financing perspective, this is critical as it underpins the financing arrangements for vessels and the profitable operations of the fishing fleet. It will also future-proof fishing operations in the event of TACC reductions in some stocks (e.g. jack mackerel);
- ii) It enables Pelco to introduce catching sector efficiencies through rationalisation of capacity. In this regard it removed the need for Pelco to expand its fishing operations through the purchase of an additional vessel and enables even greater efficiencies by retiring one existing vessel from fishing. Improved efficiencies will be made possible through better coordination of fishing effort;
- iii) It enables Pelco to reduce processing costs per kilo increasing overall profitability in the sector;
- iv) It widens Pelco's market reach by increasing the quantity and continuity of fish it can offer for supply; and
- v) The increased volume of fish provides significantly greater levels of continual employment for Pelco processing workers and ensures that Pelco's future is secure, thereby encouraging its

continued economic contribution to the local economy, maintaining and improving social and cultural wellbeing.

The combined effect of the re-purchase of the Sanford Asset Package will be to cement Pelco's competitiveness in the international fishing market and ensure its long-term viability in the face of operational risks (such as poor weather and breakdowns) and price and exchange rate shocks out of Pelco's control. In this environment Pelco projects that it would only be able to realise a modest overall profit margin if access to iwi ACE and the quota package was not available. This would only allow a 10% downward movement in price or supply before the Pelco business would become uneconomic. Such circumstances make business activities highly risky given that international prices have varied downwards by as much as 15% in recent years. Retaining the Divested Quota Package therefore has a material impact on Pelco's business as it adds security to the supply of additional ACE and an additional % of profitability buffer that would not be subject to the vagaries of ACE market supply.

In addition, the re-purchase of the Divested Quota Package will enable Pelco to increase regional employment and investment in Tauranga which was not guaranteed if the Sanford sale was sold through a disaggregated process. Post re-purchase of the Divested Quota Package, Pelco will be increasing its processing operations in Mt Maunganui to accommodate the expansion of activities and also increasing employment and support activities associated with the additional vessels. At the very least, this will secure regional operations that would have been discontinued without the sale. It will also have significant multiplier effects on the local economy through the supporting activities of service industries.

Pre and post purchase numbers of staff employed at Pelco, along with overall impacts to the regional economy, are summarised in Table 3.

Company	Pre Sanford deal (Jan 2019)	Post Sanford deal (9 Sept 2019)
Pelco	25 Full-time 25 Casuals 78% Māori (39 workers)	43 Full-time 4 Casuals 55% Māori (26 workers)
Te Arawa Iwi	11 contract workers (on average) 100% Māori	20-33 (Estimate) 100% Māori
First Call (contract labour)	0	10-15 (Estimate)

Table 3: Regional employment and economic impact

In Table 4 below, the number of days the factory has operated prior to and post the Sanford Asset acquisition is compared. The operating days directly correlate to the number of days casual and contract workers (e.g. Te Arawa Mahi) are offered work. For example, in October 2018 the factory operated for 43% of the month, which equates to 13 days. This compares with 77% in October 2019 or 24 days. This means that casual and contract workers were offered work for 13 days in October 2018 and 24 days in October 2019. Additional full time staff have been taken on by Pelco, on the basis that Pelco will operate at full capacity, which includes the Divested Quota Package. If the consent to exceed aggregation limits is not granted, and Divested Quota Package is not able to be secured by Pelco, then the current levels of staffing will decrease.

	2019/20		2018/19		2017/18		2016/17		2015/16	
	Days	% Used	Days	% Used	Days	% Used	Days	% Used	Days	% Used
April	5	19%	6	22%	1	4%	8	30%	18	67%
May	16	52%	4	13%	8	26%	8	26%	11	35%
June	13	45%	7	24%	19	66%	19	66%	11	38%
July	12	39%	10	32%	9	29%	12	39%	6	19%
August	9	29%	5	16%	0	0%	5	16%	5	16%
September	12	40%	5	17%	2	7%	6	20%	8	27%
October	23	77%	13	43%	12	40%	15	50%	19	63%
November	25	83%	11	37%	14	47%	12	40%	14	47%
December	18	62%	6	21%	9	31%	10	34%	16	55%
January	20	71%	8	29%	6	21%	7	25%	8	29%
February			3	12%	1	4%	13	50%	8	31%
March			8	26%	6	19%	19	61%	9	29%
Total	46		86	24%	87	25%	134	38%	133	38%

Table 4: Comparison of number of days casual and contract workers were offered work pre- and post-Sanford Asset acquisition

Consequence of aggregation limits

Pelco has secured the necessary financing for the re-purchase of the Divested Quota Package and the only constraint to taking up the option is the impact of the quota aggregation limits established under s.60 of the Fisheries Act 1996. Proposed quota share purchases in two species, kahawai and blue mackerel, would increase Pelco's ownership of quota shares in these species to a level in excess of the limits specified.

The aggregation limit for the combined total allowable commercial catches for every stock of blue mackerel is 45% and for kahawai it is 35%. If Pelco proceeds with the re-purchase of the remaining quota, it will own 55.304% of all blue mackerel (EMA) quota and 45.993% of all kahawai (KAH) quota. Shares in excess of the aggregation limits represent about 1,190 tonnes of blue mackerel quota and 300 tonnes of kahawai quota worth between NZ\$1.6 and NZ\$3.7 million.¹³ Calculations of aggregation amounts are [REDACTED]

A sensitivity analysis also shows, for example, that a 20% TACC increase in Fisheries Management Area 1 stocks, where Pelco has the highest holdings of quota to support its business, would increase its aggregation percentage to 58.029 and 46.737 tonnes for blue mackerel and kahawai respectively. This is simply because aggregation limits are based on ACE generated in a particular year calculated as a percentage of TACC limits which, if varied, change the aggregation amount. Such changes are outside the control of Pelco, and it is proposed that the Minister provide an additional 5% margin to

¹³ Indicative prices calculated as the range of high ACE prices reported in the 2015/16 fishing period across QMAs (i.e. EMA \$150-250, KAH \$200-650) and converted to quota value by dividing ACE price by a quota dividend price ratio 0.15.

accommodate at least some of this potential change. **This would increase the application for aggregation consent to 61 % for blue mackerel species of abundance and 51 % for kahawai.**

Pelco has investigated the option of divesting some of the quota shares on a permanent basis, but the consequences are that investments and financing of associated vessel and processing capacity are significantly undermined, particularly given that the purchase was [REDACTED]. To be viable, each vessel requires an annual portfolio of catch. While it is feasible to balance some of this catch with ACE that is purchased on an annual basis, this can only be for a proportion of the catch. This is because buying ACE annually is uncertain, subject to significant price fluctuation, and is not of sufficient volume to secure the financing for such large assets as purse seine vessels and equipment. Moreover, it is important to note that catch of skipjack tuna, a non-QMS species, is highly variable and Pelco requires reliable access to significant ACE in other stocks to protect against the high degree of variability in the skipjack supply.

Implications of the purchase for the integrity of the QMS

Pelco is committed to maximum efficiency whilst implementing principles of sustainable utilisation and to that end has developed a Small Pelagics Fisheries Plan to support scientific data collection and analysis, as noted above and referred to in the Affidavit of Mr Rolleston.

It is also critically important to have sufficient quota to cover expected catch requirements of vessels to maintain the integrity of the Quota Management System itself. Recent catch of some pelagic species has exceeded TACC levels and attracted Deemed Value payments (for example EMA landings exceeded the TACC with resulting Deemed Value payments in three out of the last ten years). This over-catch occurs in large part because ACE trading between competing operators is not well coordinated and each company over-caught on historical expectations of market ACE availability that did not eventuate. This problem is a consequence of the very small size of the pelagic fisheries relative to the number of operators that can operate viably. These coordination problems will be improved significantly as a result of the purchase and rationalisation of fishing effort into one integrated operation.

Similarly, there are considerable additional environmental and social advantages made possible through the rationalisation of fishing effort and vessel operations. While environmental interactions are minimal, these will be even further reduced as less time will be spent fishing. The ability of the industry to manage potential conflict with recreational fishing activities will also improve. As noted earlier, Pelco maintains a close working relationship with key recreational fishing groups to minimise opportunities for conflict, particularly during the summer season. Vessel coordination aimed at avoiding such conflict will be improved as a result of the Sanford Asset acquisition, something that was not possible when the fleet was split between Pelco and Sanford. The three vessels that will continue to operate will all do so subject to the vessel management plan, including observing the courteous arrangements with the recreational fishers. MPI has initiated a meeting between the commercial purse seine sector and New Zealand Sport Fishing Council to discuss interactions between the two sectors. Three meetings were held during 2019. The meetings have been positive and have opened communications between Pelco and the NZSFC, which assist in ensuring the sectors are not in direct conflict or in competition for fishing grounds.

Fisheries Act 1996 S60 (3) considerations

General considerations- proof of purchase

Pelco notes that some 90 applications for aggregation exemptions have been granted in the past by the Minister with few such applications declined in their entirety.¹⁴ A key consideration in the granting of prior consent has been the ability of the applicant to demonstrate proof of pending purchase so that potential impacts of the application can be properly assessed. In practice, MPI has advised the Minister that he is entitled to give preference to granting an application where a pending purchase can be demonstrated. Indeed, a number of applications for exemption have been granted based on proof of quota purchase.¹⁵

The purchase of Sanford's Asset Package and operations forms the background to the re-purchase of the Divested Quota Package that has been known publicly since December, 2018 (see Sanford media release attached as [REDACTED]). Details of the sale of the Divested Quota Package are outlined in the attached copy of the agreement ([REDACTED]) which also provides the option to re-purchase the Divested Quota Package in the event consent is granted under s.60.

General considerations – purpose of aggregation limits

MPI's advice is that the purpose of quota aggregation limits set within the Act, as reported to Parliament by the Select Committee, was to "prevent monopolistic behaviours" and "protect smaller fishing operations". While recommending a low aggregation for inshore fisheries such as paua and rock lobster, the Select Committee nonetheless recognised that such low limits were not appropriate for other fisheries that require substantial investment to enter and, to be internationally competitive, require economies of scale. Accordingly, the Select Committee recommended that higher aggregation limits be set in such fisheries.¹⁶ The pelagic fisheries that are the subject of this application are fisheries recognised by the Select Committee as requiring higher aggregation limits.

In practice, the limits set in the Act for the two species being considered in this application were 45% for blue mackerel and 35% for kahawai. These limits were, however, set on the basis of general understanding of why higher aggregation allowances were required in such fisheries. Pelco's view is that the specific characteristics of pelagic fishing now warrant more specific consideration and in this respect should not be seen as setting a precedent across all fisheries. Specifically, these characteristics are the specialist and high investment cost fishing technique (i.e. purse seining) combined with the low value of these fishing stocks and the relatively small size of the fisheries relative to the scale of fishing needed to be economically viable. These factors justify consent to a higher aggregation limit to maintain the viability of fishing opportunities for pelagic stocks. These characteristics also militate against having an effect on smaller scale harvesters as fishing activities at smaller scales are unlikely to be viable over the long term and Pelco is not aware of any competition in this space.

There is, moreover, no suggestion or justification that the consent to allow increased aggregation of quota ownership in these pelagic fisheries will result in monopolistic actions. The term "monopoly" is

¹⁴ Ministry for Primary Industries, September, 2017. *Application from Fiordland Lobster Company for consent to hold rock lobster quota in excess of aggregation limits: Decision Document*. MPI Information Paper No: 2017/10, p6-7.

¹⁵ Ibid, p7.

¹⁶ Parliamentary Debates (Hansard), Volume 471, p 2378-79.

generally used in this regard to describe the actions of owners of a good, in this case quota shares, who act in an anti-competitive manner to manipulate market prices by managing supply thereby disadvantaging consumers. While it is not always the case that such action is to be avoided, for example, it may be in New Zealand's interest to control supply of some goods to gain a higher international price where there are few substitutes for such goods, it is not a consideration in the pelagic fishery business given that New Zealand is a very small supplier in a large international commodity market and has little ability to influence price.

It is also the case that the term "monopoly" is often misapplied to describe situations where control is exerted over supply from fishers in a way that enables price paid for such supply to be reduced. This effect is often called "transfer pricing" in the seafood sector where profits are taken higher in the value chain. Given that Pelco's pelagic operations will be vertically integrated, the effects of transfer pricing are moot and have no implications for fishers and other quota owners. Purchase of additional ACE, including from iwi, will continue to be carried out on an open market and competitive basis.

As noted by MPI, *"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.)."*¹⁷ There is no basis for suggesting this application will result in anti-competitive behaviour to disadvantage small-scale fisheries as the proposed re-purchase of the Divested Quota Package by Pelco is not in competition with such operations.

General considerations – Purpose of the Fisheries Act 1996

When making any decision under the Act, the Minister is obligated to ensure that his decisions are consistent with the Purpose and Principles of the Act. There are a number of matters raised in the introductory section of this application that demonstrate benefits measured against this statutory purpose as follows:

The aggregation consent will provide for utilisation by enabling economic wellbeing

The grant of consent will enable economic wellbeing by supporting the establishment of a viable business operation that can maximise efficiency in harvesting and processing and is of sufficient size to be economically sustainable into the future. Granting of consent will also help future-proof Pelco's operations against TACC changes applied to ensure sustainability.

The aggregation consent will provide for utilisation by enabling social wellbeing

The grant of consent will enable Pelco to retain financially viable seafood fishing and processing operations at regional level in Mt Maunganui and, through ongoing and improved collaboration with the recreational fishing sector, it will help minimise fishing conflict and improve recreational access.

The aggregation consent will provide for utilisation by enabling cultural wellbeing

¹⁷ Ministry for Primary Industries, September, 2017. *Application from Fiordland Lobster Company for consent to hold rock lobster quota in excess of aggregation limits: Decision Document*. MPI Information Paper No: 2017/10, p6-7, Appendix 3.

The grant of consent will enable Pelco to maintain a specialist and efficient pelagic fishing operation in New Zealand that will provide a sustainable outlet for profitable partnerships with iwi and an associated opportunity for iwi employment at a regional level. Pelco will also continue to support iwi in the access to fish through koha.

The aggregation consent will help ensure sustainability

The grant of consent will reduce impacts on the environment by maintaining and increasing use of an environmentally-friendly fishing technique (i.e. purse seine rather than trawl) which has few bycatch and no bottom impact issues if managed well. It will also help improve compliance with sustainability limits by allowing improved vessel planning and coordination to enable better compliance with TACC limits through limiting use of Deemed Values.

Fisheries Act 1996 - Section 60 considerations

Section 60(3)(a) considerations

The option to re-purchase the remaining quota arises out of this transaction.

Section 60(3)(b)(i) considerations

Withholding the consent has the potential to significantly reduce investment in the development of pelagic fisheries, including blue mackerel and kahawai fisheries, in more southern parts of the New Zealand Exclusive Economic Zone. Pelco is committed to extending its purse seine operations throughout the range of these fisheries which is made possible through the expansion of its fleet and secure ACE supply.

Section 60(3)(b)(ii) considerations

The transaction which forms the background upon which this application is made, encompassed the existing Sanford pelagic fishing fleet and therefore the re-purchase of the Divested Quota Package will not result in a redistribution of fishing effort away from other fishers. Existing arrangements for accessing ACE for bycatch of these fish species (where it exists) will be largely unaffected. Transfer pricing effects in the value chain have little relevance as returns to vessels are part of an integrated operation and so there is little impact on other quota owners or commercial fishers.

Section 60(3)(b)(iii) considerations

Existing processing capacity will be transferred from Sanford to Pelco which will enable the rationalisation of costs and improved efficiency in operations. Pelagic fish is a low value commodity market and Pelco is a price taker on this market, so there is no potential for monopoly activity (positive or negative). Pelco already markets pelagic fish internationally and has access into these markets for additional capacity. The increased supply available will improve these market opportunities by providing better continuity and scale in supply.

Section 60(3)(b)(iv) considerations

The granting of consent for blue mackerel and kahawai aggregation will improve opportunities for Pelco to harvest other pelagic species, particularly skipjack and jack mackerel. This is because the catching capacity of vessels is integrated and will be better coordinated across different stocks throughout the year. Maintaining commercial scale harvesting activities in skipjack is of national importance for securing New Zealand's catch history interests in the skipjack fisheries pending potential international agreements on allocation.

Section 60(3)(b)(v) considerations

Withholding consent will likely decrease economic efficiency in the industry given the need to maintain scale in catching and processing capacity in these low value fisheries. Immediate gains in efficiency will be made through the retirement of one fishing vessel (*San Tortugas*).



[REDACTED]