



To: Hon David Parker, Minister for Oceans and Fisheries

From: Emma Taylor, Director Fisheries Management, Fisheries New Zealand

Application to hold quota in excess of aggregation limits for kahawai and blue mackerel

Date	20 September 2021	Reference	B21-0564
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Decision required	Date decision required by
YES <input checked="" type="checkbox"/> / NO <input type="checkbox"/>	No statutory timeframe, but requested by end of September 2021 if possible.

Recommendations
<p>Note that Pelco New Zealand Limited has applied for consent to exceed the quota aggregation limits for kahawai and blue mackerel and to hold 45.993 percent of kahawai quota and 55.304 percent (with authorisation to hold up to 61 percent) of blue mackerel quota.</p> <p>Note Pelco New Zealand Limited already holds the maximum amount of quota possible under the aggregation limits for these species (35 percent of kahawai quota and 45 percent of blue mackerel quota).</p> <p>Agree to consent to Pelco New Zealand Limited exceeding the aggregation limits for kahawai and blue mackerel to the level requested (except for the request for speculative additional 5 percent for blue mackerel).</p>

Consultation
<p>Public consultation <input checked="" type="checkbox"/></p> <p>Key comments: Consultation was undertaken with the general public including recreational fishers and relevant quota and ACE holders. A medium to high level of interest is expected from recreational fishing groups, especially related to kahawai.</p>

Contacts for telephone discussion (if required)			
Name	Position	Contact number	First contact
Emma Taylor	Director, Fisheries Management	s 9(2)(a)	<input checked="" type="checkbox"/>
Jacob Hore	Manager, Inshore North	s 9(2)(a)	<input type="checkbox"/>

Key messages
<p>This briefing seeks your decision on an application from Pelco New Zealand Limited (Pelco NZ) for consent to hold quota in excess of aggregation limits specified in the Fisheries Act 1996 for kahawai and blue (English) mackerel.</p>
<p>Pelco NZ operates purse seine vessels in the New Zealand fishery and has recently acquired the purse seine interests of Sanford Limited. The company has rationalised the combined fleet and now seeks your approval to consolidate the quota holdings of the two companies to make the most efficient use of the investment in vessels and the available international markets.</p>
<p>Aggregation limits are in place to promote competition within fisheries and prevent monopolistic behaviour, as well as to ensure opportunities for small-scale fishing operations and new entrants to the fisheries. They are set at the number of quota shares, the total quota weight equivalent of which is no more than 35 percent for kahawai and 45 percent for blue mackerel, for all combined stocks of that species (based on the current total allowable commercial catch (TACC)).</p>
<p>Pelco NZ's application requests your consent to exceed these aggregation limits and hold 45.993 percent of kahawai quota and 55.304 percent of blue mackerel quota, plus authorisation to hold up to 61 percent of blue mackerel quota. This additional approximate five percent 'margin' for blue mackerel is requested in order to accommodate future TACC changes; since aggregation limits are calculated based on quota weight equivalent, future increases in TACC for any one stock could incidentally cause Pelco NZ to be in violation of the aggregation limits.</p>
<p>Fisheries New Zealand consulted on Pelco NZ's application between 20 July and 18 September 2020 and received thirty submissions. Twenty-six submissions opposed granting consent to Pelco NZ's application, citing concerns with such a large proportion of the market being controlled by a single company, as well as the sustainability and limited knowledge of the stocks. The response from Te Ohu Kaimoana expressed support for the application, citing the potential benefits to local iwi and communities. The remaining three submissions did not specify a stance.</p>
<p>Section 60 of the Fisheries Act 1996 (the Act) requires you to consider a range of matters when deciding on an application to hold quota in excess of aggregation limits. This includes the willingness and ability of other industry members to acquire quota, and the likely effect of granting or withholding consent on other quota owners or commercial fishers.</p>
<p>Fisheries New Zealand recommends that you consent to Pelco NZ's application to exceed the aggregation limits for kahawai and blue mackerel specified in legislation but do not authorise the future purchase of blue mackerel quota up to a limit of 61 percent. We consider that the effect of the exemption on the efficiency of the fishing industry will be relatively small, noting that Pelco NZ has a current arrangement to access the annual catch entitlement to this quota in any case, but it will deliver increased certainty to Pelco NZ and therefore support further investment.</p>
<p>Once you have made your decision on the application, a decision letter and Gazette notice will be prepared for your consideration.</p>

Background

Legislation relating to aggregation limits (sections 59 & 60 of the Fisheries Act 1996)

1. The Act specifies the maximum number of quota shares that may be owned by any one person for a particular stock or species. The relevant quota aggregation limits are for:
 - **species named on Schedule 5 of the Act** (including blue mackerel), a number of quota shares for any one species the total quota weight equivalent of which is no more than 45 percent of the combined TACC for every stock of that species; and
 - **any other species** (including kahawai), a number of quota shares for any one species the total quota weight equivalent of which is no more than 35 percent of the combined TACC for every stock of that species.
2. There are specific exemptions from the aggregation limits identified in the Act. If a person exceeds the aggregation limits on the basis of their initial allocation of quota, they may remain above the limit, but not acquire further quota without consent. There are a considerable number of entities that exceed aggregation limits on that basis. In addition, aggregation limits do not apply to Te Ohu Kaimoana, the Chatham Islands Enterprise Trust or to the Crown.
3. Provision exists for the Governor General to make an order in council to add species to Schedule 5 of the Act based on the recommendation of the Minister of Fisheries. A review was undertaken in 2005 to assess the suitability of individual species for inclusion on Schedule 5. Each QMS species was assessed to determine if they fit into one of three categories:
 - substantial investment required to harvest or process;
 - substantial science investment required to prove the fishery or market; and
 - economies of scale required to compete in an export-oriented market.
4. As a result of that review, 38 species were listed on Schedule 5 and a number removed. It was considered that a quota aggregation limit of 45 percent should be applied to those species in which enterprises are required or would benefit from holding enough quota to achieve economies of scale. This is generally warranted when substantial investment is required or success in the international market requires sizeable quota holdings. 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 with lower input costs, little to no processing requirements and no requirement for development of international markets.
5. It is also noteworthy that aggregation limits do not apply to Annual Catch Entitlement (ACE), nor do they prevent aggregation at the stock level (except with respect to rock lobster and pāua). That is, a single entity can hold 100 percent of the ACE for a species or 100 percent of the quota in a single stock, provided that did not constitute more than the aggregation limit across the total quota of all stocks for that fishery.

6. You may consent to persons holding quota in excess of aggregation limits, and the Act outlines specific considerations when making a decision on an application for consent. Additionally, you can place conditions on an approval for an exemption to the aggregation limits, including limits on the number of quota shares for any stock, or granting consent for a particular time period, as opposed to in perpetuity.
7. When considering whether to grant consent for persons to hold quota in excess of the aggregation limits, you must consider:
 - a. the willingness and ability of other members of the New Zealand fishing industry to acquire quota of the relevant species;
 - b. the likely effect of the granting or withholding of the consent on:
 - i. the development of any new or existing stock or species;
 - ii. other quota owners or commercial fishers;
 - iii. the processing and marketing of that stock or species;
 - iv. the ability of the applicant to take any other stock or species;
 - v. the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry; and
 - c. such other matters as you consider relevant.
8. If quota shares have been acquired in excess of the permitted number of shares by any person before consent is obtained, you shall not grant consent.
9. Since 1988, Ministers of Fisheries have approved (either in whole or in part) approximately 90 applications to hold quota more than the applicable aggregation limits. Most of these exemptions are for rock lobster and pāua, species for which aggregation limits are set the lowest. The most recent example of an inshore finfish exemption is from 2008 for elephant fish quota. No applications for aggregation limit exemptions have been declined in their entirety to date.
10. In the past the main reason for withholding consent for parts of applications was because there was no pending purchase by the applicant. These speculative applications make it difficult to assess the impacts you are required to consider under the Act (i.e. the impacts on quota holders and other fishers) because of the uncertainty from where the additional quota would be sourced.

The applicant

11. Pelco NZ is a subsidiary of the parent company Pelco Holdings Limited which was incorporated in 1991. Other subsidiaries include Pelco Quota Holdings Limited, Pelagic Fishing Limited, and Pelco Receiving Limited. These various companies are considered associated entities under the Act and for the purposes of this application. Together, it is a fishing and fish processing company based in Mount Maunganui, Tauranga.

12. With the recent acquisition of additional vessels and quota, Pelco NZ is now New Zealand's largest purse seining company and the only company specialising primarily in pelagic species. It currently operates three purse seining vessels (*Matariki II*, *Columbia II*, and *Western Ranger*) targeting four main pelagic fish stocks (jack and blue mackerel, kahawai, and skipjack tuna). Pelco NZ estimates the annual catch capacity of these three vessels at 19,000 tonnes.
13. Pelco NZ employs twenty-eight fishermen, forty-three full time staff, four casual staff, as well as up to forty-three contracted employees in its processing and marketing operations. It estimates that approximately 70 percent of its staff are Māori. The company is locally, and family owned, and the Director (Marc Andrew Tauwhitu Rolleston) and senior managers claim strong connections to their hapū and iwi.
14. Pelco NZ exports most of the fish that it catches and processes, mostly in whole frozen form. Fish are sent mostly to West Africa as well as a small proportion to Europe. The oily nature of pelagic fish species makes them well suited to being smoked which allows for extended shelf life in areas with limited or no refrigeration.

The application

15. Pelco NZ was approached in late 2018 by the fishing company Sanford Limited which notified it that its pelagic fishery assets were for sale, inclusive of two fishing vessels and the associated quota package. Sanford wished to sell its assets as a package because it provided the best opportunity for a well-priced sale and avoided the administrative burden of dividing the package into smaller parcels.
16. In order to purchase the asset package in the timeframe required by Sanford, Pelco NZ divested itself of enough quota to enable it to purchase the entire Sanford package without exceeding the quota aggregation limits. This quota was divested to a quota broker, Quota Management Systems Limited (QMSL) under a contract that included an option for re-purchase if Pelco NZ's application for an exemption from aggregation limits was successful. This contract remains valid until such time as Pelco NZ's application is finally determined. Under this agreement, QMSL must remain the sole owner of the quota and sell it back to Pelco NZ upon request. Pelco NZ is also guaranteed access to all the ACE generated from the quota held by QMSL.
17. This relationship was challenged by various submissions which questioned whether the contractual relationship between Pelco NZ and QMSL established them as "associated persons" under section 59(10)(d) of the Act. This would have invalidated the application since the combination of Pelco NZ's holdings and QMSL's holdings exceeds the aggregation limits, and under section 60(4) of the Act consent will not be granted if quota shares exceeding the aggregation limits have been acquired prior to consent being obtained. Fisheries New Zealand's view is that section 59 deals only with owning or acquiring quota shares, not having a contractual right to access ACE or acquire shares.
18. The aggregation limits for kahawai and blue mackerel are 35 percent and 45 percent respectively. Pelco NZ requests consent to hold:
 - a. 45.993 percent of all kahawai quota, and
 - b. 55.304 percent of all blue mackerel quota, with an authorisation to hold up to 61 percent.

19. Pelco NZ's purpose in requesting the additional approximately five percent speculative quota for blue mackerel (which it refers to as a "margin") is to protect against the possibility of future TACC increases which could inadvertently cause its holdings to be pushed above the aggregation limit. This is a consequence of the wording of the Act which defines the aggregation limit by the quota weight equivalent rather than total quota shares and applies nationally to all stocks of a species combined, rather than to a single stock.
20. Fisheries New Zealand's analysis of impacts is based on the 45.993 and 55.304 percent levels requested. It is more difficult to assess the impacts of the speculative five percent part of their request and we do not consider it necessary to decide on this at this time.
21. Pelco NZ considers that there are special circumstances that warrant consenting to its application. The "high volume, low value" business model that it operates requires access to large volumes of fish to support international markets. The quantity of scale demanded by this model is currently constrained by the aggregation limits set out in the Act. Pelco NZ argues that although the purpose of the aggregation limits is to prevent monopolistic behaviour, the fisheries in which it operates require certain volumes in order to be economically viable and therefore an exception should be made in this circumstance.
22. Pelco NZ sells most of its catch internationally and it contends that to ensure continued access to these international markets, it requires guaranteed access to high volumes of fish through increased quota holdings. Much of the kahawai and blue mackerel catch is taken "on demand" to fulfil orders as they are received. It asserts that an aggregation exemption will allow Pelco NZ to fill larger orders and help guarantee its competitiveness, as well as ensure its long-term viability in the face of operational risks.
23. Pelco NZ states in its application that consenting to an exemption from the aggregation limits will improve efficiencies of harvesting and processing through rationalisation of fishing effort. Since Pelco NZ purchased additional vessels as part of the Sanford package, it considers that ensuring profitability for those vessels requires guaranteed access to additional quota. Purchasing the Sanford vessels (as opposed to building or buying a new vessel) avoided needlessly increasing overall capacity in the fleet, which also contributes to increased efficiency. It also considers that the security provided by the additional quota holdings would allow greater investment in infrastructure and innovation that would be of benefit to the fishery.
24. Pelco NZ considers its operations to be sustainable since overall take is managed within the TACC. It also considers its fishing method to be sustainable because of the lack of impacts on benthic ecosystems, as well as the relatively limited bycatch taken with the target species. It contends that amalgamating Sanford's operations with its own allows for more sustainable targeting of fish; the two companies are no longer competing for the same fish, so effort can be spread out and better coordinated within a single fleet.

Pelco NZ's current quota ownership

25. Pelco NZ along with Pelco Quota Holdings Limited own quota shares in thirty-five fish stocks across nineteen species, including the various small pelagics (jack and blue mackerel, kahawai, and trevally).
26. Pelco NZ and Pelco Quota Holdings Limited are subsidiaries of the parent company Pelco Holdings Limited. They are considered associated entities under section 59(10)(d) of the Fisheries Act, and section YB of the Income Tax Act 2007, and therefore the quota is considered to be owned by a single entity. Together they currently own the maximum limit of kahawai and blue mackerel quota they are eligible to hold (35 percent and 45 percent respectively). The *total quota weight equivalent* of the combined TACCs of all stocks of kahawai that equates to the 35 percent aggregation limit is 954.8 tonnes, and for blue mackerel it is 5,197.5 tonnes, with differing levels of holdings for both species in each of the stock areas.
27. Table 1 shows all Pelco NZ's holdings of kahawai and blue mackerel quota and estimated ACE by Fishery Management Area (FMA), as well as what its holdings would be if the requested exemption was granted (this does not include the speculative five percent 'margin' requested for blue mackerel). If Pelco NZ is granted consent to hold the requested levels of quota, the ACE it controls would increase by 10.3 percent for blue mackerel, and by 11 percent for kahawai. The impacts at the stock level are higher for some stocks, notably EMA 1 (ACE holdings increasing by 15.6 percent), and KAH 1 and 2 (ACE holdings increasing by 18.5 percent and 10.8 percent, respectively).
28. This is illustrated in the table below, however it is important to again note that the legal framework applies at a species rather a stock level and the aggregation level applies to the quota weight equivalent across all stocks.

Table 1: Pelco NZ's current holdings by species and by stock in green, and if the aggregation limit exemption is granted in blue (excluding the requested five percent 'margin' for blue mackerel).

Stock	TACC (kg)	Pelco Current Quota Holdings	Estimated ACE (kg)	Quota weight equivalent (%)	Pelco Quota Holdings w/Exemption*	Estimated ACE (kg)	Quota weight equivalent (%)
EMA 1	7,630,000	63,056,785	4,811,233	63.1	78,654,505	6,001,339	78.7
EMA 2	180,000	45,432,254	81,778	45.4	45,432,254	81,778	45.4
EMA 3	390,000	54,078,556	210,906	54.1	54,078,556	210,906	54.1
EMA 7	3,350,000	2,793,530	93,583	2.8	2,793,530	93,583	2.8
EMA 10	0	0	0	0	0	0	0
TOTAL	11,550,000	165,361,125	5,197,500	45.0	180,958,845	6,387,606	55.3
KAH 1	1,075,000	37,726,678	405,562	37.7	56,176,264	603,895	56.2
KAH 2	705,000	56,595,348	398,997	56.6	67,440,413	475,455	67.4
KAH 3	410,000	34,650,095	142,065	34.7	34,650,095	142,065	34.7
KAH 4	9,000	0	0	0.0	0	0	0.0
KAH 8	520,000	1,572,317	8,176	1.6	6,399,867	33,279	6.4
KAH 10	9,000	0	0	0.0	0	0	0.0
TOTAL	2,728,000	130,544,438	954,800	35.0	164,666,639	1,254,694	46.0

Consultation

29. Fisheries New Zealand consulted on Pelco NZ's application between 20 July and 18 September 2020 (nine weeks).
30. Thirty submissions were received, including a form letter that was submitted seven times. One submission supported Pelco's application, and twenty-six submissions opposed it. Three submissions were requests for additional information and did not specify a stance. It should be noted that eleven of the thirty submissions (including the form letters) commented specifically on kahawai; there were no submissions relating solely to blue mackerel. Pelco NZ received redacted copies of all submissions, and as a result, altered its application to remove a request for a five percent margin for kahawai that was part of the original application. Appendix Two provides a summary of all submissions received during consultation, and Appendix Three provides Pelco's responses to those submissions which opposed its application.

Analysis of decision criteria

31. Section 60(3) of the Fisheries Act describes the matters that you are required to consider before deciding on an aggregation exemption application. The analysis below has been structured around the requirements of section 60(3) and includes rationale provided by Pelco NZ in its application, consideration of concerns raised by submitters, and Fisheries New Zealand comment.

60(3)(a) - Willingness and ability of other members of the NZ fishing industry to acquire quota

32. An open tender is the only conclusive way to determine whether industry members are willing and able to buy quota. In the absence of such evidence, submissions, quota trading history and port prices can provide some context. Quota trading information can provide an indication of the willingness and ability of fishers to acquire quota by the frequency and volume of quota being traded over time and at what price. Similarly, port prices are indicative of the value of the commodity itself on the market which offers additional insight into the value of the quota.
33. Pelco NZ considers that its application will not affect the willingness or ability of other fishers to acquire quota since the total amount of quota that it seeks to obtain was already entirely owned and utilised between the Pelco NZ and Sanford operations, and was therefore not freely available to others.

Submitter Views

34. A group of KAH 1 setnet fishers and quota holders operating in the Auckland area submitted that there would have been interest in the quota for sale by Sanford if it had been made available on the open market. They emphasize that KAH 1 is a tightly held and conservatively priced stock, and there is strong demand for the quota when it becomes available on the open markets.
35. It should be noted that there were no submissions on availability or demand for quota for other stocks besides KAH 1.

Fisheries New Zealand Comment

36. Pelco NZ is now the only company that operates purse seine vessels in the blue mackerel fishery. There is a significant investment required to acquire these specialised vessels and Fisheries New Zealand considers that this will continue to influence the willingness of others to purchase quota. This is indicated by the limited quota trading for this species (generally less than three trades per year.)
37. While there is a more active market (and demand) for kahawai quota, particularly for KAH 1, the number and volume of trades is also relatively low. Submitters indicate a willingness to buy in KAH 1, but this is not reflected in the level of trading in recent years, suggesting there is not an open market for trading.
38. Fisheries New Zealand concludes that, in the case of blue mackerel, aggregation at the level proposed will not affect the willingness of others to acquire quota (even as a financial asset only while leasing the harvesting right (ACE) to others). Given the specialised nature of the fishery and concentration of catching ability within Pelco's operations it is considered unlikely other parties would be interested to acquire blue mackerel quota. With respect to kahawai, and KAH 1 in particular, submissions suggest that there are willing buyers for quota for this stock. We note that the combined holdings of Pelco NZ and Sanford have been held by those companies for many years and quota has not been freely traded. It is difficult to predict if this situation would change if the application to aggregate kahawai quota was declined. There is no certainty that quota currently held by QMSL would then be applied to the open market.

60(3)(b)(i) - The likely effect on the development of any new or existing stock or species

39. Fisheries New Zealand interprets this matter as the effect on how fish stocks are likely to be used including:
 - a. the effect on the level of utilisation of existing kahawai and blue mackerel stocks or the ability of industry to develop new fisheries.
 - b. the effect on the provision of information on existing commercially viable kahawai and blue mackerel fisheries that could improve the management for existing stocks; and
 - c. the incentives and ability of industry to develop new markets for other species.
40. Pelco NZ considers that not granting its application has the potential to significantly reduce its investment in the development of pelagic fisheries. It has stated that it would like to continue to extend its operations throughout the range of the kahawai and blue mackerel fisheries (especially in the south) if it is granted consent. Additionally, it contends that withholding consent could impact its ability to further develop its interests in the skipjack fishery.

Submitter Views

41. The submission from s 9(2)(a) argues that granting the aggregation exemption could detrimentally impact Fisheries New Zealand's ability to collect data that contributes to the management of kahawai and blue mackerel stocks. It states that the more harvesters, the greater diversity of data sources, and therefore there is less opportunity for orchestrated misreporting.

42. s 9(2)(a) response states that consolidating the resource under one company will incentivise better management in the long run as the company will be more motivated to manage it well if it has a greater investment in the resource.

Fisheries New Zealand Comment

43. While some of kahawai and blue mackerel stocks are already well utilised by fishers (KAH 1 and EMA 1), others such as KAH 8 are under-utilised (the TACC is regularly under caught, however the status of the stock relative to maximum sustainable yield is not known).
44. For the well-utilised stocks, the amalgamation of quota previously held by Sanford and Pelco NZ simply shifts who is taking the fish from the water, not how much is being taken. Pelco NZ states in its application that it is committed to extending its purse seine operations throughout the range of the kahawai and blue mackerel fisheries. This implies that if Pelco NZ is granted consent, the under-utilised stocks could be more fully exploited in the future. Any sustainability concerns raised in submissions regarding fishing up to the level of the TACCs should be addressed in the setting of the TACC itself and are not matters for this decision.
45. Pelco NZ raises in its submission the importance of maintaining capacity to operate in the skipjack fishery. Skipjack is a highly migratory species that occurs in New Zealand on a seasonal basis. Pelco NZ and Talley's are the only companies that participate in this fishery. Skipjack is a stock that is shared with other Pacific nations and falls under the mandate of the Western and Central Pacific Fisheries Commission (WCPFC). New Zealand has interests in having active participation in this fishery with respect to any future international allocation negotiated through the WCPFC. Fisheries New Zealand concludes that, should the application be approved, the effects on the development of any new or existing stock or species is likely to be positive.

60(3)(b)(ii) - The likely effect on other quota owners or commercial fishers

46. It is difficult to determine conclusively the potential impacts on other fishers, however, some context is provided by examining quota ownership and ACE transfers, as well as the degree of concentration in quota and ACE markets if the application is granted. An evaluation is provided in the following sections.
47. Pelco NZ considers that there will be little impact on other quota owners or commercial fishers because its purchase encompassed the entire Sanford pelagic operation and therefore did not result in a redistribution of available catch from other fishers. It states that existing arrangements for accessing ACE for bycatch will also be "largely unaffected." Additionally, it submits that withholding consent for its application and forcing them to compete in the ACE market will have the unintended consequence of driving up overall ACE prices because of the large volumes of ACE they would be required to procure to cover the increased catch afforded by its two new vessels.
48. It should be noted that Pelco NZ is currently accessing and utilising the ACE associated with the quota that it divested through a contractual arrangement with Quota Management Systems Limited (the current holder of the quota).

Quota Ownership and Markets

49. Pelco NZ is already a major quota share owner for kahawai and blue mackerel stocks. Between Pelco NZ's two quota-holding entities, it currently owns exactly the amount of quota allowed by the aggregation limits (35 percent of kahawai and 45 percent of blue mackerel). This equates to 130,544,438 kahawai quota shares (out of 600 million) and 165,361,125 blue mackerel quota shares (out of 500 million). Pelco NZ's current quota holdings, along with the other top five quota owners for the relevant stocks, are shown in Table 2. Note the red text relates to Pelco NZ quota (in various holdings), and the blue text is the quota Pelco NZ wishes to acquire from QMSL.

Table 2: Top five largest quota owners for KAH 1,2,3,8 and EMA 1,2,3 (as at July 2021). EMA 7 is excluded because Pelco NZ's holdings rank them sixth and they are not seeking to acquire more quota for that stock. Their holdings of KAH 8 currently rank them tenth and if granted consent to acquire the quota held by QMSL, they would rank fifth.

Stock	Client Name	# Shares
KAH1	Pelco Quota Holdings Limited	37,726,678
	Quota Management Systems Limited	18,449,586
	Pare Hauraki Asset Holdings Limited	6,850,796
	Sanford Limited	6,068,444
	Ngatiwai Holdings Limited	3,630,278
KAH2	Pelco Quota Holdings Limited	56,595,348
	Quota Management Systems Limited	10,845,065
	Kahungunu Asset Holding Company Limited	10,435,861
	Pupuri Taonga Limited	7,536,262
	Te Ohu Kai Moana Trustee Limited	5,156,478
KAH3	Pupuri Taonga Limited	39,616,179
	Pelco Quota Holdings Limited	34,650,095
	Ngai Tahu Fisheries Settlement Limited	15,011,942
	KPF Investments Limited	3,724,743
	Te Ohu Kai Moana Trustee Limited	1,439,943
KAH8	Aotearoa Quota Brokers Limited	21,259,252
	Sanford Limited	21,887,864
	Aotearoa Fisheries Limited	9,114,527
	Tainui Group Holdings Limited	6,568,756
	Quota Management Systems Limited	4,827,550
EMA1	Pelco Quota Holdings Limited & Pelco NZ Limited	63,056,785
	Quota Management Systems Limited	15,597,720
	Pare Hauraki Asset Holdings Limited	7,083,870
	Ngatiwai Holdings Limited	3,611,674
	Te Ohu Kai Moana Trustee Limited	1,547,299
EMA2	Pelco Quota Holdings Limited & Pelco NZ Limited	45,432,254
	Pupuri Taonga Limited	33,777,531
	Kahungunu Asset Holding Company Limited	10,435,861
	Te Ohu Kai Moana Trustee Limited	5,156,478
	Rangitane O Te Ika A Maui Limited	2,086,170

Stock	Client Name	# Shares
EMA3	Pelco Quota Holdings Limited	54,078,556
	Pupuri Taonga Limited	24,215,334
	Hokotehi Settlement Quota Holding Company Limited	10,000,000
	Ngati Mutunga O Wharekauri Asset Holding Company Limited	10,000,000
	KPF Investments Limited	1,580,328

50. Fisheries New Zealand estimated the impacts on kahawai and blue mackerel quota market competition using two internationally accepted analytical techniques: the four-firm concentration ratio, and the Herfindahl-Hirschman Index (HHI). Note that analyses were conducted excluding the speculative five percent 'margin' requested by Pelco NZ for blue mackerel because it is very difficult to estimate how granting a speculative exemption would affect future market competition.

Table 3: Four-firm concentration ratios and Herfindahl-Hirschman indexes for kahawai and blue mackerel, in the current market and if Pelco NZ's application is granted consent. Red text indicates the existence of limited competition or potential monopolies based on accepted economic principles.

	Four-Firm Concentration Ratio		Herfindahl-Hirschman Index	
	Current Market	With Consent	Current Market	With Consent
KAH	59.72%	64.57%	1,512	2,281
EMA	72.76%	81.86%	2,354	3,281

51. The four-firm concentration ratio measures the market share of the four largest firms in an industry (which in this case includes Pelco NZ Ltd). Current markets for kahawai and blue mackerel are already considered to be of "medium concentration" (ratios between 50 to 80 percent). Granting the Pelco NZ application would move the ratio for kahawai from 59.72 percent to 64.57 percent, and for blue mackerel from 72.76 percent to 81.86 percent. This would move blue mackerel into the "high concentration" category (above 80 percent), indicating limited competition or a potential monopoly exists in the industry.

52. The HHI is a metric that assesses the comparative size of every company in a particular industry. The HHI is a much more comprehensive examination of a market since it takes into consideration the market shares of all the players in the industry. The HHI shows similar results as the four-firm concentration ratio, with markets for kahawai and blue mackerel currently both considered "moderately concentrated" (values between 1,500 and 2,500). If the application is granted, kahawai would remain in the moderately concentrated category at 2,281, while blue mackerel makes a bigger shift into the "highly concentrated" category (values above 2,500) indicating that it is a highly concentrated market.

53. The marked difference between blue mackerel and kahawai is the result of the significant difference in numbers of quota holders (110 distinct entities for blue mackerel versus 258 for kahawai). This distinction means that shifts in blue mackerel have greater impacts because the market is already more concentrated.

54. It should be noted that the above analyses are at a species level, which is the requirement of the Act since finfish aggregation exemptions apply at that level. As noted earlier, the Act allows a single entity to own 100 percent of the quota for a single stock, so long as its total holdings are within the limits at the species level.

ACE Ownership and Markets

55. Pelco NZ states in its application that it will not disrupt most current agreements since it plans to adopt Sanford's operations wholly and without alteration. The Act does not explicitly demand consideration of the impacts on ACE markets, but the availability of ACE will impact on commercial fisheries, which is a statutory consideration. Fisheries New Zealand considers that examining these markets provides some context for an aggregation exemption decision in that they reflect the impact on the fishery as a whole. Submitters raised concerns about the impact of approving the application for consent on the availability of ACE for kahawai.
56. Kahawai (and less frequently blue mackerel) are commonly taken as bycatch in mixed-species fisheries. Fishers are not required to hold ACE before fishing, but they must balance catch with ACE at months end or pay a deemed value. The level of deemed value payment on an annual basis is an indication of the availability of ACE. Across all kahawai stocks annual payments have been around \$1,500 (1,500 kilograms of overcatch) indicating that there is sufficient ACE available to cover bycatch. There is no indication that the deemed value for kahawai is so high that it provides a disincentive for fishers to land their catch.
57. ACE trading history shows relatively high numbers of ACE transfers for kahawai, but less for blue mackerel. The exception is EMA 1 which, although the *number* of transfers is not large, the volumes being traded are quite high. It also shows that ACE price has remained relatively stable for both species. This suggests that ACE markets are operating freely for most kahawai stocks and while markets for blue mackerel appear to be constrained, it is more likely that there is simply less demand for blue mackerel ACE. Again, the exception is EMA 1 which seems to be operating freely, albeit with fewer participants.
58. Examining Sanford and Pelco NZ ACE transfers also provides some insight into whether ACE fishers would be heavily impacted by an aggregation exemption because it illustrates the willingness and ability of the quota-holding entities to sell the ACE generated by their quota, and at what price. ACE transfers by Sanford and the various Pelco entities for KAH 1 for the last five fishing years shows a slight consolidation. While the number of transfers from Sanford to others has understandably decreased given that it has sold quota, the number of transfers from Pelco NZ entities to others do not appear to have increased proportionally. This indicates Pelco NZ may hold more ACE for its own use, and make less available to the market, than Sanford did when it held the quota. Additionally, the average ACE transfer price has been steadily increasing (Figure 1 below).

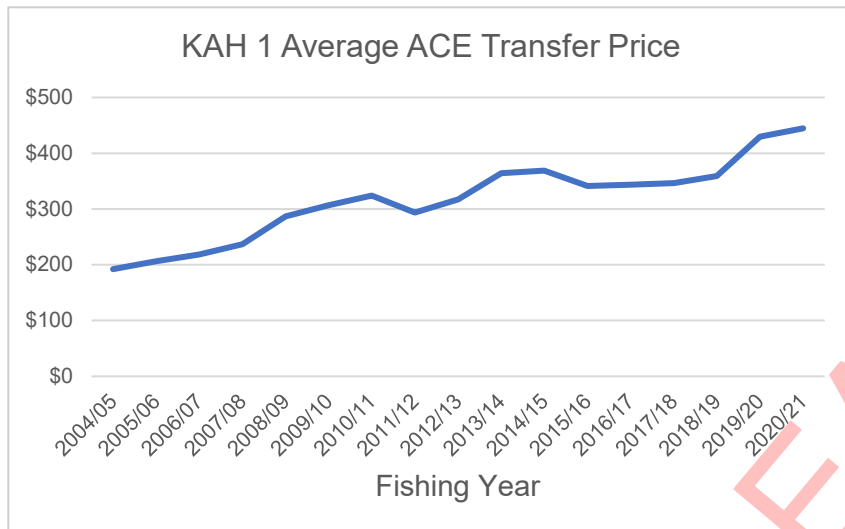


Figure 1. Average ACE transfer prices per tonne for KAH 1 since the 2004/05 fishing year.

Submitter Views

59. The general perspective of submitters is that allowing more quota to be aggregated by Pelco NZ will impact the availability of that quota (and the associated ACE) on the market. Various submissions speak of smaller fishing companies being placed at a disadvantage by the scale of operations of larger companies. Submissions express support for smaller fishing operations and believe that denying aggregation exemptions will help ensure the ongoing viability of these small-scale operations.
60. The submissions from s 9(2)(a) [redacted], s 9(2)(a) [redacted] state that kahawai is an important fish for retail shops and the associated local communities in Auckland, so it is important that there is ACE and quota available for local fishers. Reducing the amount of ACE on the market could lead to increased prices for kahawai locally, which would negatively impact local communities, especially lower-income communities that rely on lower value fish like kahawai.
61. The submission by a group of KAH 1 fishers and quota holders operating in the Auckland area asserts that KAH 1 ACE is already difficult to access because of a lack of availability on the market. They consider KAH 1 and 8 are critical limiting species in their fisheries, especially setnet fisheries. They assert that Pelco NZ's claims that acquiring Sanford's operations will not affect other fishers is only true if they operate their business in the same manner that Sanford did.
62. Sanford provided ACE to fishers, including their contracted fishers, through open sales on the ACE market, and some of that ACE appears to have been sourced from the quota now transferred to Pelco NZ. The submission considers that Sanford may now be competing in the market for ACE to cover its catch and may decrease the availability of ACE for fishers other than Pelco NZ fishers.

63. In addition to holding the ACE generated from their own quota, Pelco NZ is an active buyer in the market for other KAH ACE and may hold over 63 percent of KAH 1 ACE. The submission asserts that allowing such a large share of the market to be controlled by one entity is contrary to the intent of the aggregation limits, and that allowing for it would detrimentally impact other fishers of KAH stocks.

Fisheries New Zealand Comment

64. Consenting to Pelco NZ's application would increase its dominant quota holding position in several stocks. Submitters are concerned (primarily in KAH 1 and KAH 8) that a single entity holding the combined quota would reduce the availability of ACE to small fishers. Purchasing ACE (as opposed to holding quota) is an important aspect of many fishing portfolios, especially smaller operations.
65. Taken at face value the undertaking of Pelco NZ to maintain any previous ACE arrangements applying to the Sanford quota held for purse seining suggests there should be no disruption to the current availability of ACE. Current information suggests that this has not been a problem to date, however there is no assurance this will continue (however we could explore imposing a condition regarding access to ACE). There are no limits to the amount of ACE that can be held at the level of individual stocks so irrespective of quota holdings, Pelco is free to access the ACE market as needed for its operations.
66. Sanford retained six percent of both the kahawai and blue mackerel quota packages to cover its bycatch using other fishing methods, so submitters concerns about Sanford competing in the markets to cover its own catch are unlikely to be realised. Conversely, there is potential for an increase in the price of ACE if Pelco NZ is required to compete in the market for ACE should its application be unsuccessful.

60(3)(b)(iii) - The likely effect on the processing and marketing of that stock or species

67. This matter relates to the efficiency of processing and the ability to market products (i.e. find new markets or achieve greater penetration of existing markets).
68. Pelco NZ argues that the certainty of having more quota will enable increased processing capacity and rationalisation of costs due to improved efficiency in operations. It asserts that there is no potential for monopolistic activity because pelagic fish is a low value commodity market and Pelco NZ is a price taker (meaning it lacks the market share to influence market prices and must accept the prevailing prices in overseas markets where it sells the majority of its catch). It also states that it already markets pelagic fish internationally and has access to these markets, including room for additional capacity.

Submitter Views

69. The submission by s 9(2)(a) opposes Pelco NZ's business model, which includes shipping local kahawai to offshore markets. He submits that this model will detrimentally impact local markets and fish stocks.
70. The submission by various sport fishing clubs state that Pelco NZ's business model does not add any value to domestic markets and should not be incentivised by lax aggregation rules.

Fisheries New Zealand Comment

71. Fisheries New Zealand considers that consenting to this application has the potential to improve efficiencies in processing and marketing of kahawai and blue mackerel. Granting the application could enable greater investment in processing capacity by Pelco NZ given the reduced risk afforded by holding additional quota.
72. Pelco NZ currently sells some of the kahawai it catches to local markets and granting it control over such a large market share would allow it to have significant control over the domestic markets in the future. However, domestic markets could not absorb the amount of kahawai caught by Pelco NZ and most of the catch is exported to international markets where there is more competition and demand. Pelco NZ is also free to shift its focus towards the local market at any stage.

60(3)(b)(iv) - Ability of the applicant to take any other stocks or species

73. Pelco NZ states in its application that granting its exemption will improve opportunities to harvest other pelagic species, particularly skipjack and jack mackerel. This is because of the increased catching capacity of its fleet whose efforts will be better coordinated across different stocks throughout the year. Pelco NZ asserts that maintaining commercial scale harvesting activities in skipjack is of national importance for securing New Zealand's catch history in the skipjack fisheries pending potential international agreements on allocation. Establishing and maintaining catch history is important in international fisheries as catch history informs allocation in stocks such as skipjack. It argues that allowing for the expansion of other pelagic stocks like kahawai and blue mackerel will also allow for expansion in the skipjack fishery since these fish are taken with the same gear.

Submitter Views

74. No submitters made any comments on this matter.

Fisheries New Zealand Comment

75. The ability to maintain an economic scale to its purse seine fishing will facilitate Pelco NZ maintaining and potentially expanding its involvement in the skipjack fishery. Skipjack is present in New Zealand waters from around December to April. Kahawai and blue mackerel are able to be taken outside of this period, providing year-round opportunities for the purse seine fleet.
76. Consenting to Pelco NZ's application will likely allow greater diversity in its operations across seasons, species, and stocks, including for skipjack.

60(3)(b)(v) - The likely effect on the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry

77. Pelco NZ submits that withholding consent will likely decrease its economic efficiency in the industry given the need to maintain scale in catching and processing capacity in low value fisheries such as kahawai and blue mackerel. It also states that immediate gains in overall efficiency were made via the purchase of the Sanford package through the retirement of one of the newly acquired fishing vessels (the *San Tortugas*). This vessel was identified as being at the end of its functional life and allowed the equivalent catch to be taken across the other more efficient vessels in their fleet.

Submitter Views

78. There were no submissions made directly relevant to this section, but the submissions on section 60(3)(b)(ii) *the likely effect on other quota owners or commercial fishers* above can be considered relevant for this section as well.

Fisheries New Zealand Comment

79. Efficiency is central to the argument supporting Pelco NZ's application. While there will be opportunities for Pelco NZ to achieve efficiencies in its own operations, Fisheries New Zealand considers that the effect of the exemption on the efficiency of fishing industry as a whole will likely be relatively small.
80. Fisheries New Zealand notes Pelco NZ could achieve greater economies of scale through other approaches rather than seeking exemption from aggregation (i.e. by purchasing additional ACE each year). However, Pelco NZ submits that this approach creates uncertainties for its operational arrangements (including uncertainties in the future availability of ACE), which reduces confidence in investment.
81. From a long-term sustainability and utilisation perspective, it is desirable to have an efficient harvesting fleet whose fishing capacity is matched to the available resource. As quota holders gain increasing shares, their incentives to improve stewardship of the stocks are likely increased with a potential net benefit to other interests in the fishery. Fisheries New Zealand agrees that the certainty of quota ownership as opposed to a requirement to purchase ACE each year will assist Pelco NZ in making investment decisions.
82. While Fisheries New Zealand notes that both Pelco NZ and Sanford (the only two companies specializing in small pelagics on a large scale) have historically managed to achieve profitable business operations under the constraints of the aggregation limits, both Pelco NZ and Sanford have historically supplemented the ACE derived from their quota with ACE purchased on the market. Further, the fleet of the two companies has now been combined and rationalised and access to a level of catch to maintain the profitability of the fleet is central to the application.

60(3)(c) - Such other matters as the Minister considers relevant

83. Pelco NZ and submitters raised several other matters that they believe to be relevant to the application, including the sustainability of the kahawai and blue mackerel stocks, the lack of information on the stocks, and impacts for local iwi communities.

84. Pelco NZ and the response by s 9(2)(a) emphasize the positive impacts that consenting to the application could have on local iwi communities, including local iwi that have relationships with Pelco NZ, those whom it employs, as well as those from whom it purchases ACE. Pelco NZ submits that before submitting its application, it undertook its own consultation with iwi and Māori organisations to gain support for its application, which it says was forthcoming.
85. Several submissions raise concerns about the sustainability of the KAH and EMA stocks. Various recreational fishers submitted their concerns that the stocks are overfished and have become much more difficult to find. The sport fishing clubs' submissions noted a decrease in biomass and express concern that allowing for an aggregation exemption could exacerbate the problem. Fisheries New Zealand notes that setting sustainable catch limits is a separate matter and granting consent to the aggregation limit exemption is not likely to increase the amount of fish being taken or even necessarily who harvests it in practice, only who owns the quota.
86. One submission expressed concern about the uncertainty of the status of the stocks and the large information gaps regarding historical and current biomass. They are also concerned about the lack of a management plan, and with issues of bycatch. More broadly, concerns have been raised by the recreational and environmental sectors around high volume low value fisheries, particularly where bulk harvest methods such as purse seining are a primary means of catching fish. There is a perspective that the ecological value of achieving a higher abundance of pelagic species such as kahawai and blue mackerel in the environment outweighs the relatively low economic value of the fishery. There are also concerns around the biological and localised depletion implications of removing large volumes (i.e. whole schools) of fish at a time, as is done by purse seining.
87. It is the view of Fisheries New Zealand that sustainability concerns are not meant to be addressed through section 60 considerations and instead should be addressed through the sustainability review process and adjustments to the total allowable catch (TAC).

Conclusions

88. Increased aggregation benefits the firm seeking greater quota holdings, by providing greater certainty under which that company can manage its business affairs. It could also benefit other stakeholders in the fishery through improved incentives for stock management. The greater the degree of aggregation of ownership in a fishery, the more one can expect the dominant owner to take an interest in the management of the stock.
89. There may be consequential improvements in efficiency in the industry associated with increasing economies of scale. More efficient use of the capital invested in the fishing fleet of a large operator can lower harvesting costs. The additional supply of fish derived from increased quota holdings may in turn increase market or brand penetration, especially for large volume low value fisheries like blue mackerel.

90. On the downside, increased aggregation of quota could lead to monopolisation of the supply of ACE required to cover bycatch in related fisheries, with negative impacts on other fishers and increased barriers to entry of new players s 9(2)(g)(i)
- [REDACTED]
- The Ministry for Primary Industries is currently exploring the commissioning of work regarding the impacts of the fisheries reform programme. The outcomes of this work should provide more transparency and enable further informed advice to be provided about questions regarding how wealth is being shared across the fishing industry.
91. Fisheries New Zealand considers the net effect of granting Pelco NZ permission to exceed aggregation limits to be neutral to positive for the kahawai, blue mackerel and associated fisheries based on the considerations outlined above. Market concentration is already moderate for both species, with Pelco NZ already the majority shareholder. This is to be expected given that very few companies (primarily Sanford and Pelco NZ) have operated purse seine vessels in these fisheries for many years and have had quota holdings commensurate with their investment in the fishery.
92. Concerns raised in submissions regarding the sustainability of kahawai and blue mackerel stocks are not relevant to this decision; rather they are matters to consider in any future review of TACs. Consenting to Pelco NZ's application will allow the company to consolidate holdings that have traditionally been taken by purse seine and allow it to harvest these stocks more efficiently. Consolidation will also assist the company in maintaining and developing international markets and to maintain catch history within the skipjack fishery. The company's commitment to retain any existing agreements to provide ACE to other fishers should resolve the concerns of some fishers particularly those that operate in KAH 1 and KAH 8, however Pelco NZ has acknowledged there is no formal mechanism to enforce this.
93. Should you consent to its primary application, Fisheries New Zealand does not recommend that you authorise an additional amount of quota aggregation for blue mackerel to provide Pelco NZ with a buffer should TACC changes in the future alter its position with respect to aggregation limits. The consultation process to amend catch limits would provide sufficient time for Pelco NZ to adjust its holdings in future if required.
94. The case for blue mackerel is clearer as purse seining is the only current target fishing method capable of catching the species in volume. In the case of kahawai concerns have been raised in submissions, particularly in relation to the availability of kahawai ACE in northern stocks. If you are concerned that consenting to the aggregation request would restrict the availability of ACE over time you may wish to issue a time bound consent in relation to kahawai.

95. In making your decision, there is also provision under section 60(2) of the Act for you to impose conditions on consent that you consider appropriate in the circumstances. Conditions can be put in place to mitigate the risks you have determined will likely occur based on your considerations under the Act. The types of conditions you may impose are coloured by the wording in the Act, with the example of limiting the number of quota shares for any stock. Consent may be given for any specified year or years or generally.
96. There are examples where conditions have been imposed for historical applications. These typically relate to:
- the exemption including companies owned or controlled by the applicant, or subsidiaries and associated companies at the time of the notice;
 - limiting the number of quota shares in a specified stock e.g. 38 percent of the combined TACCs of a particular species; and
 - completing the acquisition of quota shares by a specified date.
97. We are available to discuss this application and advice with you, and can provide you with further advice on potential conditions and previous examples of conditions if requested.

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Recommendations

1. It is recommended that you:

a) **Note** that Pelco NZ Limited has applied for consent under section 60(1) of the Fisheries Act 1996 to exceed the quota aggregation limits for kahawai and blue mackerel and to hold 45.993 percent of kahawai quota and to hold 55.304 percent (with authorisation to hold up to 61 percent) of blue mackerel quota.

NOTE

b) **Agree** to grant consent to Pelco NZ Limited to hold 45.993 percent of kahawai quota and up to 61 percent of blue mackerel quota, without condition.

OR

YES / NO

c) **Agree** to grant consent to Pelco NZ Limited to hold 45.993 percent of kahawai quota and 55.304 percent of blue mackerel quota, without condition.

OR

YES / NO

d) **Agree** to grant consent to Pelco NZ Limited to hold up to 45.993 percent of kahawai quota and 55.304 percent of blue mackerel quota with conditions that you consider reasonable or appropriate.

OR

YES / NO

e) **Agree** to withhold consent for Pelco NZ Limited to hold quota in excess of aggregation limits for kahawai and blue mackerel.

YES / NO

f) **Note**, that a letter notifying Pelco NZ Limited will be drafted for your consideration once your decision is known.

YES / NO

s 9(2)(a)

Emma Taylor
 Director Fisheries Management
 Fisheries New Zealand

Hon David Parker
 Minister for Oceans and Fisheries

/ / 2021

Minister's comments

Appendix One: Pelco New Zealand Limited's application for exemption from quota aggregation limits

Publicly available: <https://www.mpi.govt.nz/dmsdocument/41193-Pelco-application-for-excess-quota-Redacted.pdf>

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Appendix Two: Summary of submissions received on Pelco NZ's application during consultation

Submitter Name/Group	Stance	Comments
s 9(2)(a)	NA	Request release of additional application documents.
	Oppose	Stocks need protecting.
	NA	Request permission to share the application with local iwi.
	Oppose	Too much quota for one company to own.
	Oppose	Kahawai are overfished, small fishing companies are at a disadvantage.
	Oppose	<ul style="list-style-type: none"> - EMA: Concern around unknown stock status, unknown sustainability of catch levels, declining catch rates on west coast, limited research, no management plan. - KAH: uncertainty in stock status and structure, significant information gaps for historical and current biomass and recovery times for degraded populations, issues of bycatch and habitat degradation by destructive fishing methods, should use genetic structures to identify breeding groups.
	NA	Request clarification to which quota areas application applies.
	Oppose	Disagrees with the allowance for amalgamation of quota, as well as the ITQ system in general.
	Oppose	Does not support aggregation of quota, instead supports opportunities for smaller commercial companies and fishing communities.
	Oppose	Submits that enough damage has been done to date.
	Oppose	Populations of kahawai have been decimated in recent years, and it is rare to see mackerel.
	Oppose	<ul style="list-style-type: none"> - Generally agree with submission of NZSFC (#13, below). - Enjoy a good working relationship with Pelco and endeavour to maintain that relationship. - There is a noticeable decrease in biomass for blue mackerel and kahawai and allowing for aggregation limits to be exceeded will exacerbate the problem. - Unused quota should not be able to be resurrected. - Expect MPI to investigate the validity of the application and ensure that the law is upheld, and the laws are seen to be transparent and fair.
	Oppose	<ul style="list-style-type: none"> - Support the principle of aggregation limits and therefore do not support Pelco's application. - Concerned about the adequacy of the consultation process, especially the extensive redactions and withholding of annexes. - Request that annexes be released, consultation be extended, and the process be reviewed against the requirements of the Fisheries Act.

s 9(2)(a)

	<ul style="list-style-type: none"> - Challenge the legality of Pelco's application on the grounds that the contract between Pelco and Quota Management Systems Ltd. may make them "associated persons" under the Fisheries Act. - State that Pelco's high volume, low value business model does not add value to domestic markets and that their fishing method (purse seining) is not environmentally friendly. - Argue that because aggregation exemption applications are rarely declined, the purpose of the limits (and the public's faith in those limits) is undermined.
Oppose	Kahawai is an important fish for retail shops in Auckland so it is important that quota is available to a wide range of fishers that need it, including for bycatch. Reduced ACE on the open market could lead to increased prices for kahawai which could have detrimental impacts on lower income communities. Less concerned with English (blue) mackerel (EMA).
Oppose	Concerned about prices increasing for kahawai if aggregation exemption is granted which would have a detrimental impact on submitters fish shop.
Oppose	If quota is allowed to aggregate, its price will inevitably increase which will lead to more small fishers exiting the industry which should not be allowed to happen.
Oppose	<ul style="list-style-type: none"> - More harvesters mean diversified data sources, i.e. reduced opportunity for orchestrated misreporting - Granting the application would undermine the fundamental purpose of the QMS and be contrary to the obligations to Maori interests - The argument that the economic viability of Pelco's business is at stake implies that the limitations placed by the Act would apply to everyone fishing these stocks and if it is too expensive to harvest that could imply that the stocks are so low that the fishery should be closed to allow the stock to rebuild sufficiently that the cost per unit effort is economically viable. - There are other mechanisms that Pelco could use to ensure the ongoing viability of their business.
Oppose	Oppose any person or entity holding excess quota over the legal entitlement.
Oppose	Disagrees with Pelco's model harvesting kahawai for offshore markets. Approving the application would detrimentally impact local fish stocks, small fishers, and local markets, and affordability of the catch.
Support	<ul style="list-style-type: none"> - Do not intrinsically oppose exemptions to aggregation limits and consider each application case by case - Feels there is a net benefit to be gained by granting application - Do not believe that granting would result in anti-competitive behaviour - Argue that there are benefits for local iwi communities, and that consolidating management

s 9(2)(a)

	<p>of the resource to one company allows for more sustainable utilization</p> <ul style="list-style-type: none"> - Believe that benefits outweigh the perceived risks of approving the application.
Oppose	<ul style="list-style-type: none"> - KAH1 ACE is already difficult to access because of lack of availability on the market - KAH1 and 8 are critical choke species in northern set net fisheries - The combination of Pelco's holdings will effectively mean they hold over 56% of KAH1 and 67% of KAH2 which will strangle the ability of other fishers to source ACE - Believe that Pelco's contract with Quota Management Systems Limited establishes them as an associated person since they are unable to divest the shares as if they were their own property and are obligated to sell them back to Pelco, which we believe makes them "associated persons" under the act which would invalidate Pelco's application. - Argue that allowing Pelco to consolidate kahawai quota and ACE will be highly detrimental to other fishers of kahawai and is contrary to the effective operation of the QMS and purpose of the aggregation limits. - Believe that granting Pelco's request for speculative quota is not justified.
Oppose	<p>Argue that consolidating ownership of quota will reduce availability of kahawai to New Zealanders. Challenges the legality of Pelco's application based on the definition of "partnership," stating that the contract between Pelco and unrelated third party qualifies as a partnership and therefore the divested quota is technically still owned by Pelco.</p>

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Appendix Three: Pelco NZ's response to submissions received during consultation

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18 January 2021

Hon David Parker
Minister for Oceans and Fisheries
C/- Emma Taylor
Director Fisheries Management
Charles Fergusson Building
34-38 Bowen Street
Wellington 6011

By email: emma.taylor@mpi.govt.nz,

Dear Emma

RE: PELCO NZ LIMITED APPLICATION UNDER S 60 OF THE FISHERIES ACT 1996

A Background

1. We refer to the letter from Emma Taylor, Director Fisheries Management, dated 23 December 2020, noting that Pelco NZ Limited, Pelco Quota Holdings Limited and Pelco Holdings Limited (“Pelco”) are free to provide the Minister with responses to the submissions received during public consultation.
2. We note, however, that a number of the submissions enclosed with the letter dated 23 December 2020 have identifying particulars removed. In light of this, we have responded to the submissions as per the table contained within the Ministry’s “Appendix 1 Summary Table of Submissions received in relation to Pelco NZ Limited’s application for an exemption from the Quota Aggregation Limited”, which is set out below.

Submitter	Stance of Submitter	Comments	Date of Submission
A	NA	Requested release of additional application documents	24/07/2020
B	Opposes	Stocks need protecting	27/07/2020
C	NA	Requested permission to share the application with local iwi.	29/07/2020
D	Opposes	The request is too much quota for one company to own.	30/07/2020
E	Opposes	Kahawai are overfished, small fishing companies are at a disadvantage.	04/08/2020
F	Opposes	English (blue) Mackerel (EMA): Concern around known stock status, unknown sustainability of catch levels, declining catch rates on west coast, limited research, no management plan. Kahawai (KAH): Uncertainty in stock status and structure, significant information gaps for historical and current biomass and recovery times for degraded populations, issues of bycatch and habitat degradation by destructive fishing methods, should use genetic structures to identify breeding groups.	24/08/2020
G	NA	Requested clarification on which quota areas the application applies to.	26/08/2020

H	Opposes	Disagrees with the allowance for amalgamation of quota, as well as the ITQ system in general.	26/08/2020
I	Opposes	Does not support aggregation of quota, instead supports opportunities for smaller commercial companies and fishing communities.	30/08/2020
J	Opposes	Submits that enough damage has been done to date.	01/09/2020
K	Opposes	Populations of kahawai have been decimated in recent years, and it is rare to see mackerel.	01/09/2020
L	Opposes	<ul style="list-style-type: none"> Generally, agreed with submission of the national representative organisation. Enjoy a good working relationship with Pelco and endeavour to maintain that relationship. There is a noticeable decrease in biomass for blue mackerel and kahawai and allowing for aggregation limits to be exceeded will exacerbate the problem. Unused quota should not be able to be resurrected. Expect MPI to investigate the validity of the application and ensure that the law is upheld, and the laws are seen to be transparent and fair. 	15/09/2020
M	Opposes	<ul style="list-style-type: none"> Support the principle of aggregation limits and therefore do not support Pelco's application. Concerned about the adequacy of the consultation process, especially the extensive redactions and withholding of annexes. Request that annexes be released, consultation be extended, and the process be reviewed against the requirements of the Fisheries Act. Challenge the legality of t Pelco's application on the grounds that the contract between Pelco and Quota Management System Ltd. May make them "associated persons" under the Fisheries Act. State that Pelco's high volume, low value business model does not add value to domestic markets and that their fishing method (purse seining) is not environmentally friendly. Argue that because aggregation exemption applications are rarely declined, the purpose of the limits (and the public's faith in those limits) is undermined. 	18/09/2020
N	Opposes	Kahawai is an important fish for retail shops in Auckland, so it is important that quota is available to a wide range of fishers that need it, including for bycatch. Reduced ACE on the open market could lead to increased prices for kahawai which could have detrimental impacts on lower income communities. Less concerned with English (blue) mackerel (EMA).	undated
O	Opposes	Concerned about prices increasing for kahawai if aggregation exemption is granted which would have a detrimental impact on the submitter's fish shop.	undated
P	Opposes	If quota is allowed to aggregate, its price will inevitably increase which will lead to more small fishers exiting the industry which should not be allowed to happen.	undated

Q	Opposes	<ul style="list-style-type: none"> • More harvesters mean diversified data sources, i.e. reduced opportunity for orchestrate misreporting. • Granting the application would undermine the fundamental purpose of the QMS and be contrary to the obligations to Māori interests. • The argument that the economic viability of Pelco's business is at stake implies that the limitations place by the Act would apply to everyone fishing these stocks and if it is too expensive to harvest that could imply that the stocks are so low that the fishery should be close to allow the stock to rebuild sufficiently that the cost per unit effort is economically viable. • There are other mechanisms that Pelco could use to ensure the ongoing viability of their business. 	undated
R	Opposes	Oppose any person or entity holding excess quota over the legal entitlement.	31/08/2020
S	Opposes	Disagrees with Pelco's model harvesting kahawai for offshore markets. Approving the application would detrimentally impact local fish stocks, small fishers, and local markets, and affordability of the catch.	18/09/2020
T	Supports	<ul style="list-style-type: none"> • Do not intrinsically oppose exemptions to aggregation limits and consider each application case by case. • Feels there is a net benefit to be gained by granting this application. • Do not believe that granting would result in anti-competitive behaviour. • Argue that there are benefits for local iwi communities, and that consolidating management of the resource to one company allows for more sustainable utilization. • Believe that benefits outweigh the perceived risks of approving the application. 	undated
U	Opposes	<ul style="list-style-type: none"> • KAH1 ACE is already difficult to access because of lack of availability on the market. • KAH1 and 8 are critical choke species in northern set net fisheries. • The combination of Pelco's holdings will effectively mean they hold over 56% of KAH1 and 67% of KAH2 which will strangle the ability of other fishers to source ACE. • Believe that Pelco's contract with Quota Management Systems Limited establishes them as an 'associated person' since they are unable to divest the shares as if they were their own property and are obligated to sell them back to Pelco, which if true would invalidate Pelco's application. • Argue that allowing Pelco to consolidate kahawai quota and ACE will be highly detrimental to other fishers of kahawai and is contrary to the effective operation of the QMS and purpose of the aggregation limits. • Believe that granting Pelco's request for speculative quota is not justified. 	undated
V	Opposes	Argue that consolidating ownership of quota will reduce availability of kahawai to New Zealanders. Challenges the legality of Pelco's application base on the definition of "partnership", stating that the contract between Pelco and the unrelated third party qualifies as a partnership and therefore the divested quota is technically still owned by Pelco.	September 2020

3. In making submissions in reply, it is not Pelco's intention to repeat submissions that are already set out in its original application.

4. In accordance with the above, Pelco's submission in reply are as follows.

B Submissions in Reply

Submitter A

5. In respect of this submission A, dated 24 July 2020, Pelco has no submissions in reply.

Submitter B

6. In respect of this submission B, dated 27 July 2020, Pelco notes that the opposition to its application is not accompanied by any supporting information or detail. Accordingly, Pelco submits that this application must have very limited weight in terms of the Ministry's mandatory considerations under s 60 of the Fisheries Act 1996 ("FA 1996").

Submitter C

7. With respect to this submission C, dated 29 July 2020, Pelco has no submissions in reply.

Submitter D

8. With respect to this submission D, dated 30 July 2020, Pelco submits that the objector's opposition to one company having so much of the allowable catch, without more detail, ignores the fact that the Act expressly contemplates (by virtue of s 60 FA 1996) that such aggregations are permissible. In addition, Pelco notes that the application is essentially confined to quota that was previously owned by them and was necessitated by virtue of the *Sanford asset package* being marketed as a going concern. In practical terms, the application is effectively the final stage of an amalgamation of two already existing pelagic fishery operations. Accordingly, the aggregation of quota as a result of the purchase of the *Sanford asset package* and Pelco's application relating to the *divested quota package* has little or no impact on other operators in the fishing industry.

Submitter E

9. With respect to this submission E, dated 4 August 2020, Pelco submits that the objector, while being very perfunctory, essentially confuses general concerns over the viability of the kahawai fishery and the suggested need for quota to be reduced with matters that are relevant to the application. In particular, this application relates to existing holdings of quota and does not directly impact on the sustainability of the fishery. Issues going to the sustainability of the fishery are appropriately dealt with under Part 3 of FA 1996 and may be addressed by way of revision of TACs and TACCs or implementation of suitable regulations. Section 60 on the other hand is not a sustainability measure. Even if it were, the present application has no impact on sustainability measures or the sustainability of the fishery itself as it relates to amalgamation of quota that was already being fished prior to the application. This is true both in terms of the *divested quota package* and the *Sanford asset package*. The application is, at the minimum, purely neutral in sustainability terms, though as outlined in the accompanying submissions in support of the application (pages 10 and 11), the repurchase of the *divested quota package* will reduce the need for an additional vessel which would otherwise increase overall purse seine capacity in the fishery needlessly.

Submitter F

10. With respect to this submission F, dated 24 August 2020, Pelco submits that, while it is more detailed in terms of issues relating to the sustainability of blue mackerel and

kahawai stocks, the same points set out above in respect of Submitter E are relevant to this submission.

Submitter G

11. With respect to this submission G, dated 26 August 2020, Pelco has no submissions in reply.

Submitter H

12. With respect to this submission H, dated 26 August 2020, Pelco submits that, in essence, it amounts to a general opposition to the use of ITQ system as currently operated under the auspices of the FA 1996. Whatever the merits are of the arguments raised in that submission, they are irrelevant to the matters that are required to be addressed by the Minister under s 60 FA 1996.

Submitter I

13. With respect to this submission I, dated 30 August 2020, Pelco submits that general opposition to commercial interests being granted exemptions under s 60 to quota aggregation limits has little weight in terms of the matters the Minister is required to consider under that provision. This is especially the case where no supporting detail or justification for that opposition are provided. This submission effectively opposes any exercise of the Minister's discretion under s 60 which is clearly not permissible in light of the terms of that section and the Act overall.

Submitter J

14. With respect to this submission J, dated 1 September 2020, Pelco submits that this submission can have little weight in terms of its application under s 60, given the absence of any supporting information or detail in relation to the allegations set out therein.

Submitter K

15. With respect to this submission K, dated 1 September 2020, Pelco submits that the objector appears to confuse general concerns over the viability of the fisheries with matters that are relevant to the application. The objection focuses on opposing increased catch which is a matter of sustainability, and subject to other provisions of the FA 1996 rather than relating to an application to hold an exemption under s 60.

Submitter L (Tauranga Sport Fishing Club)

16. With respect to this submission L, dated 15 September 2020, Pelco submits that there are essentially four grounds set out in opposition to its application.
 - (a) The first ground concerns allegations that the application would give rise to monopoly concerns through majority control of the quota into ownership of one corporate entity. Pelco submits that s 60 expressly contemplates aggregations of quota that would otherwise breach the provisions of s 59 FA 1996. Accordingly, generalised opposition to applications for quota holdings in excess of aggregation limits does not specifically address issues that are relevant to the Minister's exercise of the discretion under s 60. In addition, however, Pelco notes that the application, if granted, would only involve Pelco being granted consent to hold up to 61% EMA and 51% for KAH. The actual amount the *divested quota package* would confer on Pelco would be 55.304% of EMA quota and 45.993%

of KAH quota. Pelco's application, even if granted, would leave substantial holdings of quota for both species in other industry hands. Monopoly concerns accordingly would have little justification. These concerns have even less impact given the fact that the application itself arises by virtue of Pelco's purchase of the Sanford pelagic fishing operation as a going concern and that the *divested quota package* previously belonged to Pelco itself. What effectively underlies this application is an amalgamation of Pelco's pelagic operation with Sanford's pelagic business. The amalgamation would be expected to be profitable as a result of increased economies of scale. The fundamental purpose of the application is not to exercise monopoly controls but rather to derive economies of scale by amalgamation of two substantial businesses. As a result, the application would preserve already existing investments in these pelagic businesses and existing jobs.

- (b) The second point raised in these submission relates to sustainability of the overall biomass. For the reasons set out in respect of Submitters E and F, sustainability concerns are more properly addressed under Part 3 of the Act and are not directly relevant to the matters the Minister is required to consider under s 60.
- (c) The third point raised in the submissions is an unsupported allegation that the quota has been improperly allocated through aggregated quota being sold and then purchased back at a later date. It is unclear from this submission which quota (*Sanford asset package* or *divested quota package*) is alleged to have been improperly allocated. Nor is it clear what the objector is impugning with respect to the phrase "improperly allocated". As best as Pelco can interpret this ground of the submission, it appears that the allegation is essentially one that there is something legally improper with the *divested quota package* being sold to a third party under a contract that provides an option to repurchase that quota. The objector, however, nowhere outlines the specific nature of the suggested illegality or impropriety. With respect to this submission, Pelco submits that there is nothing legally wrong or improper about Pelco onselling sufficient of its existing quota to a third party in order to make available room for the incoming *Sanford asset package*. Nor is there anything unlawful or improper about the existence of an option to repurchase the *divested quota package* in the event the Minister grants this application. In fact, the arrangements in respect of which the objector raises its concerns are entirely appropriate and legal and **were undertaken for the express purpose of not breaching the relevant provisions of the FA 1996.**¹ In addition, an option to purchase which is conditional on an exercise of a discretion by a third party gives rise to a contingent interest rather than a vested interest in the *divested quota package*. Contingent interests are not unlawful or improper per se nor do they breach any provisions of the FA 1996 because such interests do not confer on the party any *present* right to that property. In contrast, an "*interest may be vested in interest or vested in possession.. An interest vested in possession confers an immediate right to present enjoyment of the assets, while an interest that is merely vested in interest confers a present right to future enjoyment. Both are distinct from a contingent interest which will not*

¹ Emphasis added.

vest unless and until some requirement is satisfied other than the determination of a prior interest.”²

- (d) The fourth point raised is the objector’s proposal that quota that has been unused for any reason should not be able to be resurrected or fished in the future. Pelco submits that it is not entirely clear what the objector is actually suggesting here. Nor is it clear what these submission have to do with the present application by Pelco. Quota, by its very legal nature, is not fished. In addition, all quota spawns ACE regardless of “usage”. It is ACE, which is not subject to aggregation limits under the Act, that is fished. Accordingly, it is difficult to understand what the objector means by way of “unused” quota. In any case, both the *Sanford asset package* and the *divested quota package* involve quota that is in current use, in the sense that ACE spawned from those quota packages is being fished.

Submission M

17. With respect to this submission M (NZ Sport Fishing Council), dated 18 September 2020, Pelco submits that there are essentially four grounds set out in opposition to its application.

- (a) The first ground concerns allegations that the application would give rise to monopoly concerns. This submission reflects that made by the Tauranga Sport Fishing Club. Accordingly, Pelco’s submissions in respect of Submitter L’s identical objection relating to monopoly concerns are restated. There is also an adjunct submission that the consolidation of quota shares is not consistent with the objector’s rescue fish policy of avoiding market dominance and regulatory capture. Inconsistency with Submitter M’s policies are not relevant to the exercise of the Minister’s discretion under s 60.
- (b) The second ground concerns allegations that Pelco has had adequate time between entering a contract with Sanford Limited and the settlement date to make an application for exemption but they chose not to do so. In supporting this submission, the objector outlines in paragraph 16 of its submission the relevant sequence of events. Pelco submits in response that the period between 6 December 2018 (sale unconditional) and 1 April 2019 (transfer of *divested quota package*) did not allow sufficient time for Pelco to prepare and file an application under s 60. What the objector fails to take into account is that the purchase of the *Sanford asset package* involves substantially more assets and matters other than quota. Pelco was in fact acquiring a going concern from Sanford. Transferring the Sanford pelagic business to Pelco involved substantial management and legal time addressing the myriad of issues that such a transfer necessarily involves. Nor does the objection take into account the fact that the period between 6 December 2018 and 1 April 2019 transitioned over the Christmas/New Year break period for employees of the company. Effectively, the company had effectively only two clear months to deal with all the financial, employment, legal, and the associated issues involved with the acquisition of the *Sanford asset package*. In addition, the objector fails to recognise the fact that, in preparing its application under s 60, Pelco undertook its own consultation

² *MA v MA and LK Trustees (NO.91) Limited* (as Trustees of the Good Hope Trust) [2016] NZHC 1426 at [19]

discussions with iwi and Māori organisations with a view to obtaining support for amalgamation. This support was subsequently forthcoming. Accordingly, Pelco submits that the objector's submission is without merit. In any event, even if the submitter's objection were accepted at face value, that submission is irrelevant to the Minister's determination under s 60. That is because s 60 sets out no time requirement for the making of such an application. Provided the quota has not been acquired in breach of s 59 FA 1996, an application can be made at any point. As a result, the objector's submission that Pelco had sufficient time prior to the transfer of the *divested quota package* to make an application under s 60 is not a valid ground for objection as it is not relevant to the matters set out in s 60 or the Act generally.

- (c) The third ground related to the objector's concerns with the consultation process and, in particular, the inability of the submitter to verify the nature of the relationship between Pelco and QMSL (the unrelated third party that purchased the *divested quota package*). The adequacy or otherwise of the consultation process is not a matter for Pelco to comment on. The Ministry is in the best position to determine the validity or otherwise of that claim. Pelco simply submits that objections to the consultation process are not per se objections to the Pelco's substantive application, i.e. it does not set out a valid objection to the application to exceed the aggregation limit itself, rather it relates to the process adopted by the Ministry. With respect to the objector's ability to verify the nature of the relationship between Pelco and QMSL, Pelco submits that is not a valid ground of objection. That is because it is not the objector's place to determine those issues. It is the Ministry that is the functioning authority which has the legal obligation to determine those matters. While it may well be the case that the objector has not had the underlying contract relating to the option to repurchase and agreement for sale and purchase of quota disclosed to it, that contract has been disclosed to the Ministry. It is for the Ministry to assess that contract not the objector. Pelco has had no indication from the Ministry of any concerns related to the matters set out in that contract. Nor would Pelco expect to receive notice of any concerns as the matter is legally relatively straight forward. A contract conferring an option to repurchase a quota package subject to a contingency occurring does not vest any interest in the quota package that is the subject of that option.³ Pelco also submits that the objector misunderstands the law when it submitted (at paragraph 20 of its submissions) that "*the relationship between buyer and vendor is material to determine if they are associated persons...*" Pelco notes by way of reply that the phrase "*associated person*" applicable to ss 59 and 60 of the FA 1996 is that defined under subpart YB of the Income Tax Act 2007.⁴ The provisions of subpart YB are relatively narrow in scope and plainly do not apply to a relationship derived by way of a contract conferring an option to repurchase property. Accordingly, this ground of objection is without merit.
- (d) The fourth ground relates to sustainability concerns relating to purse seining and pelagic species. For the reasons already set out in relation to Submitters E, F and L, s 60 is not a sustainability measure and sustainability measures are more

³ Refer to Submitter L paragraph (c).

⁴ As it was prior to the amendments set out in s 59(10)(d) FA 1996.

properly dealt with under Part 3 of the Act. Given that the application relates to existing quota and that quota will spawn ACE which can be fished irrespective of who owns it, this ground of objection is irrelevant to the Minister's considerations under s 60 FA 1996.

Associated Submitter

18. With respect to this submission by Whangamata Ocean Sports Club Inc., dated 18 September 2020, Pelco notes that it is a form letter repetition of the submission made by Submitter M. Pelco therefore repeats its submissions made in reply to the submissions of Submitter M.

Submitter N

19. With respect to this submission N, undated, Pelco submits that there are three grounds set out in opposition to its application.
 - (a) The first ground submits that kahawai is a core fishing species caught by commercial and recreational fishers across the country and that an exemption for such a core species would make a mockery of the legislation and send a poor signal to the wide community. Pelco submits that this ground of opposition is essentially an opposition to the granting of exemptions to the aggregation limits per se which ignores the fact that the legislation also expressly provides the Minister with the power to grant exemptions. This ground of opposition also ignores the fact that the aggregation limits only relate to quota, which is not in fact the mechanism by which fishing for kahawai is implemented. Quota's role within the legislative context of the FA 1996 is simply to govern the spawning of ACE. That is its sole purpose. It is ACE which governs the actual fishing undertaken in respect of any specific QMS species. ACE is not governed by aggregation limits and theoretically any party could purchase 100% of all ACE and fish it in any species. This concept is poorly understood within the broader general public and accordingly leads to confusion about the role of quota and the issues that arise about aggregation of quota. Accordingly, the submitter's proposition that the aggregation legislation is designed to protect species like kahawai to ensure it remains readily available to all New Zealanders is not correct.
 - (b) The second ground given for opposition to the application is the importance of kahawai in Auckland retail, Māori, Polynesian and other communities. The submitter states that is therefore vital that there is a good supply of quota available to a wide range of fisherman who either target this fish or catch it as bycatch. In response, Pelco submits that there is nothing inherent in the aggregation application that would directly impact on the availability of kahawai in Auckland or in other areas of New Zealand. As previously noted, the amalgamation proposal involves at its essence an amalgamation of two previously existing fishing businesses. Pelco's proposed business model based on a successful amalgamation approval is not solely limited to supplying international markets. Pelco currently sells kahawai to local businesses with most of that fish being smoked and onsold to the local market. Pelco also sells up to 80MT of kahawai ACE to another fishing company and a large supermarket chain as a result of long term arrangements. Pelco also notes that even if the

aggregation application is approved, a substantial quantity of quota would still remain in the hands of other quota owners and this would likely be available for the purposes set out in the objector's submission. Pelco further notes that the amalgamation proposal would not actually result in any substantive change to existing fishing industry activity in respect of kahawai because the application essentially relates to the amalgamation of two prior existing fishing operations (which include the quota in question).

- (c) The third ground relates to a concern that the application will result in a reduced supply of "ACE (quota)" on the open market and therefore lead to an increase in price over time which would then have a detrimental effect on lower socio-economic communities. No evidence or analysis is provided in support of this submission. In reply, Pelco submits that its aggregation proposal will have a purely neutral effect on existing supplies of ACE because at the core of the application is the amalgamation of two prior existing businesses. Sanford fished its own ACE and Pelco fished its own ACE. The sole impact of the aggregation application is the removal of one business owner which will lead to efficiencies and greater profitability in the combined fishing operation. In addition to the quota, Pelco has purchased all of Sanford's pelagic fishing operation assets. The objection also ignores the fact that the application essentially relates to Pelco reacquiring the quota that it previously owned. The only effect that rejecting the application would have would be to force Pelco to enter the ACE market and purchase ACE at a higher cost to it in order to secure long term supply of ACE. Aside from reducing the profitability of the Pelco operation, this would have the effect of driving up kahawai ACE prices across the board, giving rise to the very concerns expressed by the objector.

Submitter O

20. With respect to this submission O, undated, Pelco submits that this submission essentially repeats the same concerns as Submitter N. Accordingly, Pelco repeats its submissions made in reply to Submitter N.

Submitter P

21. With respect to this submission P, undated, Pelco submits that this submission is also a repeat of the same concerns as Submitters N and O. Accordingly, Pelco repeats its submissions made in reply to Submitter N.

Submitter Q

22. With respect to this submission by Submitter Q (Te Rarawa Anga Mua Trust), undated, Pelco submits that there are essentially three grounds set out in opposition to the application.

- (a) The first ground concerns the alleged impact of the proposed aggregation application on data management of the QMS system. In particular, the objector alleges that a wider spread of quota results in less chance or orchestrated misreporting or under-reporting of catch. No evidence or analysis is provided in support of that submission. With all due respect to the submitter, this allegation is not borne out by actual experience over the course of the history of the QMS system. Larger New Zealand operators within the QMS system have generally had a better track record of compliance than smaller fishers. Larger operators

tend to have better management and control systems along with appropriate support staff to ensure that its vessels and associated business operations operate in compliance with the QMS. In addition, because of the scale of investment involved in large operations, there is substantially less benefit and therefore incentive to operating outside the constraints of the QMS and such activities would result in substantive risk to large valuable assets owned by such operators. Both Sanford and Pelco have good compliance records prior to the purchaser of the *Sanford asset package* and there is nothing within the nature of the proposed aggregation application that would be likely to alter that position. If anything, the amalgamation proposal would further incentivise Pelco's operations to comply with the requirements of the QMS, given the increased assets that would be at risk in the event of non-compliance.

- (b) The second ground stated by the objector, relates to the proposition that commercial rights to public assets were granted under the QMS system and that accordingly ongoing management and viability of fish resources is for the benefit of the New Zealand public and not just harvesters or processors. Accordingly, it is suggested that the purchase of stocks above the aggregation limits is not best for the fishery and would breach the Crown's obligation to provide active protection of Māori interests guaranteed by Te Tiriti o Waitangi. In response, Pelco submits that the objector, beyond referring to data management issues underpinning the sustainability of fisheries management, does not set out any evidence or analysis for this submission. Accordingly, it is difficult to respond in detail to this statement beyond simply pointing to support for the aggregation application set out in the submission of Te Ohu Kaimoana. In particular, Pelco also notes that the company itself is a Māori owned business and has extensive relationships with iwi in terms of shared economic and cultural goals which are set out in detail in the applicant's submissions.
- (c) The third ground given by the objector relates to the issue of economic viability as a trigger for activation of approving aggregation applications both in terms of Pelco's application and in general. A number of propositions are set out in support of this ground. The objector states that "*If fishing is so difficult then normally this implies that stocks are too low and the cost per unit effort too high for commercial activity to take place sustainably...*" This proposition is both logically and factually inaccurate. It ignores the fact that the value of pelagic fishery's product is dictated by world prices, not sustainability or availability within New Zealand. In this market, New Zealand is a price taker not a price maker. Sustainability issues, if any, have no effect on price and therefore current economics of pelagic fishing operations in New Zealand. In addition, as previously noted in relation to other submitters, s 60 is not a sustainability measure. Issues relating to sustainability are more properly addressed under Part 3 of the FA 1996. Sections 59 and 60 FA 1996 relate to aggregation of ownership. Accordingly, this ground of the objection is factually inaccurate and is not relevant to the matters that the Minister is required to consider under s 60 as those issues it raises, if valid, can be addressed under the appropriate provision of the Act..

It is worth noting that at the conclusion of the submissions of the objector, it suggests that Pelco NZ Limited institute a long-term agreement with the current holder or similar for the supply of ACE to continue fishing these fisheries. That proposition fundamentally undermines the objector's grounds of opposition to the application. That is because the objector is essentially acknowledging that if the Minister were to decline the application, Pelco could effectively achieve the same end result by virtue of long-term ACE supply contracts and the concerns raised by the objector would still apply.⁵

Submitter R

23. With respect to this submission R, dated 31 August 2020, Pelco submits that the stated objection is perfunctory in nature and simply relies upon the existence of the aggregation limits set out in s 59 without considering the fact that the Act also provides discretion for the Minister to grant an exemption under s 60. The objector fails to set out any analysis or rationale for the objection beyond a statement that "*Any person or company should only be entitled to their legal entitlement.*". Accordingly, Pelco submits that this objection should carry little weight in consideration of Pelco's application by the Minister.

Submitter S

24. With respect to this submission S, dated 18 September 2020, Pelco submits that there are two stated grounds set out in opposition to the application.
- (a) The first ground stated is that the application should be declined as to approve consent would breach the Act itself. This ground of objection is both logically and legally erroneous. That is because the Act expressly provides for the Minister to approve an application to exceed the aggregation limits set out in s 59.
 - (b) The second ground stated is that the application would detrimentally impact on other operators in the fishing industry for the reasons therein stated. Pelco's response is that the objection stated ignores the fact that at the core of the application is the amalgamation of two prior existing businesses and quota packages. Both operations independently fish for pelagic species and applied the ACE spawned from their quota to their own operations. Accordingly, the impact of the application on other fishers is entirely neutral. In fact, if the application is rejected by the Minister, Pelco would be forced to enter the open ACE market to secure long-term ACE supply and this would likely drive up ACE prices to the detriment of smaller fishing operations. The stated ground also ignores the fact that the application primarily relates to the reacquisition of Pelco's previously owned quota and, logically, approval of that application has no impact on other fishers.

Submitter T

25. With respect to this submission T, undated, Pelco notes that the submitter fully supports the application on behalf of 58 mandated iwi organisations other than those that have independently responded.

⁵ Pelco does not however accept that it can implement long-term ACE agreements that would be sufficient to secure the long-term development of the amalgamated fishing operations and continued profitability. The aggregation application would provide a greater security than ACE supply contracts.

Submitter U

26. With respect to this submission U, undated, Pelco submits that there are essentially three stated grounds of objection.
- (a) The first ground given is in essence an allegation that, by virtue of the contractual option to repurchase the divested quota package from QMS Limited, the parties are associated under the FA 1996 and accordingly hold quota for KAH stocks in excess of the mandated aggregation limits. Accordingly the Minister cannot legally retrospectively consent to the excess aggregation. Pelco in response to this submission rejects the proposition that it and QMS Limited are associated persons for the purposes of aggregation of quota simply by virtue of a contractual option to repurchase the *divested quota package*. The submitter provides no analysis or legal rationale for its conclusion. Pelco repeats its submissions set out in its response to Submitter L subparagraph (c). Such a contract does not vest any interest in the quota held by the other party nor does the arrangement meet any of the stated grounds for associations set out in s YB of the Income Tax Act 2007.
 - (b) The second ground stated is that the granting of the aggregation application would have an impact on other fishers in that it would close off open sale of ACE that was alleged to have previously been made by Sanford in respect of KAH1 quota. In that regard, this ground is similar to that set out by Submitter N but includes more detail in relation to the suggested impacts.⁶ It should be noted that this submission ignores the fact that the Sanford asset package has already been acquired by Pelco and any impacts from that purchase (if any) are outside the scope of this application. The present application relates to an approval to repurchase quota that was previously owned by the applicant but which would require the Minister's approval to reacquire as it would result in an aggregation above the statutory limits. The reacquisition of this specific quota package is entirely neutral in respect of its impact on other fishers as that quota package was previously fished by Pelco. In essence, the applicant is seeking an advantage over and above that previously pertaining by virtue of accessing ACE which would otherwise not have been on the open market. The submission also ignores the fact that if the application were not granted that would have the effect of forcing Pelco into competing in the open market for substantial quantities of KAH1 ACE. This would have the inevitable effect for driving up prices of KAH1 ACE to the detriment of small operators.
 - (c) The third ground relates to the differential between the percentage of quota Pelco would hold by virtue of reacquisition of the *divested quota package* and the additional 5% sought in respect of KAH. The only rationale provided in support of this ground of objection is that there is no assurance given that Pelco would not immediately purchase additional kahawai quota to increase its share of quota weight equivalent to 51% and the objector sees no justification for that additional capacity. Pelco also notes that the objector seems to be under the impression that if the application is declined, the Ministry can direct QMS Limited to sell the excess kahawai quota on the open market. This belief is both factually and legally incorrect.

⁶ Refer to paragraph 19(b).

Submitter V

27. With respect to this submission V, dated September 2020, Pelco submits that there are two grounds for objection which are visible to the applicant on the face of the redacted copy of the objector's submission.
- (a) The first ground relates to speculative impacts on the KAH1 fishery from the application, both in terms of recreational access and supply to retail shops. Pelco submits that there is nothing in the current application that would impact on recreational access per se as recreational access is separately accommodated under the relevant provisions of the FA 1996. Quota aggregation issues relate solely to the commercial sector. The issues raised by the objectors in relation to the retail sector are simply speculative and do not logically arise from this application. Again, the objection ignores the fact that the application relates to reacquisition of the *divested quota package* that was previously owned by the company. Accordingly, the effect of repurchasing that quota package is entirely neutral and nothing would essentially change from that which previously existed prior to the divestment of the quota package.
 - (b) The second ground of objection relates to a similar allegation as set out in a number of other objectors' submissions that the option to repurchase essentially makes the parties associated for aggregation purposes. Pelco repeats its earlier submissions on this point.

C Conclusion

28. In light of the concerns outlined in some of the submissions, Pelco has reconsidered its request for an additional 5% sought for KAH, to allow for any increases in TAC/TACC. Pelco accordingly amends its application for Ministerial consent to omit the additional 5% of KAH. For the avoidance of doubt, Pelco maintains its application for Ministerial consent to hold quota shares in excess of aggregation limits in blue mackerel (EMA) up to 61% and in kahawai (KAH) up to 46%.

Yours faithfully

OCEANLAW NEW ZEALAND

s 9(2)(a)

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Partner

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