



4 July 2024

The Hon. Shane Jones
Minister of Oceans and Fisheries
Private Bag 18888
Parliament Buildings
Wellington 6160

By email: shane.jones@parliament.govt.nz

Dear Minister

RE: PELCO GROUP APPLICATION UNDER SECTION 60 OF THE FISHERIES ACT 1996

Introduction

1. We act for the Pelco Group of companies, being Pelco NZ Limited, Pelco Quota Holdings Limited, and their parent company Pelco Holdings Limited. As these entities are associated for the purposes of s 59(10) of the Fisheries Act 1996 and s YB of the Income Tax Act 2007, they are addressed as a single entity (Pelco NZ) for the purposes of these submissions.
2. This letter and attachments are submitted as an application by Pelco NZ under s 60 of the Fisheries Act 1996 for approval to exceed aggregation limits in respect of blue mackerel (EMA) and kahawai (KAH).
3. This application by Pelco NZ relates to the repurchase of quota consisting of blue mackerel and kahawai previously owned by Pelco NZ but sold to Quota Management Systems Limited (QMSL) for the purposes of making sufficient headroom for incoming quota purchased as part of an overall package of assets from Sanford's pelagic fishing operations (the divested quota package).
4. Pelco NZ has previously made a similar application under s 60 of the Fisheries Act 1996, under cover of our earlier letter dated 11 March 2020. Pelco NZ's application was made to the then Minister of Oceans and Fisheries, the Hon. Stuart Nash, for the purposes of allowing Pelco NZ to increase its quota holdings to a total of 61% for EMA and 51% for KAH (copies of which are attached).

5. As noted in the earlier application, the combination of Pelco NZ's remaining quota holdings and the incoming Sanford package of quota meant that Pelco NZ held a maximum amount of quota possible for these two species (45% of blue mackerel quota and 35% of Kahawai quota). If Pelco NZ were permitted to repurchase the divested quota package it would then own 55.304% of all blue mackerel quota and 45.993% of all kahawai quota. In addition, Pelco NZ applied for an additional 5% margin to accommodate future TAC/TACC changes. Accordingly, Pelco NZ's previous application was for consent to exceed the s 59 aggregation limits so as to enable it to hold total quota shares in blue mackerel of up to 61% and in kahawai up to 51%.
6. The full background to that previous application was set out in our letter of 11 March 2020 and the enclosed materials furnished in support of that application. That earlier application and supporting materials are incorporated and relied upon by our client for the purposes of this renewed application.¹
7. Following receipt of that earlier application, it was submitted for public consultation. Subsequent to the close of that consultation, Pelco NZ's response to the submissions received by the Ministry was set out in our letter to the Minister dated 18 January 2021. That response is also relied upon and incorporated by our client in their present application (a copy of which is also **attached**). By way of memorandum dated 20 September 2021 to the Minister, Fisheries New Zealand recommended that the Minister consent to Pelco NZ's application to exceed the aggregation limits for blue mackerel to 55.304% and 45.993 % for kahawai but recommended against the additional 5% margin sought to accommodate future TAC/TACC changes. Following comments and questions from the then Minister, the Hon. David Parker, Fisheries New Zealand refined its position from recommending consent to Pelco NZ's application to that of noting:

"The Fisheries Act 1996 provides discretion regarding whether to accept or decline the application of Pelco to aggregate quota. We consider that granting the application would, overall, be neutral to positive but it is somewhat of a "line call".

8. The somewhat subtle shift in the Ministry's advice to the Minister was not explained but probably was reflective of the then Minister's perceived opposition to the application.

¹ There is nothing in the Fisheries Act 1996 that limits or otherwise restricts the making of multiple applications under s 60 of that Act.

9. By way of letter dated 4 August 2022, the Minister declined consent for all aspects of Pelco NZ's application. The principal grounds on which the Minister declined the application were that exceeding the aggregation limits would likely:
- i) lessen competition in relation to blue mackerel and kahawai;
 - ii) present a barrier to new entrants; and
 - iii) entrench the current low liquidity in the ACE market.
10. Following receipt of the Minister's letter, we advised our client that in our view the Minister's decision appeared to confuse the respective roles of quota and ACE in relation to access to fisheries under the QMS. On its face, the Minister's decision appeared to have considered aggregation limits of quota as linked to and equating with access to the fishery, which is in fact a function of ACE. The Minister's comments in his letter declining the application appeared to encapsulate an understanding of the QMS as it existed under the previous Fisheries Act 1983.
11. Since the advent of the 1996 Act, access to QMS fisheries is no longer governed by quota. More importantly, the aggregation provisions do not impact on ACE holdings and the Act does not preclude any person from purchasing up to 100% of all available ACE in any particular fishery. The same position applies in respect of persons entering into long term contracts for that purpose. Given that this is undoubtedly the correct legal view of the current Fisheries Act 1996, it is difficult to see how the Minister's focus on the impact of Pelco's quota aggregation application on ACE availability for other fishers could be logically or legally justified.
12. Section 60(3) of the Fisheries Act 1996 governs the matters the Minister shall take into account in considering whether to grant any consent to persons to hold quota in excess of aggregation limits. In particular, the Minister is required to consider the following:
- (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:*
 - (i) 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:*
 - (c) Such other matters as the Minister considers relevant."*

13. There is nothing in s 60 of the current Act that justifies the previous Minister's equating quota aggregation with limiting access to the fishery. The fact that the 1996 Act does not contain aggregation provisions relating to ACE in fact undermines the very rationale for his decision.
14. Since the decision of August 2022, our client has taken time to enable us to provide advice and to consider its options. In the meantime our client has been able to maintain the previous status quo in terms of the relevant quota and ACE packages
15. In addition, there have been recent changes in the overall structure of the New Zealand fishing industry which have further served to undermine the previous Minister's conclusions in relation to the competitive/monopoly impacts of aggregation of quota holdings in the New Zealand context.
16. In particular, recent decisions made by the Commerce Commission relating to consolidation of other fishing assets have reinforced the view that the previous Minister's concerns may have been overstated. s 9(2)(g)(i)

s 9(2)(g)(i)

s 9(2)(g)(i)

Associated determinations

by the Commerce Commission highlight that these sale arrangements do not result in the consolidation of fishing and quota rights in a manner that influences competing fishing operators, and does not influence competition in the associated retail and wholesale markets.

17. As has been previously noted by MPI, *"it is clear that Parliament's rationale for aggregation limits was not to prevent quota concentration per se, but rather to avoid unacceptable effects that could emerge: anti-competitive behaviour, and disadvantage to small fishing operations in those fisheries in which access is easier (lower input costs, little to no processing required, no requirement for development of international market, etc.)."*⁴ There is no basis for suggesting this application will result in anti-competitive behaviour to disadvantage small-scale fisheries as the proposed repurchase of the Divested Quota Package by Pelco is not in competition with other operators. That is because neither the Sanford quota package nor the divested quota package were previously owned or available to any other fishers (including the ACE generated).

² [Commerce Commission - Aotearoa Fisheries Limited t/a Moana New Zealand; Sanford Limited \(comcom.govt.nz\)](#) [2023] NZCC 25

³ [Commerce Commission - Sealord Group Limited; Independent Fisheries Holdings Limited \(and its related entities\) \(comcom.govt.nz\)](#) [2023] NZCC 31

⁴ Ministry for Primary Industries, September, 2017. *Application from Fiordland Lobster Company for consent to hold rock lobster quota in excess of aggregation limits: Decision Document*. MPI Information Paper No: 2017/10, p6-7, Appendix 3.

18. Pelco NZ's application to extend its quota holdings represents a much less significant consolidation of property rights than those recently assessed and approved by the Commerce Commission and will also have negligible influence on any competitors in the fishery. Importantly, the reasons for Pelco seeking aggregation exemption are for the exact same reasons for the aforementioned industry consolidations, including the need to increase efficiency through scale and support industry investment.
19. Consent to hold quota in excess of the current aggregation limits will enable economic wellbeing by improving efficiency of harvesting and processing and long term security of the applicant's business activities. The enhanced aggregation of property rights will be essential to securing long term financing for those purposes. This point illustrates the fundamental difference between quota and ACE (i.e. property rights vs access rights). Under s 136 of the Fisheries Act 1996, only quota shares may be the subject of a registered mortgage. Given their limited annual nature, ACE is not a suitable asset for security purposes. In fact, s 137 of the Fisheries Act 1996 specifically prohibits ACE from being subject to a mortgage and no mortgage over ACE shall have any effect for the purposes of that Act.
20. In addition, approval of this application will also enable Pelco NZ to enhance social wellbeing by retaining regional employment in the Bay of Plenty and will provide for better and direct communications between commercial and recreational fishing communities with the aim to reduce conflict between the sectors. The long term security of Pelco, through the aggregation consent, will ensure that there is continued cultural wellbeing by maintaining the catch power necessary to realise iwi-owned fisheries assets and provide employment opportunities. An approved aggregation consent will also help to ensure sustainability by enabling improved compliance with sustainability limits, provide for heightened industry-led fisheries research, streamlined engagement between fisheries managers and the industry and by increasing the use of an environmentally benign fishing technique.
21. There is one fundamental difference between this renewed application and the preceding one. Unlike the earlier application, this application is solely for the purposes of reacquiring the divested quota package and does not include a 5% buffer for future TAC/TACC reductions. Accordingly, this reapplication is to seek the Minister's consent under s 60 of the Fisheries Act 1996 for Pelco NZ to hold 55.304% of all blue mackerel quota and 45.993% of all kahawai quota.

23. Should you have any further queries relating to this application, please advise.

s 9(2)(a)

NEW ZEALAND

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Partner

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cc Director-General Fisheries New Zealand, Ministry for Primary Industries

Annexures:

Pelco NZ's Application to Exceed Aggregation Limits March 2020

Pelco NZ's letter covering the Application to Minister Nash 11 March 2020

Pelco NZ's response in reply to submissions 18 January 2021

PROACTIVELY RELEASED