



GISBORNE FISHERIES LIMITED

27 November 2019

Hon Stuart Nash
Minister of Fisheries
Parliament Buildings
Wellington

Dear Minister

Application for consent to hold CRA 3 rock lobster quota in excess of aggregation limits

Attached is an application by Gisborne Fisheries Limited to hold rock lobster quota in excess of the aggregation limits in CRA 3. The application relates to our interest in purchasing an additional 3,794,496 CRA 3 quota shares that will be made available for sale by tender during December. The vendors have indicated they would like the transaction to be completed prior to the start of the fishing year on 1 April 2020.

As a locally-based Gisborne company with strong ties into the community, Gisborne Fisheries has a long-term commitment to the CRA 3 rock lobster fishery. The requested exemption from the aggregation limits will enable Gisborne Fisheries to maintain throughput at our rock lobster facilities, maintain our relationships with commercial fishers, exporters and other fisheries stakeholders, continue to provide local employment opportunities, and continue to invest in innovation and collaborative fisheries management.

Please do not hesitate to get in touch if you require any further information about Gisborne Fisheries or the application.

Yours sincerely

Salvatore Zame
CEO



Gisborne Fisheries Limited – application for consent to hold rock lobster quota in excess of aggregation limits in CRA 3

1. APPLICATION

1. This is an application by Gisborne Fisheries Limited to hold spiny rock lobster quota in excess of the quota aggregation limits set out in section 59 of the Fisheries Act 1996 (**the Act**). The quota aggregation limit for rock lobster is 10,000,000 quota shares (10% of the total allowable commercial catch) in any one quota management area.
2. Gisborne Fisheries owns 16,802,141 quota shares in CRA 3 (Gisborne) under an exemption to the aggregation limits granted in 1998. The current application relates to the intended purchase by Gisborne Fisheries of an additional 3,794,496 CRA 3 quota shares. Therefore, in combination with the previously-granted exemption, Gisborne Fisheries seeks to hold a total of 20,596,637 CRA 3 quota shares in perpetuity. The additional exemption would be conditional upon the successful purchase by Gisborne Fisheries of the additional quota shares.

2. BACKGROUND

Gisborne Fisheries Limited

3. Gisborne Fisheries is a family owned company that fishes, processes, markets and sells rock lobster and wetfish throughout New Zealand and internationally. Four generations of the Zame family have been involved in fishing and seafood businesses on the East Coast for over 70 years.
4. Gisborne Fisheries, which was established in 1955, is an integral part of the Gisborne community. Its 20 employees include management, factory staff, skippers and crew. The company owns three fishing vessels, quota for rock lobster and various inshore finfish species, and modern processing facilities.
5. From the late 1990s, Gisborne Fisheries began to purchase rock lobster quota and established strategic relationships with local cray fishermen. Approximately 25% of Gisborne Fisheries' CRA 3 Annual Catch Entitlement (ACE) is fished by a vessel which the company has an ownership interest in, and the remaining 75% is fished by local fishermen who have long term relationships with Gisborne Fisheries. For example, when Gisborne Fisheries acquired a large package of quota in 1998, the transaction was subject to upholding existing arrangements with fishers who had generated that catch history. Many of these fishermen (or their sons) still fish into Gisborne Fisheries and one of these families continues to fish approximately 30% of Gisborne Fisheries' CRA 3 ACE.
6. Gisborne Fisheries is one of four major processors of CRA 3 rock lobster. In addition to processing lobsters caught using the company's own ACE, Gisborne Fisheries obtains small packages of ACE from other quota owners and also processes lobsters supplied by independent fishers. In total around 30% of CRA 3 landings pass through the company's Gisborne facilities.¹ These facilities are used to receive and hold live rock lobsters which are then sent to Auckland for packing and export. Gisborne Fisheries is a

¹ Although Gisborne Fisheries also owns quota in CRA 2, CRA 4 and CRA 8, only the CRA 3 rock lobster is processed in the Gisborne facilities.

shareholder in the Auckland pack-house operated by rock lobster export and marketing company Lee Lobster (now NZ Red).

7. The CRA 3 rock lobster fishery is highly valued by customary, commercial and recreational fishers and has faced numerous management challenges over the years. Two factors have been critical for the endurance and success of Gisborne Fisheries. The first is vertical integration, which has enabled the company to be flexible and sustainable in an ever-changing environment. The second is the confidence the company has in the Quota Management System (QMS) as a strong basis for ensuring sustainability. Confidence in the QMS and the security of quota rights has enabled Gisborne Fisheries to continue to invest in product innovation, local infrastructure and employment, and to work with other CRA 3 quota owners and stakeholders to improve the management of the fishery.

Current Gisborne Fisheries CRA quota ownership

8. Gisborne Fisheries 1955 Limited (FishServe client number 8440865) owns 16,802,141 CRA 3 quota shares by virtue of an exemption to the aggregation limits that was granted in 1998. The company also owns smaller amounts of rock lobster quota in CRA 2, CRA 4 and CRA 8.

Gisborne Fisheries CRA quota ownership

	Quota shares
CRA 2	6,032,674
CRA 3	16,802,141
CRA 4	2,235,460
CRA 8	600,519

9. For the purposes of section 59(10) of the Act, Gisborne Fisheries 1995 Limited is not associated or included with any other persons.

3. RATIONALE FOR SEEKING EXEMPTION FROM THE AGGREGATION LIMITS

10. Gisborne Fisheries wishes to purchase a package of 3,794,496 CRA 3 quota shares that has been put on the market by the Gerber Family Trust. The quota is for sale by tender, and the vendors have indicated that they would like the sale to be completed prior to the start of the fishing year on 1 April 2020.
11. Because Gisborne Fisheries' quota ownership in CRA 3 is constrained by the aggregation limits in section 59 of the Act and by the exemption granted in 1998, the company requires an additional exemption from the aggregation limits in order to be able to purchase the Gerber Family Trust quota shares. Any purchase arrangements that Gisborne Fisheries may enter into would be conditional upon consent being granted to exceed the aggregation limits, so as to comply with the requirements of section 60(4) of the Act.²
12. Gisborne Fisheries wishes to purchase quota in excess of its current exemption from the aggregation limits for two main reasons:

² Section 60(4) provides that "the Minister shall not grant any consent... in any case if quota shares have been acquired by any person... in excess of the then permitted number of shares before the consent is obtained".

- 13.1 **To enable the company to sustain its current throughput and to maintain economies of scale.** As a small vertically integrated company, Gisborne Fisheries is reliant on sustaining its throughput in order to maintain economies of scale. As in other rock lobster fisheries, CRA 3 ACE is tightly controlled through long-term relationships between suppliers and buyers. The Gerber Family Trust quota – equivalent to 8.458 tonnes at the current TACC of 222.9 tonnes – has been landed into Gisborne Fisheries for over 12 years. If this quota is now purchased by another company, then the associated ACE will also move to the control of the competing company and Gisborne Fisheries' access to rock lobster will be reduced.

A reduction in access to ACE would reduce Gisborne Fisheries' throughput by over 10% with potential flow-on effects to the efficiency of the company's processing operations, and with detrimental effects on the company's long-standing arrangements with fishers and with our export partner.

- 13.2 **To maintain the company's competitive position within the rock lobster industry.** Gisborne Fisheries faces constraints in competitiveness that are not shared by equivalent companies. In particular, Aotearoa Fisheries Limited (AFL), which is the largest quota owner in CRA 3 with 21,754,129 quota shares, has a statutory exemption from the aggregation limits as well as a previous exemption (granted to Moana Pacific Fisheries) to hold up to 32.7% of CRA 3 quota. All other CRA 3 quota owners have quota holdings that are significantly less than 10,000,000 quota shares. These entities therefore do not require an exemption from the aggregation limits in order to be able to purchase additional CRA 3 quota shares.

If Gisborne Fisheries is able to purchase the Gerber Family Trust quota, the company will own just over 20% of CRA 3 quota shares which will maintain its position as the second largest owner of CRA 3 quota.

13. In summary, Gisborne Fisheries requires an exemption from the aggregation limits in order to maintain the company's share of processing throughput, to maintain its current ability to supply fishers with ACE, and to maintain its competitive position within the rock lobster industry.

4. LEGAL REQUIREMENTS

14. Section 60(3) of the Act sets out the matters that must be considered by the Minister when making a decision on an application to hold quota in excess of the aggregation limits. These matters are considered below.

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

15. Gisborne Fisheries is not able to comment directly about the willingness and ability of other members of the rock lobster industry to purchase CRA 3 quota, but we make the following observations:
- CRA quota shares are highly valued, with sale prices recently exceeding \$1 million per tonne. At these prices, relatively few quota owners have sufficient scale and capital to purchase quota, particularly for larger quota parcels;

- The CRA 3 quota currently offered for sale is a large package of quota. Aside from AFL and Gisborne Fisheries itself, only Te Ohu Kaimoana Trustee³ and one other entity hold larger amounts of CRA 3 quota than the Gerber Family Trust; and
- The number of CRA quota shares traded annually has been decreasing over time across all rock lobster stocks. In CRA 3, the percentage of quota shares traded annually decreased from 9.8% in the three year period 2002-2005 to 4.9% ten years later in the period 2012-2015. The relatively low number of trades suggests that the market may be becoming constrained.

16. Although there may be a small number of alternative purchasers who are willing and able to purchase the Gerber Family Trust quota, we consider that if Gisborne Fisheries is not able to participate on an equal footing alongside other potential purchasers, the market will be noticeably restricted.

Section 60(3)(b)(i) the likely effect of granting or withholding of the consent on the development of any new or existing stock or species

17. The granting or withholding of consent is unlikely to have any direct positive or negative effect on the development of the CRA 3 rock lobster stock.

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

18. The granting of consent to Gisborne Fisheries would increase the pool of potential purchasers for the Gerber Family Trust quota (a positive effect for the vendor). It would also mean that the small number of other quota owners who may wish to purchase the Gerber Family Trust quota would be operating in a marginally more competitive quota market. Aside from that limited effect, other quota owners would not be affected and will be able to continue to buy and sell CRA 3 quota – including participating in the tender for the Gerber Family Trust package – irrespective of whether Gisborne Fisheries is granted an exemption.

19. If consent is withheld, commercial fishers who currently obtain ACE from Gisborne Fisheries will be disadvantaged. One of the reasons that Gisborne Fisheries is applying for the exemption is to maintain the company's ability to supply ACE to fishers with whom we have long-standing relationships. Furthermore, the granting of the consent will ensure that there will continue to be more than one large supplier of ACE in the CRA 3 rock lobster fishery. This will generally benefit ACE-dependent fishers, including those who do not have a relationship with Gisborne Fisheries, by retaining competition in the ACE market.

Section 60(3)(b)(iii) the likely effect of granting or withholding of the consent on the processing and marketing of that stock or species

20. As noted above, the withholding of consent will result in Gisborne Fisheries losing over 10% of the company's rock lobster processing throughput at its Gisborne facilities. It may also result in a reduction of rock lobster product for Gisborne Fisheries' export partner NZ Red. However, if consent is granted,

³ Te Ohu Kaimoana holds 5,350,197 Settlement Quota shares because allocation of Settlement Quota is not yet complete in CRA 3.

the *status quo* will be maintained with respect to access to CRA 3 rock lobster for processing and marketing, and other rock lobster processors or marketers will not be disadvantaged.

Section 60(3)(b)(iv) the likely effect of granting or withholding of the consent on the ability of the applicant to take any other stock or species

21. The granting or withholding of the consent will not have any impact on Gisborne Fisheries' ability to take other stocks or species.

Section 60(3)(b)(v) the likely effect of granting or withholding of the consent on the efficiency of the New Zealand fishing industry or any person engaged in the New Zealand fishing industry

22. Gisborne Fisheries considers that the very low aggregation limits for rock lobster create inherent inefficiencies in the industry. The aggregation limits slow the process of industry consolidation because of the transaction costs involved in seeking exemptions and they also distort the process and outcome of consolidation through their inequitable application across the industry. The granting of consent to Gisborne Fisheries would help alleviate (on a temporary and limited basis) some of these inherent inefficiencies.
23. At a company level, the withholding of the consent would have a negative effect on the efficiency of Gisborne Fisheries' operations as the company's current throughput and economies of scale would be reduced.

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

24. The following matters may be considered relevant by the Minister.
- **Purpose of aggregation limits.** Although the purpose of aggregation limits is not specified in the Act, the most widely accepted purpose (based on Select Committee reports) is not to prevent quota concentration *per se*, but rather to avoid the unacceptable effects that could emerge from quota concentration, such as anti-competitive behaviour and disadvantage to small fishing operations. As noted elsewhere in this application, Gisborne Fisheries considers that the granting of this application will simply maintain *status quo* arrangements – it will not increase anti-competitive behaviour and will not disadvantage small fishing operations.
 - **The Commerce Act 1986.** Independently of Fisheries Act requirements, the Commerce Act in Part 2 prohibits behaviour that restricts competition (i.e., anti-competitive or restrictive trade practices) and in Part 3 prohibits mergers and acquisitions that substantially lessen competition in the market. The quota ownership that Gisborne Fisheries is seeking does not begin to approach the levels that would be of concern under the Commerce Act.
 - **Regional economic development.** The CRA 3 fishery provides significant social and economic benefits to the people of Gisborne and the East Coast. Gisborne Fisheries is a locally-owned company that is firmly embedded in the Gisborne community. The retention of quota ownership within the area effectively guarantees the availability of ACE to local fishers and secures the ongoing benefits of employment in the fishing industry.

5. SUMMARY

25. Gisborne Fisheries requires consent to exceed the aggregation limits so as to be able to purchase an additional 3,794,496 CRA 3 quota shares. As Gisborne Fisheries already owns quota up to the level of a previously-granted exemption, the current application is for Gisborne Fisheries to hold, in perpetuity, an additional 3,794,496 CRA 3 quota shares (giving a total of 20,596,637 CRA 3 quota shares). The additional exemption would be subject to the successful purchase of the Gerber Family Trust quota shares by Gisborne Fisheries.
26. An exemption will enable Gisborne Fisheries to maintain the company's share of processing throughput, maintain its current ability to supply local fishers with CRA 3 ACE, and maintain its competitive position in the rock lobster industry. It will have negligible impacts on other quota owners or commercial fishers.
27. As a locally-based Gisborne company with strong ties into the community, Gisborne Fisheries has a long-term commitment to the CRA 3 rock lobster fishery. We wish to be able to maintain our relationships with commercial fishers, exporters and other fisheries stakeholders, continue to provide local employment opportunities, and continue to invest in innovation and collaborative fisheries management. The requested exemption from the aggregation limits will enable Gisborne Fisheries to maintain throughput at our rock lobster facilities and help us contribute to these wider aims.
28. If further information is required in relation to this application, please contact:

[REDACTED]