

NOTICE UNDER SECTION 66 OF THE COMMERCE ACT 1986

Proposed acquisition of ACE and fishery assets

26 May 2023

SECTION 66(1) COMMERCE ACT 1986: NOTICE SEEKING CLEARANCE

26 May 2023

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington
NEW ZEALAND

By email: registrar@comcom.govt.nz

Pursuant to s 66 (1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

CONTENTS

OVERVIEW	4
REQUIRED INFORMATION	7
1. APPLICANT'S DETAILS	7
2. OTHER MERGER PARTY'S DETAILS.....	11
3. MERGER DETAILS	12
4. NOTIFICATIONS TO OTHER COMPETITION AGENCIES	16
5. RELEVANT PRODUCTS AND SERVICES.....	17
6. WHY THE MERGER IS UNLIKELY TO RESULT IN A SUBSTANTIAL LESSENING OF COMPETITION	24
7. DOCUMENTS BRINGING ABOUT THE PROPOSED MERGER	42
8. OTHER DOCUMENTS RELATING TO THE PROPOSED MERGER.....	43
9. ANNUAL REPORTS AND FINANCIAL STATEMENTS	44
10. CONFIDENTIALITY	45
DECLARATION	46
APPENDIX 1 – SCHEDULE OF DOCUMENTS.....	47
APPENDIX 2 – SCHEDULE OF CONFIDENTIAL INFORMATION.....	48

OVERVIEW

The proposal

- A. Aotearoa Fisheries Limited, trading as Moana New Zealand, (**Moana**) proposes leasing fish quota (ie *acquiring* associated Annual Catch Entitlement (**ACE**)) and acquiring some fishery assets from Sanford Limited (**Sanford**) related to Sanford’s North Island inshore finfish business which has its operational base in Auckland (**Auckland Business**) (the **proposal**). []
- B. []

Moana & its rationale for the proposal

- C. Moana was established under the Māori Fisheries Act 2004, with 58 “*mandated iwi organisations*”¹ as shareholders, as custodian of commercial fishery assets returned to Māori under Treaty of Waitangi fisheries settlements with the Crown. The aggregation of Māori fishing rights in Moana has enabled it to invest in fishing infrastructure and efficiently use those fishing rights for the benefit of all iwi.
- D. Moana has a proven track record in successfully operating an effective and efficient supply chain operation from harvest to market. The proposal provides Moana with assured access to catch volumes for the term of the proposal. It enables Moana to use its existing infrastructure more efficiently, in a more sustainable way, when total allowable commercial catch will continue to decline over time (for environmental and regulatory reasons). This ensures Moana can offer consistent and sustainable supply to customers.
- E. Moana's unique identity means it is guided by its enduring values of Whakapapa, Manaakitanga, Kaitiakitanga and Whakatipuranga. Māori will always be involved in the business of fishing as these assets can never be sold. Profits are returned to iwi to drive their respective social agendas, such as education and health. Moana’s unique identity and purpose means a te ao Māori perspective when considering the proposal.

The proposal does not meet Commission market share & concentration indicators; nor is it a merger of the parties’ businesses

- F. The proposal will result in horizontal aggregation in the control of some finfish quota, moving Moana’s share of total finfish quota, including all quota it currently leases, from [] to []. This does not come close to meeting the Commission’s market share and concentration indicators. Further, [] of the total ACE Moana holds in 2023 comes from leases that expire on or before 30 September 2025. Excluding such leases, Moana’s share of total finfish quota reduces to just [] before the proposal and [] after the proposal.
- G. The proposal will not merge Moana and Sanford’s businesses. Sanford, New Zealand’s largest seafood company, will remain a significant, independent competitor and will retain ownership of its quota, including the quota that it will lease to Moana through the proposal. Quota will be leased for a specified term, []. Some of the ACE acquired will be used to supply []. The proposal also [], and the Auckland Fish Market will remain in Sanford ownership.

Relevant markets will remain highly competitive with strong competitor & customer constraints

- H. New Zealand’s fisheries industry contains a diverse range of fishing companies, including large companies and many medium and small companies, particularly for inshore fisheries.

¹ As defined in section 5 (interpretation) of the Māori Fisheries Act 2004.

Wholesalers also provide another channel to market and can aggregate supply from independent sources. The majority of domestic caught fish is exported, providing significant potential for export diversion.

- I. Competing suppliers (many of which are vertically integrated) of NZ sourced seafood include Talley's, Leigh Fisheries (owned by Foodstuffs North Island), United Fisheries, Independent Fisheries, Solander Group, Vela Fishing, Ngāi Tahu Seafood, Ngati Porou Seafoods, Pelco, Star Fish Supply, NZ King Salmon, Mount Cook Alpine Salmon, Sealord and others. There are also many wholesalers (such as Bidvest and Scott Seafoods), and numerous retailers (such as Toby's Seafood and Takanini Fish Market).
- J. Customers and end consumers have highly elastic demand and can choose between a range of finfish species (including wild or farmed), different product formats (eg live, fresh or frozen; whole, fillets, and other parts of the fish), frozen manufactured fish products (eg crumbed fish, fish fingers), imported fish, other seafood, and other proteins.
- K. Customers include the two main supermarkets, one of which is vertically integrated with its own seafood business (Leigh Fisheries),² speciality retailers (such as Farro), food service (such as hotels, restaurants, cafes), and online platforms (such as My Food Bag and Hello Fresh).

The Commission's past approach to market definition, mostly confirmed by Castalia's analysis

- L. The Commission considered the commercial fishing industry in *New Zealand Seafood Investments Limited and Basuto Investments Limited (Basuto)*. *Basuto* defined national finfish markets and identified "export diversion and imports to be key elements in the analysis of competition within the fishing industry".
- M. A comprehensive analysis of the competitive effects of the proposal has been conducted by independent economic experts Castalia. Castalia's report (**Castalia Report**) is attached.
- N. The Castalia Report finds that the relevant markets are:
 - a. A national market for the supply of finfish harvesting services (**Harvesting Market**)
 - b. A national market for the wholesale supply of unprocessed finfish (**Wholesale Unprocessed Market**)
 - c. A national market for the wholesale supply of processed finfish (including gutted, filleted with skin on, and filleted with skin off) (**Wholesale Processed Market**)
 - d. A national market for toll processing (**Processing Market**), and
 - e. A market or markets in which processed finfish products are supplied to retail customers, including wild and farmed fish and both saltwater and fresh-water species, noting that retail processed fish products are likely also part of a broader market for supermarket goods (**Retail Markets**).

The proposal will not substantially lessen competition in the relevant markets

- O. The proposal will not substantially lessen competition in the relevant markets:
 - a. **Harvesting Market:** The proposal will not place Moana in a materially stronger position of buyer power given Sanford is largely not a competing buyer of finfish harvesting

² <https://www.newworld.co.nz/who-we-are/news/catch-of-the-day>

services. Instead, the proposal may increase opportunities for independent fish harvesters by providing greater access to out-sourced ACE. The certainty under the proposal of having increased access to ACE resulting in larger catch plans may also result in better outcomes for independent fishers including the economic viability of their businesses.

- b. **Wholesale Unprocessed Market:** A diverse range of fishing companies and seafood wholesalers will continue to compete in the market. Assessment of market share and concentration against the indicators in the Commission's Mergers and Acquisitions Guidelines finds that the proposal is even less likely to raise competition concerns, as shown by the Castalia Report. The market will also be competitively constrained by countervailing power from large wholesale customers, imports, the threat of export diversion, and the availability of other customer options. Customers in each channel have a range of alternatives, including existing competitors (including purchasing via the Auckland Fish Market), a range of fish species and product formats to choose from, imports, other seafood, and other proteins.
 - c. **Wholesale Processed Market:** A diverse range of fishing companies, seafood wholesalers, and processing companies will continue to compete in the market. The market will also be competitively constrained by countervailing power from large wholesale customers, imports, the threat of export diversion, and the availability of other customer options.
 - d. **Processing Market:** Large toll processing customers, such as supermarkets, have strong countervailing power as a result of their scale and broader protein processing options. For smaller businesses requiring processing services, there is a large number of other processing options.
 - e. **Retail Markets:** Moana has a minor presence, particularly compared to supermarkets. The proposal will have no material effect on the Retail Markets, including as Moana will not be purchasing Sanford's retail business (Sanford and Sons).
- P. The relevant markets are not vulnerable to co-ordination. Among other things they are highly fragmented with many market participants which have varying cost structures and business models. Customers also most value quality and consistency of supply, which affect price and would be difficult to co-ordinate. The proposal does not increase the potential for coordination.
- Q. Accordingly the proposal will not result, nor be likely to result, in a substantial lessening of competition in any relevant markets.

REQUIRED INFORMATION

1. APPLICANT'S DETAILS

Provide the name(s) of the applicant(s) for clearance, and the name(s) of the individual(s) responsible for the notice. In addition, please include the:

- *postal address, physical address, telephone number and web address of the applicant(s);*
- *email address, telephone number and position of the contact person(s); and*
- *names of any relevant related entities (showing shareholdings).*

1.1 This notice is given by Aotearoa Fisheries Limited, trading as Moana New Zealand (**Moana, the applicant**).

1.2 The contact details for the applicant are:

Postal address: PO Box 445, Shortland Street, Auckland 1140, New Zealand
 Physical address: 1-3 Bell Avenue, Mt Wellington, Auckland 1080, New Zealand
 Telephone: 09 302 1520
 Web address: moana.co.nz

1.3 The contact person for the applicant is:

Name: Grant Shuker
 Position: CFO
 Email address: []
 Telephone: []

1.4 All correspondence in relation to this notice should be directed in the first instance to:

Matthews Law
 PO Box 2579
 Shortland Street
 Auckland 1140

Attention: Andrew Matthews / Danny Xie
 Telephone: +64 9 972 3754 / +64 9 972 3755
 Email: andrew.matthews@matthewslaw.co.nz
danny.xie@matthewslaw.co.nz

Moana

1.5 Moana has 58 iwi shareholders and is a unique entity set up under the Māori Fisheries Act 2004. It is the only pan-iwi organisation in Aotearoa.

1.6 The Treaty of Waitangi (**Treaty**) had guaranteed Māori full rights to fishing and fisheries resources.³ Māori claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the quota management system introduced by the Fisheries Amendment Act 1986 was unlawful and in breach of the principles of the Treaty. A full and final settlement of all Māori claims to commercial fishing rights was reached with the Crown by 1992. The settlement

³ The Māori text of the Treaty guaranteed Māori “*te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa*”. The English text guaranteed Māori “*the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries*”. The Waitangi Tribunal found ‘their fisheries’ “*refers to their activity and business of fishing, and that must necessarily include the fish that they caught, the places where they caught them, and the right to fish.*” (Waitangi Tribunal Muriwhenua Fishing Report (Wai 22, 1988): https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68478237/Muriwhenua%20Fishing%20Report%201988.compressed.pdf at 203).

included funding the purchase of half of Sealord Group Limited which was being sold at the time, and a cash settlement which was subsequently used to acquire fishing quota and commercial fishing businesses which were then transferred to Moana by way of the Māori Fisheries Act 2004.

- 1.7 The intent of the settlement was to enable Māori to return to commercial fishing as they had done prior to colonisation. The nature of the settlement means that Māori will always be involved in fisheries; and these assets cannot be sold. Activities and investments that Moana make have a long-term perspective and are consistent with their values.
- 1.8 Under the Māori Fisheries Act 2004 Moana must pay dividends to its shareholders of at least 40% of profit (subject to passing the normal solvency tests of the Companies Act), with the balance being retained to invest in growth opportunities for future generations. Iwi in turn use these dividends to drive their own social agendas such as education and health initiatives.
- 1.9 A paper by the Motu Economic and Public Policy Research funded by the Ministry of Fisheries explains why Moana's predecessor under the Māori Fisheries Act 1989 was set up:⁴

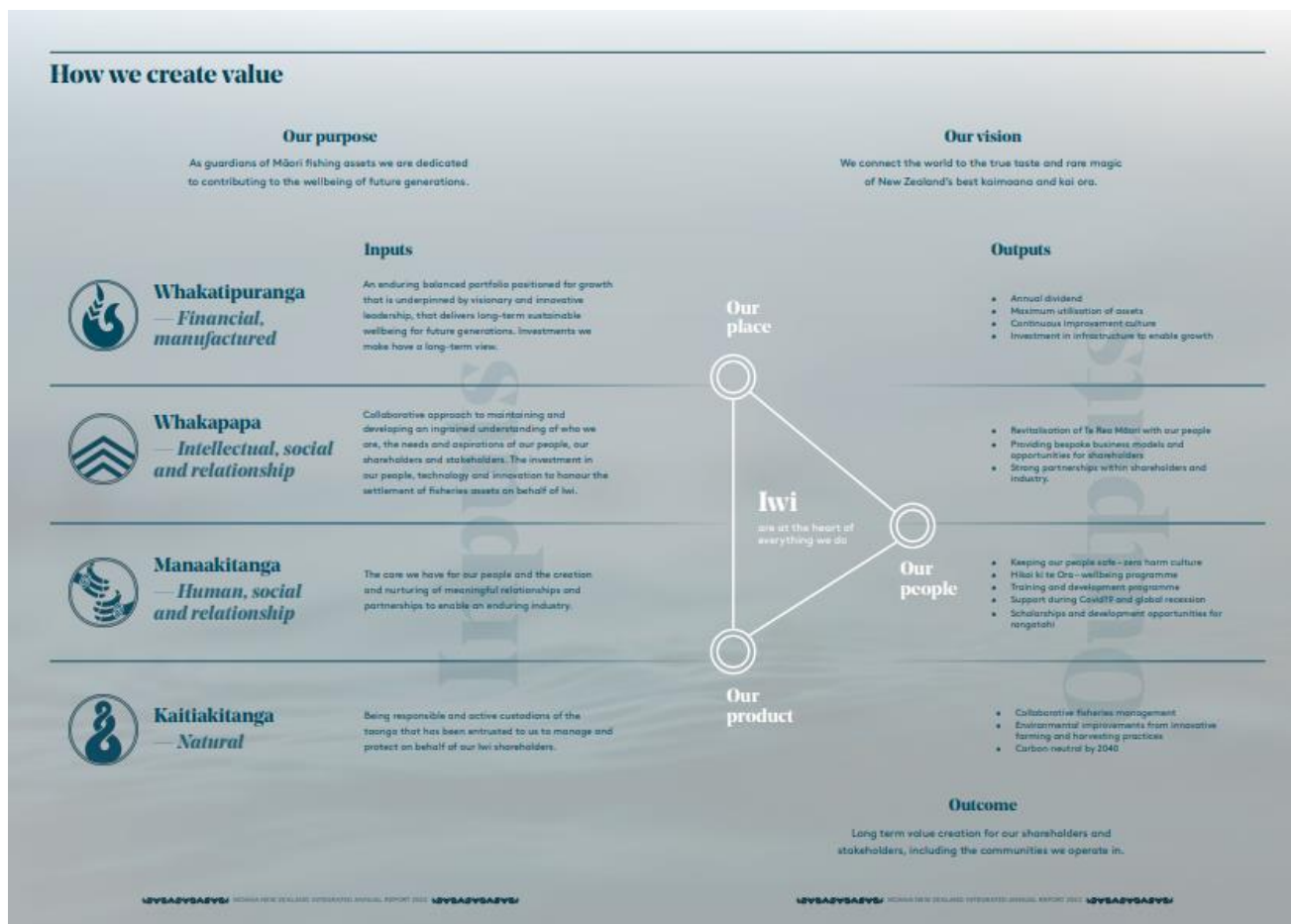
At the time of the 1989 Maori Fisheries Act, the QMS was still a reasonably new system that had been introduced to increase the efficiency of the fishing industry through, at least in part, the consolidation of the industry. Splitting Maori fishing assets amongst all iwi seemed to be contrary to the purpose of this new system. Thus, Aotearoa Fisheries Limited (AFL) was set up under the 1989 Maori Fisheries Act in order to make money for Maori from the settlement assets and to acquire additional assets (Day 2004). The profit that was made from the aggregated assets was to then be allocated to individual iwi, thus maintaining the efficiency of the system while still allowing individual iwi to benefit from their assets.

- 1.10 Moana's values were developed more than 12 years ago through a series of hui with iwi shareholders and govern Moana's decision-making:⁵
 - a. **Whakapapa – understanding where we are from.** Taking a collaborative approach to maintaining and developing an ingrained understanding of who we are, the needs and aspirations of our people, our shareholders and external stakeholders.
 - b. **Manaakitanga – looking after our people.** Moana is known as a fair and trusted employer by being focused on the safety, wellbeing and development of their people.
 - c. **Kaitiakitanga – custodians for future generations.** Being responsible and active custodians of the taonga that has been entrusted to Moana to manage and protect on behalf of iwi shareholders.
 - d. **Whakatipuranga – prosperity for future generations.** Developing an enduring balanced portfolio positioned for growth that is underpinned by visionary and innovative leadership, that delivers long-term sustainable wellbeing for future generations.
- 1.11 We discuss the relevance of Moana's unique identity and these values below (*Rationale for the proposal*).
- 1.12 These enduring values, and their impact on how Moana conducts its business, can be seen graphically in the **Full Moana Values model**:⁶

⁴ Kelly Lock & Stefan Leslie *New Zealand's Quota Management System: A History of the First 20 Years* (Motu Economic and Public Policy Research, Motu Working Paper 07-02, April 2007): https://motu-www.motu.org.nz/wpapers/07_02.pdf at 29.

⁵ See, for example, Moana's *Integrated Report 2022* <https://ar.moana.co.nz/>

⁶ See https://ar.moana.co.nz/documents/MOANA_2022_Values_Model.pdf



1.13 These values are not corporate mantra, they reflect Moana's genesis and identity, which will necessarily endure. As such a te ao Māori perspective must be applied to the proposal.

1.14 Moana operates an inshore wild catch fishing business, a pacific oyster aquaculture business, a pāua (abalone) wild catch and farmed business, and a ready-to-eat meals business. Moana has a deep sense of responsibility and respect for kaimoana and honours the taonga it has been entrusted with. It takes a long-term view to work in harmony with nature and to ensure the sustainability of fisheries resources for future generations.

1.15 Moana has a 50% shareholding in Kura Limited, a 50:50 joint venture with Nippon Suisan Kaisha Limited (**Nissui**). This joint venture has a 100% shareholding in Sealord Group Limited (**Sealord**). Sealord operates a deepwater fishery and exports 90% of its catch in various frozen formats to 40 countries.⁷ Sealord is run as its own independent company and its directors are not entitled to act in the best interests of Moana.⁸

1.16 Sealord in turn has a 50% shareholding in Westfleet Seafoods Limited (**Westfleet**), a 50:50 joint venture with Endurance Fishing Company Limited. Westfleet operates an inshore fishery located in Greymouth in the South Island.⁹

⁷ For more information see <https://www.sealord.com/about-us/our-story-heritage/>

⁸ Moana may appoint up to 3 directors to Sealord's parent company. Clause 6.5 of Sealord's constitution allows directors to act in the best interests of its parent company, the joint venture company Kura Limited. However, Kura Limited's constitution does not have a clause allowing directors to act in the best interests of a shareholder and so directors have a duty to act in the best interests of the company under section 131 of the Companies Act 1993. Clause 18.1 (last amended on 31 May 2021) of Kura Limited's constitution provides each of its shareholders can have no less than 2 and no more than 3 directors on Kura Limited's board.

⁹ For more information see <https://westfleet.co.nz/>

1.17 Some further information on some other entities Moana has a shareholding in is also provided in attachment 5.1. **Appendix 1** attaches a schedule of documents attached to this application.

2. OTHER MERGER PARTY'S DETAILS

Provide the name(s) of the other party/parties to the merger and provide the:

- *postal address, physical address, telephone number and web address of each party; and*
- *name, email address, telephone number and position of the contact person(s) for each party.*

2.1 The contact details for Sanford Limited (**Sanford**) are:

Postal address: PO Box 443, Shortland Street, Auckland 1140, New Zealand
 Physical address: 22 Jellicoe Street, Freemans Bay, Auckland 1010, New Zealand
 Telephone: +64 (9) 379 4720
 Web address: <https://www.sanford.co.nz/>

2.2 The contact person for Sanford is:

Name: Roberto Magaraggia
 Position: General Counsel and Company Secretary
 Email address: []
 Telephone: []

2.3 All correspondence in relation to this notice should be directed in the first instance to:

Russell McVeagh
 PO Box 8
 Auckland 1140

Attention: Troy Pilkington / Sophie Vinicombe
 Telephone: +64 9 367 8108
 Email: troy.pilkington@russellmcveagh.com
sophie.vinicombe@russellmcveagh.com

Sanford

2.4 Sanford is New Zealand's largest seafood company and is listed on the NZX.¹⁰ It has inshore and deepwater operations, and aquaculture operations (mussels and salmon). It also operates the Auckland Fish Market,¹¹ and retail fishmonger Sanford and Sons¹² (both currently located at Wynyard Quarter, Auckland).

2.5 Sanford has three fish processing plants: in Auckland, Timaru and Bluff.¹³ The Auckland processing plant is reaching the point where it needs to be replaced and relocated to continue operating.

2.6 This application relates only to Sanford's North Island inshore finfish business which has its operational base in Auckland (**Auckland Business**). For the avoidance of doubt, the Auckland Business does not include the Auckland Fish Market operated by Sanford, and Sanford and Sons retail operation owned by Sanford.

¹⁰ <https://www.nzx.com/companies/SAN/analysis>

¹¹ <https://www.afm.co.nz/>

¹² <https://sanfordandsons.co.nz/>

¹³ <https://www.sanford.co.nz/operations/processing/>

3. MERGER DETAILS

Set out the details of the merger for which you are seeking clearance including, where relevant:

- *the type of transaction (such as a merger or joint venture), what is to be acquired, how the merger is structured (such as whether assets or shares are to be purchased), the purchase price and anticipated timing of the merger;*
- *the rationale for the merger;*
- *how the merger changes the control of the company, including a diagram(s) of how the structure of ownership and affiliated companies are to change;*
- *a description of relevant ancillary agreements associated with the merger, such as long-term supply agreements between the target and the acquirer; and*
- *the likely relevant scenario(s) for both merging parties if the merger does not go ahead; and*

Details on how the proposal is structured

3.1 Moana proposes leasing quota (ie *acquiring* associated Annual Catch Entitlement (**ACE**)) and acquiring some fishery assets related to the Auckland Business from Sanford (the **proposal**). Under the proposal:

- a. Sanford will sell the ACE for much of its quota of North Island inshore species to Moana. The arrangement is for a minimum term of approximately 10 years. Sanford has sought to simplify its operations and establish a lower-risk passive revenue stream for its North Island inshore ACE. The value for this package of ACE starts at nearly \$11M (annualised) for the first year and scales up to \$13M over the next five years before increasing in fixed increments of 1.5% per annum.
- b. Sanford will sell Moana two of its inshore fishing vessels and a selection of its processing equipment and refrigerated vehicles/trailers. One marine farm comprised of three coastal permits in the Croisilles Harbour has also been included in the deal (**Croisilles Marine Farm**). The price paid by Moana for these ancillary assets is expected to be between \$5M and \$8M (depending, in part, on valuations and final asset selections by Moana).

3.2 Clearance is sought for the proposal, as detailed in attachment 7.1. The proposal is subject to two conditions, including the Commission granting clearance. Settlement is expected to occur in Q4 of FY23, but this will depend on when the conditions are satisfied. Please note that:

- a. Under the proposal Sanford will retain ownership of its quota (including paying associated levies).
- b. The proposal does not affect Sanford's other fishing or aquaculture operations, so Sanford will continue to supply customers (including in the North Island) with seafood from those operations.
- c. The proposal does not result in the transfer to Moana of the Auckland Fish Market, or Sanford's Auckland based retail business (Sanford and Sons), both of which will continue to operate as competing sales channels to Moana.
- d. The quota to be leased under the proposal is equivalent to only % of total industry seafood catch (excluding aquaculture).
- e.

- f. Sanford will work with Moana to facilitate the employment of staff affected by the closure of Sanford's fish processing plant in Auckland where practicable.

Rationale for the proposal

3.3 As noted, *“Moana New Zealand is a wholly owned Māori organisation bound by the values of manaakitanga (looking after our people our way), whakatipuranga (prosperity for future generations), whakapapa (our genealogy - where we're from) and kaitiakitanga (custodians for our future generations). All values that are people centric.”*¹⁴

3.4 The proposal is consistent with Moana's values:

a. **Whakapapa – investments for future generations**

The intent of the Māori Fisheries Settlement was to ensure and enable growth for Māori within the fishing industry in Aotearoa. Over the past 10 years Moana has invested over \$61M in upgrading and/or building new processing facilities across the country, providing a solid foundation for growth and for future generations to prosper.

With 58 Mandated Iwi Organisations across the country, Moana enjoys strong, trusted relationships with its owners; some with their own seafood processing facilities. Where required, Moana will be able to spread volume across these partnerships who are regionally based enabling economic benefits to be spread outside of the main centres.

b. **Manaakitanga – investing in people**

Moana has and does continuously invest in the training and development of its people. This has resulted in a strong team that are skilled in successfully operating an effective and efficient supply chain operation from harvest to market. Their success has been proven over many years of positive returns for Moana's iwi owners.

Across the country businesses are experiencing labour shortages and restrictions. Moana has recently invested almost \$2M in a cutting-edge water jet cutter that debones fillets. This has helped overcome the shortage of skilled knifehands and has capacity for greater volumes. The proposal will allow further investment in innovations such as this and mechanisation to improve productivity, meet changing customer requirements and mitigate the changing workforce dynamics that are increasing the difficulty of attracting quality processing staff.

Moana does not currently operate a night shift so has capacity to maximise the use of existing processing facilities and process additional volumes.

Moana does not own fishing vessels, and instead contracts independently run and operated fishers who are regionally based. Along with many commercial fishing operators, Moana and its contract fishers are facing increasing costs and challenging labour conditions. Putting more volume through existing infrastructure, including fishing vessels, is critical to absorb these costs and maintain sustainable economic returns. Being able to both fish larger volumes and have longer term certainty of access to ACE will also bring efficiencies to and benefit to Moana's independent contract fishers.

The fleet of fishing vessels that Moana relies on is aging and will also need to adapt away from diesel. This means fishers will need to make significant investments. Long-term catch plans and certainty of access to increased ACE volume lowers the risk associated

¹⁴ [Annual Integrated Report 2022 \(moana.co.nz\)](https://www.moana.co.nz/annual-integrated-report-2022)

with these investments. (The independent fishers meet the cost of these investments, though Moana has helped in the past with underwriting the financing and providing long-term catch plans to support fisher investment.)

Regarding the two vessels that will be purchased from Sanford, Moana intends to on-sell these to existing Moana contract fishers. It also intends to offer long term fishing contracts to the independent fishers that currently fish North Island inshore finfish stocks for Sanford.

c. Whakatipuranga - investment in technology and innovation

Moana will continue to grow its business and improve efficiency of its existing operations, as well as increasing scale to support further investment in innovation (including mechanisation and reduction of their carbon footprint) and fisheries research. The proposal will enable Moana to use existing infrastructure more efficiently, in a more sustainable way, consistent with its business model, especially with industry catch volumes declining over time (for environmental and regulatory reasons). This ensures Moana can continue to offer consistent and sustainable supply to customers.

Moana is currently undertaking a project in Porirua, Wellington which includes relocation of its existing domestic finfish operation from the Wellington CBD to a new purpose-built facility which will be export certified. The proposal supports the investment in the new Wellington facility by increasing the volume available to be processed through Wellington. Having a second export facility is also critical from a risk management and business continuity point of view.

The investment in the water jet cutter mentioned above will also allow Moana to meet increasing demand from customers for more fillets rather than whole fish. The proposal will enable Moana to put more volume, with some additional capital investment, through its processing operations and through its contracted fishing vessels to help maintain sustainable economic returns in the context of increasing costs.

d. Kaitiakitanga – custodians for future generations

Volume within this proposal allows for greater efficiencies in catch plans, in turn helping the reduction of Moana’s carbon footprint.

Moana has a Harvest Footprint project which seeks to lighten bottom contact through understanding where fishing areas overlay with habitats of significance, enabling better decision making on where they do and do not fish in the future. Moana is also currently seeking to understand what innovations in gear exist to lighten bottom contact.

As mentioned above, the proposal opens up greater opportunities for contract fishers to invest in their own fishing operations. Examples of this are [FV Santy Maria](#) which was launched in 2015 and incorporates innovation and technology for better environmental outcomes, and [Precision Seafood Harvesting](#) which increases product quality and allows for greater selectivity (allowing the smaller fish to escape unharmed), advanced bird mitigation methods and better fuel efficiency.

3.5 []

How the proposal changes the control of the company

3.6 The proposal does not change the control of any company.

Description of relevant ancillary agreements associated with the proposed acquisition

3.7 [] []

Likely counterfactual(s)

3.8 []

3.9 []

3.10 The Castalia Report outlines possible counterfactual scenarios and assesses whether they are likely.¹⁵ Consistent with the Castalia Report, Sanford leasing its quota on a long-term basis to a party other than Moana (**Term Lease Counterfactual**), and Sanford selling its ACE on an annual basis (**Annual Lease Counterfactual**) are used as the relevant counterfactuals.

3.11 Due to the competitive constraints on Moana, the conclusion that the proposal does not substantially lessen competition is not reliant on the choice of counterfactual.

¹⁵ Castalia Report at [3.2].

4. NOTIFICATIONS TO OTHER COMPETITION AGENCIES

If this merger forms part of an international transaction, list the other competition agencies that are being notified and the date on which those agencies were or will be notified. Where relevant, indicate the status of reviews by other agencies.

- 4.1 The proposal does not form part of an international transaction, and the parties are not notifying any other competition agencies.

5. RELEVANT PRODUCTS AND SERVICES

Describe the relevant products and/or services of the merging parties and provide the following for each:

- *the merging parties' view on the appropriate market definition;*
- *each merging party's total sales revenues, volumes, and, where relevant, capacity and excess capacity figures for the past three financial years;*
- *the names and contact details for the merging parties' main competitors, and any trade or industry associations in which one or more of the merging parties participate; and*
- *the names and contact details for each merging party's key customers, including at least the top five by value, and the revenue earned from each in the last financial year.*

5.1 Moana will use the assets acquired under the proposal to supply finfish, except for the Croisilles Marine Farm which Moana plans to develop in the future for use for oyster farming. This section includes:

- a. A description of the New Zealand commercial fishing industry.
- b. A description of the Croisilles Marine Farm and why no products or services are materially affected by its inclusion in the proposal.
- c. Moana's view on market definition.
- d. The parties' total sales revenues and volumes.
- e. Names and contact details for some of the merging parties' main competitors and industry associations.
- f. Names and contact details for the merging parties' key customers.

New Zealand commercial fishing industry

5.2 Around 400K tonnes of seafood (excluding aquaculture) is caught commercially in New Zealand each year.¹⁶ The New Zealand seafood industry had total export earnings of close to \$2.0B in 2020.¹⁷ In 2020 there were 906 businesses in the fishing industry in New Zealand.¹⁸

5.3 As explained further in the Castalia Report,¹⁹ the Quota Management System (**QMS**) controls maximum harvest levels for 98 of the 169 species that are commercially fished in New Zealand. Quota is a share in a fish stock. On the first day of a fishing year, quota owners get Annual Catch Entitlement (**ACE**) based on how much quota they own and the total allowable commercial catch (**TACC**) for that fish stock in that fishing year. ACE gives the right to catch a certain volume (kilograms) of a fish stock during the fishing year.²⁰ ACE can be freely transferred.²¹

5.4 At a high level, fisheries engage in the following supply chain activities:

- a. **Obtain ACE:** A registered entity can own quota or lease quota (purchase ACE) from other quota owners. Every kilogram of fish caught during a 12-month fishing season (most

¹⁶ <https://figure.nz/chart/XSrNdNLCb2dS0Slx>

¹⁷ <https://www.seafood.co.nz/resources/key-facts>

¹⁸ <http://businesstoolbox.stats.govt.nz/IndustryProfilerViewProfile.aspx?ProfileID=AA312>

¹⁹ Castalia Report at [2.1].

²⁰ <https://www.mpi.govt.nz/fishing-aquaculture/commercial-fishing/operating-as-a-commercial-fisher/commercial-fishing-annual-catch-entitlement/>

²¹ <https://www.mpi.govt.nz/fishing-aquaculture/commercial-fishing/operating-as-a-commercial-fisher/commercial-fishing-annual-catch-entitlement/>

5.6 The Commission considered the commercial fishing industry in *New Zealand Seafood Investments Limited and Basuto Investments Limited (Basuto)*.²⁵ The relevant finfish markets were defined as:²⁶

- a. the market for the harvesting and supply of finfish in New Zealand
- b. the market for the processing and wholesale supply of finfish in New Zealand, and
- c. the market for the processing and wholesale supply of value-added finfish products in New Zealand.

5.7 The majority decision made the following comments in defining the relevant market:²⁷

- a. **Product:** The Commission found that *“finfish species form neither a homogeneous group, nor discrete groupings of ‘high value’ and ‘low value’ species, but rather are graded over a range of quality, and hence of price”*.²⁸ Therefore, demand-side substitutability was between species at adjacent quality/price levels. For example, for consumers buying premium quality fish, if the price of orange roughy were to rise, snapper was a more likely substitute for orange roughy than hoki. In relation to deep-sea versus in-shore fish, even though deep-sea and in-shore fishing used different technologies and may have been differentiated at the supply-side, the Commission considered that both species competed with one another for the consumer dollar.
- b. **Functional:** The two major categories of finfish were (1) ‘basic processed’ (ie marketed as wetfish, either whole or in fillets) which were sold to restaurants, fish and chip shops, seafood shops and (to a degree) for supermarkets and (2) manufactured / ‘value-added’ (ie the finfish has undergone further processing into crumbed and breaded fillets and into frozen branded products such as fish fingers, burgers, bites and cakes), which were predominantly sold through supermarkets and other retail outlets as convenience food items and were likely to meet at least some competition from other processed, frozen convenience, meat products.
- c. **Geographic:** The Commission’s investigations suggested that the geographic dimensions of the markets were at least national in extent. *“With regard to harvesting, quota by species relates to particular management areas, and onshore processing facilities tend to receive fish from vessels fishing the adjacent regional waters, particularly for inshore species. Thus, there are regional differences in the domestic market with, for example, snapper being more prevalent in Auckland, tarakihi in Wellington, and flatfish species in Christchurch. This appears to reflect regional differences in species availability, and consequently differences in consumer tastes. However, the Commission found that harvesting and processing companies do transport catch around the country, or acquire fish from other fishing companies—and this includes fish being transported between the South and North Islands—in order to reduce regional discrepancies between supply and demand, and to smooth out seasonal fluctuations in supply. In the case of processing and wholesale supply, finfish in both fresh, frozen and processed forms are transported around*

²⁵ *New Zealand Seafood Investments Limited and Basuto Investments Limited* (2000) NZCC Decision No 388:

https://comcom.govt.nz/_data/assets/pdf_file/0024/72609/388.pdf

²⁶ At paragraph 108.

²⁷ The majority decision, which included Chair Belgrave and Deputy Chair Dr Berry, was reached under urgency (12 working days), whereas the dissent considered that this timeframe did not provide them sufficient time to be satisfied on all the issues.

²⁸ At paragraph 88.

the country, and a very large proportion of the industry's output is sold overseas."²⁹

Hence, the Commission considered that the market is at least nationwide in extent.

5.8 The Commission identified the below competitive constraints in its analysis. It considered *"export diversion and imports to be key elements in the analysis of competition within the fishing industry"*.³⁰

- a. **Export diversion:** The Commission noted that *"[t]he extent to which a harvesting firm could exploit market power is likely to be capped as a result of competitive forces at play in the processing and wholesale markets. These forces include the possibility of export diversion..."*³¹ and *"[t]he potential for rival companies to divert product from export markets to the domestic market will reinforce this constraint, and a number of companies have indicated that they would divert exports in response to a favourable change in relative prices. There may be some potential for this to occur directly in the harvesting market, given that some fish is exported whole in a largely unprocessed state."*³²
- b. **Imports:** The Commission noted that *"the availability of imports, while not a notable current feature of the market in New Zealand, appears to offer an alternative supply source for certain buyers, and may be considered as representing a further constraint upon the associated companies"*.³³ *"[A]ny attempt by a harvester to extract higher landed fish prices from processors would at some point lead to a switch towards semi-processed imports."*³⁴ As set out in the diagram at paragraph 6.19 below, imports of seafood have increased even further again in the 23 years since this decision.
- c. **Supermarkets countervailing power:** The Commission noted that *"in the hypothetical situation where the combined entity was potentially able to exert market power in the domestic market by withholding supplies, and forcing up the price above the export price, one source of constraint would likely be the countervailing power of the supermarkets. Faced with a domestic price significantly higher than the export price, the supermarkets would have a strong incentive to 'shop around' between the various suppliers outside of the combined entity to secure a better deal, and those suppliers would have an incentive to undercut the high price in order to secure the volume of sales made available by a supermarket contract. In this way, the Commission anticipates that the countervailing power of the supermarkets would help to undermine any attempts by the combined entity to exert market power."*³⁵

5.9 The Commission has also considered an acquisition of scampi quota in *Sanford Limited and Simunovich Fisheries Limited (Simunovich)*.³⁶ The relevant markets were defined as:³⁷

- a. the catch and domestic wholesale supply of scampi in New Zealand; and
- b. rights to harvest scampi in New Zealand waters for export.

²⁹ At paragraph 105.

³⁰ At paragraph 149.

³¹ At paragraph 147.

³² At paragraph 148.

³³ At paragraph 204.

³⁴ At paragraph 147.

³⁵ At paragraph 216.

³⁶ *Sanford Limited and Simunovich Fisheries Limited* (2005) NZCC Decision No 544.

³⁷ *Sanford Limited and Simunovich Fisheries Limited* (2005) NZCC Decision No 544 at [68].

Croisilles Marine Farm

- 5.10 The Croisilles Marine Farm is vacant. The three coastal permits of the Croisilles Marine Farm allow for mussels or oysters farming. In the past, the Croisilles Marine Farm had been used by Sanford for mussel farming.
- 5.11 The Commission considered the mussel farming industry in *Sanford Limited and The Pacifica Seafoods Group of Companies*.³⁸ The relevant mussel markets were defined as:³⁹
- a. The farming of Greenshell mussels in the South Island; and
 - b. The processing of Greenshell mussels in the South Island.
- 5.12 No conceivable competition issue regarding the Croisilles Marine Farm's inclusion in the proposal is anticipated:
- a. There is no overlap between the parties in mussel farming, or oyster farming. Sanford engages in mussel farming while Moana engages in oyster farming.
 - b. The Croisilles Marine Farm is currently vacant and therefore is not being used to produce any aquaculture output.
 - c. There is no effect on Sanford's mussel farming operations, or its ongoing ownership and operation of other marine farms.
 - d. There is positive effect for oyster farming, and economic productivity generally, by enabling Moana to develop and utilise the Croisilles Marine Farm to farm oysters.
 - e. There are over 600 mussel farms in New Zealand, and they cover thousands of hectares of marine space.⁴⁰ As at February 2023, approximately 188 hectares of authorised aquaculture activities exists in Croisilles Harbour, with about 4,896 hectares in all of Tasman Bay.⁴¹ The Croisilles Marine Farm occupies around 13.935 hectares of this – 7% in relation to Croisilles Harbour, 0.2% in relation to Tasman Bay, and even lower in relation to any South Island market. For more information, Fisheries New Zealand has a webpage on how to set up a new marine farm: <https://www.mpi.govt.nz/fishing-aquaculture/aquaculture-fish-and-shellfish-farming/setting-up-a-marine-farm/>
- 5.13 The only relevant products and services therefore are in relation to finfish.

The Applicant's view on market definition

- 5.14 Moana views the relevant markets as:
- a. A national market for the supply of finfish harvesting services (**Harvesting Market**)
 - b. A national market for the wholesale supply of unprocessed finfish (**Wholesale Unprocessed Market**)

³⁸ *Sanford Limited and The Pacifica Seafoods Group of Companies* (2010) NZCC Decision No 701.

³⁹ *Sanford Limited and The Pacifica Seafoods Group of Companies* (2010) NZCC Decision No 701 at [2].

⁴⁰ <https://www.sciencelearn.org.nz/resources/751-new-zealand-s-green-lipped-mussel-industry>

⁴¹ Fisheries New Zealand Aquaculture Decision on five coastal permits in Croisilles Harbour (23 February 2023): <https://www.mpi.govt.nz/dmsdocument/55783-U210357-U220472-U220473-U220765-U220816-Aquaculture-Decision-on-five-coastal-permits-in-Croisilles-Harbour> at [32].

- c. A national market for the wholesale supply of processed finfish (including gutted, filleted with skin on, and filleted with skin off) (**Wholesale Processed Market**)
- d. A national market for toll processing (**Processing Market**), and
- e. A market or markets in which processed finfish products are supplied to retail customers, including wild and farmed fish and both saltwater and fresh-water species, noting that retail processed fish products are likely also part of a broader market for supermarket goods (**Retail Markets**).

5.15 Moana’s view is supported by the Castalia Report which finds:

- a. Individual species are not in individual markets, and instead lie in a single market, for the following reasons:
 - i. Fishing companies catch and sell a range of different finfish species—even if they target one or more specific species, they will have bycatch of other species that also needs to be sold.
 - ii. Customers (including end consumers and wholesale customers) have a general preference for freshness when purchasing finfish, indicating that, in general, customers will select from a range of available substitutable finfish options.
 - iii. While an individual customer may have a preferred species or set of species, all species are likely linked through a chain of substitution.
- b. The relevant product market for finfish is not limited to wild-harvested or saltwater fish and includes salmon, which has grown in popularity over time. Salmon prices sit as part of the continuum of finfish prices and empirical analysis on the substitutability of salmon and wild-caught species in Australia also indicates salmon is in the same market as wild-caught species.
- c. Chilled and frozen finfish lie in the same market, with frozen products forming part of the variety of options available to customers. This finding reflects the Castalia Report’s analysis of how frozen and fresh finfish prices compare, and the practice by some supermarkets of thawing frozen finfish and selling it alongside other fresh finfish products.
- d. The geographic dimension of the wholesale markets is national because fishing vessels can choose to berth at different locations to land whole finfish, and processed finfish can be freighted around the country at a transportation cost that is low relative to price of finfish. Castalia’s survey of supermarket pricing found no consistent price differentials between the North and South Islands (or other regional differentials) for each of the four most commonly sold species, which is consistent with a national market definition. The two previous decisions by the Commission on seafood markets (*Basuto* and *Simunovich*) also concluded that the geographic dimension of the relevant markets was national.

5.16 These market definitions are broadly consistent with the Commission’s approach in *Basuto*.⁴² They meet the legislative requirement that a market must be “for goods or services as well as

⁴² *Basuto* defined markets for (1) the harvesting and supply of finfish in New Zealand, (2) the processing and wholesale supply of fresh finfish in New Zealand, and (3) the processing and wholesale supply of value-added finfish products in New Zealand.

other goods or services that, as a matter of fact and commercial common sense, are substitutable for them".⁴³

The parties' total sales figures

5.17 The parties' respective total sales revenues and volumes are attached. **Appendix 1** attaches a schedule of documents attached to this application.

Names and contact details for the parties' main competitors and industry associations

5.18 The names and contact details for the parties' main competitors and industry associations are attached. **Appendix 1** attaches a schedule of documents attached to this application.

Names and contact details for the parties' key customers

5.19 The names and contact details for the parties' key customers, and the revenue earned from each in the last financial year are attached. **Appendix 1** attaches a schedule of documents attached to this application.

⁴³ Commerce Act 1986, s 3(1A).

6. WHY THE MERGER IS UNLIKELY TO RESULT IN A SUBSTANTIAL LESSENING OF COMPETITION

Explain why you consider the merger is unlikely to result in a substantial lessening of competition in any market having regard to the Mergers and Acquisition Guidelines. You should address:

- *how firms compete in the relevant markets, including how the merging parties seek to acquire and retain customers, how sales are made and the key dimensions of competition, such as price, quality or innovation;*
- *the merging parties' existing competitors, including approximate market shares (explaining how these have been calculated), and the extent to which these competitors will constrain the merged firm;*
- *the likelihood, extent and timeliness of entry and expansion by potential competitors (including conditions of entry and expansion) and the extent to which such entry or expansion will constrain the merged firm;*
- *the countervailing power of customers and the extent to which that countervailing power will constrain the merged firm; and*
- *any other relevant factors.*

Overview

6.1 The proposal will not result in a substantial lessening of competition in any relevant market because:

- a. **No anti-competitive horizontal unilateral effects in Wholesale Unprocessed Market and Wholesale Processed Market:** Moana will continue to be constrained post-proposal by:
 - i. a large and diverse range of existing competitors
 - ii. import competition
 - iii. the threat of export diversion
 - iv. customer countervailing power
 - v. elastic demand, and
 - vi. broader constraints from other seafood and proteins.
- b. **No anti-competitive horizontal unilateral effects in Processing Market:** There are a wide range of processing options.
- c. **No anti-competitive effects in other markets:** The proposal has limited effect on the Harvesting Market and Retail Markets.
- d. **No anti-competitive horizontal co-ordinated effects:** The proposal does not increase the risk of co-ordination in any market.

No anti-competitive horizontal unilateral effects in Wholesale Unprocessed Market and Wholesale Processed Market

6.2 This section analyses the Wholesale Unprocessed Market and Wholesale Processed Market together as most fishing companies and wholesalers can supply both unprocessed and processed fish. Whether whole or filleted fish is supplied largely comes down to customer requirements and the relative economics of costs. Much of the same competitive constraints therefore operate in both markets. Some additional comments on the Wholesale Processed Market are provided at paragraphs 6.43-6.45 to confirm this.

There are a large and diverse range of existing competitors

- 6.3 New Zealand's fisheries industry contains a diverse range of fishing companies, including large companies and many medium and small companies, particularly for inshore fisheries.
- 6.4 Companies in the industry have adopted a diverse range of business models to stay competitive in a context of increasing costs and downward pressure on TACC. Some companies have a business model based on very large volumes to gain scale efficiencies, some achieve economies of scope by focussing on non-fish products (such as supplying export lobster or shellfish, reducing the incremental costs of supplying fish domestically), while others are vertically integrated (such as owning quota, having a small fish harvesting operation and owning a store that sells fresh fish as well as fish and chips/takeaway food).
- 6.5 Wholesalers also play an important role in competition. Given there are many small quota holders (with around 2,200 total quota holders⁴⁴), wholesalers provide another channel to market for small fishing companies and can aggregate supply from independent sources. There are numerous wholesalers including KiwiFish, Fresko, Scott Seafoods, Seafood Harbour, Bounty Seafoods, Crystal Bay, South City Seafoods, Mega Foods, Dahua Supermarkets, Tai Ping Supermarkets, and Takanini Fish Mart.
- 6.6 Other existing competitors which will continue to compete in the market include:
- a. **Talley's** began 80 years ago catching wild fish and has grown into a multi-division international company also supplying mussels, vegetables and ice cream.⁴⁵ Talley's has a fleet of 8 deep sea vessels and supports fleet of more than 80 independently owned and operate in-shore vessels. NBR reports Talley's Fisheries employs around 8,000 people and generates annual revenue of more than \$4B.⁴⁶
 - b. **Leigh Fisheries** began in 1957 with a focus on long-lining fish.⁴⁷ Leigh Fisheries was acquired by Foodstuffs North Island (**FSNI**) in 2019.⁴⁸ New World's news release commented "*This partnership will ensure all New World stores, in addition to other Foodstuffs stores, have a ready supply of premium, New Zealand caught fish*".⁴⁹ FSNI generated over \$4B revenue for the year ended 3 April 2022.⁵⁰
 - c. **United Fisheries** is located in Christchurch and has grown since 1974 to become "*one of the top ten seafood companies in New Zealand*".⁵¹ United Fisheries also own several salmon farms and has contracts with other farms. It has a purpose build 5,000 square metre temperature controlled factory.
 - d. **Independent Fisheries** is based in Christchurch and is one of New Zealand's largest deep-sea fishing companies.⁵² It harvests and processes fish.

⁴⁴ *The economic contribution of commercial fishing to the New Zealand economy* (BERL, August 2017):

https://www.inshore.co.nz/fileadmin/Documents/Other/BERL_Commercial_Final_18_January_2017.pdf at 10

⁴⁵ <https://www.talleys.co.nz/>

⁴⁶ <https://www.nbr.co.nz/talley-family-10/>

⁴⁷ <https://www.leighfish.co.nz/>

⁴⁸ New World "*Catch of the day – Foodstuffs announces Leigh Fisheries acquisition*" (3 July 2019)

<https://www.newworld.co.nz/who-we-are/news/catch-of-the-day>

⁴⁹ New World "*Catch of the day – Foodstuffs announces Leigh Fisheries acquisition*" (3 July 2019)

<https://www.newworld.co.nz/who-we-are/news/catch-of-the-day>

⁵⁰ Foodstuffs North Island Consolidated FY22 Financial Statements: <https://annualreports.foodstuffs.co.nz/numbers>

⁵¹ <https://unitedfisheries.co.nz/content/company>

⁵² <https://www.indfish.co.nz/>

- e. **Solander Group** “specialises in catching and providing high quality fresh seafood to its customers in New Zealand and around the world”.⁵³ It has a retail online platform⁵⁴ and wholesale online platform⁵⁵ which sell and deliver a large range of fresh fish and seafood. Its products “come from many different fishing ports in New Zealand to ensure you get the freshest fish and biggest range possible”.⁵⁶
- f. **Vela Fishing** “own a significant and diversified parcel of quota, and have both a broad and established New Zealand supply base and an international customer base”.⁵⁷ It was a “tradition of innovation” and was the first to utilise factory freezer class fishing vessels to produce once frozen fillet product. The wider Vela Group also has substantial forestry and dairy farming interests in New Zealand.
- g. **Ngāi Tahu Seafood** manages fisheries assets on behalf of Ngāi Tahu.⁵⁸ It harvests seafood under contract, with approximately 100 independent and experienced fishers and fishing companies.⁵⁹ Ngāi Tahu Seafood is headquartered in Christchurch and owns facilities in Bluff, Christchurch, Kaikōura and Picton. Ngāi Tahu generated around \$320M revenue for the year ended 30 June 2022.⁶⁰
- h. **Ngati Porou Seafoods** owns Ngati Porou quota assets, currently valued at \$35M.⁶¹ Ngati Porou returned to the business of fishing in 1993 and “have worked hard to develop and add to these assets for the benefit of our people, for the health of the environment and the economy of our region”.⁶² Ngati Porou Seafoods catches, processes, nationally wholesales, exports, and retails seafood from Gisborne’s wharf. It processes more than two tonnes of fresh fish on average per day.⁶³ It operates the retail shop Real Fresh and owns the premium smoked whitefish brand Ahia.⁶⁴
- i. **Pelco** is a wild capture fishing and processing company that specialises in pelagic species, such as blue mackerel, jack mackerel, kahawai, trevally and tuna.⁶⁵ Pelco is based in Mount Maunganui. Pelco own significant pelagic quota as well as some inshore quota.
- j. **Star Fish Supply** is based in the Hawke’s Bay and operates a premium fresh seafood and wholesale processing facility.⁶⁶ It lands and processes locally caught seafood and bait, and distributes bulk fresh seafood throughout the North Island to wholesalers, supermarkets, and export.
- k. **NZ King Salmon** is the world’s largest producer of king salmon with more than 30 years of experience.⁶⁷ It is based in Nelson and farms king salmon in the Marlborough Sounds.

⁵³ <https://solander.com/>

⁵⁴ <https://www.gourmetseafood.co.nz/>

⁵⁵ <https://wholesale.solanderseafood.co.nz/>

⁵⁶ <https://wholesale.solanderseafood.co.nz/about-solander>

⁵⁷ <https://www.velafishing.co.nz/page/about-vela/>

⁵⁸ <https://www.ngaitahuseafood.com/>

⁵⁹ <https://www.ngaitahuholdings.co.nz/nga-haumi/ngai-tahu-seafood/>

⁶⁰ Te Rūnanga o Ngāi Tahu Group Annual Report 2021-2022: <https://ngaitahu.iwi.nz/investment/ngai-tahu-annual-reports/2022-annual-report/>

⁶¹ <https://www.npsl.co.nz/about/group/>

⁶² <https://www.npsl.co.nz/about/group/>

⁶³ <https://www.npsl.co.nz/our-business/operations/>

⁶⁴ <https://www.npsl.co.nz/our-business/domestic-market-channels/>

⁶⁵ <https://www.pelco-nz.com/index.htm>

⁶⁶ <https://www.star-fish.co.nz/>

⁶⁷ <https://www.kingsalmon.co.nz/>

It is investing in an open ocean aquaculture proposal. NZ King Salmon generated \$174.5M revenue for the year ended 31 January 2022.⁶⁸

- I. **Mount Cook Alpine Salmon** was established in 1992 and is a leading producer of freshwater King Salmon in New Zealand.⁶⁹ It operates 5 aquaculture farms, 2 hatcheries (and has shares in a third), a large primary processing plant in Timaru, and a secondary processing plant in Christchurch where it produces its Aoraki smoked product range. Catalist reports Mt Cook Alpine Salmon has revenues approaching \$40M.⁷⁰
- 6.7 Sanford (excluding the Auckland Business) will also continue to compete in the market through its continued presence in relation to its other business units, namely:
 - a. Salmon hatching, farming, processing business unit (with locations in Southland / Stewart Island, and trading under the Big Glory Bay brand)
 - b. Mussel farming and processing unit (with locations in Coromandel and Havelock)
 - c. Wildcatch deepwater business unit (based in Timaru), and
 - d. South Island based inshore business unit based in Bluff and Timaru (which has a processing facility in Timaru).
 - 6.8 For the Commission's context, Sanford's Auckland Business is only a small proportion [] of Sanford's total business. Sanford will also continue to own / operate other Auckland-based operations, including the Auckland Fish Market (which facilitates third party sales), and the Sanford and Sons retail fishmonger outlet.
 - 6.9 Important dimensions of competition are:
 - a. Quality of fish
 - b. Consistency / reliability of supply, and
 - c. Price.
 - 6.10 Competitors may also compete by offering supply with other types of seafood, for example mussels, crayfish.
 - 6.11 A 2019 MPI survey found quality to be the most important factor for purchasing seafood for the major customer groups:⁷¹
 - a. *"Quality is the leading factor for consumers when purchasing seafood."*
 - b. *"Restaurants rated quality as the most important factor, followed by sustainability"*
 - c. *"Food retailers indicated quality and consistent supply were important in their seafood sourcing decisions."*
 - 6.12 The Castalia Report uses share of finfish quota as a proxy for market share. It calculates the inshore finfish quota shares and total finfish quota shares below. These figures include all of

⁶⁸ New Zealand King Salmon Annual Report 2022: <https://www.kingsalmon.co.nz/wp-content/uploads/2022/05/NZKS-Annual-Report-FY22-WEB-FINAL-2.pdf>

⁶⁹ <https://alpinesalmon.co.nz/>

⁷⁰ https://www.catalist.co.nz/businesses/landing/Mount_Cook_Alpine_Salmon_Limited

⁷¹ New Zealand seafood consumer preferences (MPI, November 2019) <https://www.mpi.govt.nz/dmsdocument/38750-New-Zealand-seafood-consumer-preferences> at 2

Moana’s leases, but do not include leases held by other parties, as that information is not disclosed.

Table 5.3: Estimated share of finfish quota

Company	Share of Inshore Finfish Quota	Share of Total Finfish Quota
Sealord	6.6%	19.7%
Sanford post-transaction	9.0%	17.4%
Talley’s	17.9%	14.8%
Independent	1.2%	7.9%
Moana post-transaction (including leases)	[]	[]
Vela	1.6%	4.8%
Pelco	0.7%	3.7%
United Fisheries	6.4%	2.9%
Ngāi Tahu	5.0%	2.6%
Solander	0.1%	1.9%
Westfleet	2.5%	1.0%
Foodstuffs	2.6%	0.6%
Gisborne Fish	0.8%	0.2%
Egmont Seafoods	0.1%	0.0%
Other ⁷²	[]	[]
Total	100%	100%
Moana pre-transaction	[]	[]
Sanford pre-transaction	18.2%	19.1%

6.13 Using these quota shares as a proxy for market share, the proposal does not meet the market share and concentration indicators (previously “safe harbours”) set out in the Commission’s Merger and Acquisitions Guidelines. As shown in the table below, this is true for both total finfish quota shares and inshore finfish quota shares, and whether or not Moana, Sealord, and Westfleet are treated as separate entities. (As the Castalia Report notes, Moana, Sealord and Westfleet’s aggregated quota shares are not necessarily meaningful in practice as the three companies are operated separately.)

⁷² This category includes a large number of small quota holders. Some of this quota could be leased to other companies.

	Moana, Sealord, Westfleet treated as separate entities	Moana, Sealord, Westfleet treated as one entity
Total finfish quota shares		
CR 3	[]	[]
Relevant market share indicator	Less than 40%	Less than 40%
Moana post-transaction	[]	[]
Inshore finfish quota shares		
CR 3	[]	[]
Relevant market share indicator	Less than 40%	Less than 40%
Moana post-transaction	[]	[]

6.14 These shares attribute all quota currently leased by Moana (and of course quota that will be leased under the proposal for post-transaction shares) to Moana's share of quota. Of the total finfish ACE that Moana holds in 2023, [] is owned, while a further [] comes from leases that expire on or before 30 September 2025. Excluding leases which expire on or before 30 September 2025, Moana's post-transaction share of total finfish quota reduces to [] and share of inshore finfish quota reduces to [].

6.15 These quota shares also overstate the parties' share of domestic wholesale finfish supply because they do not include:

- a. Domestic supply of salmon and other finfish not managed under the QMS. The Castalia Report finds the capacity of NZKS and Sanford salmon supply is approximately around 9% the size of total inshore finfish quota, so the exclusion of salmon from the market share proxies could significantly overstate Moana's share.⁷³
- b. Finfish imports, including salmon.

6.16 Salmon is a consistently strong sales performer. Salmon and wild caught fish are sold at a similar price range and are typically placed in the same area in physical stores and same category in online stores. Examples of this are pictured below.



Picture taken from New World Eastridge on 11 March 2023. From left to right: NZ Gurnard (Red) Fillets (Prfz) \$37.99/kg; NZ Tarakihi Fillets \$38.99/kg; NZ Trevally Fillets \$32.99/kg; Bluff Salmon Skin on Bone Out Portion \$55.99/kg; Fj Tuna Yellowfin Loin \$48.99/kg; Bluff Salmon Fillet Skin On Bone In \$50.99/kg; NZ Snapper Fillets \$54.99/kg.

⁷³ Castalia Report at 46.

You're shopping from **PAK'nSAVE Royal Oak** Choose a timeslot **Login or register**

PAK'nSAVE Search for groceries e.g. milk... \$0.00

Groceries Deals My Lists

Fresh Foods & Bakery > Seafood > Fresh Fish Fillets & Steaks

Fresh Fish Fillets & Steaks

See more

Brand Showing 1 - 20 of 20 products Popularity High to Low

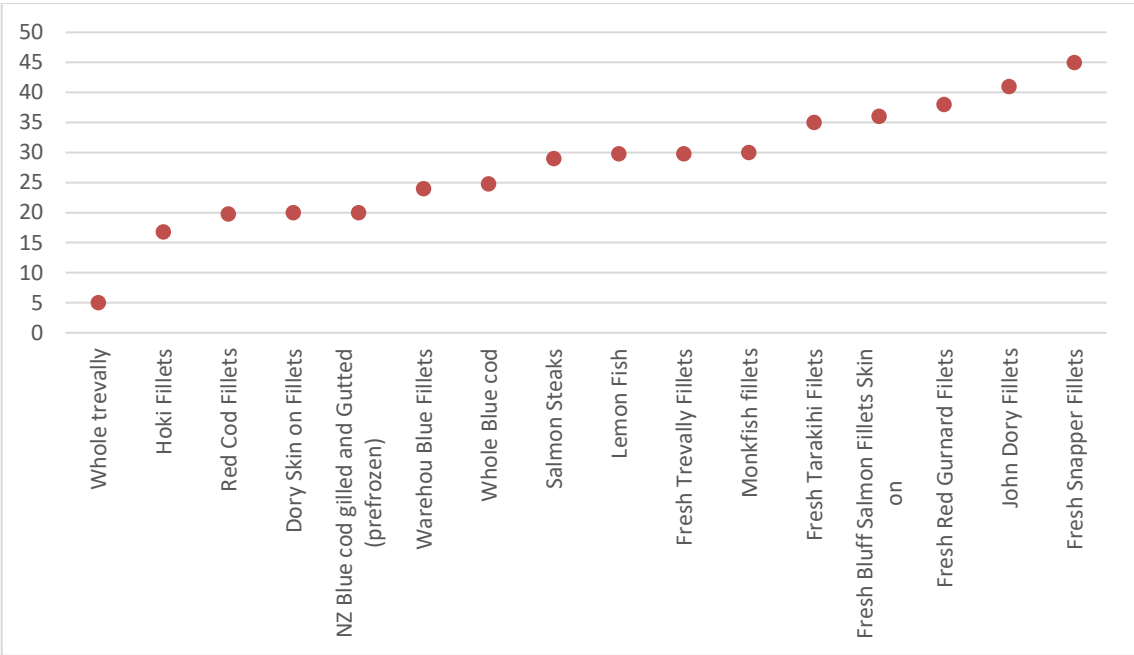
<p>EXTRA LOW</p> <p>Fresh Bluff Salmon Fillets Skin On kg</p> <p>Image coming soon</p> <p>39⁹⁹ kg \$4.00/100g</p> <p>0.1 kg ADD</p> <p>Product of New Zealand</p>	<p>EXTRA LOW</p> <p>Bluff Salmon Fillet Skin On kg</p> <p>39⁹⁹ kg \$4.00/100g</p> <p>0.1 kg ADD</p> <p>Product of New Zealand</p>	<p>Tarakihi Fillets NZ kg</p> <p>39⁹⁹ kg \$4.00/100g</p> <p>0.1 kg ADD</p> <p>Product of New Zealand</p>	<p>NZ Hoki Fillets Fish kg</p> <p>22⁹⁹ kg \$2.30/100g</p> <p>0.1 kg ADD</p> <p>Product of New Zealand</p>	<p>EXTRA LOW</p> <p>Fresh Trevally Fillets kg</p> <p>25⁹⁹ kg \$2.60/100g</p> <p>0.1 kg ADD</p> <p>Product of New Zealand</p>
---	---	---	--	--

Screenshot taken from [PAK'nSAVE online shopping website](#) on 14 March 2023.

6.17 A 2017 Coriolis report commissioned by MBIE found salmon (as well as mussels, oysters and lobster) are shifting to value (higher prices at lower volumes), while wild capture is experiencing falling volumes and price pressure.⁷⁴ Salmon is now sold at a similar price range to wild capture fish like snapper, as shown in figure 4.4 of the Castalia Report.

⁷⁴ *The Investor's Guide to the New Zealand Seafood Industry 2017* (Coriolis & MBIE, June 2017) <https://www.mbie.govt.nz/assets/94e74ef27a/investors-guide-to-the-new-zealand-seafood-industry-2017.pdf> at 12

Figure 4.4: Retail price per kilogram of fresh fish in Royal Oak Pak 'N Save supermarket (\$ per kg)

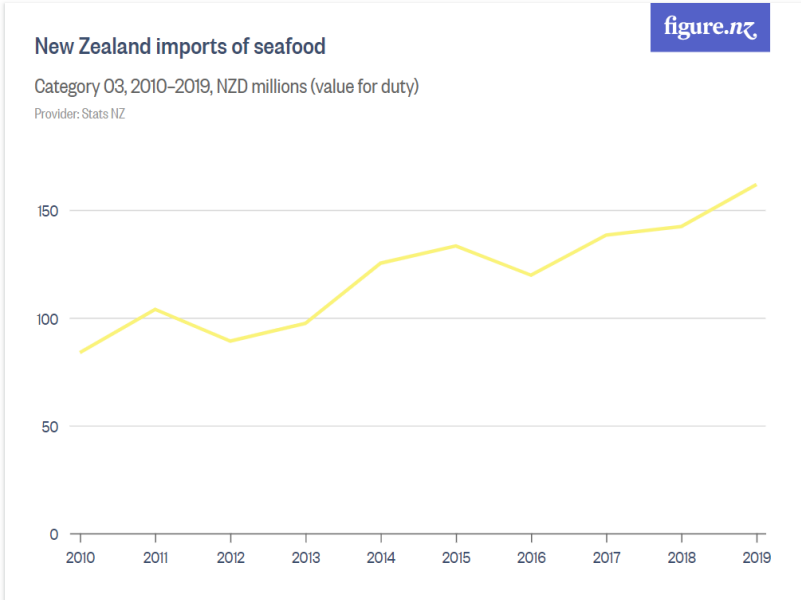


Source: Survey of online prices as at 25 January 2022, Pak and Save Royal Oak Auckland

6.18 The Castalia Report also discusses a recent Australian study which found that growth of Australian-farmed Atlantic salmon production has had a significant negative impact on the prices received for Australian wild-caught species.⁷⁵

There is a growing degree of import competition

6.19 There is a growing degree of import competition. New Zealand imports of seafood has increased over the years, and almost doubled from \$84M in 2010 to \$162M in 2019.⁷⁶



6.20 Popular imports include salmon, basa (lower cost white fillet made from farmed fish from South East Asia) and alaskan pollock. Salmon from Norway, Denmark and Australia is readily available in NZ at competitive prices. Pangasius and basa (Vietnamese catfish) is imported into New

⁷⁵ Castalia Report at 35.

⁷⁶ <https://figure.nz/chart/tErPPeXnWw9UIYtS-qQIpREhvOk7EKBMC>

Zealand, and is often available at fish and chips shops,⁷⁷ food service channels,⁷⁸ as well as via supermarket channels (for example, Countdown sells thawed "Countdown Vietnamese Basa Fillets"⁷⁹ and frozen "Countdown Fish Fillets Basa").⁸⁰ (Reflecting the ready availability of basa as an import, imported basa is said to be the "most ubiquitous battered fish on menus" in fish and chip shops in Australia, followed by imported New Zealand hoki.)⁸¹ Alaskan pollock is also imported and sold in New Zealand (for example Pams Fillets Frozen Fish is made from alaskan pollock⁸²). As discussed further in the Castalia Report, there is potential for import volumes to increase substantially given the huge size of fish stocks such as alaskan pollock.⁸³ Barramundi, a farmed freshwater fish in Australia, is another import option. The Castalia Report further discusses examples of imported fish.⁸⁴

6.21 Foodstuffs and Woolworths both import salmon. Supermarkets also import frozen finfish, defrost it, and present it in the same manner as domestic caught fish. PAK'nSAVE recommends "If you're sold on the idea of your fish being traditionally fresh, check the labels at the seafood counter. Some may actually be previously frozen fresh fish that has been thawed for convenience".⁸⁵

6.22 The Castalia Report finds import competition places an additional competitive constraint on market participants and discusses empirical studies which support this finding:⁸⁶

A recent empirical study that looked at the impact of an increased supply of imported fish products on the price of domestically caught fish products in Australia, found that imports of fresh fish (including most aquaculture species) have a substantial negative impact on the prices of lower-valued domestically caught species over both the short- and long-term. The same study found a small but significant negative impact in the long-term of an increased supply of imported fish on higher-valued domestically caught fish. An earlier study published in 2021, which performed cointegration analysis, found substitution relationships between fresh imports and several high value and low value domestically-caught Australia species that are sold at the Sydney Fish Market.

⁷⁷ Chipping Away. Cuisine. Retrieved from: <https://www.cuisine.co.nz/chipping-away/>: ("A quick Google of a couple of fish and chip shops around my region and the only fish source information is 'Kiwi As' and 'Fished from the pristine waters of New Zealand'. We assume we are eating New Zealand fish and maybe we are. But what if it's basa or tilapia? If the fillet is long and grey, it probably is. Do we care?")

⁷⁸ <https://davis.nz/products/seafood/fish/fish-fillets>: ("Basa is an economical seafood option. Conveniently layer packed, skinless and boneless Basa fillets are suitable for many cooking methods.")

⁷⁹ <https://www.countdown.co.nz/shop/productdetails?stockcode=98236&name=countdown-vietnamese-basa-fillets-3-5-pce-thawed-tray>

⁸⁰ <https://www.countdown.co.nz/shop/productdetails?stockcode=445352&name=countdown-fish-fillets-basa-frozen>

⁸¹ (19 January 2019). The secrets behind Australia's best fish and chips (and where to find them). Sydney Morning Herald. Retrieved from: <https://www.smh.com.au/goodfood/eating-out/a-field-guide-to-australias-best-fish-and-chips-20190119-h1a8sq.html>

⁸² For example: <https://www.pams.co.nz/product-finder/5294962-EA-000>

⁸³ Castalia Report at 10 & 63: ("Accounting for five percent of the world's marine finfish capture, Alaskan pollock is the world's second-most caught species in the world, with an estimated 3.4 million tonnes caught in 2018 (for comparison, the volume of Hoki caught in the same year was 135 thousand tonnes). Foodstuffs sells frozen Alaskan pollock fillets supplied under the Pams brand. McDonald's, which uses Alaskan pollock in the United States for Filet-o-Fish, also lists Alaskan pollock (in addition to hoki) as an ingredient for Filet-o-Fish on its New Zealand website. The huge scale of the Alaskan pollock market overseas, provides the potential for much greater import volumes in future.")

⁸⁴ Castalia Report at 62-64.

⁸⁵ <https://www.paknsave.co.nz/saving-ideas/fresh-vs-frozen-seafood>

⁸⁶ Castalia Report at 64-65.

The threat of export diversion constrains the domestic market

- 6.23 The majority of domestic caught fish is exported. In 2021 around \$970M (194,834 tonnes) of finfish was exported from New Zealand.⁸⁷ The Castalia Report estimates 77% of total industry finfish catch is exported and 57% of Moana’s top ten species.⁸⁸
- 6.24 As was the case in *Basuto*, if domestic prices were to rise above competitive levels, competitors could readily divert supply back to the domestic market.
- 6.25 Because of the small size of the domestic market relative to the level of exports, relatively small amounts of ACE are needed to supply a significant volume to the domestic market and be a significant constraint. This reasoning was used in the *Simunovich* decision which stated, because most scampi is exported, “*given the small size of the domestic market – 5-10 tonnes annually – those competitors need only a modest amount of quota to be a constraint*”.⁸⁹
- 6.26 []
- 6.27 The Commission has recognised export diversion and imports as important competitive forces in fish processing and wholesale markets:⁹⁰

the Commission recognised in Bausto [sic] that as the amount of TACC was set, the supply response of competitors was limited. In other words, the typical constraint of competitors to expand production and restrict the combined firm from raising prices and/or decreasing quality did not apply.

*Instead, the particular size of the competitors quota relative to the domestic demand was relevant. The Commission considered that the extent to which the combined firm could exploit market power was **likely to be capped as a result of competitive forces at play in the processing and wholesale markets, mainly through the possibility of export diversion and/or imports.***

(emphasis added)

- 6.28 The Castalia Report further examines the likelihood that export diversion would constrain behaviour in the domestic market and finds export diversion is likely to occur if prices increase materially with the proposal.⁹¹

Large customers have countervailing power

- 6.29 Supermarkets have a large degree of countervailing power. A 2019 survey of New Zealand seafood consumer preferences conducted by MPI found 50% of consumers most often purchase seafood at supermarkets.⁹² The Commission’s grocery market study found Foodstuffs and Woolworths have combined retail grocery market shares of 80-90% under most estimates⁹³ and that “*for most suppliers, particularly smaller suppliers, there appears to be an imbalance of*

⁸⁷ *New Zealand Seafood Exports by Product Type* (Seafood New Zealand, December 2021):

https://www.seafood.co.nz/fileadmin/oldsite/documents/Export_data/21.12.7.pdf; more Seafood New Zealand export statistics can be found at <https://www.seafood.co.nz/publications/export-stats>

⁸⁸ Castalia Report at 54-55. Note these figures are not based on paragraph 5.2’s statement that “*Around 400K tonnes of seafood (excluding aquaculture) is caught commercially in New Zealand each year*” because the 400K tonnes figure is a rough approximation based on 2003-2019 data and relates to all seafood (excluding aquaculture), rather than finfish only.

⁸⁹ *Sanford Limited and Simunovich Fisheries Limited* (2005) NZCC No 544 at [5] & [8].

⁹⁰ *Sanford Limited and Simunovich Fisheries Limited* (2005) NZCC No 544 at [35]-[36].

⁹¹ Castalia Report at [5.2.3].

⁹² *New Zealand seafood consumer preferences* (MPI, November 2019): <https://www.mpi.govt.nz/dmsdocument/38750-New-Zealand-seafood-consumer-preferences> at 8.

⁹³ Commerce Commission “*Market study into the retail grocery sector: Final report*” (8 March 2022) at [5.79].

bargaining power in favour of the major grocery retailers".⁹⁴ Supermarkets are a vital channel for Moana and fisheries.

- 6.30 Foodstuffs is vertically integrated through its ownership of Leigh Fisheries, and Woolworths has "*partner[ed] with Hilton Food to establish a brand new, state-of-the-art \$100 million meat plant*",⁹⁵ which is understood to also include Woolworths' seafood processing requirements.⁹⁶ Hilton Foods is an international food processing group and supplies products across poultry, seafood and red meat.⁹⁷
- 6.31 Supermarkets have the ability to resist price increases by, for example, reducing shelf space and allocating this to competitors (including itself in the case of Foodstuffs and Leigh Fisheries) or imported fish, predominantly salmon. Supermarkets also have the incentive to resist price increases as this reduces its costs, allowing it to either pass on cost savings to consumers to increase demand and ultimately profits, or to increase its margin.
- 6.32 Supermarkets and customer facing channels (eg My Food Bag) also have the ability to influence consumer preferences. For example they could encourage trial of a different species of fish.
- 6.33 The Castalia Report finds large customers, such as supermarkets, have countervailing buyer power through large scale and self-supply options.⁹⁸

Elastic demand will have a constraining effect on prices

- 6.34 Other supply channels also have a range of available alternatives, including competitors, imports, salmon, or switching to other seafood or proteins, as further explained at paragraph 6.37.
- 6.35 Customers and end consumers have elastic demand. The Castalia Report finds empirical analysis has shown the demand for fish in New Zealand to be elastic.⁹⁹ Research funded by the Health Research Council of New Zealand published in 2013 implies that a 1% increase in the price of fish would result in a reduction in demand by 1.27%. The Castalia Report therefore finds the elasticity of demand could be expected to constrain pricing.

Finfish products face broader constraints from other proteins

- 6.36 Prices of finfish products face constraints from other proteins— if finfish is too expensive, end consumers can switch to other types of seafood, proteins such as chicken, or even plant-based proteins.

Customers in each channel have a range of available options

- 6.37 Customers in each channel can source chilled fish from a range of different options, including those shown in the table below. Customers in each channel also have a range of other available

⁹⁴ Commerce Commission "Market study into the retail grocery sector: Final report" (8 March 2022) at [8.60].

⁹⁵ (23 November 2021). Woolworths New Zealand Limited's post conference submission to the New Zealand Commerce Commission regarding the market study into the retail grocery sector: https://comcom.govt.nz/_data/assets/pdf_file/0029/273827/Woolworths-NZ-Ltd-Post-conference-submission-on-Market-study-into-grocery-sector-24-November-2021.pdf

⁹⁶ (11 April 2019). A \$100m hi-tech meat processing facility is to be built at Wiri to supply Countdown North Island. Stuff: <https://www.stuff.co.nz/business/111899901/a-100m-hitech-meat-processing-facility-is-to-be-built-at-wiri-to-supply-countdown-north-island>

⁹⁷ For more information on Hilton Foods see <https://www.hiltonfoods.com/where-we-operate/new-zealand/>

⁹⁸ Castalia Report at [5.2.8].

⁹⁹ Castalia Report at [5.2.4].

options, including a range of fish species, switching to alternative product formats (eg live, fresh or frozen; whole, fillets, and other parts of the fish), imports, other seafood, and other proteins.

Chilled Fish Offering			Super-markets	Food Service	Spec Retail	Online	Wholesale	
	Location	Business Type(Main)						
Sanford/AFM	Auckland	Fishing company and auction operator	√	√	√	√	√	
Talley's	Nelson	Fishing company	√	√				
United Fisheries	Christchurch	Fishing company	√					
Leigh Fish (part of FSNI)	Leigh/Auckland	Fishing company	√					
Sea Treasure Seafoods	Hamilton	Seafood Wholesaler	√	√		√		
Westfleet	Greymouth	Fishing company	√					
Egmont Seafoods	Taranaki	Fishing company	√					
Saltwater Seafoods	Hastings	Seafood Wholesaler			√	√		
KiwiFish	Auckland	Seafood Wholesaler	√	√	√			
Becroft	Auckland	Seafood Wholesaler					√	
Service Foods	Auckland	National Food Distributor		√	√			
Bidfood	Auckland	National Food Distributor		√	√			
Foodchain	Auckland	National Food Distributor		√	√			
Gilmours (part of FSNI)	Auckland	Wholesaler		√				
Wellington Trawling	Wellington	Seafood Wholesaler	√	√	√	√	√	
Fish Factory	Wellington	Seafood Wholesaler		√			√	
Solander	Port Nelson	Seafood Wholesaler				√	√	
Wildfish	Wellington	Seafood Wholesaler		√		√	√	
Deep Blue Seafoods	Wellington	Seafood Wholesaler	√	√			√	
Fresko	Wellington	Seafood Wholesaler			√			
Gisborne Fisheries	Gisborne	Fishing company	√				√	
Polynesian Seafoods	Wellington	Seafood Wholesaler			√			
Yellow Brick Rd	Wellington	Seafood Wholesaler		√				
Waitangi Seafoods	Chatham Is	Fishing company					√	
Ngati Porou Fisheries	Gisborne	Seafood Retailer			√			
Te Arawa Fresh	Rotorua	Seafood Retailer			√	√		
Star Fish Supply	Napier	Fishing company	√				√	
NZ King Salmon	Nelson	Fishing company	Presumably all channels					
Mt Cook Alpine Salmon	Lake Pukaki	Fishing company	Presumably all channels					
Wholesalers*				√	√		√	

* There are numerous wholesalers. []

6.38 **Supermarkets** represent a large proportion of domestic sales and are supplied by many fisheries. As noted above, the Commission's grocery market study found Foodstuffs and

Woolworths have combined retail grocery market shares of 80-90% under most estimates.¹⁰⁰ Foodstuffs also owns inshore fishery Leigh Fishery and Woolworths has partnered with Hilton Foods to meet its seafood processing requirements.

- a. Existing third-party competitors for supply to supermarkets include Talley's, United Fisheries, Leigh Fishery, Sea Treasure Seafoods, Westfleet, Egmont Seafoods, KiwiFish, Wellington Trawling, Deep Blue Seafoods, Gisborne Fisheries, and Star Fish Supply.
- b. []
- c. [] [] []
- d. As discussed above, supermarkets have strong countervailing power. The ability of supermarkets to exercise countervailing power and switch to alternatives can be demonstrated by Foodstuffs' delisting of several Sealord products in 2021.¹⁰¹
- e. Supermarkets also have the option of increasing imports – for example, both PAK'nSAVE¹⁰² and Countdown sell Vietnamese basa fillets.¹⁰³

6.39 **Food service** providers sell fish products for consumption 'on premise', for example hotels, restaurants, and cafes.

- a. Existing third-party competitors for supply to food service providers include Talley's, Sea Treasure Seafoods, KiwiFish, Service Foods, Bidfood, Foodchain, Gilmours, Wellington Trawling, Fish Factory, Wildfish, Deep Blue Seafoods, Yellow Brick Rd, and other wholesalers.
- b. Food service providers may have strict price requirements (eg restaurants who need to attract customers and be profitable), which imposes constraint on Moana's prices as higher prices will inevitably result in reduced demand. Nor can Moana decrease quality without damaging its reputation and losing the high proportion of customers who value quality.
- c. Fish species have a high degree of substitutability for food service providers. For example, restaurant menus can refer to "market fish" rather than require a fixed species,¹⁰⁴ and dishes can be changed. A 2019 MPI survey indicates restaurants are flexible around wild and farmed seafood.¹⁰⁵

¹⁰⁰ Commerce Commission "Market study into the retail grocery sector: Final report" (8 March 2022) at [5.79].

¹⁰¹ <https://www.stuff.co.nz/business/industries/126670095/uncertainty-for-sealord-as-contract-slashed-by-foodstuffs-north-island>

¹⁰² https://www.paknsave.co.nz/shop/product/5313500_ea_000pns?name=basa-fillets

¹⁰³ <https://www.countdown.co.nz/shop/productdetails?stockcode=98236&name=countdown-vietnamese-basa-fillets-3-5-pce-thawed-tray>

¹⁰⁴ See for example menus for [Harbourside Ocean Bar Grill](#), [Soul Bar & Bistro](#), [FISH](#).

¹⁰⁵ *New Zealand seafood consumer preferences* (MPI, November 2019) <https://www.mpi.govt.nz/dmsdocument/38750-New-Zealand-seafood-consumer-preferences> at 15

Chefs are flexible around wild and farmed seafood

- 14 out of 16 interviewed chefs/owners offered both wild and farmed seafood in their restaurant menu. Some considered farmed seafood a sustainable option with less damage to the environment. Farmed seafood also provided a consistent supply and an easily sourced option for the restaurants.
- A few fine dining restaurants only offered line caught and "novel" seafood to create a point-of-difference for their diners. Additionally, these restaurants had the ability to change their menu regularly and as a result was able to easily accommodate new seafood ingredients, including fish types.

Figure 24: What types of seafood do you source?
New Zealand market



Source: EIU Restaurant Interview (2019) © all rights reserved.

- Food service providers also have a range of options, including options of using frozen fish (for example, McDonald's uses 100% frozen hoki in its Filet-o-Fish burgers),¹⁰⁶ imported fish (as noted above, Vietnamese basa is said to be "ubiquitous" in fish and chips shops in Australia), serving other seafood, or other proteins (for example replacing a fish dish with a chicken dish if fish is no longer price attractive). Food service providers may also demand less volume of fish if their customers select fish dishes from the menu less often because of relative price changes between fish and other dishes.

6.40 **Specialty retailers** sell fish products for consumption 'off premise', for example Farro Fresh, Oceanz Seafood, Moore Wilson stores, fish & chip shops, and independent fish mongers.

- Existing third-party competitors for supply to speciality retailers include independent sales through Auckland Fish Market, Saltwater Seafoods, KiwiFish, Service Foods, Bidfood, Foodchain, Wellington Trawling, Fresko, Polynesia Seafoods, Ngati Porou Fisheries, Te Arawa Fresh, and other wholesalers.
- Fish species have a high degree of substitutability for speciality retailers. For example, fish & chip shop menus can refer to a "fish of the day" rather than require a fixed species.¹⁰⁷
- Specialty retailers also have the options of switching between fresh and frozen fish, or using imported fish.

6.41 **Online platforms**, for example My Food Bag, Hello Fresh, and GrabOne, are customers whose primary interface with consumers is through online sales.

- Existing third-party competitors for supply to online platforms include Sea Treasure Seafoods, Saltwater Seafoods, Wellington Trawling, Solander, Wildfish, Hello Fresh, and Te Arawa Fresh. Some of these competitors are supplying their own online platform/website.
- Online platforms also have the options of switching between fresh and frozen fish, or using imported fish. Meal kit providers like My Food Bag can also customise their menu

¹⁰⁶ (2 September 2020). By hoki, Macca's fish is 100% locally sourced. Stuff. Retrieved from: <https://www.stuff.co.nz/life-style/food-wine/122582842/by-hoki-maccas-fish-is-100-locally-sourced#:~:text=Hoki%20flesh%20is%20white%20and,of%20Aotearoa%20and%20southern%20Australia.>

¹⁰⁷ See for example menus for [The Fish & Chip Shop](#), [The Seafood Collective](#), [FishSmith](#).

and could substitute wild caught fish meal options for other meal options, for example salmon, other seafood or other proteins. []

c. []

6.42 **Wholesalers** on-sell fish products to other businesses, for example Bidvest (a full-service food wholesaler), Scott Seafoods, and Sea Treasure Seafoods.

- a. Existing third-party competitors for supply to wholesalers include Becroft, Wellington Trawling, Fish Factory, Solander, Wildfish, Deep Blue Seafoods, Gisborne Fisheries, Waitangi Seafoods, Star Fish Supply, and other wholesalers.
- b. Some of the volume sold to wholesalers may be exported overseas.
- c. Fishing companies regularly sell fish to other fishing companies. Fisheries have multiple channels to market available to them, and wholesalers can aggregate supply from independent sources, encouraging competition from a range of different sources and suppliers.

The Wholesale Processed Market is no less competitive than the Wholesale Unprocessed Market

6.43 In addition to fishing companies and wholesalers, there are a broader range of businesses which engage in processing, including:

- a. Specialist fresh-fish distributors
- b. Food service companies
- c. Restaurants which process back-of-house
- d. Speciality and international supermarkets
- e. Fish mongers,
- f. Protein processing options.

6.44 The Castalia Report notes *“While the broad customer groups in [the Wholesale Processed Market] are similar to those who purchase unprocessed finfish, customers of wholesale processed finfish generally do not have access to the facilities or inhouse expertise to process the finfish themselves or the volumes and capability to purchase unprocessed fish and manage a toll processing arrangement”*.¹⁰⁸

6.45 These customers are not disadvantaged. Given the range of fishing companies, wholesalers, and processing companies which can purchase unprocessed fish, undertake processing, and then supply processed fish, the Wholesale Processed Market is no less competitive than the Wholesale Unprocessed Market.

Overall

6.46 Moana will therefore continue to be constrained by competition from a range of sources post-proposal, and across all channels. The proposal will not substantially lessen competition in the Wholesale Unprocessed Market or the Wholesale Processed Market.

¹⁰⁸ Castalia Report at [4.1.4].

No anti-competitive effects in Processing Market

6.47 Toll processing is primarily a service provided to the two large supermarket groups (Foodstuffs and Woolworths). These customers have strong countervailing power as a result of their scale, their ability to self-supply and their ability to attract entry by broader protein processing options to take advantage of economies of scope in processing multiple proteins.

6.48 For example, Woolworths has a partnership arrangement with Hilton Foods, an international food processing group with a multi-category offer across meat, seafood, vegan and vegetarian, easier meals and supply chain services.¹⁰⁹ Stuff reported that Woolworths had partnered with Hilton Foods to build a new 15,700m² processing plant in Wiri, Auckland to supply exclusively to the Countdown supermarkets in the North Island.¹¹⁰ Stuff also reported this was Hilton Foods' first investment in New Zealand.

6.49 Hilton Foods states “[t]he site in New Zealand harnesses all expertise across all our protein categories and supplies complex ranges of products across poultry, seafood and red meat”.¹¹¹ It has described its new Auckland processing facility as follows:¹¹²

Launching in 2021, this innovative new facility showcases unparalleled versatility and scale by processing both traditional meat protein, alongside extended value-added products including poultry and seafood to provide scale and critical mass, in comparison to the 'single species' sites that HFG currently operate in APAC.

6.50 The fact that Hilton Foods New Zealand operations process fish was also featured in Hilton Foods' 2022 Annual Report:¹¹³



6.51 []

6.52 Woolworths previously processed fish themselves.

6.53 FSNI self-supplies some processing through Leigh Fisheries, which it owns. [] []

6.54 The national supermarket chains also have options around whether to aggregate processing in certain locations or use multiple suppliers around the country.

¹⁰⁹ <https://www.hiltonfoods.com/our-expertise/>

¹¹⁰ (11 April 2019). A \$100m hi-tech meat processing facility is to be built at Wiri to supply Countdown North Island. Stuff: <https://www.stuff.co.nz/business/111899901/a-100m-hitech-meat-processing-facility-is-to-be-built-at-wiri-to-supply-countdown-north-island>

¹¹¹ <https://www.hiltonfoods.com/where-we-operate/new-zealand/>

¹¹² Hilton Foods Australia and New Zealand Brochure.

¹¹³ <https://www.hiltonfoods.com/media/cjxo2khx/2022-annual-report.pdf>

- 6.55 For business with smaller volumes, there are a range of options for any processing requirements, including:
- a. Specialist fresh-fish distributors
 - b. Food service companies
 - c. Restaurants commonly process back-of-house
 - d. Speciality and international supermarkets
 - e. Fish mongers, and
 - f. Manual self-processing.
- 6.56 Given the range of processing options for both smaller and larger customers, the proposal does not substantially lessen competition in the Processing Market.

No anti-competitive effects in other markets

The proposal has no or positive effect on the Harvest Market

- 6.57 Moana does not operate finfish harvesting services and is instead a buyer in the market for the supply of finfish harvesting services. Sanford is a buyer, but also harvests finfish itself.
- 6.58 Finfish harvesters have the option to contract to fishing companies other than Moana that procure fish harvesting services (such as Leigh Fisheries and Talley's). The Castalia Report finds "Given that finfish harvesters have these options, it is unlikely Moana would have strong buyer power either with or without the proposal".¹¹⁴
- 6.59 Compared to outcomes under the Annual Lease Counterfactual, the certainty under the proposal of having increased access to ACE resulting in larger annual catch plans and longer term security may result in better outcomes for vessel owners, particularly with increasing costs of fuel (and the prospect of investing in alternative zero emission vessels) as well as cost increases for staff and compliance.
- 6.60 Compared to the Term Lease Counterfactual, the proposal increases the opportunities for independent finfish harvesters if the firm that Sanford leases the quota to in this counterfactual is a vertically integrated company that operates its own vessels. If instead the firm that Sanford leases the quota to contracts fishers, outcomes for fishers (in terms of negotiating power) would not be significantly different under the proposal.

The proposal has immaterial effect on Retail Markets

- 6.61 The proposal will not materially affect competition in Retail Markets because:
- a. Moana has only a very small presence in retailing through two food retailing outlets situated within Moore Wilsons supermarkets in Wellington City and Porirua, and a 50% shareholding in Oceanz Seafood Licensing Limited which is the franchisor for five Oceanz branded retail stores across Auckland.
 - b. The proposal does not result in Sanford's retail offering, Sanford and Sons, being transferred to Moana. []

¹¹⁴ Castalia Report at [5.1].

- c. There are a large number of competing specialty fish retailers. Examples, just in Auckland, include: Scott Seafood (1 store and online), Toby's Seafood (5 stores and online), Manukau City Seafoods (1 store), Takanini Fish Market (1 store), Marsic Fish Shop (1 store), Premium Seafoods Retailers and Wholesalers (1 store), Hunter Fish (1 store), Kiwifish (1 store), Seafood Collective (2 stores in Auckland, and 2 in Tauranga). Wellington examples include: Wellington Sea Market (2 stores), Fresko Supplies (1 store), Ninos at Harbourside Market.
- d. Supermarkets provide a key retail channel and allow consumers to purchase all of their groceries in one place. A 2019 survey by MPI found that 50% of all seafood purchases by New Zealand respondents occurred via the supermarkets and the grocery stores compared with 15% from specialty seafood stores. The remainder was primarily from fast food/takeaway shops and restaurants.¹¹⁵

No anti-competitive horizontal co-ordinated effects

6.62 The below factors mean the relevant markets are not vulnerable to coordination:

- a. The markets are highly fragmented with many market participants. Market participants have varying cost structures and business models.
- b. Customers most value quality and consistency of supply, which affect price and would be difficult to co-ordinate.
- c. Customers are sophisticated businesses, particularly supermarkets who purchase large volumes.
- d. There is a high level of demand side substitutability within and outside the markets.
- e. There is no evidence that competitors are currently coordinating in respect of either the price or the volume offered to customers in New Zealand.
- f. Moana has a different pricing strategy to most market participants. Moana sets an annual price which it keeps consistent throughout the fishing year to provide certainty to customers (this also saves transaction costs). Other fisheries generally adjust their prices freely eg day-to-day.

6.63 The proposal does not increase the potential for coordination.

6.64 The Castalia Report finds that the variety of different suppliers in these markets makes coordinated effects very difficult and highly unlikely.¹¹⁶

The large number of market participants with a wide range of sizes and business models implies that coordinated effects are highly unlikely due to the very fragmented nature of the market. In addition, it is difficult for competitors to identify which competitors are making sales to which customers and what prices are being charged. These factors make coordinated behaviour among competitors very difficult and highly unlikely.

Conclusion

6.65 For the reasons set out above, the proposal will not have the effect or likely effect of substantially lessening competition in any relevant markets.

¹¹⁵ MPI (2019), New Zealand Seafood Consumer Preferences, slide 8.

¹¹⁶ Castalia Report at [5.2.6].

7. DOCUMENTS BRINGING ABOUT THE PROPOSED MERGER

Provide copies of the final or most recent versions of any documents bringing about the proposed merger such as the sale and purchase agreement, contracts, ancillary agreements or offer documents.

- 7.1 Documents bringing about the proposed merger are attached. **Appendix 1** attaches a schedule of documents attached to this application.

8. OTHER DOCUMENTS RELATING TO THE PROPOSED MERGER

Provide copies of any documents (including planning documents, due diligence reports, strategy documents, minutes of meetings, customer research, pricing studies, reports, presentations, surveys, analyses, industry/market reports and recommendations) in the applicant's possession which:

- *have been prepared for, seen or considered by senior management and/or any member of the board of directors (or equivalent body) (whether prepared internally or by external consultants); and*
- *either:*
 - *set out the rationale for the merger (including but not limited to the benefits of, and/or investment case for the merger) and/or plans following the merger; or*
 - *assess or analyse the merger with respect to competitive conditions, competitors (actual and potential), potential for sales growth or expansion into new product or geographic areas, market conditions, market shares and/or the price to be paid;*
 - *within the last two years, set out the competitive conditions, market conditions, market shares, competitors, or the applicant's business plans in relation to the relevant product(s) or service(s) as identified in response to question 5 above.*

8.1 Other documents relating to the proposal are attached. **Appendix 1** attaches a schedule of documents attached to this application.

9. ANNUAL REPORTS AND FINANCIAL STATEMENTS

Provide copies of, or links to, the most recent annual report, audited financial statements and management accounts for the relevant business unit(s) as identified in response to question 5.

9.1 Moana's annual reports with audited financial statements can be found at the below links.

- a. 2022 annual report:
https://ar.moana.co.nz/documents/MOANA_2022_Annual_Report.pdf
- b. 2022 annual report financial statements:
https://ar.moana.co.nz/documents/MOANA_2022_Annual_Report_Financials.pdf

9.2 Sanford's annual reports with audited financial statements can be found at the below links.

- a. 2022 annual report: <https://www.sanford.co.nz/2022-annual-report/>
- b. All annual reports: <https://www.sanford.co.nz/investors/reports-1/company-reports/>

10. CONFIDENTIALITY

If you wish to request confidentiality for specific information contained in or attached to the application, a schedule must be provided which sets out the reasons for each request, preferably with reference to the Official Information Act 1982.

- 10.1 Confidentiality is not claimed for the fact of the proposal.
- 10.2 Confidentiality is sought for:
- a. information highlighted in **yellow**, being confidential to Moana,
 - b. information highlighted in **green**, being confidential to Sanford, and
 - c. information highlighted in **blue**, being confidential to both parties.
- 10.3 A schedule of confidential information setting out the reasons for each request is attached as **Appendix 2**.
- 10.4 The parties request that they be notified of any request made to the Commission under the Official Information Act 1982 (**OIA**) for the release of confidential information (contained in this application or any additional information provided, whether orally or in written form), and that the Commission seeks their views as to whether the information remains confidential and commercially sensitive before it responds to the OIA request.

DECLARATION

I, Grant Shuker, CFO of Aotearoa Fisheries Limited, have prepared, or supervised the preparation of, this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am an officer of Aotearoa Fisheries Limited and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Sign

Date

APPENDIX 1 – SCHEDULE OF DOCUMENTS

#	DOCUMENT
1	Castalia Report
In response to Q5 (sales, main competitors, associations, and key customers details):	
[]	[]
[]	[]
In response to Q7 (documents bringing about the proposal):	
[]	[]
In response to Q8 (documents relating to the proposal):	
[]	[]
[]	[]
[]	[]
[]	[]

APPENDIX 2 – SCHEDULE OF CONFIDENTIAL INFORMATION

PARAGRAPH	REASON FOR CONFIDENTIALITY	RELEVANT OIA SECTION
A	[]	Section 9(2)(b)(ii) making available the information would likely unreasonably prejudice the commercial position of the person(s) who supplied the information or the subject(s) of the information and withholding the information is necessary to protect the information
B	[]	Section 9(2)(b)(ii)
F	[]	Section 9(2)(b)(ii)
G	[]	Section 9(2)(b)(ii)
1.3	[]	Section 9(2)(a) withholding the information is necessary to protect the privacy of natural persons
2.2	[]	Section 9(2)(a)
3.1-3.2	[]	Section 9(2)(b)(ii)
3.4	[]	Section 9(2)(b)(ii)
3.5	[]	Section 9(2)(b)(ii)
3.7	[]	Section 9(2)(b)(ii)
3.8	[]	Section 9(2)(b)(ii)
3.9	[]	Section 9(2)(b)(ii)
6.8	[]	Section 9(2)(b)(ii)
6.12-6.14	[]	Section 9(2)(b)(ii)
6.26	[]	Section 9(2)(b)(ii)
6.37	[]	Section 9(2)(b)(ii)
6.38(b)	[]	Section 9(2)(b)(ii)
6.38(c)	[] [] []	Section 9(2)(b)(ii)
6.41(b)	[]	Section 9(2)(b)(ii)
6.41(c)	[]	Section 9(2)(b)(ii)
6.51	[]	Section 9(2)(b)(ii)
6.53	[] []	Section 9(2)(b)(ii)
6.61	[]	Section 9(2)(b)(ii)
Attachment 1	[]	Section 9(2)(b)(ii)
[]	[]	Section 9(2)(b)(ii) Section 9(2)(a)
[]	[]	Section 9(2)(b)(ii) Section 9(2)(a)
[]	[]	Section 9(2)(b)(ii)
[]	[]	Section 9(2)(b)(ii)