

Moana submission on SOI

1. Thank you for the opportunity to submit on the Statement of Issues (SOI).
2. The SOI usefully identifies that the main potential issues the Commission is continuing to assess relate to upstream markets based on, we understand, anecdotal market feedback, rather than data. In the downstream wholesale markets, the SOI considers that *“Moana would likely be constrained by the presence of both North Island-based and South Island-based competitors”*.¹
3. It is useful for the Commission to highlight potential issues, regardless of the market definition.
4. For present purposes we note that market feedback and the approach taken has a supply-side focus. While important to consider, the demand-side perspective should also be considered, especially noting that the Commerce Act’s purpose takes a demand-side perspective of “the long-term benefit to consumers”. Critical to this is efficiencies throughout the supply chain.
5. We have some different perspectives on some of the feedback the Commission received. It is timely that the new Fisheries Industry Transformation Plan was recently released on 7 August 2023 as it highlights industry dynamics and future plans, many of which we have noted, including:²
 - a. **“Consumer preferences and community confidence** – *Global consumer preferences and expectations about the types of seafood products and methods by which they are harvested are changing. Discerning consumers are engaged, educated and seeking brands that verify they meet high social and environmental standards. Fish is one of the few wild food products New Zealanders regularly consume. Maintaining community confidence in fishing requires the industry to adopt and demonstrate high environmental standards.”*
 - b. **“Fleet capacity and efficiency** – *The total number of vessels operating has dropped substantially in recent decades, in part due to the economics of small scale fishing. Many inshore operators focusing on wet fish have found it difficult to invest in new vessels, so the fleet is comprised of a significant number of older vessels that are less energy efficient and do not meet modern expectations. The number of vessels operating in the inshore will likely reduce further.”*
 - c. **“Cost pressures** – *Inflation and rising input costs are putting pressure on the industry. While many of these cost pressures are the result of global headwinds, others are specific to Aotearoa New Zealand’s regulations. The combined effect on our fishing industry has been considerable.”*
 - d. **“Labour supply and demographic change** – *Access to workers at all skill levels is an ongoing challenge for the industry, particularly given the very tight labour market at present and the challenging nature of many roles in the sector. The existing workforce is aging, while regional populations are projected to shrink. Population growth is largely expected in major centres, away from most fishing activity. The future of the industry depends on attracting and retaining people to participate in the sector.”*
6. This proposal has always been about gaining efficiencies – including pro-competitively decreasing costs and increasing quantity of fish caught to better meet demand. Having greater certainty about ACE for the short to medium term reduces transaction costs and enables greater certainty, enabling efficient investment. Among expected efficiencies, we expect to increase the

¹ SOI at [87].

² <https://www.mpi.govt.nz/dmsdocument/58351-Fisheries-Industry-Transformation-Plan>

quantity and quality of fish caught with the SNA ACE acquired under the proposal compared to how that same level of ACE would be used in the status quo or counterfactuals. Moana will remain constrained upstream and downstream, so will remain under competitive pressure to be efficient.

7. Key to the competition assessment is the factual, counterfactual and market dynamics, including that:
 - a. Harvesting services and ACE are essential inputs for Moana. Moana doesn't have a business without fishers. Moana is a customer (acquirer) in any harvesting market(s) and ACE market(s). By definition there must be an equilibrium of supply and demand.
 - b. Quota owners can already extract high prices for SNA1 and SNA8 ACE given it is scarce, with high demand but a fixed quantity. Moana will be leasing the ACE for the purposes of its own wholesale supply, not for the purposes to onsell it at a profit.
 - c. Competition in the downstream markets has impacts throughout the supply chain and value chain. At one end of the supply chain, quota owners fully capture the value of ACE, bearing in mind that at the other end of the supply chain there is strong countervailing power and demand-side elasticity.
 - d. Those factors have led to this proposal so Moana can achieve pro-competitive efficiencies.
 - e. Moana owns a limited amount of SNA8 quota itself (giving rise to around 169t of ACE for the current fishing year), and Sanford owns only a limited amount of SNA2 quota itself. The proposal in effect just puts Moana in Sanford's existing position in SNA8 ACE, and does not materially change Moana's share of SNA2 given Sanford's small quota holding in SNA2 (therefore, could not be said to have any material impact). As such, the impact of the proposal can be regarded as relatively small, compared to the status quo.
 - f. Feedback received by the Commission seems to incorrectly assume Moana also 'holds' existing levels of leased ACE post-transaction. (There may also be some optimistic views on counterfactuals by interested parties.) However, as the Commission knows, it would be wrong both factually and legally to include any future uncontracted ACE arrangements.
 - i. Factually, any such arrangements (ie non-contracted ACE arrangements) have not occurred yet (and may not). They are not part of the factual. Non-contracted ACE, by definition, remains contestable.
 - ii. Legally, any such future arrangements (if entered) would be subject to the Commerce Act, which applies to entering into, and / or giving effect to such arrangements (as appropriate) at the relevant time, not in advance. As such that is the time to consider them.³
 - g. Regardless, as noted competition will still occur to acquire that non-contracted ACE- which, by definition, remains contestable. While iwi shareholders may, at the margin,

³ Including "guesses" of further acquisition of these rights would also be a form of "double counting" – treating them as occurring before they occur (if indeed they do) and perversely would seem predicated on the proposal also proceeding. It is, of course, legitimate to consider existing ACE as a starting point when considering the quantity of ACE Moana may use in the likely counterfactual.

wish to contract with Moana, economic rationality can be expected to prevail.⁴ Each shareholder only holds a relatively small minority share of Moana, meaning that they do not individually have a strong incentive to favour Moana over other purchasers of ACE. Competition to access ACE will remain, including when existing ACE arrangements expire. ACE leased to Moana is genuinely at risk beyond the term of the lease. All of Moana's leased ACE is at risk in the short to medium term.

- h. A counterfactual under which Sanford leases out the ACE in a short-term spot market may on its face seem appealing to the Commission, however there is a real risk that this would be less competitive and highly inefficient because of the inability to utilise the ACE in long term plans and decisions. This could lead to the very underutilisation of ACE that the Commission is concerned about.
8. The SOI invites submissions on the following factors, which this submission responds to:
- a. Unilateral effects in upstream markets for the acquisition of inshore harvesting services (paragraph 86 of SOI)
 - b. Unilateral and vertical effects relating to upstream markets for the supply of ACE (paragraph 79 of SOI)
 - c. Unilateral effects in downstream wholesale supply markets (paragraph 90 of SOI)
 - d. Likely counterfactuals (paragraph 66 of SOI)
 - e. Market definition (paragraph 33 of SOI)
 - f. Co-ordinated effects (paragraph 93 of SOI)
9. Moana is happy to assist if the Commission has further questions or would like further details.
10. This submission contains confidential information, which is highlighted and provided on a confidential basis. Moana acknowledges that any information provided to the Commission can be subject to the Official Information Act 1982 (**OIA**) but that, consistent with usual practice, the Commission would notify us of any request made under the OIA for release of this information (or any part of it) and seek our views. Disclosure of the information would unreasonably prejudice our commercial position and would prejudice the supply of similar information in the future.

⁴ Consistent with the High Court's comments in *Commerce Commission v Bay of Plenty Electricity Ltd* (HC Wellington CIV-2001-485-917, 13 December 2007), the Commission should consider conduct parties would rationally take: "We also note in this case that there was some discussion by counsel of the could/would debate regarding the counterfactual test. We do not find that debate particularly enlightening. In our view, what the test addresses is the question of whether a firm with dominance and/or a substantial degree of market power would rationally, in the sense that it could and could do so profitably — over a relevant time frame — engage in the impugned conduct if it did not possess that dominance or substantial market power." (at [318]). Likewise, in *Wilson and Horton Limited and Power Plant Production Limited* (2001) NZCC Decision No 445 the NZCC considered that assessments of likely future occurrences could not be made without considering what an economically rational firm would do in that market situation: "In order to be a constraint on market participants, entry must be likely in commercial terms. An economically rational firm will be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on its investment, including allowance for any risks involved." (at [93]).

Acquisition of inshore harvesting services

11. The proposal will not create or increase buyer power in relation to the acquisition of inshore fish harvesting services because:
 - a. There is a mutually dependent and beneficial relationship between fishing companies and fishers; ultimately, Moana needs fishers.
 - b. The proposal pro-competitively enhances efficiency and increases the volume of fish being caught by fishers. The increased volumes should support a greater number of fishers than in the counterfactual.
 - c. In practice there is a limited degree of existing competition between Moana and Sanford in the acquisition of fish harvesting services, given the mutually beneficial and long term nature of fisher relationships.
 - d. Other acquirers of inshore fish harvesting services remain.

Mutually dependent and beneficial relationship between fishing companies and fishers

12. There is a mutually dependent and beneficial relationship between fishing companies and fishers. Particularly for Moana, as it does not have harvesting capabilities or expertise itself. Moana needs fishers to be able to harvest its ACE. Moana's business necessarily relies on having sustainable, successful fishers. For this reason, Moana engages in initiatives to support fishers, including:
 - a. Moana supported one of its fishers to finance the build of a new trawler, by underwriting the loan and providing a 14 year ACE supply agreement. Moana has continued to explore opportunities for similar solutions to help renew the inshore fleet, which is recognised as being very aged.
 - b. Moana collaborated with MPI, Sanford and Sealord in researching and developing Precision Seafood Harvesting, a new fish harvesting technology that was driven by the desire to deliver better quality seafood and safeguard the future of our oceans and fish stocks.⁵
 - c. Moana routinely provides advances to fishers to help pay for significant repairs and maintenance expenses.
 - d. Moana annually conducts Responsible Fishing Training, to ensure the fishers are up to date with developments in the regulatory framework, have an opportunity to share ideas with each other, as well as an opportunity for Moana to educate our fishers on our standards and behaviour expectations.
 - e. In the last 12 months Moana has paid an extra \$650k (c3%) on top of our normal fisher payments as a subsidy for the significant increase in diesel costs.
 - f. Moana pays the suppliers for fuel and ice, and recharges to the fisher. Some suppliers will not deal directly with fishers due to credit risk (which Moana takes on).
13. Moana would not have the ability to exercise buyer power against fishers because this would be detrimental to Moana's own business in both the short term and long term. Moana would

⁵ <https://precisionseafoodharvesting.co.nz/#our-story>

lose volumes if it does not have fishers to catch fish. (Again this would be economically irrational, and the Commission must not expect us to act irrationally.) The pool of available fishers is reasonably stable but is reducing as fishers retire or become uneconomic. Skilled, quality fishers are in high demand and are not easily replaced.

14. Moana would not have the incentive to exercise buyer power for the same reason. Particularly given Moana's values and unique identity. A people centric and long-term perspective must be taken, noting also that Moana's settlement assets can never be sold which means returns to Moana shareholders can only be achieved by positive business performance and not through capital gains.
15. For this reason, relationships with fishers are generally long term, enduring, stable relationships. As recognised in the SOI, while catch plans are usually agreed on an annual basis, *"many ACE Fishers have harvested fish for the same commercial fishing business for a long period of time"*.⁶ This is because fishing companies and fishers have aligned incentives. It is not in the fishing company's interest to mistreat their fishers.
16. If ACE is regarded as an essential input, then the fishers catching that ACE must be equally essential because ACE only has value if it is harvested.

The proposal pro-competitively enhances efficiency

17. The volume acquired under the proposal enables Moana to put more volume through existing operations and gives Moana increased scale to support further investment and research.
18. Being able to both fish larger volumes and have longer term certainty of access to ACE will also bring pro-competitive efficiencies and benefits to Moana's independent contract fishers. Moana also intends to on-sell the two vessels that will be purchased under the proposal to contract fishers. The proposal therefore pro-competitively provides two more vessels to the contract harvesting market.
19. []
20. [] Moana intends to offer fishing contracts to the independent fishers that currently fish North Island inshore finfish stocks for Sanford. []
21. []
22. []
23. []

Moana's experience with fishers in practice

24. Moana's application had considered Sanford was largely not a competing buyer of finfish harvesting services because Sanford is known to catch fish itself. In light of the SOI, it appears Sanford, specifically the Auckland Business, does also catch a material volume of fish through contract harvesters.
25. Nevertheless, in practice Moana does not particularly experience competition from Sanford for harvesting services. As explained above, relationships with fishers are generally long term, mutually dependent and beneficial relationships.

⁶ SOI at [26].

26. []
27. Moana's current harvesting arrangements are working well, so it has no intention to change the terms and conditions of its harvesting arrangements to the detriment of fishers post-proposal. Ultimately, Moana needs fishers.

Other acquirers of inshore fish harvesting services remain

28. The following sets out Moana's understanding of where some key North Island independent fishers land catch to: []
29. The above list indicates many other acquirers of inshore fish harvesting services remain, including []
30. The above list also demonstrates that many contract harvesters have supply arrangements with multiple fishing companies. The SOI at paragraph 84 notes that evidence that North Island ACE Fishers can and do fish for more than one commercial fishing business suggests that there is some degree of competition between existing purchasers for harvesting services. It also suggests fishers can have simultaneous relationships with multiple fishing companies, and face relatively low switching costs.

Supply of ACE

31. The proposal will not result in a less competitive allocation of ACE, and may not even decrease access to ACE because:
- a. The SNA ACE acquired will be used for the purposes of Moana's wholesale supply, not for any leveraging of any hypothetical vertical market power.
 - b. To the extent lack of SNA ACE limits catch of snapper or other species, this is a consequence of the level at which SNA TACC is set, not Moana's use of the ACE. Moana intends to fully utilise the SNA ACE and maximise catch of all species to best meet customer demand. This could improve access to SNA ACE for other parties.
 - c. Moana owns a limited amount of SNA8 itself. Competition remains to access ACE other parties put on the market.
 - d. It is unclear if access to ACE will decrease compared to the counterfactual. There appears to be limited change compared to the status quo. The proposal could also improve access to SNA ACE for other parties through more efficient utilisation of Sanford's SNA ACE.
 - e. Wholesale supply markets are and will remain highly competitive. Downstream competition ensures contestability and the need for efficiency all the way up the value chain.

Access to ACE

32. Access to ACE is first and foremost controlled by TACC.
33. TACC and catch rates for SNA1 and SNA8 as reported by Fisheries New Zealand are shown below (the 2023 figures do not include July, August and September catch yet).

Fig 1. SNA1 TACC and catch⁷

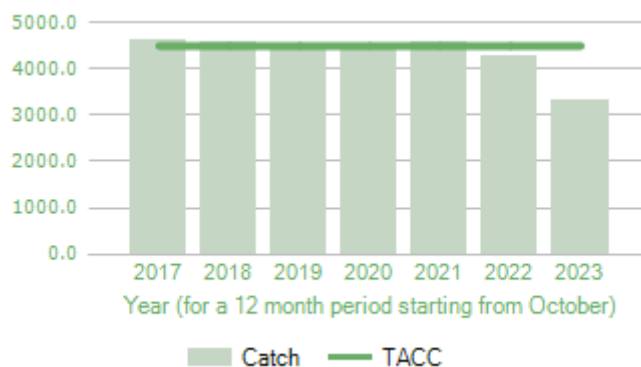
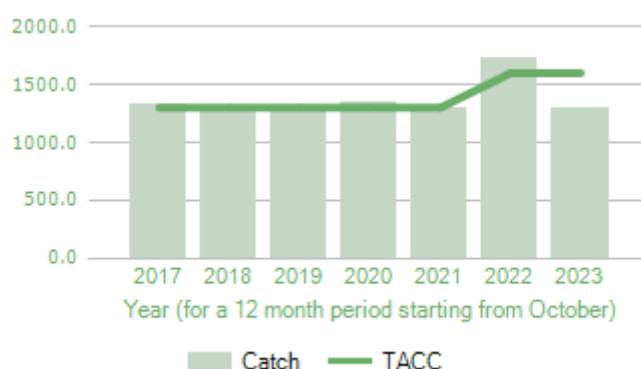


Fig 2. SNA8 TACC and catch⁸



34. Moana acknowledges that “in Area One off the East Coast of the North Island and Area Eight off the West Coast of the North Island, where multiple fish stocks overlap in the same waters, vessels targeting species such as gemfish, red cod or warehou, tarakihi, gurnard or hoki often cannot avoid making significant bycatches of snapper because snapper is highly abundant in those waters”.⁹ This has caused issues for North Island inshore operators, including Moana. As described by Fisheries New Zealand:¹⁰

Because of high snapper abundance, commercial operators say they have had to change their behaviour and gear configurations to try and avoid catching too much snapper and exceeding their available ACE. As snapper in SNA 8 is an unavoidable bycatch when targeting other species which occupy the same habitat, fishers must manage the snapper component of their catch to enable them to utilise other stocks. Fishers have reported that the level of snapper bycatch influences where the vessels fish within SNA 8, with effort focussing in areas where snapper bycatch is known to be lower. Some trawlers in the fishery have also resorted to using a lower headline on their trawl nets in order to try and reduce snapper bycatch while targeting gurnard.

35. In 2021 the Minister for Oceans and Fisheries was presented with four options to increase TAC and TACC for SNA8, with option 1 proposing to increase TACC to 1,600t and option 4 to 2,600t.

⁷ <https://fs.fish.govt.nz/Page.aspx?pk=8&tk=41&ey=2024>

⁸ <https://fs.fish.govt.nz/Page.aspx?pk=8&stock=SNA8&ey=2024>

⁹ SOI at [76].

¹⁰ <https://www.mpi.govt.nz/dmsdocument/45484-Review-of-sustainability-measures-for-snapper-SNA-8-for-202122> at [60]

Even under option 4, Fisheries New Zealand data showed the SNA8 fishery is expected to continue to grow in abundance.¹¹ However, the Minister ultimately decided to take option 1.

36. As can be seen in Fig 2 above, even with the increase in 2022, there is still high demand for and use of SNA8, up to (and even over) the limit allowed. (While deemed values apply, they apply to the 'marginal' / extra catch, not all snapper, let alone all species caught.)
37. To the extent lack of SNA ACE limits catch of other species, this is a consequence of the level at which SNA TACC is set relative to TACC of other species / the abundance of snapper, not Moana's use of the ACE. Moana intends to fully utilise the SNA ACE acquired under the proposal and to maximise catch of all species to best meet customer demand. Allocation of that SNA ACE to another party would not increase the overall quantity caught.
 - a. []
 - b. []
 - c. Contestability remains for ACE currently leased to Moana after those arrangements expire. In the short term, around []% ([]t) of the SNA1 ACE Moana holds in 2023, and []% ([]t) of SNA8, comes from leases that expire on or before 30 September 2025. In the medium term, all of Moana's current leases are at risk. After those leases expire, to maintain access to that ACE, Moana would need to compete for and win the future lease. These leases, including leases from iwi, are genuinely contestable. The quota holders are not restricted in any way from switching to another party after the term of the lease. Moana has no control over who the quota holders lease to. Also, the entry into those future leases would be subject to the Commerce Act, and the relevant time they can be considered is at the time the arrangement is entered into, not at the time of this proposal. It would therefore be inappropriate and legally incorrect to include future arrangements, which have not occurred yet and are not guaranteed to occur, in the "factual". Those future arrangements are not an effect of the proposal and are at risk.
 - d. Contestability obviously also remains for all the other ACE Moana does not own or lease, including []% of SNA1 ACE, []% of SNA2, []% of SNA7 and []% of SNA8 (total []t).
 - e. This means there is sufficient access to SNA ACE for remaining competitors, noting that downstream markets were still competitive in 2021 when SNA8 TACC was 1300t (and so when there was 300t less access to SNA8 ACE for all players, [])
38. Therefore post-proposal, competitive forces will still ensure competitive supply and allocation of ACE, and the proposal should even improve, rather than reduce, access to SNA ACE.
39. Of course, whether the proposal would decrease access to ACE also depends on the counterfactual.
 - a. Under the status quo, presumably most of Sanford's ACE is used for the purposes of its own wholesale supply, so there is no material change in access to ACE for third parties. Based on Moana's analysis of Fish Serve ACE transfer data for the 21/22 fishing year, Moana estimates:
 - i. Sanford uses []% of its SNA1 and []% of its SNA8 ACE for its own wholesale purposes.

¹¹ <https://www.mpi.govt.nz/dmsdocument/45484-Review-of-sustainability-measures-for-snapper-SNA-8-for-202122> at [89]

- ii. []
 - iii. []
 - iv. This leaves around []t of SNA1 ACE and []t of SNA8 ACE which Moana presumes Sanford supplies to third parties (including some of which is supplied to Moana), and which Moana would use under the proposal principally for its own supply. This translates to a change in access to ACE to third parties of []% of SNA1 TACC and []% of SNA8 TACC. These volumes are de minimis, accounting for []% of total SNA TACC.
 - v. []
 - b. []
 - c. For all counterfactuals in which Sanford leases the quota, please note that a high price will likely still attach to the SNA ACE given it is scarce, with high demand but a fixed quantity. The quota owner is in the best position to extract the value of that ACE. The value of leasing Sanford's ACE therefore is to increase volume, which is not compatible with all business models in the industry. Any complaints or theories of harm in terms of price of ACE and the ability of fishers / fishing companies to make a profit on ACE they purchase is not a consequence of the proposal, and is merely a consequence of the scarcity of the ACE and Sanford's ownership of the underlying quota.
 - d. []
40. Regardless of the counterfactual though, the proposal will not have vertical anti-competitive effects. The SNA ACE acquired will be used for the purposes of Moana's wholesale supply, not for any leveraging of any hypothetical vertical market power. Moana does not purchase ACE for the purpose of onselling it to other parties at a profit, but to use that ACE to supply fish. So there is no real opportunity for Moana to "profitably increase prices charged for surplus ACE or withhold supply". (In terms of ACE supplied to fishers, no price is attached to this because Moana obviously must transfer ACE to its fishers to enable them to catch fish. More comments on the relationship between Moana and fishers are provided above.)
41. Moana, as a finfish processor and wholesaler, is best characterised as a buyer of ACE, not a seller of ACE. Given much of Moana's ACE is sold to it on short-term leases, if a higher price could be achieved for ACE, the parties from which Moana purchases the ACE could charge that price to any alternative purchasers (if any), instead of selling (leasing) that ACE to Moana.
42. Alternatively, if other parties were able to make more efficient use of the ACE in any period, there would be no incentive for Moana not to lease the ACE to those parties on that basis (as it appears Sanford has done). Again, economic rationality can be expected to prevail. Given Moana is constrained by competition in downstream markets, any flawed theory of withholding ACE and recovering returns lost by increasing downstream prices would not be possible.
43. We do not consider defining ACE markets would contribute to the analysis for this application because ACE must be used to catch fish which will ultimately be supplied in the wholesale markets. Therefore any effects regarding access to ACE are best analysed in relation to the downstream wholesale markets,¹² ie parties which require access to ACE ultimately use that

¹² This is also reflected in the Commission's approach in *Basuto*, where the Commission noted that: "*competition in the harvesting market* [note that at this time the QMS had not implemented the concept of ACE yet] *cannot be examined in isolation from competition in the downstream processing and wholesale markets, and constraints in those markets are likely to inhibit the extent to which any potential harvesting dominance could in fact be exploited*"

ACE to compete in the downstream wholesale markets;¹³ the consequence of any hypothetical lack of access to ACE is that they supply less volume in the wholesale markets so the competitive effects are best analysed in the wholesale markets.

44. As outlined in our application, the wholesale supply markets are and will remain highly competitive, for reasons including elastic customer demand, existing competitors (from across all of New Zealand), customer countervailing power, imports, and pro-competitive efficiencies. It is also doubtful that there are additional anti-competitive effects arising from lack of access to the ACE which is the subject of the proposal, given that under the status quo, third parties already have limited access to Sanford's ACE as it presumably is used primarily for the purposes of Sanford's Auckland Business. Even in the current scenario, these third parties still compete strongly against Moana. Any broader issue of access to ACE generally, is a feature of the QMS and TACC levels, and is not an effect of this proposal.
45. [] There is no reason to think that the proposal would cause insufficient quantities of SNA ACE available for by catch or domestic purposes (noting that currently around half of snapper caught is exported).

Ability to target / change mix of species caught

46. As above, we acknowledge the role of SNA ACE for by-catch purposes. We do note however that the position is not as absolute as in paragraph 27 of the SOI that "*it is almost impossible to target individual species*". As noted in the Fisheries New Zealand quote above, parties can and do take measures to target catch. More information on the ability to target species is set out below for the Commission's information.
47. Certain species, such as Blue Nose and Hapuka, can be targeted with long lines with reasonable accuracy.
48. Different catch methods and fisher experience can vary the volume caught of other species eg long line fishers that target snapper (such as Lee Fish harvesters) will not catch much tarakihi and trevally. Trawlers are needed for these species.
49. []

Moana's shareholders' ACE arrangements

50. []
51. []
52. []
53. We also note that because each shareholder only holds a small minority share of Moana, this means that they do not individually have a strong incentive to favour Moana over other purchasers of ACE. As mentioned in the Castalia report, Moana has 58 iwi shareholders, with individual shareholdings ranging from 0.06 percent up to 12.63 percent (Ngāpuhi).

¹³ While fishers are technically the parties that "surrender" the ACE, in practice it is at the wholesale supply level where ACE is acquired, rather than the harvesting level (eg Moana acquires ACE to provide to fishers, rather than expecting fishers to procure their own ACE (though some fishers do start with their own ACE from quota holdings, additional ACE to meet catch plans is procured by the wholesaler, rather than the fisher)). To the extent fishers supply direct to wholesale customers, then they are competing at the wholesale supply level.

54. [¹⁴]

Moana's short term ACE arrangements

55. Quota that is leased to Moana under a short term lease should not be attributable to Moana because Moana has no ongoing right to the ACE generated by that quota. Legally, and in fact, the quota owner is free to decide who to lease the quota to. It is not obligated to lease it to any particular party.
56. Previous Commission decisions have considered ACE leases in the context of analysing downstream markets (rather than upstream markets).
57. In *Simunovich*, the Commission noted flaws with basing market shares purely on quota owned, or ACE held, including due to the "misleading" nature of attributing "temporary" rights to a party's market share:¹⁵

In the present case, precise market share is difficult to state with certainty. To base market shares on quota holdings only would ignore the impact of a company who has leased in ACE, giving it the ability to increase the volume of scampi it can harvest. Alternatively, to base market shares on ACE only could be misleading to the extent that ACE is temporary in nature and ignores the significance of the perpetual rights associated with quota. Further, basing market share on volume only is not possible at this time as the QMS was implemented only recently (October 2004), and so a total reported catch is not available. Therefore, it is the combination of quota holdings and leased ACE which indicates market power.

58. When *Basuto* was decided, the QMS was in place but ACE had not been implemented in the QMS yet (so the right to catch was tied in with the long term property right inherent in the quota). In the *harvesting and supply* market, *Basuto* assessed market shares based on quota owned and fished plus quota leased in from other parties, noting that the combined figure will tend to better reflect harvesting capacity.¹⁶ (Here, Moana does not engage in harvesting.) In the *processing and wholesale supply* market, market shares were assessed based on the amount of finfish which is processed and supplied to wholesalers, including imports.¹⁷ The Commission noted it is this figure which is of the greatest relevance. (Here, Moana does not have data on the size of the domestic market, so cannot calculate market shares on that basis. The application uses quota shares as a proxy.)
59. On the quota owned plus quota leased basis (ie in the *harvesting and supply* market), the parties in *Basuto* fell outside the Commission's safe harbours. For this proposal, the parties are within the market share and concentration indicators, even with leases and Sealord and Westfleet included.
60. While the Commission may take into account the short-term leases to the degree relevant, it would be inappropriate to conflate leasing with ownership. Recognition should be given to the temporary nature of ACE and leases, particularly short-term leases.

¹⁴ Castalia Report at 16: "While some iwi-owned fishing companies choose to lease their quota to Moana, others do not. Some use the quota to provide ACE to their own fishing operations. Others lease the ACE to third parties: for example, Ngāi Tahu leases its inshore and deepwater ACE to Talley's. [.]"

¹⁵ *Simunovich* at [76].

¹⁶ *Basuto* at [139]: "Quota held includes quota owned and fished, as well as quota leased in from other parties. Quota held will therefore tend to better reflect harvesting capacity."

¹⁷ *Basuto* at [189]: "... the crucial figure is the amount of finfish which is processed and supplied to wholesalers by the associated companies in the domestic market. ..." At [191]: "In considering its analysis of both the harvesting and processing markets, the Commission considers that this market share figure is of the greatest relevance, relating as it does directly to the supply of finfish in New Zealand."

Downstream constraints

61. We agree with paragraphs 87-89 that Moana would likely be constrained by the presence of both North Island-based and South Island-based competitors in wholesale supply markets for unprocessed and processed fish.
62. Moana adds that it would also be constrained by, as set out in our application:
 - a. Competition from other species of fish, including salmon, and other proteins (such as chicken, a recognised, if imperfect, substitute)
 - b. Consumer demand (which wholesale demand is derived from)
 - c. Export diversion
 - d. Customer countervailing power
 - e. Elasticity of demand
63. []
64. As the Commission recognised in the grocery market study, suppliers of perishable products (such as fresh produce) may be more susceptible to demand-side countervailing power.¹⁸ Fresh fish, of course, has an extremely short shelf-life.

Export diversion

65. We provide some further information below regarding export diversion.
66. []
67. []
68. []
69. []
70. []
71. []

Counterfactual

72. The Commission is still considering what is likely to occur without the proposal.
73. []
74. We note that in all counterfactuals in which Sanford seeks to lease the ACE:

¹⁸ Commerce Commission, *Market study into the retail grocery sector: Final report* (8 March 2022) at [8.58.5]: “Suppliers of some perishable products appear to be particularly vulnerable when dealing with grocery retailers. Suppliers of highly perishable products have limited ability to delay or withhold supply while seeking to negotiate better supply terms.”

- a. A high price will likely attach to SNA ACE, given the high demand for SNA ACE and the fixed quantity of supply.
 - b. Moana would likely seek to bid for that ACE, because Moana also needs ACE.
 - c. Compared to the proposal, there is a greater risk of some of the ACE being unutilised.
75. A counterfactual under which Sanford leases the ACE in a short-term spot market may on its face seem appealing to third parties, however there is a real risk that this could be less competitive and highly inefficient because of:
- a. The inability to utilise the ACE in long term plans and decisions.
 - b. The risk that a buyer would not be found for all the ACE, or that buyers would end up purchasing ACE which they do not need, leading to underutilisation and waste. [] Therefore, there is a real risk that a significant portion of Sanford's ACE parcel would sit idle with Sanford.
 - c. []
 - d. []
 - e. Transaction costs, which are also multiplied if the ACE is broken into smaller parcels.
76. There could very well be a less competitive allocation of ACE, a less competitive supply chain, and less competitive downstream markets, in a short-term lease counterfactual.

Submissions on market definition

77. For the purposes of the SOI, the Commission has analysed competitive effects in relation to:
- a. Upstream national markets for the supply of ACE for individual fish stocks
 - b. An upstream market (or markets) for the acquisition of inshore harvesting services from ACE Fishers
 - c. Downstream national wholesale markets for the supply of the most popular species of unprocessed fresh fish caught from inshore fisheries and processed fresh fish caught from inshore fisheries.
78. Moana's views on the appropriate markets are set out below. However, regardless of how the market is defined, appropriate weight must be given to constraints. If a narrower approach to market definition is taken, the Commission must still take into account the full market reality and dynamics, including out-of-market constraints.¹⁹

Submissions on ACE markets

79. As noted above, we do not consider defining ACE markets would contribute to the analysis for this application because ACE is used to catch fish which will ultimately be supplied in the

¹⁹ See *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 at [137]: "It is important to recognise that market definition is a tool for competition analysis rather than an end in itself. A decision to define the market by reference to crates only can provide an appropriate basis for analysis of the competition issues which need to be decided, but defining the market in that way should not lead to any under-estimation of the potential substitutability and level of constraint on market participants in that narrowly defined market, from cardboard packaging both pre-merger and post-merger."

wholesale markets. Therefore any effects regarding access to ACE are best analysed in relation to the wholesale markets,²⁰ ie parties which require access to ACE ultimately use that ACE to compete in downstream wholesale markets;²¹ the consequence of any hypothetical lack of access to ACE is that they supply less volume in the wholesale markets so the competitive effects are best analysed in the wholesale markets.

80. We understand the key fish stocks the Commission is assessing are SNA fish stocks.

Submissions on harvesting markets

81. We agree there is an upstream market for the acquisition of inshore harvesting services from ACE Fishers in the North Island.
82. While Moana's application submitted a national market for the supply of finfish harvesting services, the harvesting market analysis in Moana's application applies equally to a North Island market as it does to a national market for the acquisition of inshore harvesting services from ACE Fishers.
83. We do not consider it is appropriate to assess narrower geographic markets. Moana (the customer in this market) acquires harvesting services from fishers based throughout the North Island and North Island fishers contract with a range of North Island inshore businesses. It is also normal for fishers to cross quota management areas when fishing.

Submissions on wholesale markets

84. As submitted in our application, we consider the relevant wholesale markets are:
- a. A national market for the wholesale supply of unprocessed finfish
 - b. A national market for the wholesale supply of processed finfish.
85. Please note Moana's application does not submit that each species of finfish is necessarily a perfect substitute for every other species of finfish, nor does this need to be the case. Moana considers that species are linked through a chain of substitution such that it is appropriate to define a finfish product market. This is consistent with the Castalia Report and with the reasoning in *Basuto*:²²

*From a demand-side perspective, it is unlikely that, say, orange roughy and hoki compete closely one against the other, but it is likely that each will compete with others at its price level and in the immediately adjacent price level. For example, for those consumers who buy premium quality fish, it seems likely that snapper will be a substitute for orange roughy, but not hoki, in the event that the price of orange roughy were to rise. **This overlapping substitutability between species at adjacent quality/price levels should result in a chain of substitutability stretching from the premium quality to the budget quality species. On this***

²⁰ This is also reflected in the Commission's approach in *Basuto*, where the Commission noted that: "competition in the harvesting market [note that at this time the QMS had not implemented the concept of ACE yet] cannot be examined in isolation from competition in the downstream processing and wholesale markets, and constraints in those markets are likely to inhibit the extent to which any potential harvesting dominance could in fact be exploited" (at [150]).

²¹ While fishers are technically the parties that "surrender" the ACE, in practice it is at the wholesale supply level where ACE is acquired, rather than the harvesting level (eg Moana acquires ACE to provide to fishers, rather than expecting fishers to procure their own ACE (though some fishers do start with their own ACE from quota holdings, additional ACE to meet catch plans is procured by the wholesaler, rather than the fisher)). To the extent fishers supply direct to wholesale customers, then they are competing at the wholesale supply level.

²² *Basuto* at [90].

basis, all major finfish species would fall within the same product market. This conclusion has been supported by a range of parties within the industry.

(emphasis added)

86. Please also note that Moana's product market definition accounts for demand-side substitutability, rather than supply-side substitutability (though we still provide some observations on this below), for the same reasons as explained in *Basuto*:²³

while the industry is characterised by this supply-side differentiation, it would have no bearing on the product market definition if, as assessed, the inshore and deep-sea species compete one with another for the consumer dollar. Thus, a hypothetical monopolist in, say, the deep-sea fishery could not, in those circumstances, exert market power by raising the price of the deep-sea species, because it would lose sales to suppliers of the inshore species. In addition, some deep-sea species such as orange roughy and hoki are caught in inshore waters as a by-catch, and the hoki spawning ground fishery in the south-east approaches of the Cook Strait is an inshore fishery. For these reasons, there appears to be no basis for distinguishing separate product markets according to supply-side factors.

87. We therefore consider that downstream markets should not be artificially limited. In particular, the downstream markets:

- a. **Should not be limited to fresh fish caught from inshore fisheries:** We do not consider there is a basis to define separate markets according to supply-side factors. Downstream customers are unlikely to distinguish between fish based merely on where / how it is caught, whether inshore, deepwater, farmed, or imported. They may distinguish based on freshness and quality, but different quality grades are linked by a chain of substitution, which includes frozen fish.
- b. **Should not be limited to supply of the most popular species:** While we agree that the most popular species are substitutable for each other, we see no basis for any suggestion that only the most popular species would be in a chain of substitution. Customer/consumer behaviour and Moana's commercial experience points to a much broader market definition.
- c. **Should not exclude salmon:** There is a high degree of substitutability between salmon and wild caught fish for consumers and customers. Consumers and customers which increase their intake of salmon would generally decrease their intake of wild caught fish. Regardless, salmon clearly provides a strong constraint on the supply of wild caught fish.
- d. **Should not be limited to single species markets (eg a snapper market):** Customers and consumers readily switch between different finfish species. Fishing companies and customers (eg supermarkets) actively engage in strategies to encourage consumer switching of species.

88. We appreciate that the Commission may have accepted some of these points, but consider it important to reinforce them as the downstream demand renders any theory of harm unfeasible as Moana would have neither the ability nor incentives to engage in the suggested conduct.

89. We agree there are likely to be separate markets for unprocessed and processed fish, and that wholesale markets are likely to be national.

²³ *Basuto* at [91].

Finfish product market vs inshore / most popular / single species markets

90. The Commission finds that if the most popular species are substitutable, then Moana would likely be constrained in the wholesale markets for unprocessed and processed fish. We agree that the most popular species are substitutable.
91. There is no basis to narrow the markets to an arbitrary subset of species, to inshore caught fish, or to single species:
- a. The Commission has assessed the relevant markets before in *Basuto*, and the majority decision found a finfish product market. If anything, consumers are more likely to have expanded their range of preferences since then.
 - b. Moana’s clearance application provides evidence to establish a finfish product market, including:
 - i. The commercial reality of competition
 - ii. The chain of substitution between fish
 - iii. Customer preferences
 - iv. Substitutability of fish in restaurant menus
 - c. Markets of course must be defined as a matter of fact and commercial common sense. They do not require products to be perfect substitutes. Indeed the very origins of the concept of markets, goes back historically to markets, such as fish markets.²⁴
 - d. It is normal to see differentiation between products in the same market, as evident in a range of markets defined by the Commission.²⁵ The ACCC’s merger guidelines recognise “*it is extremely rare for a uniform level of substitution to exist across all products, services or regions within a relevant market*”.²⁶
92. We have also collected the following further evidence to support a finfish product market:
- a. The effect on sales of other species when TACC for tarakihi was significantly cut
 - b. Customer examples of demand substitution between species

²⁴ [Is market definition still needed after all these years | Journal of Antitrust Enforcement | Oxford Academic \(oup.com\)](#): “The term market originated as trading areas in which buyers and sellers come together to exchange goods. Local fish markets represent one example of a physical market, while stock, futures, or commodities markets represent other (more recent) examples. The concept implicit in the trading market was generalized to reflect any exchange of related goods or services, regardless of the physical location.”

²⁵ Including *Goodman Fielder New Zealand Limited and Lion – Dairy & Drinks (NZ) Limited* [2018] NZCC 12 (mainstream yoghurt market and Greek yoghurt market – not flavour markets); *Frucor Beverages Limited and Simply Squeezed Holdings Limited and/or Brownlie Brothers Limited* (2009) NZCC No 680 (fruit beverage market – not flavour markets); *The Coca Cola Company and Rio Beverages Limited* (2002) NZCC No 480 (fruit drinks and fruit juice market, bottled water market, carbonated soft drinks market, and new age beverages market – not flavour markets). We note also that in *Brambles New Zealand Ltd v Commerce Commission* (2003) TCLR 868 (HC) the Court warned against placing too much weight on the SSNIP test in markets with significant product differentiation and that the Commission “*should always be alive to other evidence which can assist in identifying the appropriate market in accordance with commercial common sense*” (at [81]). In *Brambles* the court found it was “*appropriate to make a common sense assessment, based on the evidence before the Commission*” (at [132]).

²⁶ ACCC Merger Guidelines (2008, updated 2017): <https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF> at [4.33]

- c. The ability to change consumer preferences on fish species
- d. Observations on supply-side considerations
- e. Increasing amounts of imports
- f. Substitutability of fish in cooking recipes

93. We provide the further evidence below, then summarise some of the evidence already provided in the clearance application.

Tarakihi case study

94. Outside of salmon and snapper, historically tarakihi (**TAR**) is the highest selling domestic species along with gurnard (**GUR**). TAR TACC on the East Coast of both islands was progressively cut from 1 October 2018 (FY19).

95. []

96. []

97. []

98. []

99. []

Customer examples of demand-side substitution between species

100. []

101. []

102. []

103. []

104. []

105. []

106. []

Consumer preferences on fish species can change

107. The ability to change consumer preferences on fish species is consistent with a high degree of substitutability between fish species. Demand can be developed for previously “unpopular species” to introduce new substitutes to species or increase the degree of substitutability.

108. For example, as outlined above, there have been successful efforts to develop demand for trevally, leading to greater use of trevally – including in restaurants such as in the menu below.



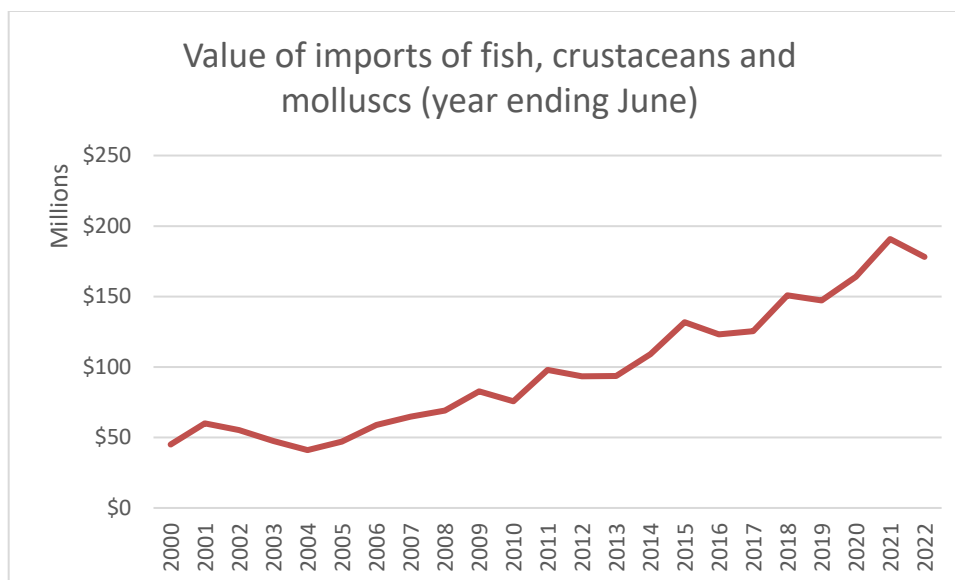
Observations on supply-side considerations

109. Fishing vessels catch a range of species. For example, small inshore vessels catch a mix of species including snapper (SNA), tarakihi (TAR), trevally (TRE), gurnard (GUR), gemfish (SKI), school shark (SCH), john dory (JDO), red snapper (RSN), and rig (SPO). Moana can ask those vessels to target particular species, which changes the ratio of species. For example, if snapper demand is slow, Moana encourages its fishers to target other species – they will still catch snapper, but less of it, and more of other species. When snapper demand is high, Moana asks fishers to target more snapper. Weather will play a role in which species can be targeted. Some large trawlers have the capability to catch both inshore and deepwater species.

Increasing amounts of seafood imports

110. Anecdotally, Moana believes that importers, seafood distributors, and even Foodstuffs themselves now import and sell larger and larger volumes of fish i.e Basa, Pompano, Milk Fish, Mackerel, etc. Many fish and chips shops now use Basa as a white fish fillet option substituting traditional local caught TAR, GUR and SNA options. []
111. As discussed in the clearance application, seafood imports have grown dramatically over time. The chart below contains updated information from Statistics NZ which shows a strong upward trend. The Statistics NZ data also shows that in 2022 imports of fish fillets and other fish meat totalled \$19M.²⁷

²⁷ This figure is net of re-imports of fish harvested in New Zealand waters but processed overseas.



Note: Sourced from Statistics NZ Infoshare, Value of imports by HS Chapter – HS HS03 Fish, crustaceans and molluscs, VFD.

Fish species are highly substitutable in cooking recipes

112. As submitted in our application, finfish species are highly substitutable for each other for end consumers (from which wholesale demand is derived). As further evidence of this, fish species are highly substitutable in cooking recipes. For example, cooking blog Blog Chef explains.²⁸

- a. *“Different kinds of fish possess different qualities, especially due to their origin. As such, there is a large number of fish species to choose from when considering substitutes for any particular one you can’t seem to get a hold on during your grocery shopping.”*
- b. *“Although different fish species have different flavors, you can almost always substitute one type of fish with another similar in most recipes.”*

113. This is a commonly accepted fact so similar comments can be found in numerous other sources.

The commercial reality of competition is not on a species by species basis

114. As explained in the Castalia Report and above, fishing companies catch and sell a range of different species — even if they target one or more specific species, they will have bycatch of other species that also needs to be sold. The commercial reality of the way in which wholesale fish are sold is that a range of species is sold together.

115. For example Moana’s supply arrangements with supermarkets and My Food Bag are for a mix of species, rather than individual species.

There is a chain of substitution between finfish species

116. The Castalia Report finds a chain of substitution likely links species of fish, including salmon. As explained further in the Castalia Report, this is supported by:

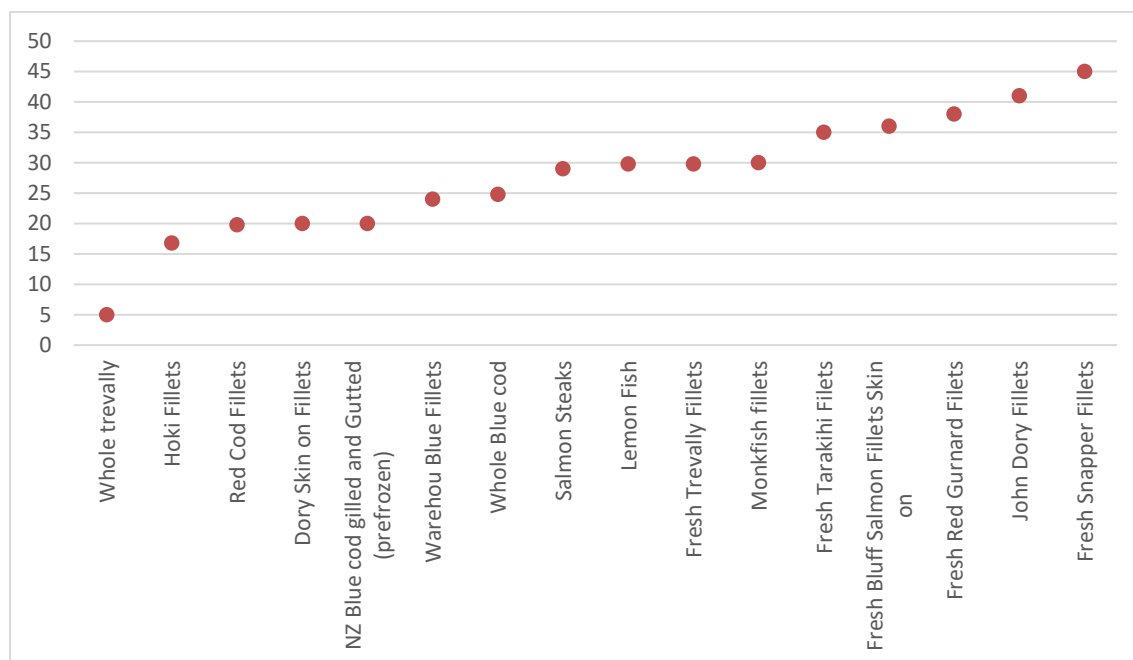
- a. Wholesale prices. The prices that Moana charges to supermarkets for skinned fish fillets show a smooth continuum of prices.

²⁸ <https://blogchef.net/fish-substitution-chart/>

[]

- b. Retail prices, which also show a relatively smooth continuum of prices.

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

- c. A 2021 Australian empirical study on the co-integration relationships between fish species.²⁹ Of the domestically-caught finfish in the study, john dory had the highest average price (A\$10.98/kg), followed by blue-eyed trevalla (A\$10.00/kg), with the cheapest species including the common saw shark (A\$1.69/kg) and silver warehou (A\$1.97). As can be seen from the diagram, although john dory is not cointegrated with the cheapest species, john dory and blue trevalla are cointegrated (with prices following the Law of One Price), and blue trevalla is cointegrated with several of the cheaper species, including silver warehou. Silver warehou is linked through a chain to the common saw shark (see the lower part of the following diagram).

²⁹ Schrobback, P., Hoshino, E., Pascoe, S., and Curtotti, R. (2021), "Market integration of domestic and imported seafood: Insights from the Sydney Fish Markets" Australian Journal of Agricultural and Resource Economics, Volume 66, Issue 1

Figure 4.3: Australian cointegration relationships between species

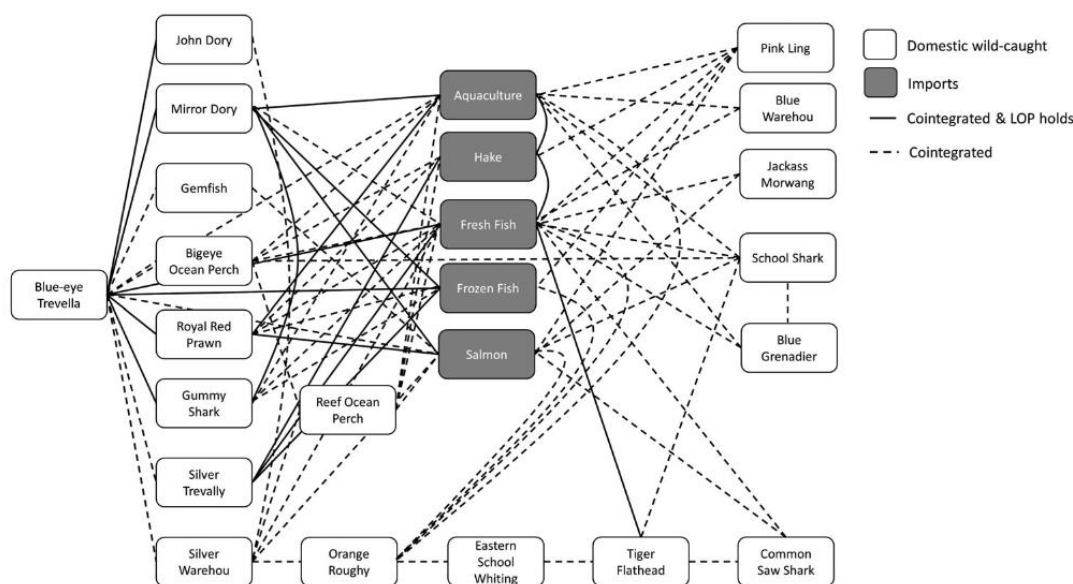


Figure 3 Co-integration relationships for domestic wild-caught and imported fish. Notes: A line (dashed or full) between two boxes (species) signifies a cointegrating relationship among two fish species. Detailed results for cointegrated price pairs are presented in Table 2. Source: Derived from authors’ analysis (Table 2)

- d. 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.³⁰
117. The Commission also found that there is a chain of substitution between finfish species in *Basuto*.³¹

The Commission has found that finfish species form neither an 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.

118. While in *Basuto*, the Commission found that salmon did not lie in the same market as wild harvested fish, in the 20 years since that decision salmon sales have increased significantly and consumer tastes have changed. For example, an MPI study published in 2019 found generational changes in fish preferences with customers in the 18 to 29 year-old category being several times more likely to purchase freshwater fish than customers with an age of more than 60.³² 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.³³ 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.

³⁰ Pascoe, S., Schrobback, P., Hoshino, E., and Curtotti, R. (2023), “Impact of changes in imports and farmed salmon on wild-caught fish prices in Australia,” *European Review of Agricultural Economics* Vol 50 (2), pp. 335–359

³¹ *Basuto* at [88].

³² MPI (2019), *New Zealand Seafood Consumer Preferences*, slide 5.

³³ *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

Customer preferences are consistent with a willingness to switch across species

119. A 2019 MPI survey found quality to be the most important factor for purchasing seafood for the major customer groups, including consumers, restaurants, and food retailers:³⁴
- 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.”*
120. This is consistent with a willingness to switch across species. The survey also found there was little difference in preference between wild and farmed seafood for consumers.³⁵

Restaurant menus reflect how fish species are highly substitutable for restaurants

121. As submitted in the clearance application, fish species have a high degree of substitutability for food service providers.
122. Restaurants often have a “fish of the day” dish, which changes according to availability. Similarly, fish and chips shops offer fish of the day. Restaurant menus can refer to “market fish” rather than require a fixed species,³⁶ and dishes can be changed.

³⁴ *New Zealand seafood consumer preferences* (MPI, November 2019) <https://www.mpi.govt.nz/dmsdocument/38750-New-Zealand-seafood-consumer-preferences> at 2

³⁵ *New Zealand seafood consumer preferences* (MPI, November 2019) <https://www.mpi.govt.nz/dmsdocument/38750-New-Zealand-seafood-consumer-preferences> at 12

³⁶ See for example menus for [Harbourside Ocean Bar Grill](#), [Soul Bar & Bistro](#), [FISH](#).

Classics

Seafood Chowder	\$28
Green lipped mussels, market fish, prawn, scallop, fondant potatoes, shellfish oil, lemon	
Harbourside Prawn Cocktail	\$28
Poached organic prawns, iceberg, Marie Rose, avocado	
Fish & Chips	\$32
Market fish, IPA batter, straight cut chips, mushy peas, tartare, malt vinegar, lemon	
NZ Fish Pie	\$32
Market fish, peas, egg, Cheddar cheese, potato top	

Sea

Pan-fried Market Fish	\$46
Roasted chestnut, Earl Grey swede, szechuan cracker, pickled shiitake	
Poached Big Glory Bay Salmon	\$48
Charred onion broth, aburi potato, wild mushrooms, chiffonade sorrel	
Char-Grilled Game Fish	\$48
Salt baked celeriac, Jerusalem artichoke, miso, yoghurt whey	
Whole Roasted Deboned Northland Gurnard	\$52
Laksa poached clams, Makrut lime, sea grapes, monkfish boudin blanc	
Market Whole Fish	\$MP
Burnt butter, capers, cubed potatoes, fresh herbs Various species and weights available. Changes daily	
Grade A Fiordland Crayfish	1/2 OR
Your choice: grilled, steamed, Mornay Various weights available, subject to availability	
	Whole
	\$MP

Example of Harbourside Ocean Bar Grill menu using 'market fish'

123. A 2019 MPI survey indicates restaurants are flexible around wild and farmed seafood:³⁷

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



Only wild

2



Both wild and farmed

14

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

³⁷ New Zealand seafood consumer preferences (MPI, November 2019) <https://www.mpi.govt.nz/dmsdocument/38750-New-Zealand-seafood-consumer-preferences> at 15

Separate unprocessed and processed markets, with similar competitive conditions

124. We agree with paragraphs 46-47 that while there may be separate markets for the supply of unprocessed fish and processed fish, the competition assessment would be similar for both types.

National geographic market

125. We agree with paragraph 52 that there are national wholesale markets. Moana's experience is consistent with the evidence that businesses operating in the South Island regularly send fresh fish to North Island customers in competition with North Island based suppliers.
126. We note that with more than three quarters of New Zealand's population living in the North Island, we would generally expect more fish to be transported from the South Island to the North Island (than vice versa).

Customer market

127. We agree with paragraph 53 that it is not necessary to define separate customer markets. Moana's experience is consistent with the feedback that wholesale customers' key requirements are consistency of supply and freshness.

Co-ordinated effects

128. We agree with paragraph 91 that the proposal is unlikely to change the conditions in the industry such that coordination is more likely, more complete, or more sustainable.
129. We agree with the Commission's comment that supply is subject to frequent changes which makes co-ordination unlikely.