

# DEED GRANTING A RIGHT OF FIRST REFUSAL OVER SHELLFISH QUOTA

THIS DEED is made

BETWEEN

THE TRUSTEES OF TE RUNANGA O NGĀTI MUTUNGA (the "Governance Entity")

AND

HER MAJESTY THE QUEEN in right of New Zealand acting by the Minister of Fisheries (the "Crown")

## BACKGROUND

- A. Ngāti Mutunga and the Crown are parties to a deed of settlement (the "Deed of Settlement") to settle the Historical Claims of Ngāti Mutunga dated 31 July 2005.
- B. Under clauses 12.10 and 12.11 of the Deed of Settlement it was agreed (if the Deed of Settlement became unconditional) the Crown and the Governance Entity would enter into this Deed.
- C. The Ngāti Mutunga Claims Settlement Act 2006 (the "Settlement Act") has come into force and the Deed of Settlement has become unconditional.

IT IS AGREED as follows:

1. **THIS DEED APPLIES TO THE SALE OF CROWN HOLDINGS OF QUOTA FOR APPLICABLE SPECIES**
  - 1.1 This Deed applies if:
    - 1.1.1 the Crown holds quota ("**Applicable Quota**") for an Applicable Species on or before the date of the Deed of Settlement; and
    - 1.1.2 a Total Allowable Commercial Catch (a "**TACC**") is set for that Applicable Species for a Quota Management Area that includes some or all of the coastline of the Shellfish RFR Area (an "**Applicable TACC**").
2. **THIS DEED APPLIES ONLY TO QUOTA ALLOCATED TO THE CROWN UNDER AN APPLICABLE TACC**
  - 2.1 This Deed applies only to Applicable Quota that:
    - 2.1.1 relates to an Applicable TACC; and
    - 2.1.2 has been allocated to the Crown as either:
      - (a) Individual Transferable Quota (and not as Provisional Individual Transferable Quota) under section 49(1) of the Fisheries Act 1996; or
      - (b) Provisional Individual Transferable Quota that has become Individual Transferable Quota under section 49(3) of the Fisheries Act 1996.

**3. THE CROWN MUST OFFER MINIMUM AMOUNT OF APPLICABLE QUOTA TO THE GOVERNANCE ENTITY**

3.1 Before the Crown sells any Applicable Quota relating to an Applicable TACC, the Crown must offer (in accordance with clause 5) the Governance Entity the right to purchase not less than the Required Minimum Amount of the Applicable Quota relating to that Applicable TACC calculated in accordance with clause 4.1 or clause 4.2 (whichever is applicable).

**4. CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED**

4.1 Where:

4.1.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.1.2 no person was eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC,

the Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

$$x = \frac{2}{5} \left[ \frac{A}{B} \times C \right]$$

4.2 Where:

4.2.1 the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

4.2.2 a person, or persons, were eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC,

the Required Minimum Amount of that Applicable Quota must be calculated in accordance with the following formula:

$$x = \text{the lesser of } \left[ \frac{2}{5} \left[ \frac{A}{B} \times C \right] \text{ or } \left[ \frac{A}{B} \times D \right] \right]$$

4.3 For the purposes of this clause:

"A" is the length of coastline of the Shellfish RFR Area that is within the coastline of the relevant Quota Management Area;

"B" is the length of coastline of the relevant Quota Management Area;

"C" is the total amount of Quota relating to the relevant Applicable TACC;

"D" is the amount of Applicable Quota held by the Crown in relation to the relevant Applicable TACC; and

"x" is the Required Minimum Amount of Applicable Quota.

4.4 For the purposes of this clause:

4.4.1 the length of coastline of the Shellfish RFR Area, and of the relevant Quota Management Area, will be determined by the Crown and by such method as the Crown considers appropriate; and

4.4.2 in particular, but without limiting the Crown's ability to use a different method, the Crown may determine that the length of coastline of the Shellfish RFR Area means the distance (being determined by the Crown) between Fisheries Point 2626276E, 6244785N and Fisheries Point 2638090E, 6252725N (such Fisheries Points being approximately marked on the map of the Shellfish RFR Area included as schedule 2).

## **5. CROWN MUST GIVE NOTICE BEFORE SELLING APPLICABLE QUOTA**

### **Crown must give RFR Notice**

5.1 Before the Crown Sells any Applicable Quota, the Crown must give a Notice (an "RFR Notice") to the Governance Entity which offers to Sell not less than the Required Minimum Amount of that Applicable Quota to the Governance Entity at the price and on the terms and conditions set out in the RFR Notice.

### **Crown may withdraw RFR Notice**

5.2 The Crown may withdraw an RFR Notice at any time before the Governance Entity accepts the offer in that RFR Notice under clause 6.

### **Effect of withdrawing RFR Notice**

5.3 If the Crown withdraws an RFR Notice, clause 3 still applies to the Applicable Quota referred to in that RFR Notice.

### **Crown has no obligation in relation to balance of Applicable Quota**

5.4 Where the Crown has given, in accordance with clause 5.1, an RFR Notice in relation to Applicable Quota relating to an Applicable TACC, the Crown has no obligations under this Deed in relation to the balance of the Applicable Quota (if any) not referred to in that RFR Notice that also relate to that Applicable TACC.

## **6. ACCEPTANCE OF RFR NOTICE BY THE GOVERNANCE ENTITY**

6.1 A contract for the Sale of the Applicable Quota referred to in an RFR Notice (or a lesser amount referred to in the acceptance) is constituted between the Crown and the Governance Entity, at the price and on the terms and conditions set out in the RFR Notice, if the Governance Entity accepts the offer in that RFR Notice (or accepts a lesser amount) of Applicable Quota:

6.1.1 by Notice to the Crown; and

6.1.2 by the relevant Expiry Date.

## **7. NON-ACCEPTANCE BY THE GOVERNANCE ENTITY**

7.1 If:

7.1.1 the Crown gives the Governance Entity an RFR Notice; and

7.1.2 the Governance Entity does not accept, on the terms and conditions set out in the RFR Notice, all the Applicable Quota offered in that RFR Notice by Notice to the Crown by the Expiry Date,

the Crown:

7.1.3 may, at any time during the period of two years from the Expiry Date, Sell any of the Applicable Quota referred to in that RFR Notice that is not accepted by the Governance Entity if the price per Quota Share, and the other terms and conditions of the Sale, are not more favourable to the purchaser than the price per Quota Share, and the other terms and conditions, set out in the RFR Notice to the Governance Entity; but

7.1.4 must, promptly after entering into an agreement to Sell any Applicable Quota referred to in the RFR Notice to a purchaser, give Notice to the Governance Entity of that fact and disclose the terms of that agreement; and

7.1.5 must not Sell any of that Applicable Quota referred to in the RFR Notice after the end of the two year period after the Expiry Date without first offering to Sell that Applicable Quota to the Governance Entity in an RFR Notice under clause 5.1.

## **8. RE-OFFER REQUIRED**

8.1 If:

8.1.1 the Crown gives the Governance Entity an RFR Notice;

8.1.2 the Governance Entity does not accept, on the terms and conditions set out in the RFR Notice, all the Applicable Quota offered in that RFR Notice by Notice to the Crown by the Expiry Date; and

8.1.3 the Crown during the period of two years from the Expiry Date proposes to offer any of those Applicable Quota not accepted by the Governance Entity for Sale again but at a price (per Quota Share), or on other terms and conditions, more favourable to the purchaser than on the terms and conditions in the RFR Notice,

the Crown may do so only if it first offers that Applicable Quota for Sale on those more favourable terms and conditions to the Governance Entity in another RFR Notice under clause 5.1.

## **9. EFFECT OF THIS DEED**

9.1 Nothing in this Deed requires the Crown to:

9.1.1 purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996; or

9.1.2 offer for sale any Applicable Quota held by the Crown.

9.2 The Governance Entity acknowledges that the inclusion of any Applicable Species in the Quota Management System may not result in any, or any significant, holdings by the Crown of Applicable Quota for that species.

9.3 Nothing in this Deed affects, or limits, and the rights and obligations created by this Deed are subject to:

9.3.1 any requirement at common law or under legislation that:

- (a) must be complied with before any Applicable Quota is sold to the Governance Entity; or
- (b) the Crown must Sell the Applicable Quota to a third party; and

9.3.2 any legal requirement that:

- (a) prevents or limits the Crown's ability to Sell the Applicable Quota to the Governance Entity; and
- (b) the Crown cannot satisfy after taking reasonable steps to do so (and, to avoid doubt, reasonable steps do not include changing the law).

## 10. THIS DEED DOES NOT APPLY IN CERTAIN CASES

10.1 Clauses 3 or 5.1 do not apply if the Crown is Selling Applicable Quota to the Governance Entity.

## 11. TIME LIMITS

11.1 Time is of the essence for the time limits imposed on the Crown and the Governance Entity under this Deed.

11.2 The Crown and the Governance Entity may agree in writing to an extension of a time limit.

## 12. ENDING OF RIGHT OF FIRST REFUSAL

### **RFR ends on Sale which complies with this Deed**

12.1 The obligations of the Crown under this Deed end in respect of any Applicable Quota on a transfer of the Applicable Quota in accordance with this Deed.

### **RFR ends after 50 years**

12.2 The obligations of the Crown under this Deed begin on the Settlement Date and end 50 years after that date.

## 13. NOTICES

13.1 The provisions of this clause apply to Notices under this Deed:

### ***Notices to be signed***

13.1.1 the Party giving a Notice must sign it;

### ***Notice to be in writing***

13.1.2 a Notice to a Party must be in writing addressed to that Party at that Party's address or facsimile number;

**Addresses for notice**

13.1.3 until any other address or facsimile number of a Party is given by Notice to the other Party, they are as follows:

**The Crown:**

The Chief Executive  
Ministry of Fisheries  
ASB Bank House  
101-103 The Terrace  
(PO Box 1020)  
WELLINGTON  
Facsimile No: 04 470 2602;

**Te Runanga o Ngāti Mutunga:**

6 Ngakoti Street  
PDC Box 32  
URENUI  
  
Facsimile No: 06 752 3347

**Delivery**

13.1.4 delivery of a Notice may be made:

- (a) by hand;
- (b) by post with prepaid postage; or
- (c) by facsimile;

**Timing of delivery**

13.1.5 a Notice delivered:

- (a) by hand will be treated as having been received at the time of delivery;
- (b) by pre-paid post will be treated as having been received on the third day after posting; or
- (c) by facsimile will be treated as having been received on the day of transmission; and

**Deemed date of delivery**

13.1.6 if a Notice is treated as having been received on a day that is not a Business Day, or after 5pm on a Business Day, that Notice will (despite clause 13.1.5) be treated as having been received the next Business Day.

**14. AMENDMENT**

14.1 This Deed may not be amended unless the amendment is in writing and signed by, or on behalf of, the Governance Entity and the Crown.

**15. NO ASSIGNMENT**

15.1 The Governance Entity may not assign its rights or obligations under this Deed.

## 16. DEFINITIONS AND INTERPRETATION

### Definitions

16.1 In this Deed, unless the context otherwise requires:

**Applicable Quota** means Quota of the kind referred to in clause 1.1.1;

**Applicable Species** means a species referred to in schedule 1;

**Applicable TACC** has the meaning given to that term by clause 1.1.2;

**Business Day** means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Taranaki;

**Crown** has the meaning given to that term by section 2(1) of the Public Finance Act 1989 (which, at the date of this Deed, provides that the Crown:

- (a) means the Sovereign in right of New Zealand; and
- (b) includes all Ministers of the Crown and all Departments; but
- (c) does not include:
  - (i) an Office of Parliament;
  - (ii) a Crown entity; or
  - (iii) a State enterprise);

**Deed** means this Deed giving a right of first refusal over Shellfish Quota;

**Deed of Settlement** has the meaning given by clause A of the Background to this Deed;

**Expiry Date** in respect of an RFR Notice, means, the date one calendar month after the RFR Notice is received by the Governance Entity;

**Individual Transferable Quota** has the same meaning as in section 2(1) of the Fisheries Act 1996;

**Minister of Fisheries** means the Minister of the Crown who is for the time being responsible for the administration of the Fisheries Act 1996;

**Notice** means a notice in writing given under clause 13 and **Notify** has a corresponding meaning;

**Party** means the Governance Entity or the Crown;

**Provisional Individual Transferable Quota** has the same meaning as in section 2(1) of the Fisheries Act 1996;

**Quota** means quota under the Fisheries Act 1996;

**Quota Management Area** means any area declared by or under the Fisheries Act 1996 to be a quota management area;

**Quota Management System** means a quota management system established under Part IV of the Fisheries Act 1996;

**Quota Share** has the same meaning as in the Fisheries Act 1996;

**Required Minimum Amount**, in relation to Applicable Quota, means an amount of that Applicable Quota calculated under clause 4.1 or clause 4.2 (whichever is applicable);

**RFR Notice** and **Notice** means a notice under clause 5.1;

**Sell** means to transfer ownership of Quota for valuable consideration and **Sale** has a corresponding meaning, but neither term includes the transfer by the Crown of Quota under section 22 of the Fisheries Act 1996;

**Settlement Date** means the date which is 20 Business Days after the Deed of Settlement becomes unconditional;

**Shellfish Quota** means Quota in relation to an Applicable Species (being a species referred to in schedule 1);

**Shellfish RFR Area** means the area identified in the map included in schedule 2; and

**Total Allowable Commercial Catch** has the same meaning as in section 2(1) of the Fisheries Act 1996 and **TACC** has the same meaning.

### Interpretation

- 16.2 In the interpretation of this Deed, unless the context requires otherwise:
- 16.2.1 terms or expressions that are not defined in this Deed but are defined in the Deed of Settlement have the meaning in this Deed that they have in the Deed of Settlement;
  - 16.2.2 headings appear as a matter of convenience and are not to affect the interpretation of this Deed;
  - 16.2.3 defined terms appear in this Deed with capitalised initial letters and have the meanings given to them by this Deed;
  - 16.2.4 where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
  - 16.2.5 the singular includes the plural and vice versa;
  - 16.2.6 words importing one gender include the other genders;



- 16.2.7 a reference to legislation is a reference to that legislation as amended, consolidated or substituted;
- 16.2.8 a reference to any document or agreement, including this Deed, includes a reference to that document or agreement as amended, novated or replaced;
- 16.2.9 a reference to a schedule is a schedule to this Deed;
- 16.2.10 a reference to a monetary amount is to New Zealand currency;
- 16.2.11 a reference to written or in writing includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- 16.2.12 a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- 16.2.13 a reference to a date on which something must be done includes any other date which may be agreed in writing between the Governance Entity and the Crown;
- 16.2.14 where something must be done by or on a day that is not a Business Day, that thing must be done on or by the next Business Day after that day; and
- 16.2.15 a reference to time is to New Zealand time.

SIGNED as a deed on 13<sup>TH</sup> DECEMBER 2006

Signed by Jamie Grant Daniel Tuuta as a Trustee of Te Runanga o Ngāti Mutunga



WITNESS



Name:

Occupation:

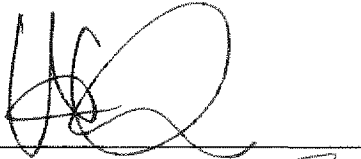
Address:

Matanuku Kihirini Mahuika  
Solicitor  
WELLINGTON

Signed by Patricia Sharon Hurimoana Haami as a Trustee of Te Runanga o Ngāti Mutunga

*Pat Haami*

WITNESS



Name:

Occupation:

Address:

Matanuku Kihirini Mahuika  
Solicitor  
WELLINGTON

*Miriana Evans*  
Signed by Miriana Evans as a Trustee of Te Runanga o Ngāti Mutunga

WITNESS



Name:

Occupation:

Address:

Matanuku Kihirini Mahuika  
Solicitor  
WELLINGTON

*Ewai H Tuuta*

Signed by Ewai Hannah Tuuta as a Trustee of Te Runanga o Ngāti Mutunga

WITNESS

*[Handwritten signature]*

Name:

Occupation: **Matanuku Kihirini Māhuika**

Address: **Solicitor  
WELLINGTON**

Signed by Lewis David Parekura Callaghan as a Trustee of Te Runanga o Ngāti Mutunga

*[Handwritten signature]*

WITNESS

*[Handwritten signature]*

Name:

Occupation: **Matanuku Kihirini Māhuika**

Address: **Solicitor  
WELLINGTON**

*[Handwritten signature]*

SIGNED for and on behalf of HER MAJESTY THE QUEEN in right of New Zealand by the Minister of Fisheries in the presence of:

WITNESS

*[Handwritten signature]*

Name: *Susie Iball*

Occupation: *Private Secretary - Fisheries*

Address: *203 Clyde St.  
Island Bay  
Wellington*

*[Handwritten signature]*

*[Handwritten marks]*

**SCHEDULE 1**  
**APPLICABLE SPECIES**  
 (Clause 16.1)

<b>Māori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Kina	Sea urchin	<i>Evechinus chloroticus</i>
Purimu	Surf-clam	<i>Dosinea anus</i> , <i>Paphies donacina</i> , <i>Macra discors</i> , <i>Macra murchisoni</i> , <i>Spisula aequilatus</i> , <i>Bassina yatei</i> , or <i>Dosinia subrosea</i>

*Handwritten signatures and initials in the bottom right corner.*

**SCHEDULE 2**  
**MAP OF THE SHELLFISH RFR AREA WITH FISHERIES POINTS MARKED**  
**APPROXIMATELY**

