

THE NGĀTI APA KI TE WAIPOUNAMU TRUST; and
NGĀTI KOATA TRUST; and
TE RŪNANGA O NGĀTI KUIA CHARITABLE TRUST; and
NGĀTI RARUA IWI TRUST; and
TE RŪNANGA A RANGITANE O WAIRAU; and
NGĀTI TAMA MANAWHENUA KI TE TAU IHU TRUST; and
TE RŪNANGA O TOA RANGATIRA INCORPORATED; and
TE ATIWA MANAWHENUA KI TE TAU IHU TRUST; and
TE RŪNANGA O NGĀI TAHU; and
HAURAKI MĀORI TRUST BOARD
(as trustee of the Pare Hauraki Fishing Trust)

and

THE SOVEREIGN
in right of New Zealand

and

TE OHU KAI MOANA TRUSTEE LIMITED
(as trustee of the Maori Commercial Aquaculture Settlement Trust)

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE
OBLIGATIONS UNDER THE MAORI COMMERCIAL AQUACULTURE
CLAIMS SETTLEMENT ACT 2004 FOR TE WAI POUNAMU AND
HAURAKI

6 May 2009

TABLE OF CONTENTS

1: BACKGROUND	1
THE MAORI COMMERCIAL AQUACULTURE CLAIMS SETTLEMENT ACT 2004	1
NEGOTIATIONS TO DATE	2
ENTRY INTO THIS DEED	4
2: SATISFACTION OF CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS	5
THE OBLIGATIONS ARE SATISFIED	5
REGIONAL SETTLEMENTS	5
ACKNOWLEDGEMENTS	6
3: IMMEDIATE PAYMENTS	8
EX GRATIA PAYMENTS	8
PAYMENT OF EQUIVALENT AMOUNTS	8
INTEREST	8
4: FURTHER PAYMENTS	10
APPLICATION OF THIS PART	10
FURTHER PAYMENTS	10
INTEREST	10
5: TAXATION	11
STATEMENT OF AGREED TAX PRINCIPLES	11
ACKNOWLEDGEMENTS	12
ACT CONSISTENT WITH TAX PRINCIPLES	12
MATTERS NOT TO BE IMPLIED FROM TAX PRINCIPLES	12
INDEMNITY FOR GST IN RESPECT OF SETTLEMENT AMOUNTS AND INDEMNITY PAYMENTS	13
INDEMNIFICATION	13
INDEMNITY FOR INCOME TAX IN RESPECT OF SETTLEMENT AMOUNTS AND INDEMNITY PAYMENTS	13
INDEMNITY FOR GIFT DUTY IN RESPECT OF SETTLEMENT AMOUNTS	14
INDEMNITY EXTENDS TO INTEREST AND PENALTIES	14

DEMANDS FOR INDEMNIFICATION.....	14
HOW DEMANDS ARE MADE	14
WHEN DEMANDS ARE TO BE MADE	15
EVIDENCE TO ACCOMPANY DEMAND	15
REPAYMENT OF AMOUNT ON ACCOUNT OF TAX.....	15
PAYMENT OF AMOUNT ON ACCOUNT OF TAX	16
PAYMENT OF COSTS	16
DIRECT PAYMENT OF TAX: CONTROL OF DISPUTES	16
RULINGS, APPLICATIONS	17
DEFINITIONS AND INTERPRETATION	17
TRUSTEE RESPONSIBILITY	17
IWI PARTY RESPONSIBILITY.....	18
6: INTRODUCTION OF LEGISLATION.....	19
AMENDING LEGISLATION TO BE INTRODUCED	19
AMENDING LEGISLATION TO BE SUPPORTED	19
7: CONDITIONS	20
THIS DEED IS CONDITIONAL.....	20
TRUSTEE'S NOTICE	20
THIS DEED WITHOUT PREJUDICE UNTIL UNCONDTIONAL.....	20
SOME PROVISIONS NOT CONDITIONAL	21
TERMINATION	21
8: MISCELLANEOUS	23
NOTICES	23
AMENDMENT.....	25
ENTIRE AGREEMENT	25
NO WAIVER OR ASSIGNMENT.....	25
TRUSTEE AS SIGNATORY	25
9: DEFINITIONS AND INTERPRETATION.....	27
DEFINITIONS	27

**DEED RELATING TO THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS UNDER THE MAORI
AQUACULTURE CLAIMS SETTLEMENT ACT 2004 FOR TE WAI POUNAMU AND THE COROMANDEL**

INTERPRETATION	30
EXECUTION	33
SCHEDULE 1 SETTLEMENT AMOUNTS	46
SCHEDULE 2 VALUATION PROCESS FOR FURTHER PRE-COMMENCEMENT SPACE	47
SCHEDULE 3 CONTENT OF AMENDING LEGISLATION.....	55
SCHEDULE 4 NOTICES	57

DEED

THIS DEED is made

BETWEEN

THE NGĀTI APA KI TE WAIPOUNAMU TRUST; and
NGĀTI KOATA TRUST; and
TE RŪNANGA O NGĀTI KUIA CHARITABLE TRUST; and
NGĀTI RARUA IWI TRUST; and
TE RŪNANGA A RANGITANE O WAIRAU; and
NGĀTI TAMA MANAWHENUA KI TE TAU IHU TRUST; and
TE RŪNANGA O TOA RANGATIRA INCORPORATED; and
TE ATIWA MANAWHENUA KI TE TAU IHU TRUST; and
TE RŪNANGA O NGĀI TAHU; and
HAURAKI MĀORI TRUST BOARD (as trustee of the Pare Hauraki Fishing Trust)

AND

THE SOVEREIGN in right of New Zealand, acting by the Minister of Fisheries

AND

TE OHU KAI MOANA TRUSTEE LIMITED (as trustee of the Maori Commercial Aquaculture Settlement Trust)

1: BACKGROUND

THE MAORI COMMERCIAL AQUACULTURE CLAIMS SETTLEMENT ACT 2004

- 1.1 During the late 1990s the Crown sought to amend existing legislation and introduce new legislation relating to aquaculture management in the coastal marine area. The possibility of conflict between the principles of Te Tiriti o Waitangi / the Treaty of Waitangi and the proposed aquaculture reforms was raised in claims before the Waitangi Tribunal.
- 1.2 The Waitangi Tribunal considered that the proposed reforms would breach the principles of Te Tiriti o Waitangi / the Treaty of Waitangi, as it found Māori have an interest in marine farming that forms part of a bundle of rights in the coastal marine area that represent a taonga protected by Te Tiriti o Waitangi / the Treaty of Waitangi (*Ahu Moana: The Aquaculture and Marine Farming Report*, WAI 953, Waitangi Tribunal Report 2002).
- 1.3 The Settlement Act was a legislated response to give effect to the findings and recommendations of the Waitangi Tribunal. The Settlement Act provides a full and final settlement of Māori claims to commercial aquaculture arising on or after 21 September 1992; and provides for the allocation and management of settlement assets relating to aquaculture.
- 1.4 The Settlement Act requires that iwi are provided with 20% of all new aquaculture space created through the establishment of "aquaculture management areas" from 1 January 2005. The Settlement Act also establishes the Crown's obligation to provide coastal iwi with the equivalent of 20% of the aquaculture space created between 21 September 1992 and 31 December 2004, including any space that was approved under the Marine Farming Act 1971 or Fisheries Act 1983 but issued after 1 January 2005. This is called pre-commencement space and is defined in section 20 of the Settlement Act.
- 1.5 The Settlement Act further provides that all settlement assets are to be transferred to Te Ohu Kai Moana Trustee Limited as trustee of the Māori Commercial Aquaculture Settlement Trust (also known as Takutai Trust). The trustee then allocates the settlement assets to iwi aquaculture organisations within a particular region, or harbour, once all the iwi within a region have attained iwi aquaculture organisation status and the settlement asset entitlements and allocations have been determined.
- 1.6 The Settlement Act provides the Crown with three methods of complying with its pre-commencement space obligations. They are:

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 1.6.1 **New space method.** The Minister of Fisheries may recommend that the Governor General makes Orders in Council requiring regional councils and unitary authorities to identify and transfer authorisations to the trustee for up to 20% of any new aquaculture space created from 1 January 2005.
- 1.6.2 **Purchase marine farm method.** The Crown can purchase marine farms from 1 January 2008 and transfer the coastal permits associated with these farms to the trustee.
- 1.6.3 **Financial equivalent method.** Where the necessary space has not been provided to the trustee under the other methods, the Crown can pay the financial equivalent from 1 January 2013.
- 1.7 The Settlement Act does not require the Crown at any particular time to comply with these methods in any particular way or combinations of ways. The Crown must use its best endeavours to comply with its pre-commencement space obligations by 31 December 2014.
- 1.8 Settlement assets will be allocated on a region-by-region basis, based around the regions of regional councils and unitary authorities. The exceptions are those harbours identified in Schedule 2 of the Settlement Act.
- 1.9 A settlement register of the marine farming permits that are pre-commencement space has been developed by the Crown. This settlement register is adjusted for any pre-commencement space decisions approved under the Marine Farming Act 1971 or Fisheries Act 1983 after 1 January 2005.
- 1.10 In July 2008 the Minister issued a plan for consultation (required under section 23 of the Settlement Act) that outlines options for the Crown to deliver its pre-commencement space obligations by 31 December 2014. That plan acknowledged that the "financial equivalent" method is most likely to be adopted in many regions as there is unlikely to be sufficient new space created in those regions to satisfy the Crown's obligations and the "purchase marine farm method" is very complex.

NEGOTIATIONS TO DATE

- 1.11 During 2007, iwi of Te Tau Ihu (the northern South Island) approached the Minister and requested that the Crown consider an early settlement of the Crown's aquaculture pre-commencement space obligations in Marlborough and Tasman regions. In June 2008, the Minister invited all iwi with interests in Marlborough and Tasman to submit a proposal for the early settlement of the Crown's pre-commencement space obligations in the region, subject to the following parameters:

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 1.11.1 all initial discussions on possible options for early completion of the pre-commencement space obligations were to be on a without prejudice basis;
 - 1.11.2 all options were to be consistent with the underlying aquaculture settlement, being 20% equivalent of the pre-commencement space, and the underlying settlement is not re-negotiated;
 - 1.11.3 any options would need to be consistent with the regional council and harbour boundaries in the Settlement Act, or an aggregation of those boundaries;
 - 1.11.4 proposals would be assessed against the financial methodology that was to be outlined in the consultation document on how the Crown will progress the settlement;
 - 1.11.5 a process would need to be agreed to value any space resulting from future aquaculture permitting decisions under the Marine Farming Act 1971 and the Fisheries Act 1983; and
 - 1.11.6 the role of Te Ohu Kai Moana Trustee Limited in receiving and distributing settlement assets would remain unchanged.
- 1.12 All iwi with interests in Te Wai Pounamu agreed to prepare a proposal for the consideration of the Minister that could achieve an early settlement of the Crown's pre-commencement space obligations for the whole of Te Wai Pounamu.
- 1.13 Additionally the Hauraki Māori Trust Board, who represents the iwi of Hauraki, approached the Minister requesting to be a party to the potential early settlement process. On the basis that the Hauraki region (the east coast sub-region of the Waikato region as referred to in section 45 of the Settlement Act) is a separate specified area in the Settlement Act with significant pre-commencement space and that the Hauraki Māori Trust Board wished to work with the iwi of Te Wai Pounamu, the Minister agreed that the Hauraki Māori Trust Board should participate in the process of presenting an early settlement proposal to him.
- 1.14 Each iwi party is either a recognised iwi organisation under the Māori Fisheries Act 2004 or an iwi aquaculture organisation under the Settlement Act.
- 1.15 The Crown contracted an independent consultancy to prepare an estimate of the value of the Crown's pre-commencement space obligations in Te Wai Pounamu and Hauraki. This estimate was released to the iwi parties on 5 September 2008. In preparing the estimate there was engagement with the

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

iwi parties and their advisors, though the estimate prepared by the Crown's consultants was not agreed to by the iwi parties.

- 1.16 On 9 September 2008 the iwi parties issued a proposal to the Minister to settle the Crown's pre-commencement space obligations in respect of Te Wai Pounamu and Hauraki. That proposal included the iwi parties' estimate of the value of the Crown's pre-commencement space obligations in Te Wai Pounamu and Hauraki.
- 1.17 On 22 September 2008 the Minister, the Minister in Charge of Treaty of Waitangi Negotiations, the Minister of Maori Affairs and representatives of the iwi parties and the trustee met and negotiated the terms of an agreement to settle the Crown's pre-commencement space obligations to the iwi parties. That agreement was recorded in a non-binding agreement in principle dated 13 October 2008 which was to be given effect to through a formal deed and related legislation.
- 1.18 The parties have since then negotiated this deed to give effect to the Crown's pre-commencement space obligations in respect of Te Wai Pounamu and Hauraki.

ENTRY INTO THIS DEED

- 1.19 Accordingly, the parties wish, in a spirit of co-operation and compromise, to enter, in good faith, into this deed setting out the basis on which the Crown's pre-commencement space obligations are satisfied. The trustee enters into this deed for the limited purposes set out in clause 8.7.

2: SATISFACTION OF CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

THE OBLIGATIONS ARE SATISFIED

- 2.1 The iwi parties agree that, on and from the unconditional date:
- 2.1.1 the Crown's pre-commencement space obligations are satisfied; and
 - 2.1.2 the Crown is released and discharged from all obligations and liabilities in respect of the Crown's pre-commencement space obligations; and
 - 2.1.3 the settlement of the Crown's pre-commencement space obligations is full and final; and
 - 2.1.4 as a result, the iwi parties, the iwi they represent, and any other entities representing those iwi, or members of those iwi, are prevented from pursuing claims against the Crown in respect of pre-commencement space, whether the claims are founded on rights arising by or in common law (including customary law and aboriginal title), Te Tiriti o Waitangi / the Treaty of Waitangi, statute, fiduciary duty or otherwise.
- 2.2 The Crown's pre-commencement space obligations are replaced by the payment obligations set out in part 3 and part 4.

REGIONAL SETTLEMENTS

- 2.3 The parties agree that the Crown's pre-commencement space obligations are satisfied on a region by region basis.
- 2.4 The parties intend that the trustee makes its determinations under sections 44 to 51 of the Settlement Act in respect of:
- 2.4.1 the regions of Te Wai Pounamu, on the basis of the binding allocation agreement between the Te Wai Pounamu iwi parties dated 6 May 2009; and
 - 2.4.2 Hauraki, on the basis of any allocation agreement reached or determination made after the date of this deed in accordance with the Settlement Act.
- 2.5 Except as provided in this deed, nothing in this deed:

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 2.5.1 affects a right that an iwi, and members of an iwi, represented by an iwi party may have, including a right arising:
- (a) from Te Tiriti o Waitangi / the Treaty of Waitangi or its principles;
 - (b) under statute;
 - (c) at common law (including in relation to aboriginal title or customary law);
 - (d) from any fiduciary duty; or
 - (e) otherwise; or
- 2.5.2 is intended to affect any action or decision under:
- (a) the deed of settlement between Maori and the Crown dated 23 September 1992 in relation to Maori fisheries claims; or
 - (b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
 - (c) the Maori Fisheries Act 2004;
 - (d) the Fisheries Act 1983;
 - (e) the Fisheries Act 1996;
 - (f) the Marine Farming Act 1971;
 - (g) the Maori Commercial Aquaculture Claims Settlement Act 2004;
 - (h) the Foreshore and Seabed Act 2004;
 - (i) the Resource Management Act 1991; or
 - (j) the Marine Reserves Act 1971.

- 2.6 Clause 2.5 does not limit clause 2.1.

ACKNOWLEDGEMENTS

- 2.7 The parties acknowledge that the satisfaction of the Crown's pre-commencement space obligations with the iwi parties are intended to enhance the ongoing relationship between the parties, both in terms of Te Tiriti o Waitangi / the Treaty of Waitangi and otherwise.

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 2.8 The parties acknowledge and agree that:
- 2.8.1 the parties have acted honourably and reasonably in respect of the negotiations leading to the satisfaction of the Crown's pre-commencement space obligations;
 - 2.8.2 this deed is for the benefit of the iwi parties on behalf of the iwi they represent; and
 - 2.8.3 this deed is binding on the Crown and the iwi parties, and the iwi, and members of the iwi, represented by the iwi parties, and the trustee.

3: IMMEDIATE PAYMENTS

EX GRATIA PAYMENTS

- 3.1 The Crown must pay to each iwi party the amount of \$200,000 by the later of:
- 3.1.1 20 business days of the date of this deed; and
 - 3.1.2 5 business days of the date of receipt by the Crown of written confirmation from the iwi party that:
 - (a) it may receive the payment without breaching any legal requirement, including arising out of the fact that the receipt may be a major transaction under its constitutional documents; and
 - (b) if the iwi party was not an iwi aquaculture organisation at the date of this deed, it is now an iwi aquaculture organisation.
- 3.2 Each iwi party acknowledges that the payment made by the Crown under clause 3.1 is an ex gratia payment but will be treated as settlement assets if this deed becomes unconditional.
- 3.3 Each iwi party further acknowledges that if this deed is terminated the trustee may take the payments into account when determining an allocation of settlement assets under the Settlement Act.

PAYMENT OF EQUIVALENT AMOUNTS

- 3.4 The Crown must pay the trustee on the settlement date:
- 3.4.1 \$95,000,000 (being the sum of the settlement amounts); and
 - 3.4.2 interest from 13 October 2008 in respect of each settlement amount in accordance with clauses 3.5 and 3.6.

INTEREST

- 3.5 The Crown will pay interest under clause 3.4.2:
- 3.5.1 on \$97,000,000 (being the sum of the settlement amounts and of the payments under clause 3.1) from 13 October 2008 until (but not including) the date on which the Crown makes payment under clause 3.1;

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 3.5.2 on the balance from each date on which the Crown makes payment under clause 3.1 until (but not including) the date on which the Crown makes payment under clause 3.4.1;
 - 3.5.3 at the interest rate that is set from time to time by the Reserve Bank as the official cash rate, expressed as a percentage per annum; and
 - 3.5.4 calculated on a daily basis but not compounding.
- 3.6 Interest under clause 3.5 will be:
- 3.6.1 subject to any tax payable; and
 - 3.6.2 paid to the trustee:
 - (a) on the settlement date; and
 - (b) after withholding any tax that is required by legislation to be withheld.

4: FURTHER PAYMENTS

APPLICATION OF THIS PART

- 4.1 This part applies to space in Te Wai Pounamu and Hauraki that:
 - 4.1.1 became pre-commencement space after 28 September 2008 but before the date of this deed; and
 - 4.1.2 becomes pre-commencement space under subsections (b) and (c) of section 20 of the Settlement Act after the date of this deed.

FURTHER PAYMENTS

- 4.2 The Crown must pay to the trustee 20% of the value of the space to which this part applies as agreed or determined under schedule 2.
- 4.3 In respect of each area of further pre-commencement space, the Crown must make the payment under clause 4.2 by the later of:
 - 4.3.1 20 business days after the date on which the value of the space is agreed or determined under schedule 2; and
 - 4.3.2 the settlement date.

INTEREST

- 4.4 Where the value of the further pre-commencement space is agreed or determined under schedule 2 more than 12 months after the date on which it becomes pre-commencement space, the Crown must also pay interest on 20% of the value from the day after the expiry of that 12 month period to (but not including) the date payment is made.
- 4.5 Interest under clause 4.4 will be:
 - 4.5.1 at the interest rate that is set from time to time by the Reserve Bank as the official cash rate, expressed as a percentage per annum;
 - 4.5.2 calculated on a daily basis but not compounding;
 - 4.5.3 subject to any tax payable; and
 - 4.5.4 paid to the trustee on the date the payment under clause 4.2 is due.

5: TAXATION

STATEMENT OF AGREED TAX PRINCIPLES

5.1 The parties agree that:

- 5.1.1 the payment, credit, or transfer of settlement amounts and further amounts by the Crown to the trustee is made under the Settlement Act and as part of the arrangements in this deed and is not intended to be, or to give rise to:
 - (a) a taxable supply for GST purposes; or
 - (b) assessable income for income tax purposes; or
 - (c) a dutiable gift for gift duty purposes; and
- 5.1.2 the payment, credit or transfer by the trustee of settlement amounts and further amounts to the iwi parties is also made under the Settlement Act and the terms of the trust and is not intended to be, or to give rise to:
 - (a) a taxable supply for GST purposes; or
 - (b) assessable income for income tax purposes; or
 - (c) a dutiable gift for gift duty purposes; and
- 5.1.3 none of the trustee and the iwi parties (the **recipients**), nor any person associated with any of them, will claim an input credit (for GST purposes) or a deduction (for income tax purposes) with reference to the payment, credit, or transfer by the Crown or the trustee of a settlement amount or of a further amount; and
- 5.1.4 the receipt or payment of interest paid by the Crown under this deed is not subject to indemnification for tax by the Crown under this deed; and
- 5.1.5 income earned by the trustee from investment, pending allocation, of the settlement amounts and the further amounts, and of interest paid by the Crown under this deed, is not subject to indemnification for tax by the Crown under this deed; and
- 5.1.6 any indemnity payment under this part by the Crown to a recipient is not intended to be, or to give rise to:

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- (a) a taxable supply for GST purposes; or
- (b) assessable income for income tax purposes; or
- (c) a dutiable gift for gift duty purposes.

ACKNOWLEDGEMENTS

5.2 To avoid doubt, the parties acknowledge:

5.2.1 that the tax indemnities given by the Crown in this part, and the principles and acknowledgements in clause 5.1:

- (a) apply only to the receipt by the recipients of settlement amounts and further amounts and indemnity payments; and
- (b) do not apply to a subsequent use or application by an iwi party, or any other person, of a settlement amount or further amount or subsequent use or application by a recipient, or any other person, of an indemnity payment; and

5.2.2 each obligation to be performed by the Crown in favour of the recipients under this deed is performed without charge to, or consideration to be provided by, the recipients or any other person.

ACT CONSISTENT WITH TAX PRINCIPLES

5.3 None of the recipients, the Crown or any person associated with any of them will act in a matter that is inconsistent with the principles and acknowledgements set out in clause 5.1.

MATTERS NOT TO BE IMPLIED FROM TAX PRINCIPLES

5.4 Nothing in part 5 is intended to suggest or imply that:

- 5.4.1 the payment, credit, or transfer of a settlement amount or of a further amount or an indemnity payment by the Crown to a recipient, or of a settlement amount or of a further amount by the trustee to an iwi party, is chargeable with GST; or
- 5.4.2 if a recipient is a charitable trust or other charitable entity:
 - (a) the payments the recipient receives or derives from the Crown under this deed and the Settlement Act or, in the case of a settlement amount or of a further amount, an iwi party receives from the trustee under the Settlement Act are

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

received or derived other than exclusively for charitable purposes; or

- (b) the recipient derives or receives amounts other than as exempt income for income tax purposes; or

5.4.3 gift duty is imposed on any payment to, or transaction with, the recipients under this deed or the Settlement Act.

INDEMNITY FOR GST IN RESPECT OF SETTLEMENT AMOUNTS AND INDEMNITY PAYMENTS

5.5 If and to the extent that:

5.5.1 the payment, credit, or transfer of a settlement amount, a further amount or an indemnity payment by the Crown to a recipient; or

5.5.2 the payment, credit, or transfer of a settlement amount or of a further amount by the trustee to an iwi party,

is chargeable with GST, the Crown must, in addition to the payment, credit, or transfer of the amount or the indemnity payment, pay the recipient the amount of GST payable in respect of the amount or the indemnity payment.

INDEMNIFICATION

5.6 If and to the extent that:

5.6.1 the payment, credit, or transfer of a settlement amount or of a further amount or an indemnity payment by the Crown to a recipient; or

5.6.2 the payment, credit, or transfer of a settlement amount or of a further amount by the trustee to an iwi party,

is chargeable with GST, and the Crown does not pay the recipient an additional amount equal to that GST at the time the amount or payment is paid, the Crown will, on demand in writing, indemnify the recipient for that GST within 10 business days of that demand.

INDEMNITY FOR INCOME TAX IN RESPECT OF SETTLEMENT AMOUNTS AND INDEMNITY PAYMENTS

5.7 The Crown agrees to indemnify the recipients against any income tax that the recipients are liable to pay if and to the extent that receipt of:

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

5.7.1 the payment, credit, or transfer of a settlement amount or of a further amount or an indemnity payment by the Crown to a recipient; or

5.7.2 the payment, credit, or transfer of a settlement amount or of a further amount by the trustee to an iwi party,

is treated as, or as giving rise to, assessable income of the recipient for income tax purposes and the Crown will, on demand in writing, make the indemnity payment within 10 business days of that demand.

INDEMNITY FOR GIFT DUTY IN RESPECT OF SETTLEMENT AMOUNTS

5.8 The Crown agrees to pay, and to indemnify the recipients against any liability that the recipients have in respect of, any gift duty assessed as payable by the Commissioner of Inland Revenue in respect of the payment, credit, or transfer by the Crown to the recipient of a settlement amount or of a further amount or by the trustee to an iwi party of a settlement amount or of a further amount.

INDEMNITY EXTENDS TO INTEREST AND PENALTIES

5.9 The indemnity under clauses 5.6 to 5.8 includes an indemnity in respect of all penalty interest, penalties and other payments required to be made by an indemnified party by reason of any payment not having been made on the due date under the applicable tax legislation, except to the extent that the late payment is the fault of the indemnified party.

DEMANDS FOR INDEMNIFICATION

5.10 Each of:

5.10.1 the indemnified parties; and

5.10.2 the Crown,

shall give notice to the other as soon as reasonably possible after becoming aware of an event or occurrence in respect of which an indemnified party is or may be entitled to be indemnified by the Crown for or in respect of tax under this part.

HOW DEMANDS ARE MADE

5.11 Demands for indemnification for tax by an indemnified party in accordance with this part shall be made by the indemnified party in accordance with the provisions of clause 5.12 and may be made at any time, and from time to time, after the settlement date.

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

WHEN DEMANDS ARE TO BE MADE

5.12 Except:

5.12.1 with the written agreement of the Crown; or

5.12.2 if this deed provides otherwise,

no demand for payment by way of indemnification for tax under this part may be made by an indemnified party more than 20 business days before the due date for payment by the indemnified party of the applicable tax (whether such date is specified in an assessment, is a date for the payment of provisional tax, or otherwise).

EVIDENCE TO ACCOMPANY DEMAND

5.13 Without limiting clause 5.13, a demand for indemnification by an indemnified party under this part must be accompanied by:

5.13.1 appropriate evidence (which may be notice of proposed adjustment, assessment, or any other evidence which is reasonably satisfactory to the Crown) setting out with reasonable detail the amount of the loss, cost, expense, liability or tax that the indemnified party claims to have suffered or incurred or be liable to pay, and in respect of which indemnification is sought from the Crown under this deed; and

5.13.2 where the demand is for indemnification for GST, if the Crown requires, an appropriate GST tax invoice.

REPAYMENT OF AMOUNT ON ACCOUNT OF TAX

5.14 If payment is made by the Crown on account of tax to an indemnified party or the Commissioner of Inland Revenue (for the account of an indemnified party) and it is determined or held that no such tax (or an amount of tax that is less than the payment which the Crown made on account of tax) is or was payable or properly assessed, to the extent that an indemnified party:

5.14.1 has retained the payment (which, to avoid doubt, includes a situation where the indemnified party has not transferred the payment to the Inland Revenue Department but has instead paid, applied, or transferred the whole or any part of the payment to any other person or persons); or

5.14.2 has been refunded the amount of the payment by the Inland Revenue Department; or

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

5.14.3 has had the amount of the payment credited or applied to its account with the Inland Revenue Department,

the indemnified party shall repay the applicable amount to the Crown free of any set-off or counterclaim by the indemnified party.

PAYMENT OF AMOUNT ON ACCOUNT OF TAX

5.15 The indemnified parties shall pay to the Inland Revenue Department any payment made by the Crown to the indemnified parties on account of tax, on the later of:

5.15.1 the "due date" for payment of that amount to the Inland Revenue Department under the applicable tax legislation; or

5.15.2 the next business day following receipt by the indemnified parties of that payment from the Crown.

PAYMENT OF COSTS

5.16 The Crown will indemnify the indemnified parties against any reasonable costs incurred by the indemnified parties or for actions undertaken by the recipients at the Crown's direction, in connection with:

5.16.1 any demand for indemnification of the indemnified parties under or for the purposes of this part; and

5.16.2 any steps or actions taken by the indemnified parties in accordance with the Crown's requirements under clause 5.18.

DIRECT PAYMENT OF TAX: CONTROL OF DISPUTES

5.17 Where any liability arises to the Crown under this part, the following provisions also apply:

5.17.1 if the Crown so requires and gives an indemnified party notice of that requirement, the Crown may, instead of payment of the requisite amount on account of tax, pay that amount to the Commissioner of Inland Revenue (such payment to be effected on behalf, and for the account, of the indemnified party); and

5.17.2 subject to an indemnified party being indemnified to its reasonable satisfaction against any reasonable cost, loss, expense, or liability, or any tax which it may suffer, incur, or be liable to pay, the Crown may, by notice to the indemnified party, require the indemnified party to:

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- (a) take into account any right permitted by any relevant law to defer the payment of any tax; and/or
- (b) take all steps the Crown may specify to respond to and/or contest any notice, notice of proposed adjustment, or assessment for tax, where expert legal tax advice indicates that it is reasonable to do so; and

5.17.3 the Crown reserves the right to:

- (a) nominate and instruct counsel on behalf of the indemnified parties whenever it exercises its rights under clause 5.17.2; and
- (b) recover from the Commissioner of Inland Revenue the amount of any tax paid and subsequently held to be refundable.

RULINGS, APPLICATIONS

5.18 If the Crown requires, the indemnified parties will consult, and/or collaborate, with the Crown in the Crown's preparation (for the Crown, the indemnified parties and/or any other person) of an application for a non-binding or binding ruling from the Commissioner of Inland Revenue with respect to any part of the arrangements relating to the payment, credit, or transfer of indemnity amounts or other amounts.

DEFINITIONS AND INTERPRETATION

5.19 In the interpretation of this part 5, a reference to the **payment, credit, transfer, or receipt** of an amount (or any equivalent wording) includes a reference to the payment, credit, transfer, or receipt of any part (or the applicable part) of the amount.

TRUSTEE RESPONSIBILITY

5.20 The trustee must:

- 5.20.1 take all reasonable and practical steps available to it to ensure that the trust is treated as a charitable trust for income tax purposes, including registering the trust with the Charities Commission before the settlement date; and
- 5.20.2 keep the Crown fully informed in relation to the progress in taking those steps.

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

IWI PARTY RESPONSIBILITY

- 5.21 If this part 5 imposes an obligation on an iwi party or an associated entity, the relevant iwi party shall take all reasonable and practicable steps available to the iwi party to procure the performance by the organisation or person of that obligation.

6: INTRODUCTION OF LEGISLATION

AMENDING LEGISLATION TO BE INTRODUCED

- 6.1 The Crown must propose amending legislation for introduction to the House of Representatives within 3 months of the date of this deed if that is reasonably practicable but, in any event, within 12 months of the date of this deed.
- 6.2 The legislation proposed:
 - 6.2.1 must be in the form set out in schedule 3 or to the same effect; but
 - 6.2.2 may include other amendments to the Settlement Act that are agreed by the parties or do not affect this deed.

AMENDING LEGISLATION TO BE SUPPORTED

- 6.3 The iwi parties and the trustee must support the passage through Parliament of the amending legislation to the extent it is consistent with clause 6.2.

7: CONDITIONS

THIS DEED IS CONDITIONAL

- 7.1 This deed is conditional on:
- 7.1.1 the trustee confirming that no iwi (as defined in section 5 of the Maori Fisheries Act 2004) other than the iwi represented by the iwi parties has an interest in Te Wai Pounamu or Hauraki for the purposes of the Settlement Act; and
 - 7.1.2 the amending legislation coming into force.

TRUSTEE'S NOTICE

- 7.2 The trustee must, within 3 months of the date of this deed, give notice in writing to the parties in respect of each settlement region that either:
- 7.2.1 confirms that no iwi (as defined in section 5 of the Maori Fisheries Act 2004) other than the iwi represented by the iwi parties for the settlement region has an interest in the settlement region for the purposes of the Settlement Act; or
 - 7.2.2 identifies another iwi that has interests in the settlement region for the purposes of the Settlement Act.
- 7.3 The iwi parties for the settlement region in respect of which the trustee gives notice under clause 7.2.2 must attempt to agree a basis on which the other iwi will be covered by this deed.
- 7.4 If an agreement is reached under clause 7.3 which does not increase the aggregate of the amounts payable under this deed the Crown, the iwi parties and the other iwi, through a recognised iwi organisation, must enter into a deed of variation to this deed to include that recognised iwi organisation as an iwi party.

THIS DEED WITHOUT PREJUDICE UNTIL UNCONDTIONAL

- 7.5 This deed, until it becomes unconditional:
- 7.5.1 is entered into on a "without prejudice" basis; and
 - 7.5.2 in particular, may not be used as evidence in any proceedings before, or presented to, a court, tribunal (including the Waitangi Tribunal), or other judicial body.

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 7.6 Clause 7.5 does not exclude any jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or enforcement of this deed.

SOME PROVISIONS NOT CONDITIONAL

- 7.7 Despite clause 7.1, clauses 3.1 to 3.3, clauses 7.5 and 7.6, part 6 and schedule 2 are binding from the date of this deed.

TERMINATION

- 7.8 The Crown or an iwi party may terminate this deed, by notice to the other party, if the condition in clause 7.1.2 has not been satisfied within 18 months after the date of this deed.
- 7.9 The Crown, or an iwi party in respect of a settlement region to which clause 7.3 applies, may terminate this deed in respect of that settlement region, by notice to the other party, if an agreement under clause 7.3 has not been reached by the date which is 3 months after the date of receipt of the notice under clause 7.2.2.
- 7.10 If this deed is terminated in respect of a settlement region under clause 7.9:
- 7.10.1 it will be at an end in respect of the settlement region, but not otherwise; and
 - 7.10.2 no person will have any rights or obligations under it in respect of the settlement region, except that the rights and obligations under clauses 3.1 to 3.3 and clause 7.2 continue.
- 7.11 If this deed is terminated under clause 7.8:
- 7.11.1 it will be at an end; and
 - 7.11.2 no person will have any rights or obligations under it, except that the rights and obligations under clauses 3.1 to 3.3 and clause 7.5 continue.
- 7.12 However, if this deed is terminated by the Crown or an iwi party under clause 7.8 in the circumstances described in clause 7.13, this deed is terminated only in respect of the settlement region of the iwi party concerned and clause 7.10 applies accordingly.
- 7.13 The circumstances to which clause 7.12 apply are:
- 7.13.1 the amending legislation comes into force but not in the form set out in schedule 3;

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 7.13.2 as a result, this deed is not a regional agreement in respect of the settlement region of the iwi party.

8: MISCELLANEOUS

NOTICES

8.1 Unless otherwise provided in this deed, the provisions of clause 8.2 apply to notices under this deed to or by an iwi party, the Crown or the trustee.

8.2 The following provisions apply to notices referred to in clause 8.1:

Notices to be signed

8.2.1 the person giving the notice must sign it (but, where the trustees for the time being of a trust are an iwi party, a minimum of two of those trustees must sign it);

Notices to be in writing

8.2.2 the notice must be in writing addressed to the recipient at its address or facsimile number;

Addresses and facsimile numbers of the iwi parties, the Crown and the trustee

8.2.3 the address and facsimile number of iwi parties, the Crown and the trustee are set out in schedule 4;

Change of address or facsimile number

8.2.4 the address or facsimile of an iwi party may be changed by notice to the Crown and the other iwi parties;

8.2.5 the address or facsimile number of the Crown or trustee may be changed by notice by the Crown or the trustee to the other and to the iwi parties;

Delivery

8.2.6 delivery of a notice may be made:

- (a) by hand to the recipient's address; or
- (b) by posting an envelope with pre-paid postage addressed to the recipient's address; or
- (c) by facsimile to the facsimile number of the recipient;

Timing of delivery

- 8.2.7 a notice delivered:
- (a) by hand will be treated as having been received at the time of delivery; or
 - (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;

Deemed date of delivery

- 8.2.8 if a notice is treated as having been received on a day that is not a business day, or after 5.00pm on a business day, that notice is (despite clause 8.2.7) to be treated as having been received the next business day;

Serving copies

- 8.2.9 a copy of each notice must be served on all other parties to the deed;

Regional notices

- 8.2.10 subject to clause 8.2.11, where a notice to or from an iwi party relates only to one settlement region, the notice need only be given:
- (a) by the Crown, to the iwi party in the settlement region and copied to all the other iwi parties in the settlement region and the trustee;
 - (b) by the trustee, to the iwi party in the settlement region and copied to all the other iwi parties in the settlement region;
 - (c) by an iwi party, to the other iwi party, the Crown or trustee, and copied to the trustee or the Crown and to all other iwi parties in the settlement region; and
- 8.2.11 the iwi parties in a settlement region may together by written notice nominate one of them, or another person, to be the sole recipient and donor of notices in respect of matters that relate to the settlement region, in which case copies do not need to be served on the other iwi parties in the region.

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

AMENDMENT

- 8.3 This deed may be amended only by a written amendment signed by the iwi parties and the Crown.
- 8.4 Where an amendment relates only to one settlement region and does not affect any other settlement region, the amendment may be signed only by the iwi parties with interests in that settlement region and the Crown.
- 8.5 Where an amendment under clause 8.3 or clause 8.4 changes the obligations of the trustee under this deed, the amendment must be signed by the trustee.

ENTIRE AGREEMENT

- 8.6 This deed:
- 8.6.1 constitutes the entire agreement in relation to the matters in it; and
 - 8.6.2 supersedes all earlier negotiations, representations, warranties, understandings and agreements in relation to the matters in it including the agreement in principle.

NO WAIVER OR ASSIGNMENT

- 8.7 Except as provided in this deed:
- 8.7.1 a failure, delay, or indulgence in exercising a right or power under this deed, does not operate as a waiver of that right or power;
 - 8.7.2 a single, or partial, exercise of a right or power under this deed does not preclude:
 - (a) a further exercise of that right or power; or
 - (b) the exercise of another right or power; and
 - 8.7.3 a person may not transfer or assign a right or obligation under this deed or a settlement document.

TRUSTEE AS SIGNATORY

- 8.8 The trustee signs this deed to confirm:
- 8.8.1 that it will give effect to the intention of the parties set out in clause 2.4 to the extent consistent with its obligations and rights under the Settlement Act;

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 8.8.2 that it is bound by, and has the benefit of part 5 to the extent part 5 applies to the trustee; and
- 8.8.3 it is bound by clause 6.3, 7.2 and 8.2.

9: DEFINITIONS AND INTERPRETATION

DEFINITIONS

9.1 In this deed and its schedules, unless the context otherwise requires:

amending legislation means the Bill referred to in clauses 6.1 and 6.2 and, when that bill is passed, means the Act resulting from the passing of that Bill;

aquaculture activities has the same meaning as in section 2(1) of the Resource Management Act 1991;

business day means the period of 9.00am to 5.00pm on any day of the week other than:

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

coastal marine area has the same meaning as in section 2(1) of the Resource Management Act 1991;

Crown has the same meaning as in section 2(1) of the Public Finance Act 1989;

Crown's pre-commencement space obligations means the obligations on the Crown under section 22 of the Settlement Act in relation to:

- (a) the regional coastlines of Te Wai Pounamu and Hauraki; and
- (b) harbours forming part of those coastlines;

date of this deed means the date this deed is signed by the parties and the trustee;

further amount means an amount payable under clause 4.2;

further pre-commencement space means space to which part 4 applies;

harbour is a harbour listed in Schedule 2 of the Settlement Act;

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Hauraki means the east coast sub-region of the Waikato region referred to in section 45 of the Settlement Act;

indemnified party means a party entitled to be indemnified under part 5;

iwi aquaculture organisation has the same meaning as in section 4 of the Settlement Act;

iwi party means each of:

- (a) The Ngāti Apa Ki Te Waipounamu Trust representing Ngāti Apa ki te Ra To; and
- (b) Ngāti Koata Trust representing Ngati Koata; and
- (c) Te Rūnanga o Ngati Kuia Charitable Trust representing Ngati Kuia; and
- (d) Ngāti Rarua Iwi Trust representing Ngati Rarua; and
- (e) Te Rūnanga a Rangitane o Wairau representing Rangitane (Te Tau Ihu); and
- (f) Ngāti Tama Manawhenua ki Te Tau Ihu Trust representing Ngati Tama (Te Tau Ihu); and
- (g) Te Rūnanga o Toa Rangatira Incorporated representing Ngāti Toa Rangatira; and
- (h) Te Atiawa Manawhenua ki Te Tau Ihu Trust representing Te Atiawa (Te Tau Ihu); and
- (i) Te Rūnanga o Ngāi Tahu representing Ngāi Tahu; and
- (j) Hauraki Māori Trust Board (as Trustee of the Pare Hauraki Fishing Trust) representing the iwi of Hauraki referred to in Schedule 3 of the Maori Fisheries Act 2004;

mandated iwi organisation has the same meaning as in section 5 of the Māori Fisheries Act 2004;

Minister means the Minister of Fisheries;

party means:

- (a) an iwi party; and
- (b) the Crown,

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

but, for the avoidance of doubt, does not include the trustee except to the extent necessary to give effect to clause 8.8;

pre-commencement space has the same meaning as in section 20 of the Settlement Act;

recipient is defined in clause 5.1.3;

recognised iwi organisation has the same meaning as in section 5 of the Māori Fisheries Act 2004;

region means the region of a regional council or unitary authority referred to in schedule 1 but, in the case of the Waikato Regional Council, means Hauraki;

regional coastline has the same meaning as in clause 2 of Schedule 1 of the Settlement Act;

regional council means a regional council named in Part 1 of Schedule 2 to the Local Government Act 2002;

Settlement Act means the Maori Commercial Aquaculture Claims Settlement Act 2004;

settlement amount means, in relation to a settlement region, the amount set out in schedule 1 next to the settlement region of that regional coastline;

settlement assets has the same meaning as in section 5 of the Settlement Act;

settlement date means the date that is 10 business days after the unconditional date;

settlement region means each of the following regions or grouping of regions:

- (a) Hauraki;
- (b) the planning areas of the Marlborough District Council and the Tasman District Council; and
- (c) the planning areas of the Canterbury Regional Council, West Coast Regional Council and Southland Regional Council;

settlement register means the register of pre-commencement space established and maintained by the Ministry of Fisheries in accordance with section 57 of the Settlement Act and the Maori Commercial Aquaculture Claims Settlement (Aquaculture Settlement Register) Regulations 2006;

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

space has the same meaning as in section 2(1) of the Resource Management Act 1991;

Te Wai Pounamu means the South Island, being the planning areas of the following regional councils and unitary authorities:

- (a) Canterbury Regional Council;
- (b) Otago Regional Council;
- (c) Southland Regional Council;
- (d) West Coast Regional Council;
- (e) Marlborough District Council; and
- (f) Tasman District Council;

trust means the trust established under section 34 of the Settlement Act;

trustee has the same meaning as in section 4 of the Settlement Act;

unconditional date means the date on which this deed becomes unconditional under clause 7.1; and

unitary authority has the same meaning as in section 5 of the Local Government Act 2002.

INTERPRETATION

9.2 In the interpretation of this deed and its schedules, unless the context otherwise requires:

- 9.2.1 headings appear as a matter of convenience and do not affect the interpretation of this deed;
- 9.2.2 defined terms have the meanings given to them by this deed;
- 9.2.3 where a word or expression is defined in this deed, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- 9.2.4 the singular includes the plural and vice versa;
- 9.2.5 a word importing one gender includes the other genders;
- 9.2.6 a reference to a clause, part or schedule is to a clause, part or schedule of or to this deed;

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 9.2.7 a reference in a schedule to a paragraph means a paragraph in that schedule;
- 9.2.8 a reference to legislation includes a reference to that legislation as amended, consolidated, or substituted;
- 9.2.9 a reference to a party in this deed, or in any other document or agreement under this deed, includes that party's permitted successors;
- 9.2.10 an agreement on the part of two or more persons binds each of them jointly and severally;
- 9.2.11 a reference to a document or agreement, including this deed, includes a reference to that document or agreement as amended, novated, or replaced from time to time;
- 9.2.12 a reference to a monetary amount is to New Zealand currency;
- 9.2.13 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;
- 9.2.14 a reference to a person includes a corporation sole and a body of persons, whether corporate or unincorporate;
- 9.2.15 a reference to the Crown, or a Crown agency, endeavouring to do something or to achieve some result means reasonable endeavours to do that thing or achieve that result but, in particular, does not oblige the Crown or the Government of New Zealand to propose for introduction to the House of Representatives any legislation, except if this deed requires the Crown to introduce legislation;
- 9.2.16 if a clause includes a preamble, that preamble is intended to set out the background to, and intention of, the clause, but is not to affect its interpretation;
- 9.2.17 in the event of a conflict between a provision in the main body of this deed (namely, any part of this deed except the schedule or an attachment) and the schedule or an attachment, then the provision in the main body of this deed prevails;
- 9.2.18 a reference to a document as set out in, or on the terms and conditions contained in, the schedule or any attachment includes that document with such amendments as may be agreed in writing

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

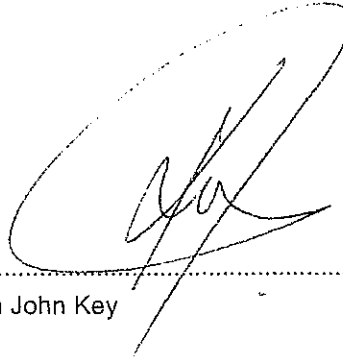
between the parties and, where an amendment changes an obligation of the trustee, the trustee;

- 9.2.19 a reference to a date on or by which something must be done includes any other date that may be agreed in writing between the parties and, where a date changes an obligation of the trustee, the trustee;
- 9.2.20 where something is required to be done by or on a day which is not a business day, that thing must be done on the next business day after that day;
- 9.2.21 a reference to time is to New Zealand time; and
- 9.2.22 reference to a particular Minister includes any Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the relevant legislation or matter.

EXECUTION

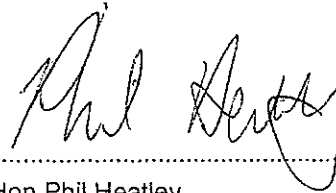
Signed for and on behalf of the **Sovereign** in
right of New Zealand by the Prime Minister

.....
Hon John Key



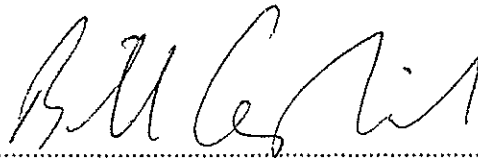
Signed for and on behalf of the **Sovereign** in
right of New Zealand by the Minister of Fisheries

.....
Hon Phil Heatley



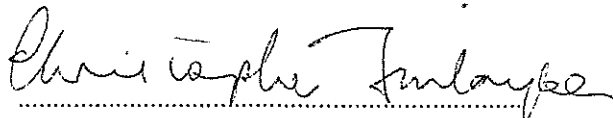
Signed for and on behalf of the **Sovereign** in
right of New Zealand by the Minister of Finance

.....
Hon Bill English

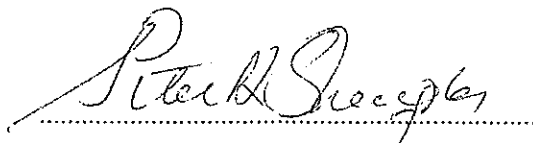


DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Signed for and on behalf of the Sovereign in
right of New Zealand by the Minister for Treaty of
Waitangi Negotiations



Hon Christopher Finlayson

Signed for and on behalf of the Sovereign in
right of New Zealand by the Minister of Maori
Affairs


Hon Dr Pita Sharples

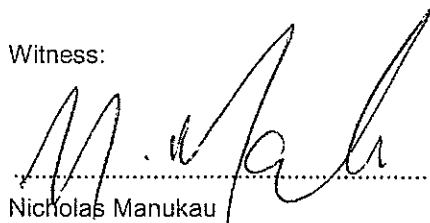
Signed in the presence of

Witness:


Peter Murray
General Manager Corporate Services
Ministry of Fisheries
Wellington

Signed in the presence of


Witness:


Nicholas Manukau
Manager Aquaculture Settlement
Ministry of Fisheries
Auckland

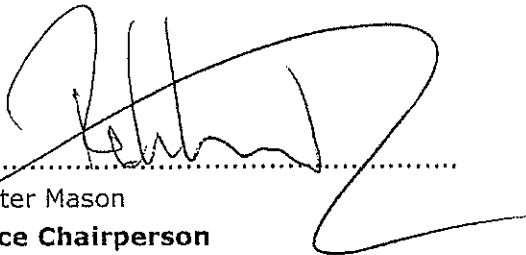
DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Ngāti Apa ki Te Waipounamu

Approved by **Ngāti Apa ki Te Waipounamu**:



Brendon Wilson
Chairperson

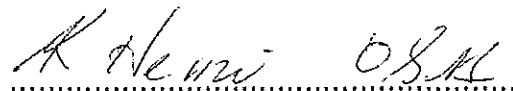


Peter Mason
Vice Chairperson

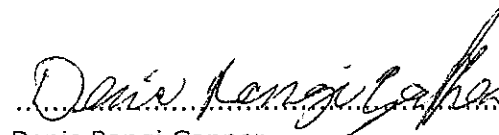
And

The **common seal** of **The Ngāti Apa ki Te Waipounamu Trust** hereunto affixed in the presence of





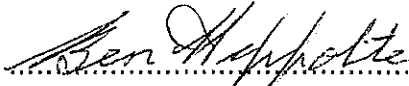
Kathleen Hemi Q.S.M.
Trustee




Denis Rangi Gapper
Trustee

Ngāti Koata

Approved by **Ngāti Koata**:



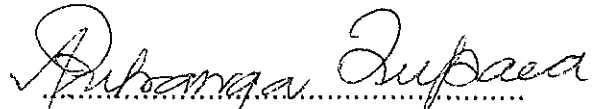
Benjamin Hippolite
Kaumātua




Ngarau Tupaea
Kaumātua



Pirihira Paul
Kaumātua



Puhanga Tupaea
Kaumātua




Riki Paraone Wineera
Kaumātua



Ruruku Joseph Hippolite
Kaumātua

.....

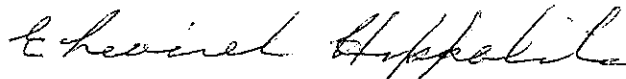
Te Akapikirangi Arthur
Kaumātua



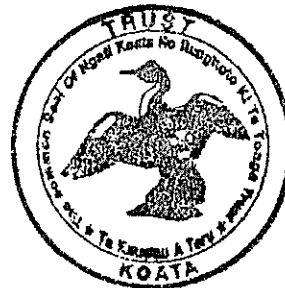
Terewai Grace
Kaumātua

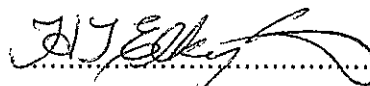
And

The **common seal** of **Ngāti Koata Trust**
hereunto affixed in the presence of



Matthew Hippolite
Chair





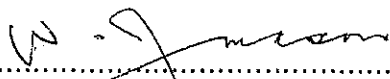
Hori Turi Elkington
Trustee

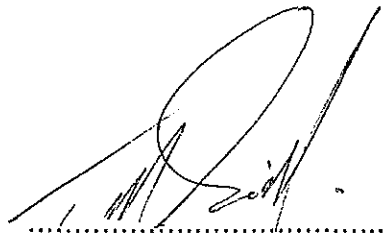
DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Ngāti Kuia


The **common seal** of **Te Rūnanga o Ngāti Kuia Charitable Trust** hereunto affixed
in the presence of




.....
Waihaere Mason
Trustee


.....
Te One Smith
Trustee

.....
Elaine Wilson
Trustee


.....
Josephine Faragher
Trustee


.....
Gena Moses
Trustee

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Ngāti Rarua

The **common seal** of the **Ngāti Rarua Iwi Trust**
hereunto affixed in the presence of



Amoroa Luke
Chairperson

John Morgan
Deputy Chairperson

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

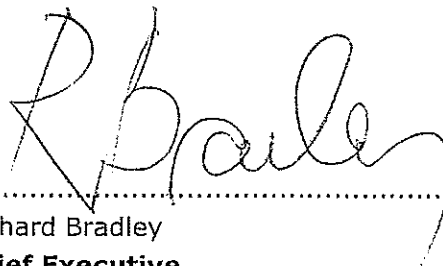
Rangitane

Rangitane o Wairau

Executed on behalf of
Te Rūnanga a Rangitane o Wairau Trust by



.....
Judith MacDonald
Chair



.....
Richard Bradley
Chief Executive

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Ngāti Tama Manawhenua ki Te Tau Ihu Trust

The **common seal** of
Ngāti Tama Manawhenua ki Te Tau Ihu Trust
hereunto affixed in the presence of



Frederick Te Miha

Frederick Te Miha
Chairman

Robert McKewen

Robert McKewen
Trustee

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Ngāti Toa Rangatira

Approved by **Ngāti Toa Rangatira**:

.....
Erenora Parata

Tiratu Williams
.....
Tiratu Williams

.....
Ruru Rene Jnr

William Prebble Hammond
.....
William Prebble Hammond

Kura Solomon
.....
Kura Solomon

Utanga Wi Neera
.....
Utanga Wi Neera

Makere Kohe-Love Reneti
.....
Makere Kohe-Love Reneti

P. Parai
.....
Piri Kawau Parai

Thomas Lawrence Edward Kenny
.....
Thomas Lawrence Edward Kenny

Rangi Josephs
.....
Rangi Josephs

And

The common seal of
Te Rūnanga o Toa Rangatira Incorporated
hereunto affixed in the presence of:



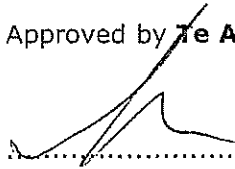
Riki Paraone Wi Neera
.....
Riki Paraone Wi Neera
Chairman

Matiu Rei
.....
Matiu Rei
Chief Executive

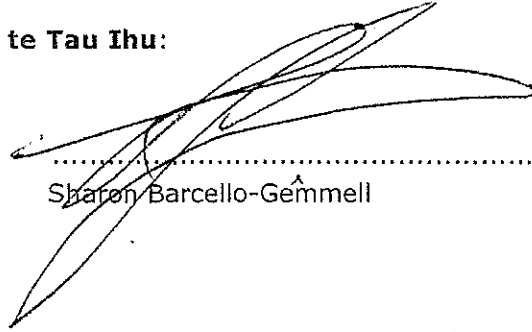
DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Te Atiawa Manawhenua ki Te Tau Ihu Trust

Approved by **Te Atiawa Manawhenua ki te Tau Ihu:**



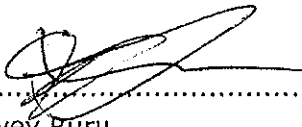
Alan Riwaka



Sharon Barcello-Gemmell

And

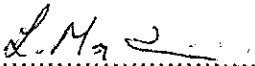
The **common seal** of
Te Atiawa Manawhenua ki te Tau Ihu Trust
hereunto affixed in the presence of



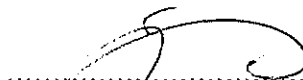
Harvey Ruru
Chairperson



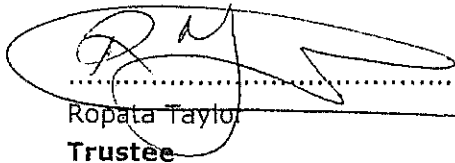
Sue Buchanan
Deputy Chairperson



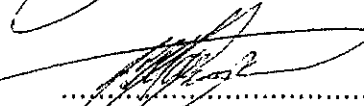
Linda Martin
Trustee



Joe Puketapu
Trustee



Ropata Taylor
Trustee

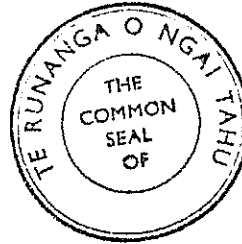



John McGregor
Trustee

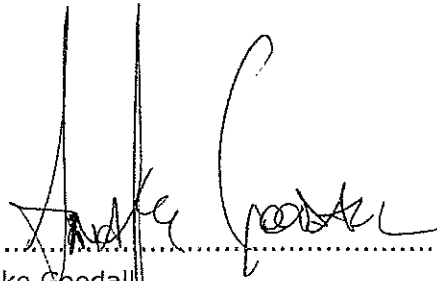
DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Ngāi Tahu

The **common seal** of
Te Rūnanga o Ngai Tahu
hereunto affixed in the presence of



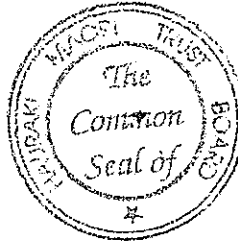

.....
Mark Solomon
Kaiwhakahaere


.....
Anake Goodall
Chief Executive Officer

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Hauraki Māori

The **common seal** of
The **Hauraki Māori Trust Board**
hereunto affixed in the presence of



Toko Renata Te Taniwha
.....
Toko Renata Te Taniwha
Chairman

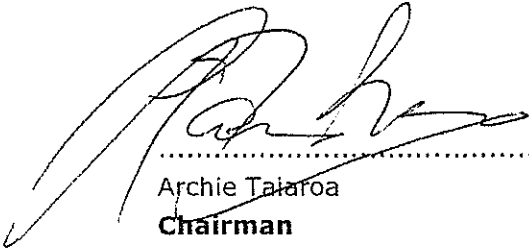
Harry Mikaere
.....
Harry Mikaere
Deputy Chairman

Josephine Anderson
.....
Josephine Anderson
Chief Executive

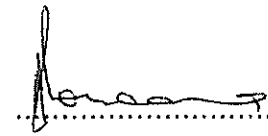
DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

Te Ohu Kaimoana Trustee Limited
(as trustee of the Māori Commercial Aquaculture Settlement Trust)

Executed on behalf of **Te Ohu Kaimoana Trustee Limited**
(as trustee of the Māori Commercial Aquaculture Settlement Trust) by



.....
Archie Taitaroa
Chairman



.....
Ngahiwi Tomoana
Deputy Chair

SCHEDULE 1 SETTLEMENT AMOUNTS

SETTLEMENT REGION	COMPRISING THE REGIONS OF	SETTLEMENT AMOUNT	INTERESTED IWI
Marlborough/Tasman	<ul style="list-style-type: none"> Marlborough District Council Tasman District Council 	\$69,270,151	<ul style="list-style-type: none"> Ngāi Tahu Ngāti Apa ki te Ra To Ngāti Koata Ngāti Kuia Ngāti Rarua Rangitane (Te Tau Ihu) Ngāti Tama (Te Tau Ihu) Ngāti Toa Rangatira Te Atiawa (Te Tau Ihu)
Rest of the South	<ul style="list-style-type: none"> Canterbury Regional Council West Coast Regional Council Southland Regional Council Waikato Regional Council* 	\$5,637,418	<ul style="list-style-type: none"> Ngāi Tahu
Hauraki	<ul style="list-style-type: none"> Waikato Regional Council* 	\$20,092,431	<ul style="list-style-type: none"> Hauraki
Total		\$95,000,000	

Notes

*Amount relates only to Hauraki.

*Nelson City Council and Otago Regional Council are not included because there is no pre-commencement space in those regions.

**SCHEDULE 2
VALUATION PROCESS FOR FURTHER
PRE-COMMENCEMENT SPACE**

DEFINITIONS

1. In this schedule, unless the context requires otherwise:

arbitrator means a person appointed under paragraph 31;

equivalent space means further pre-commencement space that has sufficiently similar characteristics to space in respect of which an agreed value per hectare was reached in determining the settlement amounts;

independent expert means a person properly appointed under paragraphs 8 and 9;

iwi appointee means, in respect of each settlement region, a person appointed by the iwi parties of that settlement region to carry out the role of the iwi appointee under this schedule;

unique space means further pre-commencement space that is not equivalent space;

valuation date means:

- (a) 22 September 2008 in respect of equivalent space; and
- (b) otherwise, the date on which the space becomes further pre-commencement space;

valuation methodology means the methodology referred to in a consultation document issued by the Minister in June 2008;

valuation report means the report prepared by LECG dated September 2008 and the proposal made by the iwi parties dated 19 September 2008 each giving an estimate of the value of the Crown's pre-commencement space obligations and includes all material subsequently exchanged between the Crown and iwi parties to establish the settlement amounts; and

valuer means a person who has experience and competence in valuing marine farms or similar businesses and the assets of those businesses.

GENERAL PROVISIONS

Separate application of process

2. The valuation process set out in this schedule applies separately to each area of space covered by a single application referred to in section 20(b) and (c) of the Settlement Act.

Variation to process

3. Despite the provisions of this schedule, the parties may:
 - 3.1. agree to a different process in respect of an area of further pre-commencement space; or
 - 3.2. agree in writing the value of an area of pre-commencement space at any time during or before the process for that area.
4. The value set out in an agreement under paragraph 3.2 in respect of an area of pre-commencement space is the value of the space for the purpose of part 4.

Crown representative and iwi appointee

5. For the purpose of this schedule, the Crown is represented by the chief executive of the Ministry of Fisheries.
6. By 1 December 2009, the iwi parties of a settlement region must appoint the iwi appointee for the settlement region and notify the Crown of the appointment. The iwi party must promptly appoint a replacement iwi appointee, and notify the Crown of that appointment, on each occasion that the appointment of an iwi appointee comes to an end. If, in respect of a settlement region, the iwi parties of that settlement region have failed to make the appointment or replacement appointment, the iwi appointee for that settlement region will be the trustee until the appointment is made.

Panel of independent experts

7. The Crown and the iwi appointees shall establish a panel of 2 persons who are independent and experts in aquaculture activities.
8. The Crown must appoint 1 such person in consultation with the iwi appointees and the iwi appointees must appoint 1 such person in consultation with the Crown. The Crown and the iwi appointees must make the appointments by 31 December 2009. If either of them fails to do so, the panel shall consist only of the person properly appointed until the other appointment is properly made. On each occasion that an appointment

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

comes to an end, the party who made the appointment must promptly make a new appointment in consultation with the other party.

9. An appointment under paragraph 8 is properly made when the person appointed has confirmed in writing to the Crown and the iwi appointees that he or she shall fulfil the role of independent expert under this schedule.
10. The Crown must ensure that each independent expert has, at the time of the expert's appointment, a copy of the valuation report, the valuation methodology and all other information exchanged between the Crown and the iwi parties in establishing the settlement amounts.

Costs

11. Unless otherwise agreed, the Crown and the iwi parties must each bear their own costs in connection with the valuation process set out in this schedule.
12. The costs of the independent experts and the costs of the hire of a venue for the meeting referred to in paragraph 33 must be borne by the Crown and the iwi parties equally.
13. Despite paragraph 12, the arbitrator may award costs against the Crown or an iwi party where the arbitrator considers that it would be just to do so on account of the conduct of the parties.

Exchange of information

14. The Crown and the iwi parties must promptly disclose to each other all information available to them that they intend to disclose to the valuer for the purposes of valuing space under this schedule.

PRE 2010 FURTHER PRE-COMMENCEMENT SPACE

15. Paragraphs 16 to 39 of this schedule apply to the determination of the value of space that becomes further pre-commencement space before the close of 31 December 2009.
16. Within 20 business days of 31 December 2009, the Crown and each iwi appointee for a settlement region in which the space became further pre-commencement space must endeavour to agree the further pre-commencement space that is equivalent space and the further pre-commencement space that is unique space. Where agreement is reached that this further pre-commencement space is:
 - 16.1. equivalent space then the value of the space for the purpose of part 4 is the amount arrived at by multiplying the area of the equivalent

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

space (expressed in hectares to the fourth decimal point) by the relevant agreed hectare rate; or

- 16.2. unique space then the value of the space will be determined under paragraphs 23 to 29.
17. Where the Crown and the iwi appointee fail to reach agreement under paragraph 16 in respect of an area of further pre-commencement space, the Crown must, within the period of 5 business days following the expiry of the 20 business day period under paragraph 16, refer the dispute to the panel of independent experts established under this schedule.
18. Within 15 business days of receipt of a referral under paragraph 17 the independent experts must give notice to the Crown and the iwi appointee of the experts' determination:
 - 18.1. that the further pre-commencement space is equivalent space; or
 - 18.2. that the further pre-commencement space is unique space.
19. If the determination is that the further pre-commencement space is equivalent space, the independent experts' determination must also include a statement of the value of the space arrived at by multiplying the area of the equivalent space (expressed in hectares to the fourth decimal point) by the relevant agreed hectare rate.
20. The independent experts' determination of the value of the further pre-commencement space that is equivalent space is the value of the space for the purposes of part 4.
21. If the independent experts determine that the further pre-commencement space is unique space or if they fail to make a determination, the value of the space will be determined under paragraphs 23 to 39.
22. In the absence of manifest error, the independent experts' determination is final and binding on the parties.

Appointment of valuers

23. If paragraph 16.2 or 21 applies, then no later than 10 business days after the date of receipt of the independent experts' determination or (as the case may be) the date of failure of the independent experts to give their determination, the Crown and the iwi appointee must each:
 - 23.1. appoint a valuer;
 - 23.2. instruct the valuer to assess the value of the pre-commencement space as at the valuation date; and

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 23.3. notify each other of the identity of the valuer.
- 24. The Crown and the iwi appointee must ensure that the terms of appointment of their valuers require them to:
 - 24.1. participate in the valuation process set out in this schedule;
 - 24.2. have regard to the agreed values in the valuation report;
 - 24.3. have regard to the valuation methodology or any other methodology for valuation of other space subsequently approved by the Minister for the purposes of section 28 of the Settlement Act; and
 - 24.4. have regard to the parties' desire to achieve consistency of approach with the methodology used in agreeing the settlement amounts.

Valuation reports

- 25. Both the Crown's valuer and the iwi appointee's valuer must prepare a valuation report that includes their respective assessments of the value of the further pre-commencement space as at the valuation date.
- 26. The Crown and the iwi appointee must each deliver a copy of its valuation report to the other by no later than 30 business days after the date that paragraph 21 applies (**valuation exchange date**).
- 27. Both valuation reports:
 - 27.1. may specify a single value, or a range of values;
 - 27.2. must include an executive summary containing:
 - (a) a summary of the valuation along with key valuation parameters; and
 - (b) a summary of any key issues affecting the value.

Single valuation report may determine value

- 28. If only one valuation report is delivered by a party by the valuation exchange date, then the assessment of value in that report will be the value of the space for the purpose of part 4.

Attempt to agree value

29. If each party has provided a valuation report, the Crown and the iwi appointee must endeavour to agree on, and record in writing, the value. The agreed value will be the value of the space for the purpose of part 4.
30. Where value is not agreed within 10 business days after the valuation exchange date, the chief executive of the Ministry of Fisheries and a person appointed for the purpose by the iwi parties of the settlement region must attempt to agree the value and, if agreement is reached, the agreed value will be the value of the space for the purpose of part 4. If agreement is not reached, the determination of the value must be referred to an arbitrator in accordance with paragraph 31.

Arbitration

31. Within 5 business days of paragraph 30 applying (the **arbitration commencement date**), the Crown and the iwi appointee must refer the dispute to an independent valuer acting as an arbitrator to determine the value. If the Crown and the iwi appointee fail to agree on an appointment by the end of that period, either one of them may request the President of the New Zealand Institute of Chartered Accountants to refer the dispute to a valuer.
32. The arbitrator is properly appointed when the arbitrator confirms in writing to the Crown and the iwi appointee that he or she shall fulfil the role of arbitrator under this schedule.
33. The arbitrator must, unless the arbitrator determines that a process other than that set out in paragraphs 34 to 36 should be followed, promptly give notice of a meeting to be attended by the Crown and the iwi appointee and their valuers at a venue and time to be decided by the arbitrator after consultation with the parties but not later than 10 business days after the arbitration commencement date.
34. The Crown and the iwi appointee must by no later than 5.00pm on the day which is 5 business days prior to the date of the meeting give to the arbitrator and to each other, their valuation reports, sales and other evidence and any submission or expert evidence based on that information that the Crown or the iwi appointee intend to present at the meeting.
35. At the meeting, the arbitrator must:
 - 35.1. establish a procedure and give each party the right to examine, cross examine and re-examine the valuers and other experts appointed by the other parties in relation to the information provided to the arbitrator; and

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

- 35.2. have regard to the requirements of natural justice in the conduct of the meeting.
36. The arbitrator shall hold the meeting and give his or her determination of the value no later than 20 business days after the arbitration commencement date.
37. The arbitrator's determination of the value of the further pre-commencement space will be the value of the space for part 4. That determination must be no higher than the higher, and no lower than the lower, of the assessment of value contained in the Crown's valuation report and in the iwi appointee's valuation report. The arbitrator's determination shall include the details referred to in paragraph 27, but must specify a single value, and not a range of values.
38. For the purpose of paragraphs 31 to 37, the arbitrator will be acting as an arbitrator, not an expert.
39. The determination of the arbitrator is final and binding on the parties.

POST 2009 FURTHER PRE-COMMENCEMENT SPACE

40. Paragraphs 41 to 47 of this schedule apply to the determination of the value of space that becomes further pre-commencement space after the close of 31 December 2009.
41. If the area of space in a region that becomes further pre-commencement space in a calendar year is 5 hectares or more, paragraphs 23 to 39 apply to the establishment of the value of the space in the region. These paragraphs apply as if the date by which paragraphs 23.1 to 23.3 have to be complied with were no later than 10 business days after the expiry of the calendar year in which the space in the region that becomes further pre-commencement space exceeded 5 hectares.
42. If the area of space in a region that becomes further pre-commencement space in a calendar year is less than 5 hectares, paragraphs 43 to 47 apply to the establishment of the value of a space in the region.
43. If paragraph 42 applies, then no later than 5 business days after the expiry of the calendar year in which the space in the region that becomes further pre-commencement space is less than 5 hectares, the Crown and the iwi appointee for the region must, unless they agree otherwise, refer the determination of the value to a valuer. If the Crown and the iwi appointee fail to agree on an appointment during that period, either one of them may request the President of the New Zealand Institute of Chartered Accountants to refer the dispute to a valuer.

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

44. Within 20 business days of receipt of referral under paragraph 43 the valuer must give the valuer's written determination to the Crown and the iwi appointee of the valuer's determination of the value of the further pre-commencement space.
45. In making the determination, the valuer must have regard to:
 - 45.1. the agreed values in the valuation report;
 - 45.2. the valuation methodology and any other methodologies for valuation of other space subsequently approved by the Minister for the purposes of section 28 of the Settlement Act; and
 - 45.3. the parties' desire to achieve consistency of approach with the methodology used in agreeing the settlement amounts.
46. The valuer's determination of the value of the pre-commencement space will be the value of that space for the purpose of part 4.
47. The valuer's determination is final and binding on the parties.

**SCHEDULE 3
CONTENT OF AMENDING LEGISLATION**

Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Bill

Government Bill

Explanatory note

General policy statement

The amendments to the Maori Commercial Aquaculture Claims Settlement Act 2004 provide the Crown with an additional option for complying with its aquaculture pre-commencement space obligation.

The objective is to allow the Crown to deliver on its contemporary Treaty of Waitangi obligations in relation to commercial aquaculture by providing a solution to the limited prospects for generating settlement assets for iwi by 2014 under the Maori Commercial Aquaculture Claims Settlement Act 2004. The amendments will also give effect to an agreement between the Crown and iwi of the South Island and Hauraki for an early settlement of the Crown's pre-commencement space obligation in those regions.

Clause by clause analysis

Clause 1 states the Bill's title.

Clause 2 provides that the Bill is to come into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **principal Act**).

Clause 4 sets out the purpose of the Bill, which is to provide the Crown with an additional way of complying with its obligation under section 22(1) of the principal Act in respect of pre-commencement space. To that end, the Bill incorporates provisions in the principal Act dealing with regional agreements.

Part 1

Amendments relating to preliminary provisions of principal Act

Clause 5 inserts a definition of regional agreement into section 4, which is the main interpretation provision.

Clause 6 amends the definition of settlement assets in section 5 by including in that definition payments of money and the transfer of any benefit to the trustee or an iwi aquaculture organisation under a regional agreement.

Part 2

Amendments relating to remaining provisions of principal Act

Clause 7 amends section 22, which sets out the Crown's obligation to ensure that the trustee is provided with space in the coastal marine area for the purpose of aquaculture activities that is equivalent to 20% of pre-commencement space. The amendments to section 22 provide the Crown with an additional way of complying with its obligation under that section. Under the amendments, the Crown can also comply with its obligation by entering into a regional agreement. The amendments also provide that if a regional agreement includes a provision of a kind referred to in *new section 29A(3)(b)* or is otherwise conditional, the Crown is taken to have complied with its obligation by entering into a regional agreement only if the agreement becomes unconditional.

Clause 8 inserts *new section 29A*. *New section 29A* describes a regional agreement as an agreement (including by deed) that is entered into by the Crown in respect of 1 or more regions of regional councils, or of 1 or more harbours listed in Schedule 2, with certain specified

parties if the Crown and those parties all agree that the Crown's obligation under section 22(1) is satisfied in respect of those regions or harbours on the terms set out in the agreement. The specified parties are the iwi aquaculture organisations of all iwi whose area of interest includes a region or harbour covered by the regional agreement or, for any iwi that do not have iwi aquaculture organisations, the recognised iwi organisations of those iwi.

A regional agreement must include the trustee as a party in order to confirm that the agreement has been entered into by all iwi aquaculture organisations for each region or harbour covered by the agreement or otherwise it must include a provision that it is conditional on the trustee confirming that to be the case. A regional agreement is enforceable as a contract in accordance with its terms.

Clause 9 amends section 31, which relates to registered entitlements to settlement assets. The amendment clarifies that a registered settlement assets allocation entitlement binds the iwi concerned specifically in relation to the allocation of settlement assets covered by a determination of the trustee in accordance with section 45(4) or Schedule 1, rather than in relation to all allocations of settlement assets within the regional coastline or harbour concerned.

Clause 10 consequentially amends section 32, which relates to the functions and powers of an iwi aquaculture organisation. The amendment clarifies that an iwi aquaculture organisation may enter into a regional agreement.

Clause 11 consequentially amends section 38, which relates to the duties of the trustee. The amendments clarify that the trustee may also enter into a regional agreement and that the reasonable costs and expenses of the trustee in performing its obligations in relation to a regional agreement are to be paid out of money appropriated by Parliament for that purpose.

Clause 12 substitutes a new section 44. New section 44 provides that the trustee must make its determination as to settlement assets allocation entitlements and its allocation of settlement assets separately on a regional basis, unless a written agreement referred to in section 45(4) covers more than 1 region or harbour, in which case the trustee must make its determinations and allocation collectively on the basis of the regions and harbours covered by the agreement. For a region or harbour, the trustee must make either a single determination for all of the settlement assets of the region or harbour or a combination

of 1 or more determinations for the settlement assets of the region or harbour covered by a regional agreement and a single determination for all the other settlement assets of the region or harbour. The trustee may amend a determination to give effect to a written agreement referred to in section 45(4) to the extent that the agreement relates to settlement assets under a regional agreement that was entered into after the written agreement. The amendment then becomes a determination of settlement assets allocation entitlements.

Clause 13 amends section 47, which sets out the basis of allocation of settlement assets. The amendment clarifies that the trustee must determine settlement assets allocation entitlements in accordance with section 47 and Schedule 1 only in respect of settlement assets for which no written agreement referred to in section 45(4) has been made within the 12-month period specified in that subsection.

Regulatory impact statement: Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004

Executive summary

The Minister of Fisheries is proposing amendments to the Maori Commercial Aquaculture Claims Settlement Act 2004 (the **principal Act**), which settles the Crown's contemporary Treaty of Waitangi obligations for marine commercial aquaculture space, to allow the Crown an additional option for complying with its aquaculture pre-commencement space obligation.

Pre-commencement space is any marine aquaculture space approved on or after 21 September 1992 and up to 31 December 2004. This includes applications for aquaculture space that is still considered under the previous aquaculture legislation if the application was publicly notified by the regional council prior to 28 November 2001.

The objectives of the amendments are to—

- provide a solution to the limited prospects for the principal Act generating settlement assets for iwi by 2014; and
- give effect to an agreement between the Crown and iwi of the South Island and Hauraki for an early settlement of the Crown's pre-commencement space obligation in those regions.

Adequacy statement

The Ministry of Fisheries Regulatory Impact Analysis Review Group has reviewed this statement and has deemed it to be adequate.

Status quo and problem

During the 3 years since the start of the aquaculture settlement, some problems with the settlement framework and progress for discharging the Crown's pre-commencement space obligation have become evident, namely—

- the difficulty of developing new space under the new aquaculture law to settle the Crown's pre-commencement space obligation; and
- the lack of enthusiasm among iwi aquaculture organisations for the purchase marine farm method of settlement.

Due to the concerns of both iwi and the Crown in the lack of progress in delivering on the Crown's pre-commencement space obligation, Cabinet has indicated a willingness to consider possibilities for amending the principal Act.

Objective

The objective of the proposed amendment is to allow the Crown to deliver on its contemporary Treaty of Waitangi obligations in relation to commercial aquaculture by recognising the problems with the existing settlement framework and the progress for discharging the Crown's pre-commencement space obligation. The proposed change allows a practical solution to the issues without renegotiating the underlying intent of the settlement. The proposed change does not change the existing Crown obligation for pre-commencement space, the change merely provides the Crown with an alternative option for delivering on this obligation.

Alternative options

A consultation document identified 2 possible alternative options.

Option 1: regional agreements

Some iwi and a regional council have suggested that an agreement could be entered into with the Crown to settle the pre-commence-

ment space obligation for their region. The principal Act, however, does not provide for such agreements. The principal Act would be amended to allow alternative means for the Crown to discharge its pre-commencement space obligation in a particular region by agreement with iwi. The quantum of the settlement itself (that is, equivalent to 20% of pre-commencement space) and the settlement being structured on regional council boundaries or harbours would not change. However, the requirement to use only the delivery methods specified in the principal Act would be removed under a regional agreement.

Option 2: Change the date for cash payments

In light of the current difficulties encountered in creating aquaculture space to meet the Crown's pre-commencement space obligation, the principal Act would be amended to make the cash payments at an earlier date. This option could deal with the pre-commencement space obligation with a single cash transaction for each region or specified harbour.

Preferred option

The preferred option is Option 1: regional agreements, which allows all iwi aquaculture organisations and recognised iwi organisations in a region plus the Crown and the trustee to agree on how to settle the Crown's pre-commencement space obligation in that region. The quantum of the settlement itself (that is, equivalent to 20% of pre-commencement space) and the settlement being structured on regional council boundaries or harbours would not change.

This is the preferred option due to the flexibility this settlement option offers. A regional agreement allows for early settlement using cash payments.

The preferred option will reduce the compliance cost and risks that the Crown faced with the existing settlement options.

Implementation and review

Subject to Cabinet approval, the changes proposed would be given effect to on enactment of the amending legislation.

Prior to the enactment of the amending legislation, various regional agreements for early settlement may be entered into between iwi and

the Crown; these agreements are, or will be, conditional on the enactment of the amending legislation. The definition of regional agreement in the Bill includes prior existing agreements.

Consultation

The proposed options were consulted on with all iwi and other parties including the aquaculture industry and regional councils who have an interest in aquaculture as part of the *Maori Commercial Aquaculture Settlement—Consultation on a plan to fulfil the Crown's settlement obligations* document. Due to the good progress of the early settlement in the South Island and Coromandel, the Minister decided to extend indefinitely the consultation period until the Minister provides 60 days' notice that consultation will close.

The agreement for the early settlement of the South Island and Coromandel, which was negotiated concurrently with the consultation process, using the options in the consultation document, represents a settlement of an estimated 92% (by value) of the Crown's pre-commencement space obligation. Iwi parties to the agreement and the trustee have provided substantive support for the regional agreement option and the legislative amendment.

Hon Phil Heatley

**Maori Commercial Aquaculture
Claims Settlement (Regional
Agreements) Amendment Bill**

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act amended	2
4	Purpose	2
	Part 1	
	Amendments relating to preliminary provisions of principal Act	
5	Interpretation	2
6	Meaning of settlement assets	3
	Part 2	
	Amendments relating to remaining provisions of principal Act	
7	Crown's obligations	3
8	New section 29A inserted	3
	29A Regional agreements	3
9	Registered entitlements to settlement assets	4
10	Functions and powers of iwi aquaculture organisations	4
11	Duties of trustee	4
12	New section 44 substituted	5
	44 Determinations and allocations generally	5

	Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Bill	
cl 1		
13	Basis of allocation of settlement assets	5

The Parliament of New Zealand enacts as follows:

1	Title This Act is the Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Act 2009 .	
2	Commencement This Act comes into force on the day after the date on which it receives the Royal assent.	5
3	Principal Act amended This Act amends the Maori Commercial Aquaculture Claims Settlement Act 2004.	10
4	Purpose The purpose of this Act is to provide the Crown with an additional way of complying with its obligation under section 22(1) of the principal Act in respect of pre-commencement space; and, to that end, this Act incorporates provisions into the principal Act that deal with regional agreements.	15

Part 1 Amendments relating to preliminary provisions of principal Act

5	Interpretation Section 4 is amended by inserting the following definition in its appropriate alphabetical order: “ regional agreement means an agreement of a kind described in section 29A (whether entered into before, on, or after the date of commencement of the Maori Commercial Aquaculture Claims Settlement (Regional Agreements) Amendment Act 2009)”.	20 25
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- 6 Meaning of settlement assets**
Section 5(1) is amended by inserting the following paragraph after paragraph (a):
“(ab) includes payments of money and the transfer of any other benefit to the trustee or an iwi aquaculture organisation under a regional agreement; and”.

Part 2
Amendments relating to remaining provisions of principal Act

- 7 Crown’s obligations**
(1) Section 22(3) is amended by inserting the following paragraph after paragraph (b):
“(ba) by entering into a regional agreement.”.
(2) Section 22 is amended by inserting the following subsection after subsection (3):
“(3A) If a regional agreement includes a provision of a kind referred to in **section 29A(3)(b)** or is otherwise conditional, the Crown is taken to have complied with subsection (1) in the way specified in **subsection (3)(ba)** only if the agreement becomes unconditional.”.
- 8 New section 29A inserted**
The following section is inserted after section 29:
“29A Regional agreements
“(1) The Crown may enter into an agreement (including by deed) in respect of 1 or more regions of regional councils, or of 1 or more harbours listed in Schedule 2, with the parties specified in **subsection (2)** if the Crown and those parties all agree that the Crown’s obligation under section 22(1) will be satisfied in respect of those regions and harbours on the terms set out in the agreement.
“(2) The parties referred to in **subsection (1)** are—
“(a) the iwi aquaculture organisations of all iwi whose area of interest includes a region or harbour covered by the agreement; or
“(b) for any iwi that do not have iwi aquaculture organisations, the recognised iwi organisations of those iwi.”

- “(3) A regional agreement must include—
- “(a) the trustee as a party to the agreement in order to confirm that the agreement has been entered into by all iwi aquaculture organisations for each region and harbour covered by the agreement; or 5
- “(b) a provision that the agreement is conditional on the trustee confirming that the agreement has been entered into by all iwi aquaculture organisations for each region and harbour covered by the agreement. 10
- “(4) To avoid doubt, a regional agreement is enforceable as a contract in accordance with its terms. 15
- “(5) Section 22(3)(c) does not prevent the Crown from making a payment to the trustee under a regional agreement before 1 January 2013. 20
- “(6) No court or tribunal has jurisdiction to inquire into the quantification or the adequacy of the benefits to be provided by or under a regional agreement. 25
- “(7) However, **subsection (6)** does not exclude the jurisdiction of a court or tribunal in respect of the interpretation or enforcement of a regional agreement.” 30

9 Registered entitlements to settlement assets

Section 31 is amended by repealing subsection (4) and substituting the following subsection:

- “(4) A registered settlement assets allocation entitlement binds the iwi concerned in relation to the allocation of settlement assets within the regional coastline or harbour concerned as determined by the trustee in accordance with section 45(4) or Schedule 1.” 25

10 Functions and powers of iwi aquaculture organisations

Section 32(2) is amended by inserting the following paragraph after paragraph (b): 30

“(ba) enter into regional agreements.”.

11 Duties of trustee

- (1) Section 38 is amended by inserting the following subsection after subsection (2): 35

“(2A) The trustee may also enter into a regional agreement or otherwise agree to be bound by a regional agreement, and perform obligations and exercise rights under or in relation to the agreement.”

(2) Section 38(3) is amended by inserting “or its obligations referred to in **subsection (2A)**” after “subsection (1)”. 5

12 New section 44 substituted

Section 44 is repealed and the following section substituted:

“44 Determinations and allocations generally

“(1) The trustee must make its determinations as to settlement assets allocation entitlements and its allocation of settlement assets separately on the basis of the region of each regional council and each harbour listed in Schedule 2. 10

“(2) However, if a written agreement referred to in section 45(4) covers more than 1 region or harbour, the trustee may make its determinations as to settlement assets allocation entitlements and its allocation of settlement assets collectively on the basis of the regions and harbours covered by the agreement. 15

“(3) For a region or harbour, the trustee must make either—
“(a) a single determination for all of the settlements assets of the region or harbour; or 20
“(b) 1 or more determinations for the settlement assets of the region or harbour covered by a regional agreement and a single determination for all the other settlement assets of the region or harbour. 25

“(4) The trustee may amend a determination to give effect to a written agreement referred to in section 45(4) to the extent that the agreement relates to settlement assets under a regional agreement that was entered into after the written agreement and, if it does so, the amendment becomes a determination of settlement assets allocations entitlements.” 30

13 Basis of allocation of settlement assets

Section 47 is amended by repealing subsection (1) and substituting the following subsection:

“(1) If by the end of the 12-month period specified in section 45(4) the iwi aquaculture organisations for a region have not made 35

a written agreement for all of the settlement assets of the region, the trustee must determine, in accordance with this section and Schedule 1, settlement assets allocation entitlements for any settlement assets for which no written agreement has been made.”

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SCHEDULE 4 NOTICES

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DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

DEED SATISFYING THE CROWN'S PRE-COMMENCEMENT SPACE OBLIGATIONS

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