

A PROTOCOL ISSUED BY THE CROWN THROUGH THE MINISTER OF PRIMARY INDUSTRIES REGARDING INTERACTION WITH NGĀTI MANAWA ON FISHERIES ISSUES

1 INTRODUCTION

- 1.1 The Crown, through the Minister and Chief Executive, recognises that Ngāti Manawa as tangata whenua are entitled to have ongoing input and participation in fisheries management processes that affect fish stocks in the Ngāti Manawa Fisheries Protocol Area (the "**Fisheries Protocol Area**") and that are managed by the Ministry of Agriculture and Forestry (the "**Ministry**") under the Fisheries Act 1996. Such input and participation will be meaningful and include the provision for early engagement. Ngāti Manawa has a special relationship with all species of fish, aquatic life and seaweed found within the Fisheries Protocol Area, and an interest in the sustainable utilisation of all species of fish, aquatic life and seaweed.
- 1.2 Under the Deed of Settlement dated 12 December 2009 between Ngāti Manawa and the Crown (the "**Deed of Settlement**"), the Crown agreed that the Minister of Primary Industries (the "**Minister**") would issue a Fisheries Protocol (the "**Protocol**") setting out how the Ministry will interact with Ngāti Manawa (the "**Governance Entity**") in relation to matters specified in the Protocol. These matters are:
- 1.2.1 recognition of the interests of Ngāti Manawa in all species of fish, aquatic life or seaweed that exist within the Fisheries Protocol Area that are subject to the Fisheries Act 1996;
 - 1.2.2 development of sustainability measures, fisheries regulations and fisheries plans;
 - 1.2.3 management planning;
 - 1.2.4 support for customary non-commercial fisheries management;
 - 1.2.5 research planning;
 - 1.2.6 the nature and extent of fisheries services;
 - 1.2.7 contracting for services;
 - 1.2.8 employment of Ministry staff with customary non-commercial fisheries responsibilities;
 - 1.2.9 provision of advice to decision-makers under the Resource Management Act 1991 concerning issues of mutual interest related to the tuna/eel fishery;
 - 1.2.10 information exchange;
 - 1.2.11 consultation;

- 1.2.12 rāhui;
 - 1.2.13 dispute resolution;
 - 1.2.14 review and amendment; and
 - 1.2.15 changes to policy and legislation affecting this Protocol.
- 1.3 The matters listed in clause 1.2 relating to fisheries management processes, sustainability measures, regulations, plans, research planning and services refer to those conducted by the Ministry.
 - 1.4 For the purposes of this Fisheries Protocol, the Governance Entity is the body representative of the whānau, hapū and iwi of Ngāti Manawa who have an interest in the sustainable utilisation of fish, aquatic life and seaweed that exist within the Fisheries Protocol Area.
 - 1.5 Ngāti Manawa has a responsibility in relation to the preservation, protection and management of its customary non-commercial fisheries in the Fisheries Protocol Area. This is inextricably linked to whakapapa and has significant cultural, spiritual, and traditional importance.
 - 1.6 The obligations of the Ministry in respect of fisheries are to ensure ecological sustainability, to meet Te Tiriti o Waitangi/Treaty of Waitangi and international obligations, to enable efficient resource use, and to ensure the integrity of fisheries management systems.
 - 1.7 The Ministry and Ngāti Manawa are seeking a relationship consistent with Te Tiriti o Waitangi/Treaty of Waitangi and its principles. The principles of Te Tiriti o Waitangi/Treaty of Waitangi guide this Protocol and provide the basis for the relationship between the parties to this Fisheries Protocol. The relationship created by this Fisheries Protocol is intended to assist the parties to exercise their respective responsibilities with the utmost cooperation to achieve over time the outcomes sought by both.
 - 1.8 The Minister and the Chief Executive of the Ministry (the "**Chief Executive**") have certain functions, powers and duties in terms of the Fisheries Legislation and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. With the intention of creating a relationship that achieves, over time, the fisheries policies and outcomes sought by both Ngāti Manawa and the Ministry consistent with the Ministry's obligations as set out in clause 1.6, this Protocol sets out how the Ministry, the Minister and the Chief Executive will exercise their functions, powers and duties in relation to matters set out in this Protocol. In accordance with this Protocol, the Governance Entity will have meaningful and ongoing input and participation into the policy, planning and decision-making processes relating to the matters set out in this Protocol.
 - 1.9 The Ministry will advise the Governance Entity whenever it proposes to consult with a hapū of Ngāti Manawa or with another iwi or hapū with interests inside the Fisheries Protocol Area on matters that could affect the interests of Ngāti Manawa.

2 BACKGROUND

- 2.1 Ngāti Manawa appreciate and regard all freshwater fisheries as taonga and consider that there is an inherent responsibility to ensure that these taonga are managed in such a way that Ngāti Manawa kaitiakitanga is exercised, respected and observed.
- 2.2 Ngāti Manawa values its ability to interact with its freshwater fisheries and to continue to exercise and practice Ngāti Manawatanga. An essential component is the maintenance of balance and the continuing good health of the fisheries to sustain the identity, traditional knowledge and practices of Ngāti Manawa for the benefit of current and future generations.
- 2.3 Ngāti Manawa consider that their historical and cultural access, use, and management of the freshwater fisheries has been substantially affected at local, regional, and national levels due to a number of factors, and, in order to mitigate these factors this protocol shall inform and include guiding principles in the sustainable management of freshwater fisheries in the protocol area.
- 2.4 Lands and resources were at the heart of Ngāti Manawa's ancestor, Tangiharuru's desire to locate himself and his followers to derive the means of a sustainable lifestyle. Ngāti Manawa values and practices were shaped by the essential need to ensure their economic, social and political survival. This survival is guided by principles of trusteeship, guardianship and resource management - principles that have been translated by terms found in everyday language such as kaitiakitanga and rangatiratanga. Ngāti Manawa view resource management as a reflection and recognition of their two way relationship with resources and their responsibility towards resources. This is encapsulated with the phrase 'sustainable management of resources' meaning that resources are utilised and managed in a way that the resource is maintained in a sustainable state.
- 2.5 As a land bound iwi, Ngāti Manawa traditionally relied on the Rangitaiki River, its tributaries and tuna/eels. Eels and eeling are the lifeblood of Ngāti Manawa. Ngāti Manawa custom and practice since the time of their ancestor Tangiharuru was based on an eel culture - "Ko au te tuna, ko te tuna ko au". This association is also expressed in their pepeha - "Ko Rangipo te Wehenga o te Tuna".
- 2.6 in particular, Ngāti Manawa have always had a strong traditional association with Pāewai/Anguilla dieffenbachii (longfinned eel). Over time the cultural practices of Ngāti Manawa extended to the other species of tuna/eels specified at 9.5.1.
- 2.7 Ngāti Manawa also have a strong traditional association with the following taonga species:
 - 2.7.1 Koura/Freshwater crayfish (*Paranephrops planifrons*);
 - 2.7.2 Kakahi/Freshwater mussel (*Hyridella menziesii*);
 - 2.7.3 Kokopu/ Giant Kokopu (*Galaxias argenteus*);
 - 2.7.4 Raumahi/Lamprey (*Geotria australis*); and
 - 2.7.5 Titarakura/Giant Bully (*Gobiomorphus Gobioidus*).

3 NGĀTI MANAWA GUIDING PRINCIPLES

*Ko Tawhiuau te maunga
Ko Rangitaiki te awa
Ko Rangipo te wehenga o te tuna
Ko Ngati Manawa te iwi
Ko Tangiharuru te tangata*

*Tawhiuau is the mountain
Rangitaiki is the River
Rangipo is the departure place of the eels
Ngati Manawa are the people
Tangiharuru is the Chief*

Manawa tu, Manawa oho, Manawa Rere, Manawakotokoto

- 3.1 Ngati Manawa values, aspirations and associations encapsulate and express the world view of Ngati Manawa with the essence of acknowledging the spiritual and physical relationships with the past, present for future generations. In doing so the inter-relationships and interconnectedness of these principles will continue to ensure that Ngati Manawa continues to provide and act in and for the best interests of Ngati Manawa at all times.
- 3.2 The following principles are interlinked and are fluid and extend across Ngati Manawa rohe; they are formed from reciprocity and cannot be dissected without affecting the other; they are in-separable:

Turangawaewae: Physical and spiritual relationships to the whenua; strong association and connection;

Ahikaroa: The eternal fires of occupation and whakapapa. Kainga, mahinga kai, settlements and camps hold importance as expressions of ahikāroa;

Mana Motuhake: The rights and ability to control, manage, direct and influence Ngati Manawa's future to its full potential. Prestige and identity linked to all things and associated with obligations and responsibility for the benefit of all Ngati Manawa;

Kaitiakitanga: The inherent and inherited responsibility for the sustainable use and care of resources where relationships are based on reciprocity between mana tangata, mana whenua, mana atua, mana ora. Welfare of the resource first and foremost; for the benefit of the resource and the people and the respect and commitment each have for one another;

Tino Rangatiratanga: Expressed as an act, relationship, association, thought and authorises and empowers ones rights and responsibilities to act and behave with the utmost respect in a given situation. Ngati Manawa responsibilities and aspirations extend beyond any individual, organisation and generation;

Whakapapa: The physical and spiritual relationships with mana atua, mana tangata and mana whenua. Values of connectivity through past, present and future relationships;

Mauri: Life force, ethos imbues in all things animate and inanimate. If the mauri is damaged, so too will be the mauri of the people;

Tikanga: Parameters by which activities are conducted to ensure the safeguarding and health of those values that Ngati Manawa hold steadfast eg: policies and procedures, terms and conditions. Appropriate behaviour and conduct for the wellbeing and intent of the situation. Ngati Manawa has its own tikanga in respect of the kaitiakitanga of their waters which dictates the way they manifest their management, interests and rights over and in their taonga;

Wairua: Spirituality imbued in all things requiring acknowledgement and response. Upholding the wairua;

Manaakitanga: To care, nurture and ensure the collective wellbeing and interest of Ngati Manawa. The collective takes precedence over personal gain and self interest; and

Mana Whenua: Ancestral rights that are not only based on lands and resources.

3.3 The Crown and the Governance Entity agree that the Ngati Manawa Guiding Principles set out in clause 3.2:

3.3.1 are intended only to provide a context for this Protocol;

3.3.2 do not affect how the Minister, Chief Executive and the Ministry will exercise their powers, functions and duties in relation to the matters specified in this Protocol; and

3.3.3 do not prevent the Minister, Chief Executive and the Ministry from interacting with other iwi or hapu with interests in the Fisheries Protocol Area.

4 RELATIONSHIP PRINCIPLES

4.1 Ngāti Manawa, the Minister, and the Chief Executive agree to abide by the following relationship principles when implementing this Protocol and exercising their various roles and functions under this Protocol:

4.1.1 Working together to preserve, promote and protect the sustainable utilisation and enhancement of freshwater fisheries;

4.1.2 Working in a spirit of co-operation;

4.1.3 Ensuring early engagement on the matters specified in clause 10 of this Protocol;

4.1.4 Operating a 'no-surprises' approach;

4.1.5 Acknowledging that the relationship is evolving, not prescribed;

4.1.6 Respecting the independence of the parties and their individual mandates, roles and responsibilities within the Protocol Area;

4.1.7 Recognising and acknowledging that the parties benefit from working together by sharing their vision, knowledge, and expertise; and

4.1.8 In the context of any documents or other information provided to the Ministry by Ngāti Manawa, recognising and acknowledging the need to safeguard Ngāti Manawa traditional knowledge and cultural expressions relating to their customary fisheries.

4.2 Underpinning the settlement between the Crown and Ngāti Manawa is the principle of honour and integrity. Both parties entered into the Deed of Settlement (the Deed) in good faith relying on the commitments of each other contained in the Deed with the intention of achieving a full, fair and durable settlement of the claims of Ngāti Manawa. The principle of honour and integrity is to be reflected in the implementation of this protocol.

5 NGĀTI MANAWA FISHERIES PROTOCOL AREA

This Fisheries Protocol applies across the Ngāti Manawa Fisheries Protocol Area which means the area identified in the map included as Attachment A of this Protocol.

6 TERMS OF ISSUE

6.1 This Protocol is issued pursuant to section 34(1)(a) of the Ngāti Manawa Claims Settlement Act 2011 (the “**Settlement Legislation**”) and clause 5.5 of the Deed of Settlement and is subject to the Settlement Legislation and the Deed of Settlement.

6.2 This Protocol must be read subject to the terms of issue set out in Attachment B.

7 RANGITAIKI RIVER REDRESS

7.1 The Crown and Ngāti Manawa acknowledge that the Deed of Settlement provides for further discussion on the development of river redress, and therefore this section will be completed to the extent necessary to reflect the outcome of those discussions.

8 IMPLEMENTATION AND COMMUNICATION

8.1 The Ministry will meet with the Governance Entity to agree a strategy to implement this Protocol as soon as practicable after this Protocol is issued. The strategy may include:

8.1.1 any matters raised in this Protocol;

8.1.2 reporting processes to be put in place, for example an annual report to be provided by the Ministry to the Governance Entity;

8.1.3 the development of an implementation plan that sets out the Ministry's obligations to the Governance Entity arising from this Protocol. The implementation plan would identify the relevant Ministry business group

responsible for delivering each obligation, and any agreed actions and timeframes; and

8.1.2 review processes for this Protocol.

8.2 The implementation strategy described in clause 8.1 of this Protocol will have effect from the date specified in the strategy.

8.3 The Ministry and the Governance Entity will establish and maintain effective and efficient communication with each other on a continuing basis, by;

8.3.1 the Governance Entity providing, and the Ministry maintaining, information on the office holders of the Governance Entity, addresses and contact details;

8.3.2 the Ministry providing and the Governance Entity maintaining information on a primary Ministry contact;

8.3.3 providing reasonable opportunities for the Governance Entity and Ministry managers and staff to meet with each other; and

8.3.4 the Ministry identifying staff positions that will be working closely with the Governance Entity to inform those staff of the contents of this Protocol and their roles and responsibilities under it; and

8.4 The Ministry will:

8.4.1 as far as reasonably practicable, provide the Governance Entity the opportunity to train relevant Ministry staff on their values and practices, and provide ongoing training as required; and

8.4.2 as far as reasonably practicable, inform fisheries stakeholders about this Protocol and the Deed of Settlement, and provide on-going information as required.

9 SPECIES OF FISH, AQUATIC LIFE AND SEAWEED

Tuna / Eels

9.1 The Ministry recognises that the Governance Entity has a customary non-commercial interest in the tuna/eel fishery within the Fisheries Protocol Area and in particular, the possibility of the enhancement of that fishery through the transfer of elvers and the possibility of farming tuna. The Ministry will explore with the Governance Entity how it might assist, within existing policy and legal frameworks and with available resources, any Ngati Manawa proposals for the enhancement of the tuna/eel fishery.

9.2 In each of the three years after the Settlement Date, upon written notice that the Governance Entity intends to apply to the Chief Executive for a special permit under section 97 of the Fisheries Act 1996, Ministry staff shall meet with representatives of the Governance Entity at a mutually acceptable venue, and consult with the Governance Entity on the following:

- 9.2.1 the maximum quantity of undersized tuna/eel that is likely to be permitted to be taken under section 97 of the Fisheries Act 1996 (the "**Permitted Catch**") from each of not more than three sites within the Fisheries Protocol Area specified by the Governance Entity to the Ministry in writing (up to a maximum of nine sites during the three year period after the Settlement Date); and
- 9.2.2 the likely conditions of any Permitted Catch, in relation to each of those specified sites, including the likely conditions in relation to the relocation of any of that Permitted Catch in:
- (a) waterways in the Fisheries Protocol Area; and
 - (b) aquaculture farms.
- 9.3 In recognition of the particular importance of tuna/eel fisheries to the Governance Entity, the Ministry will consider, in accordance with relevant legislation and operational processes, any application from the Governance Entity for a special permit to take undersized tuna (elvers or glass eels) from waterways within the Fisheries Protocol Area as part of any enhancement or aquaculture project.
- 9.4 The Fisheries Protocol shall not operate to create any expectation that a special permit or any other authorisation to extract or farm tuna will be granted.
- 9.5 For the purposes of clauses 9.1 to 9.4:
- 9.5.1 tuna/eel is defined as:
- (a) *Anguilla dieffenbachii* (longfinned eel);
 - (b) *Anguilla australis* (shortfinned eel); and
 - (c) *Anguilla rheinhartii* (Australian longfinned eel); and
- 9.5.2 undersized tuna/eel is tuna/eel with a weight less than the minimum weight prescribed for the taking of tuna/eel by or under the Fisheries Act 1996 (which, at the date of the Deed of Settlement, was 220 grams).

10 DEVELOPMENT OF SUSTAINABILITY MEASURES, FISHERIES REGULATIONS, FISHERIES PLANS AND CONSULTATION ON SPECIES WITHIN THE FISHERIES PROTOCOL AREA

- 10.1 If the Ministry is exercising powers or functions, under the Fisheries Legislation or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, relating to the setting of sustainability measures, or the making of fisheries regulations, or the development/implementation of a fisheries plan for the purposes of section 11A of the Fisheries Act 1996 (a "**Fisheries Plan**"), for any species of fish, aquatic life or seaweed within the Fisheries Protocol Area, the Ministry must:
- 10.1.1 provide the Governance Entity with all reasonably available background information in relation to the setting of sustainability measures, the making of fisheries regulations, and the development/implementation of Fisheries Plans;

10.1.2 inform the Governance Entity, in writing, of any proposed changes in relation to the Fisheries Protocol Area with regard to the:

- (d) setting of sustainability measures;
- (e) making of fisheries regulations; and
- (f) development/implementation of Fisheries Plans;

as soon as reasonably practicable to enable Ngāti Manawa to respond in an informed way;

10.1.3 provide the Governance Entity at least 30 working days from receipt of the written information described in clause 10.1.2 in which to respond, verbally or in writing, to any such proposed changes;

10.1.4 consult with the Governance Entity to discuss any proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, if requested by the Governance Entity to do so;

10.1.5 incorporate the views of the Governance Entity into any advice given to the Minister or other stakeholders on proposed changes to sustainability measures, fisheries regulations, or Fisheries Plans, that affect the Governance Entity's interests, and provide a copy of that advice to the Governance Entity as soon as reasonably practicable; and

10.1.6 report back to the Governance Entity within 20 working days of any final decision in relation to sustainability measures, fisheries regulations, or Fisheries Plans, either in writing or in person.

11 MANAGEMENT PLANNING

11.1 The Governance Entity will develop a fisheries management plan that relates to the Fisheries Protocol Area. The Ministry will assist the Governance Entity, with the resources available to the Ministry, to develop a fisheries management plan that relates to the Fisheries Protocol Area.

11.2 The parties agree that the plan will address:

11.2.1 the objectives of the Governance Entity for the management of their customary, commercial, recreational and environmental interests in fisheries resources within the Fisheries Protocol Area;

11.2.2 participation of the Governance Entity in fisheries management in the Fisheries Protocol Area;

11.2.3 the integrated management of the customary, commercial and recreational fishing interests of the Governance Entity in the Fisheries Protocol Area; and

11.2.4 participation of the Governance Entity in the Ministry's sustainability processes that affect fisheries resources in the Fisheries Protocol Area.

11.3 The parties agree to meet as soon as reasonably practicable after the effective date to discuss:

11.3.1 the content of the fisheries management plan, including how the plan will legally express, protect, and recognise the mana of Ngāti Manawa; and

11.3.2 ways in which the Ministry will work with the Governance Entity to develop and review the plan.

12 MANAGEMENT OF CUSTOMARY NON-COMMERCIAL FISHERIES

12.1 The Ministry undertakes to provide the Governance Entity with such information and assistance as may be necessary for the proper administration of the Fisheries (Kaimoana Customary Fishing) Regulations 1998. This information and assistance may include:

12.1.1 discussions with the Ministry on the implementation of the regulations within the Fisheries Protocol Area;

12.1.2 provision of any reasonably available background information relating to the sustainability, biology, fishing activity and fisheries management within the Fisheries Protocol Area;

12.1.3 training the Governance Entity to enable them to administer and implement the fisheries regulations; and

12.1.4 access to research information and records.

13 REGIONAL IWI FORUMS

13.1 The Ministry is working with iwi to establish regional iwi forums to enable iwi to have input into and participate in processes to address sustainability measures, fisheries regulations, and fisheries plans. Where the Ministry is seeking to establish a regional iwi forum in an area that will include the Fisheries Protocol Area, the Ministry will ensure that the Governance Entity will have an opportunity to participate in that forum.

14 RESEARCH PLANNING PROCESS

14.1 The Ministry will provide the Governance Entity with all reasonably available background information to participate in the processes, timelines and objectives associated with the research planning process of the Ministry.

14.2 The Ministry will consult with the Governance Entity on all research proposals commissioned by the Ministry having an effect on the Fisheries Protocol Area. The Ministry will enable the participation of the Governance Entity in Research Planning Rounds by registering a representative in the Ministry's Research Planning Groups. The Governance Entity's representative will receive full documentation concerning the Planning Group meetings and will be able to attend and participate in these meetings.

14.3 The Ministry will provide the Governance Entity, within 30 working days of the execution of the Fisheries Protocol, with information on the requirements for becoming an 'Approved Research Provider'. Should the requirements for

becoming and remaining an 'Approved Research Provider' change over time, the Ministry will inform the Governance Entity about those changes.

15 NATURE AND EXTENT OF FISHERIES SERVICES

- 15.1 The Ministry will each year consult with the Governance Entity on the Ministry's annual business plan.
- 15.2 The Ministry will provide the Governance Entity with the opportunity to put forward proposals for the provision of services that the Governance Entity deem necessary for the management of fisheries within the Fisheries Protocol Area.

16 CONTRACTING FOR SERVICES

- 16.1 The Ministry will consult with the Governance Entity in respect of any contract for the provision of services that may impact on the management of customary fisheries within the Fisheries Protocol Area, if the Ministry is proposing to enter into such a contract.
- 16.2 The level of consultation shall be relative to the degree to which the contract impacts upon the interests of other iwi as well as those of Ngāti Manawa, and may be achieved by one or more of the following:
 - 16.2.1 the Ministry may notify the Governance Entity of a contract for fisheries services;
 - 16.2.2 the Ministry may notify the Governance Entity of an invitation to tender for fisheries services; and
 - 16.2.3 the Ministry may direct a successful contractor to engage with the Governance Entity as appropriate, in undertaking the relevant fisheries services.
- 16.3 If the Governance Entity is contracted for fisheries services then clause 16.2.3 will not apply in relation to those fisheries services.

17 EMPLOYMENT OF STAFF WITH CUSTOMARY FISHERIES RESPONSIBILITIES

- 17.1 The Ministry will consult with the Governance Entity on certain aspects of the employment of Ministry staff if a particular vacancy directly affects the fisheries interests of Ngāti Manawa in relation to the Fisheries Protocol Area.
- 17.2 The level of consultation shall be relative to the degree to which the vacancy impacts upon the interests of other iwi as well as those of Ngāti Manawa, and may be achieved by one or more of the following:
 - 17.2.1 consultation on the job description and work programme;
 - 17.2.2 direct notification of the vacancy;
 - 17.2.3 consultation on the location of the position; and
 - 17.2.4 input into the selection of the interview panel.

18 RESOURCE MANAGEMENT ACT 1991

- 18.1 Ngāti Manawa and the Ministry both have concerns with the effects of activities controlled and managed under the Resource Management Act 1991 regarding the tuna/eel fishery resource within the Fisheries Protocol Area and, in particular, the issue of tuna/eel passage.
- 18.2 From time to time, the Governance Entity and the Ministry will seek to identify related priorities and issues of likely mutual interest for discussion. It is recognised that the Ministry and the Governance Entity will continue to make separate submissions in any Resource Management Act processes.
- 18.3 In providing advice to decision-makers under the Resource Management Act 1991 concerning issues related to the tuna/eel fishery resource within the Fisheries Protocol Area, the Ministry will:
- 18.3.1 discuss with the Governance Entity the general approach that may be taken by Ngāti Manawa and the Ministry in respect of the provision of that advice, and seek to identify their respective priorities and concerns;
 - 18.3.2 have regard to the priorities and issues of mutual concern identified when the Ministry makes decisions in respect of that advice; and
 - 18.3.3 provide the Governance Entity with all reasonably available background information to assist in improving its effectiveness in resource management advocacy work.

19 SPECIES SUBJECT TO RIGHT OF FIRST REFUSAL DEED OVER CERTAIN QUOTA

- 19.1 The Ministry recognises that Ngati Manawa has a customary non-commercial interest in those species (the "**applicable species**") subject to the right of first refusal deed over certain quota (the "**RFR Deed**") that the Crown has provided to the Governance Entity in accordance with clause 5.46 of the Deed of Settlement. The Ministry and the Governance Entity acknowledge that the applicable species are subject to multiple fisheries management jurisdictions, including the Fisheries Legislation. The Ministry and the Governance Entity agree that nothing in the RFR Deed requires the Crown to introduce any of the applicable species into the Quota Management System.

20 INFORMATION EXCHANGE

- 20.1 Ngāti Manawa and the Ministry recognise the benefit of mutual information exchange. To this end, the Ministry and Ngāti Manawa will as far as possible exchange any information that is relevant to the management of the Fisheries Protocol Area.
- 20.2 The Ministry will make available to Ngāti Manawa all existing information held by, or reasonably accessible to, the Ministry where that information is requested by Ngāti Manawa for the purposes of assisting them to exercise their rights under this Protocol.
- 20.3 The Ministry will provide to the Governance Entity any reasonably available information concerning the management of species or stocks that are of significance to Ngati Manawa.

- 20.4 The Ministry will advise the Governance Entity of any reasonably available information concerning tuna/eel research providers and research reports, including how the Governance Entity can access certain electronic information available in the Ministry's website.
- 20.5 Should the Minister issue to another group a fisheries protocol containing substantively different provisions than this Protocol the Ministry will notify the Governance Entity of those provisions.
- 20.6 The obligations in clause 20.1 and 20.2 do not apply to information that the Minister is legally prevented from providing (for example, information that is the subject of an obligation of confidentiality or non-disclosure) or to information that the Ministry may withhold under the Official Information Act 1982.

21 CONSULTATION

- 21.1 Where the Ministry is required to consult in relation to this Protocol, the basic principles that will be followed by the Ministry in consulting with the Governance Entity in each case are:
- 21.1.1 ensuring that the Governance Entity is consulted as soon as reasonably practicable following the identification and determination by the Ministry of the proposal or issues to be the subject of the consultation;
 - 21.1.2 providing the Governance Entity with sufficient information to make informed decisions and submissions in relation to any of the matters that are the subject of the consultation;
 - 21.1.3 ensuring that sufficient time is given for the participation of the Governance Entity in the decision making process including the preparation of submissions by the Governance Entity in relation to any of the matters that are the subject of the consultation; and
 - 21.1.4 ensuring that the Ministry will approach the consultation with the Governance Entity with an open mind, and will genuinely consider their submissions in relation to any of the matters that are the subject of the consultation.
- 21.2 Where the Ministry has consulted with the Governance Entity as specified in clause 21.1, the Ministry will report back to the Governance Entity, either in person or in writing, on the decision made as a result of any such consultation.

22 RĀHUI

- 22.1 The Ministry recognises that rāhui is a traditional use and management practice of Ngāti Manawa and supports their rights to place traditional rāhui over their customary fisheries.
- 22.2 The Ministry and Governance Entity acknowledge that a traditional rāhui placed by the Governance Entity over their customary fisheries has no force in law and cannot be enforced by the Ministry, and that adherence to any rāhui is a matter of voluntary choice.

22.3 Ngāti Manawa undertakes to inform the Ministry of the placing and the lifting of a rāhui by Ngāti Manawa over their customary fisheries, and also the reasons for the rāhui.

22.4 The Ministry undertakes to inform a representative of any fishery stakeholder groups that fish in the area to which the rāhui has been applied, to the extent that such groups exist, of the placing and the lifting of a rāhui by Ngāti Manawa over their customary fisheries, in a manner consistent with the understandings outlined in clause 22.2 above.

22.5 As far as reasonably practicable, the Ministry undertakes to consider the application of section 186A of the Fisheries Act 1996 to support a rāhui proposed by Ngāti Manawa over their customary fisheries for purposes consistent with the legislative requirements for the application of section 186A of the Fisheries Act 1996, noting these requirements preclude the use of section 186A to support rāhui placed in the event of a drowning.

23 REVIEW AND AMENDMENT

23.1 The Minister and the Governance Entity agree that this Protocol is a living document which may be updated and adapted to take account of any future developments.

23.2 Where the Ministry and the Governance Entity cannot reach agreement on any issue relating to the matters specified in this Protocol, they will use the dispute resolution process contained in clause 24.

24 DISPUTE RESOLUTION

24.1 If either the Ministry or the Governance Entity considers there has been a problem with the implementation of this Protocol, then that party may give written notice to the other party that they are in dispute. The following process will be undertaken once notice is received by the other party to this Protocol:

24.1.1 Within 15 working days of being given written notice, the relevant contact persons from the Ministry and the Governance Entity will meet to work in good faith to resolve the issue;

24.1.2 If the dispute has not been resolved within 30 working days of receipt of the notice referred to in 24.1, the Chief Executive of the Ministry and representative of the Governance Entity will meet to work in good faith to resolve the issue;

24.1.3 If the dispute has not been resolved within 45 working days despite the processes outlined in clauses 24.1.1 and 24.1.2 having been followed, the Ministry and the Governance Entity may seek to resolve the dispute by asking an agreed trusted third party to mediate the dispute with a view to reaching a mutually satisfactory outcome for both parties.

24.2 In the context of any dispute that has been initiated under clause 24.1, the Ministry and the Governance Entity will place utmost importance on the fact that the Ministry and Ngati Manawa are, in accordance with clause 1.7 of this Protocol, seeking a relationship consistent with Te Tiriti o Waitangi/Treaty of Waitangi and its principles, and such a relationship is intended to assist both parties to exercise their respective responsibilities with the utmost cooperation to achieve the outcomes sought by both over time.

25 CHANGES TO POLICY AND LEGISLATION AFFECTING THIS PROTOCOL

25.1 If the Ministry consults with iwi on policy development or any proposed legislative amendment to the Fisheries Act 1996 which impacts upon this Protocol, the Ministry shall:

25.1.1 notify the Governance Entity of the proposed policy development or proposed legislative amendment upon which iwi will be consulted; and

25.1.2 make available to the Governance Entity the information provided to iwi as part of the consultation process referred to in this clause; and

25.1.3 report back to the Governance Entity on the outcome of any such consultation, either in writing or in person.

26 DEFINITIONS

In this Protocol:

Crown means The Sovereign in right of New Zealand and includes, where appropriate, the Ministers and Departments of the Crown that are involved in, or bound by the terms of the Deed of Settlement to participate in, any aspect of the redress under the Deed of Settlement;

Deed of Settlement means the Deed of Settlement dated 12 December 2009 between the Crown and Ngāti Manawa;

Fisheries Legislation means the Fisheries Act 1983 and the Fisheries Act 1996;

Fisheries Protocol Area has the meaning given to it in clause 5;

Governance Entity has the meaning set out in clause 13.6 of the Deed of Settlement;

Protocol means a statement in writing, issued by the Crown through the Minister to the Governance Entity under the Settlement Legislation and the Deed of Settlement and includes this Fisheries Protocol;

Settlement Legislation means the Ngāti Manawa Claims Settlement Act 2011.

ISSUED on 1 May 2012

SIGNED for and on behalf of THE
SOVEREIGN IN RIGHT OF
NEW ZEALAND by the Minister of Primary
Industries in the presence of:



Signature of Witness



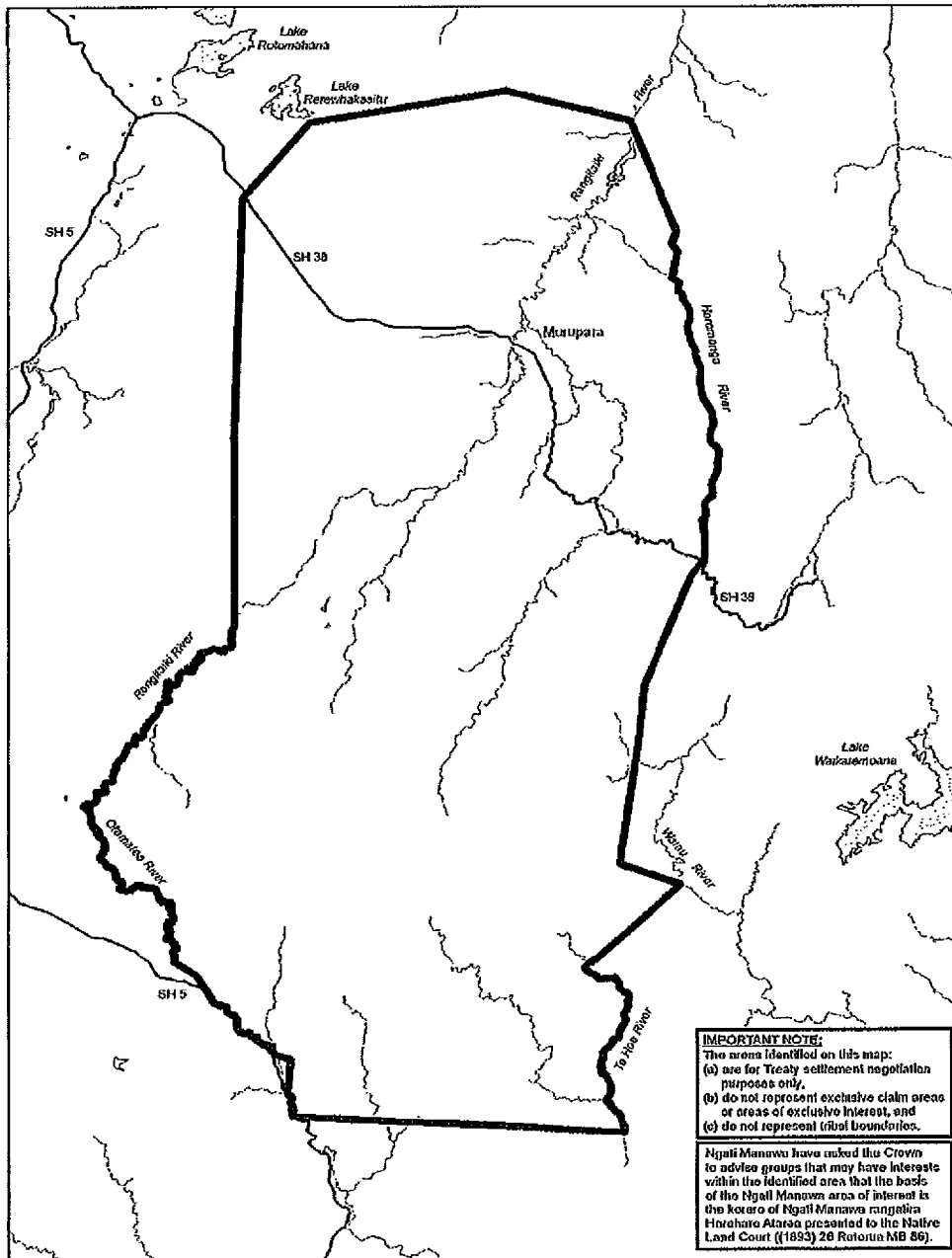
Hon David Carter

Witness Name: TEACILEE LINDERS

Occupation: PRIVATE SECRETARY

Address: OFFICE OF HON DAVID CARTER
PARLIAMENT BUILDINGS
WELLINGTON

ATTACHMENT A FISHERIES PROTOCOL AREA



ATTACHMENT B

TERMS OF ISSUE

1 Provisions of the Deed of Settlement relating to this Protocol

- 1.1 The deed of settlement provides that:
- 1.1.1 a failure by the Crown to comply with a Protocol is not a breach of the Deed of Settlement (clause 5.12); and
- 1.1.2 this Protocol does not restrict the ability of the Crown to interact or consult with any person including any iwi, hapū, marae, whānau, or representative of tangata whenua (clause 5.11.4(a)(ii));
- 1.1.3 this Protocol:
- (a) is consistent with section 4 of the Conservation Act 1987;
 - (b) does not override or diminish:
 - (i) the requirements of the Fisheries Act 1996;
 - (ii) the functions and powers of the Minister of Fisheries, or the Ministry of Fisheries, under that Act; or
 - (iii) the rights of Ngāti Manawa, or a Representative Entity, under that legislation (clause 5.11.4(c)).
- 1.2 Representative Entity has the same meaning in clause 1.1.3(iii) of these terms of Issue as the term "representative entity for Ngāti Manawa" has in clause 13.6 of the Deed of Settlement.

2 Authority to issue, amend or cancel Protocols

- 2.1 Section 34 of the Settlement Legislation provides that:
- (1) Each responsible Minister –
- (a) must issue a protocol to the trustees of Te Rūnanga o Ngāti Manawa in the form set out in Part 2 of the Schedule of the deed of settlement; and
 - (b) may amend or cancel that protocol.
- (2) A protocol may be amended or cancelled under subsection (1) at the initiative of either –
- (a) the trustees of Te Rūnanga o Ngāti Manawa; or
 - (b) the responsible Minister.
- (3) The responsible Minister may amend or cancel a protocol only after consulting with, and having particular regard to the views of, the trustees of Te Rūnanga o Ngāti Manawa.

3 Protocols subject to rights, functions, and obligations

3.1 Section 35 of the Settlement Legislation provides that:

Protocols do not restrict -

- (a) the ability of the Crown to exercise its powers and perform its functions and duties in accordance with the law and government policy, which includes (without limitation) the ability to –
 - (i) introduce legislation and change government policy; and
 - (ii) interact or consult with a person the Crown considers appropriate, including (without limitation) any iwi, hapū, marae, whānau, or other representative of tangata whenua; or
- (b) the responsibilities of the responsible Minister or a responsible department; or
- (c) the legal rights of the trustees of Te Rūnanga o Ngāti Manawa or a representative entity.

4 Noting of this Protocol

4.1 Section 38(1), (2) and (3) of the Settlement Legislation provides that:

- (1) A summary of the terms of the fisheries protocol must be noted in the fisheries plans affecting the fisheries protocol area.
- (2) The noting of the fisheries protocol is –
 - (a) for the purpose of public notice only; and
 - (b) not an amendment to a fisheries plan for the purposes of section 11A of the Fisheries Act 1996.
- (3) In this section, fisheries plan means a plan approved or amended under section 11A of the Fisheries Act 1996.

5 Enforceability of protocols

5.1 Section 36 of the Settlement Legislation provides that:

- (1) The Crown must comply with a protocol while it is in force.
- (2) If the Crown fails, without good cause, to comply with a protocol, the trustees of Te Rūnanga o Ngāti Manawa may, subject to the Crown Proceedings Act 1950, enforce the protocol.
- (3) Despite subsection (2) damages or any form of monetary compensation are not available as a remedy for failure by the Crown to comply with a protocol.
- (4) To avoid doubt –

- (a) subsections (1) and (2) do not apply to guidelines developed for the implementation of a protocol; and
- (b) subsection (3) does not affect the ability of a court to award costs incurred by the trustees of Te Rūnanga o Ngāti Manawa in enforcing the protocol under subsection (2).

5.2 The provisions included in the Settlement Legislation under clauses 5.11.5 and 5.11.6 of the Deed of Settlement will not apply to any guidelines developed in relation to a Protocol.

6 Limitation of rights

6.1 Section 38(4) of the settlement legislation provides that:

- (4) The fisheries protocol does not have the effect of granting, creating, or providing evidence of an estate or interest in, or rights relating to, assets or other property rights (including in respect of fish aquatic life, and seaweed) held, managed, or administered under any of the following enactments –
 - (a) the Fisheries Act 1996;
 - (b) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
 - (c) the Māori Commercial Aquaculture Claims Settlement Act 2004;
 - (d) the Māori Fisheries Act 2004.