

**DEED GRANTING A RIGHT OF FIRST REFUSAL OVER  
SHELLFISH QUOTA**

**DATE:** 12 November 2002

- (1) SIR GRAHAM STANLEY LATIMER, MOREHU KENA, JIMMY MARAMATANGA CONNELLY, RUSSELL RATA KEMP, RAWSON SYDNEY AMBROSE WRIGHT, AND TAPIHANA SHELFORD as trustees for the time being of TE URI O HAU SETTLEMENT TRUST (together, *Te Uri o Hau Governance Entity and Governance Entity*)
- (2) HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (*the Crown*)

**BACKGROUND:**

- A. Te Uri o Hau Governance Entity and the Crown are parties to a Deed of Settlement to settle Te Uri o Hau Historical Claims dated 13 December 2000 (*the Deed of Settlement*).
- B. The Crown agreed under the Deed of Settlement that the Crown would, by the Settlement Date under that Deed, enter into a deed in the form of this Deed granting Te Uri o Hau Governance Entity a right of first refusal over certain Shellfish Quota.
- C. This Deed is in satisfaction of the obligations of the Crown referred to in *Background B*.

**NOW THEREFORE** the parties agree as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, unless the context otherwise requires:

*Applicable Quota* means Quota of the kind referred to in *clause 3*;

*Applicable Species* means a species referred to in the *First Schedule*;

*Applicable TACC* has the meaning given to that term by *clause 2(b)*;

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;

- (b) a day in the period commencing with 25 December in any year, and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Northland;

*Control* for the purposes of *subclause (d)* of the definition of Crown Body means:

- (a) in relation to a company, control of the composition of the board of directors of the company; and
- (b) in relation to any other body, control of the composition of the group that would be the board of directors if the body was a company;

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

*Crown Body* means:

- (a) the Crown (whether acting through a Minister or otherwise);
- (b) a Crown entity (as defined in the Public Finance Act 1989) and includes the New Zealand Railways Corporation;
- (c) a State enterprise (as defined in the State-Owned Enterprises Act 1986); or
- (d) any company or body which is wholly-owned or controlled by:
  - (i) the Crown, a Crown entity or a State enterprise; or
  - (ii) a combination of the Crown, a Crown entity, Crown entities, a State enterprise or State enterprises;

and includes any subsidiary of, or related company to, any such company or body;

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

*Expiry Date* means, in respect of an RFR Notice, the date 1 month after the RFR Notice is received by Te Uri o Hau Governance Entity;

*Fisheries Legislation* means the Fisheries Act 1983 or the Fisheries Act 1996;

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

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

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

*Quota* means quota under the Fisheries Legislation;

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

*Quota Management System* means a quota management system established under Part IV of the Fisheries Act 1996 (or under Part IIA or Part IIB of the Fisheries Act 1993, as the case may be);

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

*Required Minimum Amount*, in relation to Applicable Quota, means an amount of that Applicable Quota calculated under *clause 5.1* or *5.2* (whichever is applicable);

*RFR Notice* and *Notice* means a notice under *clause 6.1*;

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

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

*Shellfish Quota* means Quota in relation to an Applicable Species (being a species referred to in the *First Schedule*);

*Te Uri o Hau Shellfish RFR Area* has the same meaning as in the Deed of Settlement and is the area identified in the map included in the *Second Schedule*; and

*Total Allowable Commercial Catch* or *TACC* means a total allowable commercial catch for a species under section 20 of the Fisheries Act 1996 (or specified for a fishery under section 28C(1), section 28CA, section 280B, or section 280C of the Fisheries Act 1983, as the case may be).

## 1.2 Interpretation

The rules of interpretation set out in clause 13.2 of the Deed of Settlement apply to the interpretation of this Deed.

## **2 THIS DEED APPLIES IF THE MINISTER SETS A TACC OF A CERTAIN KIND**

This Deed applies only if, during the period of 50 years from the Settlement Date, the Minister of Fisheries:

- (a) declares, under the Fisheries Legislation, an Applicable Species to be subject to a Quota Management System; and
- (b) sets, under the Fisheries Legislation, a Total Allowable Commercial Catch (a *TACC*) for that Applicable Species for a Quota Management Area that includes some or all of the coastline of Te Uri o Hau Shellfish RFR Area (an *Applicable TACC*).

## **3 THIS DEED APPLIES ONLY TO QUOTA ALLOCATED TO THE CROWN UNDER AN APPLICABLE TACC**

This Deed applies only to Quota (*Applicable Quota*) that:

- (a) relates to an Applicable TACC; and
- (b) has been allocated to the Crown as either:
  - (i) Individual Transferable Quota (and not as Provisional Individual Transferable Quota) under section 49(1) of the Fisheries Act 1996; or
  - (i) Provisional Individual Transferable Quota that has become Individual Transferable Quota under section 49(3) of the Fisheries Act 1996.

## **4 THE CROWN MUST OFFER MINIMUM AMOUNT OF APPLICABLE QUOTA TO THE GOVERNANCE ENTITY**

Before the Crown sells any Applicable Quota relating to an Applicable TACC, the Crown must offer (in accordance with *clause 6*) Te Uri o Hau Governance Entity the right to purchase no less than the Required Minimum Amount of the Applicable Quota relating to that Applicable TACC calculated in accordance with *clause 5.1* or *clause 5.2* (whichever is applicable).

## **5 CALCULATION OF REQUIRED MINIMUM AMOUNT OF APPLICABLE QUOTA TO BE OFFERED**

5.1 Where:

- (a) the Crown has been allocated Applicable Quota relating to an Applicable TACC; and

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

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

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

5.2 Where:

- (a) the Crown has been allocated Applicable Quota relating to an Applicable TACC; and
- (b) a person, or persons, were eligible under section 45 of the Fisheries Act 1996 to receive Quota in relation to that Applicable TACC,

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

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

5.3 For the purposes of this clause:

“A” is the length of coastline of Te Uri o Hau Shellfish RFR Area that is within the coastline of the relevant Quota Management Area;

“B” is the length of coastline of the relevant Quota Management Area;

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

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

“x” is the Required Minimum Amount of Applicable Quota.

5.4 For the purposes of this clause:

- (a) the length of coastline of Te Uri o Hau Shellfish RFR Area, and of the relevant Quota Management Area, will be determined by the Crown and by such method as the Crown considers appropriate; and
- (b) in particular, but without limiting the Crown’s ability to use a different method, the Crown may determine that the length of coastline of Te Uri o Hau Shellfish RFR Area means the aggregate of the following distances (those distances being determined by the Crown):

- (i) the distance between Fisheries Point (Mt Wesley Coast Road where intersects coast) (approximately 2581687E, 6577301N) and Fisheries Point (Extension of SE bdy of Pt Oturei M5 to where intersects coast) (approximately 2585059E, 6572357N);
- (ii) the distance between Fisheries Point (Co-ordinates being 2587095E, 6569508N in terms of NZ Map Grid metres) and Fisheries Point (Navigational Beacon at Pouto Point) (approximately 2616558E, 6536990N);
- (iii) the distance between Fisheries Point (Extension of NE bdy of Lot 1 DP 138522 to where intersects coast) (approximately 2659150E, 6558154N) and Fisheries Point (NE bdy of Lot 1DP 71829 at the Mangawhai Heads) (approximately 2654424E, 6567370N); and
- (iv) the distance between Fisheries Point (Sth bdy of Sec 1 Town of Molesworth at the Mangawhai Heads) (approximately 2654475E, 6567457N) and Fisheries Point (Extension of NE bdy of Allot 31 Suburbs of Molesworth to where intersects coast) (approximately 2654154E, 6568641N);

(such Fisheries Points being approximately marked on the map of Te Uri o Hau Shellfish RFR Area included as the *Second Schedule*).

## **6 CROWN MUST GIVE NOTICE BEFORE SELLING APPLICABLE QUOTA**

### **6.1 Crown must give offer by written notice**

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

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

The Crown may withdraw any RFR Notice given to Te Uri o Hau Governance Entity under *clause 6.1* at any time before Te Uri o Hau Governance Entity accepts the offer in that Notice under *clause 7*.

### **6.3. Effect of Withdrawing RFR Notice**

If the Crown withdraws an RFR Notice, *clause 4* still applies to the Applicable Quota referred to in that Notice.

#### 6.4 Crown has no Obligation in relation to balance of Applicable Quota

Where the Crown has given, in accordance with *clause 6.1*, an RFR Notice in relation to Applicable Quota relating to an Applicable TACC, the Crown has no obligations under this Deed in relation to the balance of the Applicable Quota (if any) not referred to in that Notice that also relate to that Applicable TACC.

#### 7 ACCEPTANCE OF RFR NOTICE BY THE GOVERNANCE ENTITY

A contract for the Sale of the Applicable Quota referred in an RFR Notice (or a lesser amount referred to in the acceptance) is constituted between the Crown and Te Uri o Hau Governance Entity if that Governance Entity accepts the offer in that RFR Notice (or accepts a lesser amount) of Applicable Quota:

- (a) by notice in writing to the Crown; and
- (b) by the relevant Expiry Date.

#### 8 NON-ACCEPTANCE BY THE GOVERNANCE ENTITY

If:

- (a) the Crown gives Te Uri o Hau Governance Entity an RFR Notice; and
- (b) the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date; -

the Crown:

- (c) may, at any time during the period of 2 years from the Expiry Date, Sell any of Applicable Quota referred to in that RFR Notice that is not accepted by Te Uri o Hau Governance Entity if the price per Quota Share, and other terms and conditions of the Sale, are not more favourable to the purchaser than the price per Quota Share, and the other terms and conditions, set out in the RFR Notice to the Governance Entity; but
- (d) must, promptly after entering into an agreement to Sell any Applicable Quota referred to in the RFR Notice to a purchaser, give written notice to Te Uri o Hau Governance Entity of that fact and disclosing the terms of the agreement; and
- (e) must not Sell any of that Applicable Quota referred to in the RFR Notice after the end of that 2 year period without first offering to Sell that Applicable Quota to Te Uri o Hau Governance Entity in an RFR Notice under *clause 6.1*.

## 9 RE-OFFER REQUIRED

If:

- (a) the Crown has given Te Uri o Hau Governance Entity an RFR Notice; and
- (b) the Governance Entity does not accept all the Applicable Quota offered in the RFR Notice by notice in writing to the Crown by the Expiry Date; and
- (c) the Crown proposes to offer any of those Applicable Quota not accepted by the Governance Entity for Sale again but at a price (per Quota Share), or on other terms and conditions, more favourable to the purchaser than on the terms in the RFR Notice; then
- (d) the Crown may do so only if it first offers that Applicable Quota for Sale on the more favourable terms to the Governance Entity in an RFR Notice under *clause 6.1*.

## 10 EFFECT OF THIS DEED

10.1 Nothing in this Deed will require the Crown to:

- (a) purchase any provisional catch history, or other catch rights, under section 37 of the Fisheries Act 1996; or
- (b) introduce any of the Applicable Species into the Quota Management System; or
- (c) require the Crown to offer for sale any Applicable Quota held by the Crown.

10.2 Te Uri o Hau Governance Entity acknowledges that the introduction of any of the Applicable Species into a Quota Management System may not result in any, or any significant, holdings by the Crown of Applicable Quota for that species.

10.3 Nothing in this Deed affects, or derogates from, and the rights and obligations created by this Deed are subject to:

- (a) any legislation or rule of law that must be complied with before any Applicable Quota is sold to Te Uri o Hau Governance Entity;
- (b) any legal requirement that:
  - (i) prevents or limits the Crown's ability to Sell the Applicable Quota to Te Uri o Hau Governance Entity; and



(ii) the Crown cannot satisfy after taking reasonable steps to do so (and, for the avoidance of doubt, reasonable steps do not include changing the law); and

(c) any requirements under any legislation or rule of law that the Crown must Sell the Applicable Quota to any third party.

## **11 THIS DEED DOES NOT APPLY IN CERTAIN CASES**

### **11.1 Sales to certain persons are exempt**

*Clause 4* does not apply if the Crown is Selling Applicable Quota to:

- (a) Te Uri o Hau Governance Entity; or
- (b) a Crown Body, if that Crown Body takes the Applicable Quota subject to the terms of this Deed and enters into a deed of covenant (at the Crown's expense) in favour of Te Uri o Hau Governance Entity in the form set out in the *Third Schedule* to this Deed.

### **11.2 Effect of exempt disposals to Crown Bodies**

A Crown Body to whom Applicable Quota is being sold under *clause 10.3* is not required to enter into a deed under *clause 11*.

## **12 TIME LIMITS**

Time is of the essence for all time limits imposed on the Crown and Te Uri o Hau Governance Entity under this Deed. The Crown and Te Uri o Hau Governance Entity may agree in writing to an extension of time limits.

## **13 ENDING OF RIGHT OF FIRST REFUSAL**

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

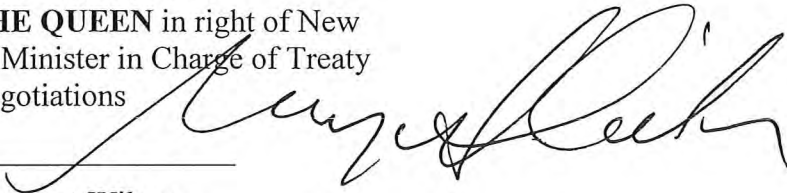
The obligations of the Crown set out in the Deed shall end in respect of any Applicable Quota on a transfer of the Applicable Quota in accordance with *clauses 7, 8, 10.3 or 11.1*.

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

The obligations of the Crown set out in this Deed end 50 years after the Settlement Date.

**EXECUTED** as a deed on the date first written above.

Signed for and on behalf of **HER MAJESTY THE QUEEN** in right of New Zealand by the Minister in Charge of Treaty of Waitangi Negotiations



\_\_\_\_\_  
Honourable Margaret Wilson

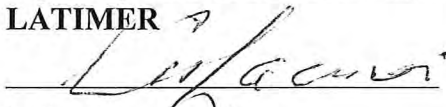
in the presence of:



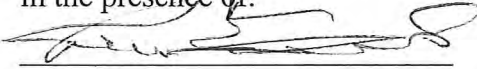
Name: HEATHER BAGGOTT  
Occupation: PRIVATE SECRETARY  
Address: PARLIAMENT BUILDINGS  
WELLINGTON

Signed by the trustees for the time being of  
**TE URI O HAU SETTLEMENT TRUST**

Signed by **SIR GRAHAM STANLEY LATIMER**

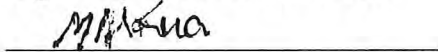


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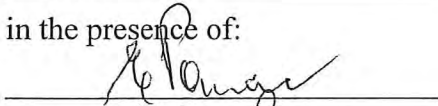


Name: RIMA EDWARDS  
Occupation: CONSULTANT  
Address: 71 KATHY RD  
KAITIAKI

Signed by **MOREHU KENA**

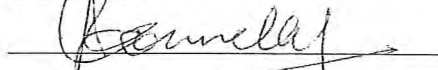


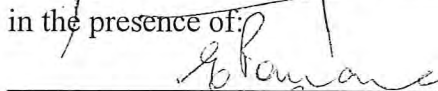
in the presence of:



Name: Ekkie Pomare  
Occupation: Retired  
Address: 72 Terrois Street  
Dargaville

Signed by **JIMMY MARAMATANGA CONNELLY**



in the presence of: 

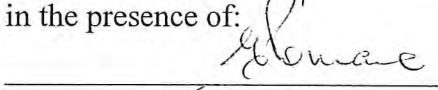
Name: Effie Pomare

Occupation: Retired

Address: 72 Jervis St  
Dargaville

Signed by **RUSSELL RATA KEMP**



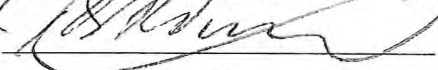
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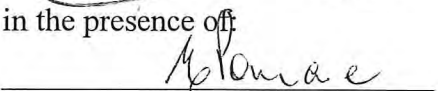
Name: Effie Pomare

Occupation: Retired

Address: 72 Jervis St  
Dargaville

Signed by **RAWSON SYDNEY AMBROSE WRIGHT**



in the presence of: 

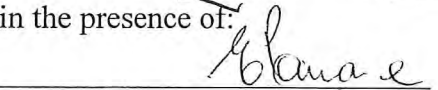
Name: Effie Pomare

Occupation: Retired

Address: 72 Jervis St  
Dargaville

Signed by **TAPIHANA SHELFORD**



in the presence of: 

Name: Effie Pomare

Occupation: Retired

Address: 72 Jervis St  
Dargaville

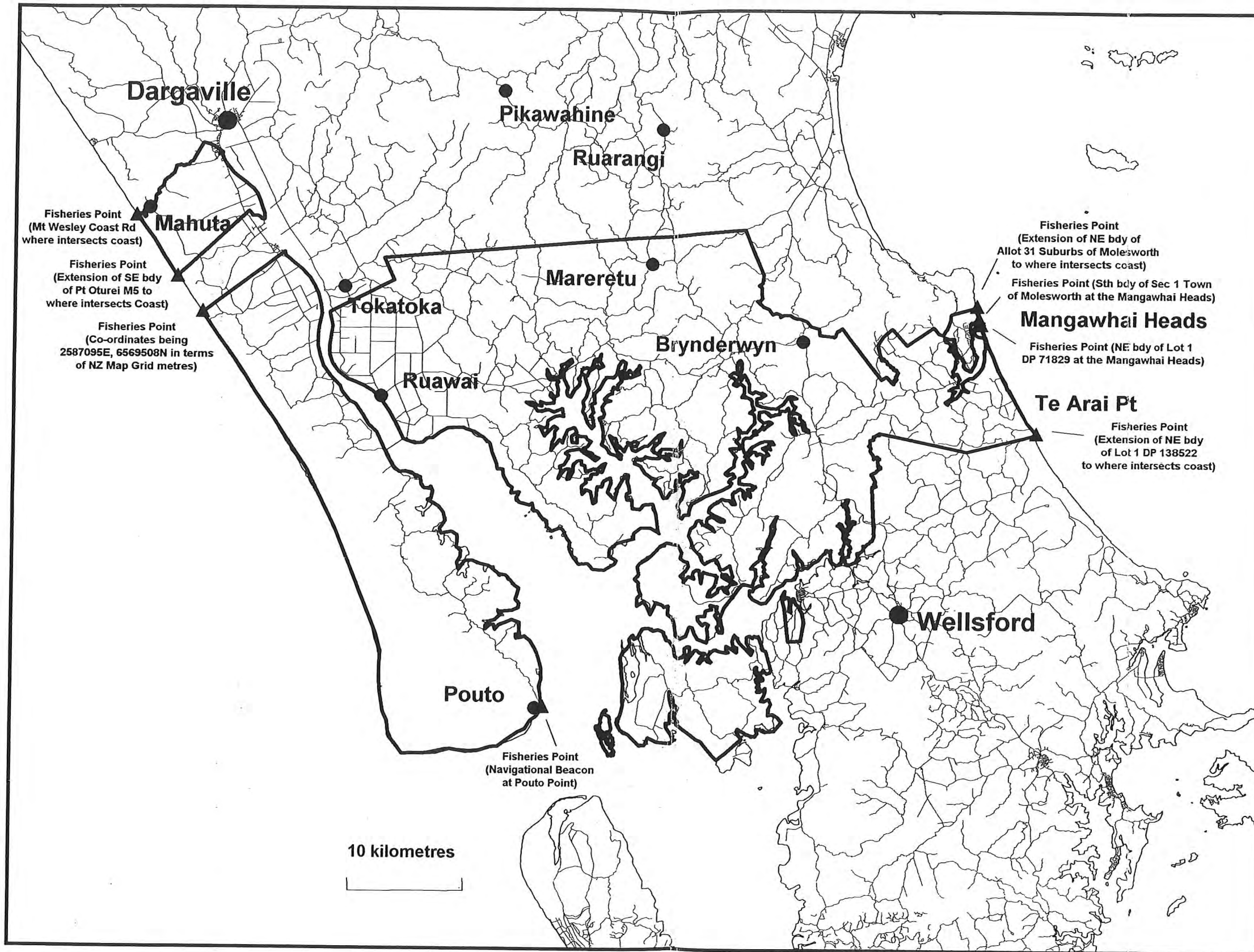
**FIRST SCHEDULE**  
**APPLICABLE SPECIES**  
*(Clause 1.1 of this Deed)*

<b>Maori Name</b>	<b>Common Name</b>	<b>Formal Name</b>
Toheroa	Toheroa	<i>Paphies ventricosa</i>
Tuatua	Tuatua	<i>Paphies subtriangulata,</i> <i>Paphies donacina</i>
Purimu	Surf-clams	<i>Dosinea anus, Paphies</i> <i>donacina, Mactra discors,</i> <i>Mactra murchisoni, Spisula</i> <i>aequilatualas, Bassina yatei,</i> <i>or Dosinia subrosea</i>
Papaka	Paddlecrab	<i>Ovalipes catharus</i>

**SECOND SCHEDULE**  
*(Clauses 1.1 and 5.4 of this Deed)*

**TE URI O HAU SHELLFISH RFR AREA**

*[Map to be attached]*



TE URI O HAU SHELLFISH RFR AREA

**THIRD SCHEDULE**  
*(Clause 12.1(b) of this Deed)*

**DEED OF COVENANT**

*Date:*

**PARTIES**

- (1) [TRUSTEE'S NAME], [TRUSTEE'S NAME], ....., and [TRUSTEE'S NAME] as trustees for the time being of TE URI O HAU SETTLEMENT TRUST (together, *Te Uri o Hau Governance Entity*)
- (2) [THE CROWN BODY] (*New Owner*)
- (3) [HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND] or [[*THE CROWN BODY*] *if this Deed relates to a second or subsequent intra-Crown disposal*] (*Current Owner*)

**BACKGROUND**

- A The New Owner intends to take from the Current Owner a Sale of the Quota described in the schedule to this Deed (*Quota*).
- B The Quota is subject to a right of first refusal granted under a Deed Granting a Right of First Refusal dated [ ] 2002 between the Crown and Te Uri o Hau (*Principal Deed*) under a Deed of Settlement (*Deed of Settlement*) dated 13 December 2000 between Te Uri o Hau and the Crown.
- C Under the terms of the Principal Deed, the Current Owner must, before Selling the Quota to the New Owner, obtain a deed from the New Owner in favour of Te Uri o Hau Governance Entity ensuring that the New Owner takes the Quota subject to the terms of the Principal Deed. This Deed is entered into to give effect to the Current Owner's obligation.

**NOW THEREFORE** the parties agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Defined Terms**

In this Deed, unless the context requires otherwise:

terms or expressions that are not defined in this Deed, but that are defined in the Principal Deed, have the meaning given to them by the Principal Deed;

*Effective Date* means the date on which the New Owner takes a Sale of the Quota;

*Quota* has the meaning given to in *Background A*;

*Principal Deed* has the meaning given to it in *Background B*; and

*Transfer* means the transfer described in *clause 2*.

## 1.2 Interpretation

The rules of interpretation set out in clause 13.2 of the Deed of Settlement also apply to the interpretation of this Deed.

## 2. TRANSFER BY CURRENT OWNER

The Current Owner transfers to the New Owner (with effect from the Effective Date) all its rights and obligations under the Principal Deed in so far as they relate to the Quota.

## 3. ACCEPTANCE BY NEW OWNER

The New Owner, for the benefit of the Current Owner and Te Uri o Hau Governance Entity, accepts the Transfer.

## 4. CONSENT AND RELEASE BY TE URI O HAU GOVERNANCE ENTITY

Te Uri o Hau Governance Entity:

- (a) consents to the Transfer; and
- (b) releases the Current Owner (with effect from the Effective Date) from all of its obligations under the Principal Deed in so far as they relate to the Quota.

**EXECUTED** as a deed on the date first written above

*[Insert execution clauses for:*

*Te Uri o Hau Governance Entity*

*New Owner*

*Current Owner]*



**SCHEDULE  
THE QUOTA**

*[Quota to be inserted here in respect of a sale of Quota, if any, to a Crown Body which takes the sale subject to this Deed of Covenant]*