

HER MAJESTY THE QUEEN

AND

MAORI

DEED OF SETTLEMENT

DEED OF SETTLEMENT

TABLE OF CONTENTS

	<u>Page No</u>
Parties	1
Preamble.....	1
<u>SECTION 1: DEFINITIONS, CONSTRUCTION AND EXCLUDED TERMS</u>	<u>4</u>
1.1 Definitions.....	4
1.2 Construction.....	6
1.3 Exclusion of Other Terms	7
<u>Section 2: CONDITIONS PRECEDENT TO THIS DEED HAVING EFFECT</u>	<u>8</u>
<u>SECTION 3: OBLIGATIONS OF THE CROWN</u>	<u>10</u>
3.1 Settlement Amount.....	10
3.2 New Quota for Additional Species	12
3.3 Maori Participation on Fisheries Statutory Bodies	12
3.4 Membership of Maori Fisheries Commission/Treaty of Waitangi Fisheries Commission	13
3.5 Crown to Introduce Amending Legislation	13
3.6 Crown to Promulgate Regulations	14
<u>SECTION 4: OBLIGATIONS OF MAORI</u>	<u>15</u>
4.1 Acquisition of Sealords.....	15
4.2 Endorsement by Maori of QMS	16
4.3 Fishing Litigation.....	16
4.4 Maori to Support Amending Legislation	17
4.5 Distribution of Benefits to Maori.....	17
4.6 Treaty of Waitangi Settlement Fund	19
<u>SECTION 5: SETTLEMENT AGREEMENTS</u>	<u>20</u>
5.1 Permanent Settlement of Commercial Fishing Rights and Interests.....	20
5.2 Non-commercial Fishing Rights and Interests	20
<u>SECTION 6: MISCELLANEOUS</u>	<u>21</u>
6.1 No Assignment of Deed.....	21
6.2 Notices, Requests, Demands	21
6.3 Choice of Law.....	22
6.4 Jurisdiction.....	23
6.5 Counterparts.....	23
6.6 Non-Merger.....	23
Attestation.....	24

FIRST SCHEDULE 25

Part I - Fisheries Legislation..... 25
Part II - Amendments to Treaty of Waitangi Act
1975 27

SECOND SCHEDULE 27

Fisheries Statutory Bodies

THIRD SCHEDULE 28

List of Proceedings - Fisheries Litigation

FOURTH SCHEDULE 34

Maori

ANNEXURE A 36

Outline of Scheme for Distribution of Benefits

DEED OF SETTLEMENT

THIS DEED made as of the day of 1992

BETWEEN

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

AND

MAORI by the persons who have entered into and executed this Deed of Settlement on behalf of Maori and whose names, addresses, status and representative capacity are set out in the Fourth Schedule

PREAMBLE

- A. By the Treaty of Waitangi the Crown confirmed and guaranteed to the Chiefs, tribes and individual Maori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries.
- B. Section 88(2) of the Fisheries Act 1983 provides:
"Nothing in this Act shall affect any Maori fishing rights."
- C. There has been uncertainty and dispute between the Crown and Maori as to the nature and extent of Maori fishing rights in the modern context as to whether they derive from the Treaty and/or common law (such as by customary law or aboriginal title or otherwise) and as to the import of section 88(2) of the Fisheries act 1983 and its predecessors.

- D. Maori have claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the Quota Management System introduced by legislation in 1986 is unlawful and in breach of the principles of the Treaty of Waitangi or has no application to Maori fisheries including commercial fisheries and obtained interim relief from the High Court and Court of Appeal declaring that the Crown ought not take further steps to bring the fisheries within the Quota Management System.
- E. At a national hui in June 1988 at wellington the Maori principals were given a mandate by Maori claiming rights and interests in the fisheries of New Zealand to secure a just and honourable settlement of their claims with the Crown.
- F. On 20 December 1989 Parliament enacted and brought into force the Maori Fisheries Act 1989 one purpose of which is "to make better provisions for the recognition of Maori fishing rights secured by the Treaty of Waitangi". The Act provided that quota totalling 10% of the total allowable commercial catches for all species then subject to the QMS should be transferred by the Crown to the Maori Fisheries Commission created under that Act in instalments over the period to 31 October 1992.
- G. On 27 February 1990 Maori and Crown agreed that there should be discussions between them to ensure that the evolution of the Quota Management System, including the term of quota, met both conservation and Treaty of Waitangi principles requirements and further agreed that all substantive court proceedings should stand adjourned sine die to allow discussions to continue. The Crown agreed that no further species would be

brought within the Quota Management System pending agreement of court resolution.

- H. There remain disputes between Crown and Maori as to the nature and extent of Maori fishing rights and interests and their status and the litigation between the plaintiffs and the Crown is still outstanding with interim declarations in relation to squid and paua and the Crown undertaking not to bring further species within the Quota Management System still in force.
- I. On 26 and 27 August 1992 representatives of the Crown and Maori met to discuss their differences with a view to settling outstanding claims and Treaty grievances of Maori in relation to fisheries, and, therefore, the outstanding litigation. On 27 August 1992 agreement was reached on a proposal for settlement.
- J. The Crown and Maori wish to resolve their disputes in relation to the fishing rights and interests and the Quota Management System and seek a just and honourable solution in conformity with the principles of the Treaty of Waitangi.
- K. The Crown recognises that traditional fisheries are of importance to Maori and that the Crown's Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries.
- L. The Crown and Maori wish, by entering into this Settlement Deed, to affirm that they consider the completion and performance of this Settlement Deed to be of the utmost importance in the pursuit of a just settlement of Maori fishing claims.

M. The Crown and Maori wish to express their mutual and solemn acknowledgement that the settlement evidenced by this Settlement Deed marks the resolution of an historical grievance.

ACCORDINGLY in the spirit of co-operation and good faith evidenced by the Memorandum of Understanding AND in consideration of the respective obligations and agreements contained in this Settlement Deed THE CROWN AND MAORI AGREE as follows:

SECTION 1: DEFINITIONS, CONSTRUCTION AND EXCLUDED TERMS

1.1 Definitions

In this Settlement Deed, including the schedules and any annexures, unless the context otherwise requires:

- 1.1.1 "BIL" means Brierley Investments Limited, a duly incorporated company having its registered office at Wellington and includes any wholly owned subsidiaries for the time being of that company;
- 1.1.2 "Conditions" means the conditions precedent specified in clause 2;
- 1.1.3 "the Fisheries Act" means the Fisheries Act 1983;
- 1.1.4 "the Fisheries Legislation" includes the statutes and/or regulations described in Part I of the First Schedule;
- 1.1.5 "the Fisheries Statutory Bodies" includes the statutory bodies described in the Second Schedule and any replacement or successor bodies;

- 1.1.6 "the Fishing Litigation" includes the claims, actions or proceedings described in the Third Schedule;
- 1.1.7 "GST" means Goods and Services Tax;
- 1.1.8 "Maori" is deemed to include the Moriori people of New Zealand;
- 1.1.9 "Maori/BIL Joint Venture" means the joint venture (including any company formed to act as the joint venture entity) to be established by and between the Maori Fisheries Commission and BIL to purchase Sealords;
- 1.1.10 "the Maori Fisheries Act" means the Maori Fisheries Act 1989;
- 1.1.11 "Maori fisheries Commission" means the Commission established under Part I of the Maori Fisheries Act and includes any wholly owned subsidiaries from time to time of that body;
- 1.1.12 "the MOU" or "the Memorandum" means the Memorandum of Understanding referred to in the preamble to this Settlement Deed;
- 1.1.13 "Payment Period" means the period commencing on the Settlement date and terminating on the Third Instalment Payment Date;
- 1.1.14 "QMS" means the Quota Management System established under Part IIA of the Fisheries Act;
- 1.1.15 "Sealords" means Sealord Products Limited, a duly incorporated company having its registered office at Manakau City and includes the entirety of the business and undertaking of that company;

- 1.1.16 "the Second Instalment Payment Date" means the first anniversary of the Settlement Date;
- 1.1.17 "Settlement Amount" means the sum of \$150,000,000;
- 1.1.18 "the Settlement Date" means:
 - 1.1.18.1 the day that settlement of the acquisition by the Maori/BIL Joint Venture of Sealords takes place; or
 - 1.1.18.2 such other date as the parties to this Settlement Deed mutually agree upon in writing;
- 1.1.19 "Settlement Deed" means this deed together with the schedules and any annexures;
- 1.1.20 "subsidiary" means a subsidiary as defined by section 158 of the Companies Act 1955;
- 1.1.21 "the Third Instalment Payment Date" means the second anniversary of the Settlement Date;
- 1.1.22 "the TOW Act" means the Treaty of Waitangi Act 1975.

1.2 Construction

In the construction of this Settlement Deed unless the context otherwise requires:

- 1.2.1 Any reference to a business day means a day that registered banks in Wellington are open for business;
- 1.2.2 Words importing the singular number shall include the plural; persons shall include companies; and in each case vice versa;

- 1.2.3 Any headings and marginal notations in this Settlement Deed or any table of contents have been inserted for convenience only and shall not in any way limit or govern the construction of the terms of this Settlement Deed;
- 1.2.4 Any reference to legislation or statutory requirements includes reference to regulations or any other form of delegated legislation and such legislation amended and in force from time to time and includes substituted provisions that substantially correspond to those referred to;
- 1.2.5 If any provision of this Settlement Deed shall be considered to be invalid under any applicable statute or rule of law it shall be deemed to be omitted only to the extent that the same shall be in violation of such statute or rule of law and shall be enforced to the maximum extent possible. In addition, the invalidity of any particular provision shall not in any way affect the validity of any other provision.

1.3 Exclusion of Other Terms

This Deed embodies the entire understanding and the whole agreement between the Crown and Maori relative to the subject matter hereof and all previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied (including any collateral agreement or warranty) with reference to the subject matter hereof or the intentions of any of the parties hereto are extinguished and otherwise are hereby excluded and cancelled save the Treaty of Waitangi itself.

SECTION 2: CONDITIONS PRECEDENT TO THIS DEED HAVING EFFECT

- 2.1 This deed is conditional upon the following conditions having been performed or fulfilled to the reasonable satisfaction of the Crown prior to the Settlement Date whether before or after the date of this settlement Deed:
- 2.1.1 Maori shall have undertaken and completed a due diligence investigation of the business undertaking assets and liabilities of Sealords in accordance with currently accepted commercial practice in relation to business acquisitions;
- 2.1.2 The Maori/BIL Joint Venture has, following the due diligence investigation, entered into a binding sale and purchase agreement with the owners of Sealords or with Sealords, as the case may be, for the acquisition by the Maori/BIL Joint Venture of Sealords;
- 2.1.3 Maori has entered into a joint venture agreement with BIL and such agreement includes binding and enforceable provisions to the effect that:
- 2.1.3.1 the Maori/BIL Joint Venture is being or has been established for the purpose of acquiring a 100% interest in Sealords;
- 2.1.3.2 the interest of Maori in Sealords through the Maori/BIL Joint Venture is not less than 50%;
- 2.1.3.3 Maori will not during the Payment Period without the prior written consent of the Crown sell transfer or otherwise dispose of the 50% interest or any part thereof in Sealords held by Maori through the Maori/BIL Joint Venture;

- 2.1.3.4 the Maori/BIL Joint Venture will not and will procure that Sealords will not, during the Payment Period without the prior written consent of the Crown, voluntarily sell, transfer or otherwise dispose of any quota under the QMS held by Sealords and/or on behalf of the Maori/BIL Joint Venture including any of such quota that may be transferred to or vested in Maori under the Maori/BIL Joint Venture arrangements;
- 2.1.3.5 the provisions referred to in clauses 2.1.3.3 and 2.1.3.4 to be included in the Joint Venture agreement shall be expressed as being for the benefit of the Crown; and
- 2.1.3.6 BIL has granted to Maori a valid enforceable first option (either expressed as an option to purchase or as a right of first refusal or both) to purchase or otherwise acquire from BIL its interest under the Maori/BIL Joint Venture agreement in Sealords or in the quota under the QMS held by Sealords and/or on behalf of the Sealords and/or on behalf of the Maori/BIL Joint Venture;
- 2.2 Should any of these conditions not have been performed or fulfilled to the reasonable satisfaction of the crown by the Settlement Date, or if for any reason the Maori/BIL Joint Venture does not complete the acquisition of Sealords, then this Settlement Deed and the MOU shall be at an end and neither party shall have any claim upon the other arising out of either the termination of this Settlement Deed and the Mou or the terms and conditions thereof to the intent that the parties shall for all purposes be returned on a without prejudice basis to the position that existed between them at the time immediately prior to the execution of the Mou.

- 2.3 It is acknowledged and agreed that nothing in this Settlement Deed is intended to prevent Maori from acquiring further fishing quota from Maori's own resources.

SECTION 3: OBLIGATIONS OF THE CROWN

3.1 Settlement Amount

3.1.1 Payable By Three Instalments

The Crown shall pay to Maori the Settlement Amount in three instalments as follows:

- 3.1.1.1 one third on the Settlement Date;
- 3.1.1.2 one third on the Second Instalment Payment Date; and
- 3.1.1.3 the remaining one third on the Third Instalment Payment Date.

3.1.2 Deferment of Second and Third Instalments

The Crown shall be entitled to defer either of the payments due on the Second or Third Instalment Payment Dates, as the case may be, if at either of such dates Maori is in default in the performance or observance of any of the agreements on the part of Maori herein contained (excluding the agreements referred to in clauses 4.2, 4.3 and 4.4) until such time as any such default has been remedied to the satisfaction of the Crown.

3.1.3 Use of Settlement Amount

- 3.1.3.1 Maori agrees that the Settlement Amount is to be used solely for the development and involvement of Maori in the New Zealand fishing industry;

3.1.3.2 It is acknowledged by the Crown that the application of the Settlement Amount in or towards the acquisition by Maori through the Maori/BIL Joint Venture of a 50% interest in Sealords is a proper use of the Settlement Amount for the purpose of clause 3.1.3.1.

3.1.4 Recipient of Settlement Amount

The Crown shall pay the three instalments of the Settlement Amount to the Maori Fisheries Commission and the receipt of the secretary or other proper officer of the Commission shall be a sufficient receipt for such payments.

3.1.5 Goods and Services Tax

The Settlement Amount payable by the Crown to the Maori Fisheries Commission is intended by the parties to be received by the Maori Fisheries Commission without any obligation for the Maori Fisheries Commission to account to the Inland Revenue Department for any GST. If a GST liability exists or arises, it is intended by the parties that (apart from any input tax lawfully available to the Maori Fisheries Commission) no net detriment or benefit shall result to the Maori Fisheries Commission or the Crown. To this end the parties agree to the following.

3.1.5.1 If any instalment of the Settlement Amount (or any indemnity payment made under this clause) paid to the Maori Fisheries Commission results in the Maori Fisheries Commission being required to account for output tax as provided by the Goods and Services Tax Act 1995, the Crown shall indemnify the Maori Fisheries Commission against that GST liability and, on the business day on which the Maori Fisheries Commission accounts to the Inland Revenue Department

for such output tax, the Crown shall (subject to Clause 3.1.5.2) pay to the Maori Fisheries Commission the amount of such GST liability.

- 3.1.5.2 If for whatever reason the Maori Fisheries Commission or any other person obtains a refund or credit in respect of any output tax for which an indemnity payment is made by the Crown to the Maori Fisheries Commission under Clause 3.1.5.1, then, on the business day following the business day on which the refund or credit arises, the Maori Fisheries Commission shall pay to the Crown an amount equating to the refund or credit together with any interest payable by the Commissioner of Inland Revenue on that refund or credit.

3.2 New Quota for Additional Species

The Crown agrees that it will introduce legislation to amend the Fisheries Act to authorise the allocation of 20% of any new quota, issued as a result of the extension of the QMS to fish species not included in the QMS as at the date of the Settlement Deed (including any as yet unknown species) to the Maori Fisheries Commission for distribution to Maori. The Crown will consult with the Maori Fisheries Commission on the management regime to apply at the time of the extension of the QMS to the new species.

3.3 Maori Participation on Fisheries Statutory Bodies

- 3.3.1 The Crown agrees that within a reasonable time after the Settlement Date it will, in consultation with Maori, cause Maori to participate in the Fisheries Statutory Bodies so as to reflect the special relationship between Crown and Maori.

3.3.2 In order to give effect to clause 3.3.1:

3.3.2.1 The Crown will request any Minister of the Crown or other person who is entitled to appoint members of any of the Fisheries Statutory Bodies to so exercise such power at the appropriate time;

3.3.2.2 The Crown will introduce legislation to require Maori participation where the applicable legislation in respect of any of the Fisheries Statutory Bodies does not presently require or permit such participation.

3.4 Membership of Maori Fisheries Commission/Treaty of Waitangi Fisheries Commission

3.4.1 The Crown will introduce legislation amending the Maori Fisheries Act as soon as practicable to reconstitute the Maori Fisheries Commission as a Treaty of Waitangi Fisheries Commission to succeed to the Maori Fisheries Commission as presently constituted;

3.4.2 The membership of the Treaty of Waitangi Fisheries Commission is to be appointed by the Minister of Maori Affairs in consultation with the Maori Fisheries Negotiators and Maori with beneficial interests;

3.4.3 The Treaty of Waitangi Fisheries Commission will be accountable to Maori as well as to the Crown in order that Maori are to have better control of their fisheries guaranteed by the Treaty of Waitangi.

3.5 Crown to Introduce Amending Legislation

3.5.1 The Crown agrees that it will introduce legislation to give effect to the following:

- 3.5.1.1 The repeal of section 88(2) of the Fisheries Act and at the same time an amendment to section 89(1) of the Fisheries Act by adding paragraph (o) **empowering the making of regulations** recognising and providing for customary food gathering and the special relationship between the tangata whenua and those places which are of customary food gathering importance **(including taurangacant read)** to the extent that such food gathering is not commercial in any way nor involves pecuniary gain or trade;
- 3.5.1.2 Any further legislative provisions necessary to give effect to clauses 5.1 and 5.2 of this Settlement Deed;
- 3.5.1.3 Without limiting the generality of the foregoing, the amendments to the Fisheries Legislation described in Part I of the First Schedule;
- 3.5.1.4 Without limiting the generality of the foregoing, amendments to the TOW Act as described in Part II of the First Schedule; and
- 3.5.1.5 This Deed.

3.6 Crown to Promulgate Regulations

The Crown agrees that, subject to the enactment of the amendment to section 89(1) of the Fisheries Act referred to in clause 3.5.1.1, it will, **after consultation with Maori** promulgate as soon as practicable regulations pursuant to the new paragraph (o) of section 89(1). Pending such regulations, contemporaneously with repeal of section 88(2) the Crown will amend Regulation 27 of the Fisheries (Amateur Fishing) Regulations 1986 as follows:

- 3.6.1 To add to the heading after the word "tangi" the words "or other approved purpose";
- 3.6.2 In Regulation 27(a) to add after "tangi" the words "or traditional non-commercial fishing use approved by the Director General"; and
- 3.6.3 In Regulation 27(c) deleting the words "relating to quantity... imposed by the Director General and".

SECTION 4: OBLIGATIONS OF MAORI

4.1 Acquisition of Sealords

- 4.1.1 Maori will as a 50% participant in the Maori/BIL Joint Venture perform its obligations in respect of the completion of the acquisition of Sealords by the Maori/BIL Joint Venture in accordance with the terms and conditions of the sale and purchase agreement referred to in clause 2.1.2.
- 4.1.2 Maori will apply the first instalment of the Settlement Amount received from the Crown on the Settlement Date in or towards the acquisition by Maori through the Maori/BIL Joint Venture of a 50% interest in Sealords.
- 4.1.3 Maori will not in accordance with the obligations contained in the Maori/BIL Joint Venture Agreement referred to in clause 2.1.3.3 of this Settlement Deed during the Payment Period without the prior written consent of the Crown sell transfer or otherwise dispose of the 50% interest of any part thereof in Sealords held by Maori through the Maori/BIL Joint Venture.

4.1.4 In accordance with the obligations contained in the Maori/BIL Joint Venture Agreement referred to in clause 2.1.3.4 of this Settlement Deed, Maori will ensure that the Maori/BIL Joint Venture will not, and will procure that Sealords will not, during the Payment Period without the prior written consent of the Crown, voluntarily sell, transfer or otherwise dispose of any quota under the QMS held by Sealords and/or on behalf of the Maori/BIL Joint Venture including any of such quota that may be transferred to or vested in Maori under the Maori/BIL Joint Venture arrangements.

4.2 Endorsement by Maori of QMS

Maori endorses the QMS and acknowledges that it is a lawful and appropriate regime for the sustainable management of commercial fishing in New Zealand.

4.3 Fishing Litigation

Maori will on or before the Settlement Date obtain from all Maori involved or having interests represented in Fisheries Litigation and deliver to the Crown:

4.3.1 A notice of discontinuance of each of the proceedings in respect of all the Fisheries Litigation signed by the solicitors for all the plaintiffs to those proceedings;

4.3.2 Undertakings in writing in a form satisfactory to the Crown signed by the persons who are to execute this Settlement Deed for Maori and any other persons who are plaintiffs in the Fisheries Litigation that such proceedings will not be reissued or recommenced in any

form in respect of Maori fishing rights and interests of any nature.

4.3.3 In the event that Maori are unable to provide prior to signing of this Settlement Deed notices of discontinuance and undertakings from all plaintiffs in the Fisheries Litigation, and the Crown has decided nevertheless to enter into this Settlement Deed:

4.3.3.1 Maori will continue to use their best endeavours to secure notices of discontinuance from all plaintiffs who have not provided them; and

4.3.3.2 Maori acknowledge that the Crown will introduce legislation to terminate such proceedings on the same basis as if they had been discontinued by all plaintiffs and undertakings given not to reissue them or proceedings similarly based.

4.4 Maori to Support Amending Legislation

Maori will support the enactment of the legislation referred to in clause 3.5 of this Settlement Deed.

4.5 Distribution of Benefits to Maori

4.5.1 Maori agrees that the settlement evidenced by this Settlement Deed of all the commercial fishing rights and interests of Maori ultimately for the benefit of all Maori.

4.5.2 the Treaty of Waitangi Fisheries Commission is to consider how best to give effect to the resolutions taken at the annual general meeting of the Maori Fisheries Commission in July 1992 and will be empowered to allocate assets held by the Maori

Fisheries Commission at the day before the Settlement Date.

4.5.3 The Treaty of Waitangi Fisheries Commission is to develop, after full consultation with Maori, the proposals of Maori for a new Maori Fisheries Act, that is consistent with this Settlement Deed, and shall report to the Crown within ninety (90) days of the date of this Settlement Deed with a request that it be enacted as soon as practicable having regard to commercial considerations. Any tribe with a beneficial interest may request that the Crown recommend to Parliament that the resulting Bill be referred to the Waitangi Tribunal under Section 8 of the Treaty of Waitangi Act and the Crown shall recommend it be referred accordingly. The final decision on the form of any Bill to be introduced shall be that of the Crown.

4.5.4 Such proposals referred to in clause 4.5.3 are to include:

4.5.4.1 The appointment, composition and powers of any body succeeding to the Treaty of Waitangi Maori Fisheries Commission; and

4.5.4.2 Development of a procedure for identification of beneficiaries and their interests in accordance with the Treaty of Waitangi and a procedure for allocation of benefits of this Settlement Deed to them in accordance with the principles of the Treaty of Waitangi. Such proposals for distribution of settlement benefits will address the questions set out in Annexure A and will include a procedure for Maori affected, to be heard on benefit issues.

- 4.5.5 Maori agrees that it will before the expiration of the period referred to in clause 4.5.3 provide to the Crown a scheme for the distribution of the benefits of this Settlement Deed to Maori in terms of clause 4.5.4.2 and which satisfies the Crown that all persons who may have rights and interests extinguished by or in consequence of this Settlement Deed will be fairly treated.
- 4.5.6 The Crown agrees that, until such time as a scheme of distribution which satisfies the Crown has been provided by Maori in accordance with clause 4.5.5 and clause 4.5.4.2, the Crown will not introduce legislation conferring any power to distribute to Maori any assets or benefits of either this Settlement Deed or of the Maori Fisheries Act.
- 4.5.7 All parties acknowledge the Treaty of Waitangi Fisheries Commission receives and holds the settlement benefits on behalf of Maori and for their benefit.

4.6 Treaty of Waitangi Settlement Fund

Maori recognise that the Crown has fiscal constraints and that this settlement will necessarily restrict the Crown's ability to meet from any fund which the Crown establishes as part of the Crown's overall settlement framework, the settlement of other claims arising from the Treaty of Waitangi.

SECTION 5: SETTLEMENT AGREEMENTS5.1 Permanent Settlement of Commercial Fishing Rights and Interests

Maori agree that this Settlement Deed, and the settlement it evidences, shall satisfy all claims, current and future, in respect of, and shall discharge and extinguish, all commercial fishing rights and interests of Maori whether in respect of sea, coastal or inland fisheries (including any commercial aspect of traditional fishing rights and interests), whether arising by statute, common law (including customary law and aboriginal title), the Treaty of Waitangi, or otherwise, and whether or not such rights or interests have been the subject of recommendation or adjudication by the Courts or the Waitangi Tribunal.

5.2 Non-Commercial Fishing Rights and Interests

The Crown and Maori agree that in respect of all fishing rights and interests of Maori other than commercial fishing rights and interests their status changes so that they no longer give rise to rights in Maori or obligations on the Crown having legal effect (as would make them enforceable in civil proceedings or afford defences in criminal, regulatory or other proceedings). Nor will they have legislative recognition. Such rights and interests are not extinguished by this Settlement Deed and the settlement it evidences. They continue to be subject to the principles of the Treaty of Waitangi and where appropriate give rise to Treaty obligations on the Crown. Such matters may also be the subject of requests by Maori to the Government or initiatives by Government in consultation with Maori to develop

policies to help recognise use and management practices of Maori in the exercise of their traditional rights.

SECTION 6: MISCELLANEOUS

6.1 No Assignment of Deed

Neither this Settlement Deed nor any of the rights or obligations hereunder may be assigned by the Crown or by Maori.

6.2 Notices, Requests, Demands

Any notice, request or demand required or permitted to be given pursuant to this Settlement Deed shall be in writing and shall be deemed sufficiently given if:

- 6.2.1 Delivered by hand to the intended recipient;
- 6.2.2 Deposited in New Zealand "Fastpost" (registered or certified with return receipt requested), postage prepaid, addressed to the intended recipient; or
- 6.2.3 Sent by facsimile addressed to the intended recipient;

at the intended recipient's address below set forth or at such other address as the intended recipient may have specified in a written notice to the sender given in accordance with the requirements of this clause.

Any such notice, request or demand mailed as set out in clause 6.2.2 shall be deemed to have been received by the addressee at the specified address 2 business days following the date of mailing and any such notice request or demand sent by

facsimile shall be deemed to have been received by the addressee on the same business day as the day on which such facsimile is sent so long as the facsimile is sent prior to 3.00p.m.

If to the Crown, addressed to:

Crown Law Office
139-141 Featherston Street
Wellington

Facsimile: (04) 472-5152

If to Maori, addressed to:

Maori Fisheries Negotiators
Luckie Hain Kennard & Sclater
Solicitors
Level 5, Harbour City Tower
29 Brandon Street
Wellington

Attention: Mr Martin Dawson

Facsimile: (04) 471-2212

6.3 Choice of Law

This Deed shall be construed, interpreted and the rights of the Crown and Maori shall be determined in accordance with the laws of New Zealand.

6.4 Jurisdiction

The Crown and Maori each agree to submit to the jurisdiction of the courts of New Zealand and any court empowered to hear appeals therefrom.

6.5 Counterparts

This Deed may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.6 Non-Merger

The agreements and obligations of the parties in this Settlement Deed shall not merge upon payment of the Settlement Amount by the Crown but (to the extent that they have not been completed by performance on the Settlement Date) shall remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.

INSERT PAGE TO BE SCANNED HERE

AS WITNESS the hands of the parties.....etc

FIRST SCHEDULEPART IFisheries Legislation

1. Repeal s.88(2) Fisheries Act.
2. Legislative provisions necessary to give effect to clauses 5.1 and 5.2 of the Deed.
3. Amendments to the Fisheries Act:
 - 3.1 S.2 - Interpretation
 Insert a new definition of Commission being the Maori Fisheries Commission established under s.4 of the Maori Fisheries Act 1989.
 - 3.2 S.28B - Declaration that species or class of fish is subject to the QMS
 Amend s.28B(1) by inserting before the words Fishing Industry Board the words Commission and the.
 - 3.3 S.28D - Matters to be taken into account in determining or varying any total allowable commercial catch
 Amend s.28D(1)(a)(i) by deleting the words Maori other.
 Amend s.28D(2) by inserting before the words Fishing Industry Board the words Commission and the.
 - 3.4 S.28E to ZG - Provisions relating to the allocation of Quota and Appeals
 Variation of the regime to allow for 20% of the total allowable commercial catch for any fishery brought within the QMS to be allocated to the Maori Fisheries Commission as individual transferable quotas.
 - 3.5 S.30 - Declaration of controlled fisheries
 Amend s.30(1) by deleting the words New Zealand and inserting before the words Fishing Industry Board the words Commission and the.

3.6 S.47 - Restrictions on licences

Amend s.47(1) by inserting before the words Fishing Industry Board the words Commission and the.

3.7 S.86 - Closed seasons in the Exclusive Economic Zone

Amend s.86 by inserting before the words Fishing Industry Board the words Commission and the.

3.8 S.88 - Limitation of Act

Repeal s.88(2) relating to Maori fishing rights.

3.9 S.89 - Regulations

(i) Amend s.89(1) by the addition of paragraph (o) empowering the making of regulations recognising and providing for customary food gathering and the special relationship between tangata whenua and those places which are of customary food gathering importance to the extent that such food gathering is not commercial in any way nor for pecuniary gain of trade.

(ii) amend s.89(3)(b) (relating to the conferring of special rights on specified communities) by adding the word non-commercial before the word fishing.

3.10 S.107G - Resource rental variations

Amend subsection(6) by inserting before the words Fishing Industry Board the words Commission and the.

3.11 First Schedule Matters to be included in Fishery Management Plan

Amend Clause 1(a) by deleting the words Maori, traditional, recreational.

(Other amendments consequential on these will also be required)

4. Amendments to the Maori Fisheries Act4.1 S.2 - Interpretation

Amend the definition of "transition period" so that it ends on the earlier of the expiration of the Payment Period or the date that the scheme of distribution pursuant to clause 4.5 comes into effect.

4.2 S.29 - Membership of Maori Fisheries Commission

Amend:

- 4.2.1 to require the Minister of Maori Affairs to consult with Maori before advising the Governor-General on the making of appointments to the Maori Fisheries Commission; and
- 4.2.2 to increase the number of members of the Maori Fisheries Commission.

5. Amendments To The Fisheries (Amateur Fishing) Regulations 19865.1 Reg. 27 - Fish taken for hui or tangi

Amend reg. 27 as follows:

- 5.1.1 add to the heading after the word tangi the words or other approved purpose.
- 5.1.2 add to reg. 27(a) after the word tangi the words or traditional non-commercial fishing use approved by the Director General.
- 5.1.3 delete from reg. 27(c) the words relating to quantity, size, or methods of taking the fish, areas from where the fish may be taken, or persons who may take the fish that are imposed by the Director General and".

PART II

Amendments to Treaty of Waitangi Act 1975

Amendments to the TOW Act whereby the Tribunal's jurisdiction to inquire into or make findings on commercial fisheries or this Settlement Deed or the legislation giving it effect is removed.

SECOND SCHEDULEFISHERIES STATUTORY BODIES

- 1. Category 1: Bodies where existing legislation allows for Maori representation.
 - 1.1 Fisheries Management Advisory Committee (s.7 Fisheries Act);
 - 1.2 Fisheries Authority (s.13 Fisheries Act);

- 1.3 New Zealand Conservation Authority (s.6D Conservation Act 1987);
- 1.4 Conservation Boards (s.6P Conservation act 1987);
- 2. Category 2: Bodies whee Maori representation could be achieved without legislative amendments but amendments are desirable.
- 2.1 Fishing Industry Board (s.3 Fishing Industry Board Act 1963);
- 2.2 Any committee of the Fishing Industry Board (s.9 Fishing Industry Board Act 1963);
- 2.3 Guardians of Lakes Manapouri, Monowai and Te Anau (s.6X Conservation Act 1987).

THIRD SCHEDULE

LIST OF PRCEEDINGS: FISHING LITIGATION

- I. Te Runganga o Muriwhenua Inc v Attorney-General and others (C.P. No. 553/87).
- II. H.R. Tau, the Ngai Tahu Maori Trust Board v Attorney-General and others (C.P. No. 559/87).
- III. The New Zealand Maori Council and others v Attorney-General and others (C.P. No. 610/87).
- IV. T. Mahute and others v Attorney-General and others (C.P. No. 614/87).
- V. The Hon Matiu Rata and others v Attorney-General and others (C.P. No. 744/88).
- VI. R.T.K. Mahuta and another v Attorney-General and others (C.P. No. 744/88).
- VII. J.Henare and others v Attorney-General and others (C.P. No. 746/88).
- VIII. T. or S.G. O'Regan and others v Attorney-General and others (C.P. No. 747/88).
- IX. J.Henare and others v Attorney-General and others (C.P. No. 762/88).

There are nine discrete sets of proceedings which are listed above in summary. These proceedings involve 49 separate plaintiffs, a list of these plaintiffs is attached. Some of the plaintiffs are involved in more than one set of

proceedings in which case this is noted. In two cases, those of E. Smith and I. Puketapu, the plaintiffs have been listed twice as they appear to represent different Iwi or Hapu.

List of Plaintiffs in the Fishing Litigation

- I. C.P. No. 553/87
1. Te Runanga o Muriwhenua Inc (i) (First Plaintiff).
Also C.P. No. 743/88 (Sixth Plaintiff).
- II. C.P. No. 559/87
2. Henare Rakiihia Tau (Deputy Chairman), the Ngai Tahu Maori Trust Board (ii) (Plaintiff).

The Ngai Tahu Maori Trust Board. Also C.P. No. 747/88 (Second Plaintiff).
- III. C.P. No. 610/87
3. The New Zealand Maori Council (iii) (First Plaintiff).
4. Raukawa Marae Trustee (iv) (Second Plaintiff).
5. Waiariki District Maori Council (iii) (Third Plaintiff).
6. Raukawa District Maori Council (iii) (Fourth Plaintiff).
7. The Taranaki Maori Trust Board (v) (Fifth Plaintiff).
- IV. C.P. No. 614/87
8. Tumate Mahuta (Kaahui Ariki), Henare Tuwhangai (Chairman of Te Kaumarua), Wi Matau Taka (Secretary and Executive Officer of Tainui Trust Board), Whare Toroa Kerr (Chairman of Nga Marae Toopu - Representatives of the Marae within Tainui), Rua Cooper, Barney Kirkwood, Ben Hoete, Eva Tua Iwi Rickard, Nganeko Minhinnick (all kaumatua and spokespersons of Tainui), Wiripoi Tamehana-Tumukai (King maker) all of Waikato (First Plaintiff).
9. The Tainui Trust Board (v) (Second Plaintiff).

Also C.P. No. 744/88 (Second Plaintiff).
- V. C.P. No. 743/88
10. Hon. Matiu Rata, Kaumatua of Ngati Kuri suing on behalf of himself and the members of his tribe (First Plaintiff).

11. Paehere Brown, Kaumatua of Te Aupouri suing on behalf of himself and the members of his tribe (Second Plaintiff).
 12. Simon Snowdon, Kaumatua of Te Rarawa suing on behalf of himself and the members of his tribe (Third Plaintiff).
 13. Rev. Maori Marsden, Kaumatua of Ngati Takato suing on behalf of himself and the members of his tribe (Fourth Plaintiff).
 14. MacCully Matiu, Kaumatua of Ngati Kahu suing on behalf of himself and the members of his tribe (Fifth Plaintiff).
- VI. C.P. No. 744/88
15. Robert Te Kotahi Mahuta of Huntly suing on behalf of himself and the members of Tainui (First Plaintiff).
- VII. C.P. No. 746/88
16. James Henare, Kaumatua of Ngapuhi suing on behalf of himself and the members of his tribe (First Plaintiff).
Also C.P No. 762/88 (Ngapuhi Whanui, First Plaintiff).
 17. Peter George, Kaumatua of Ngati Kahu suing on behalf of himself and the members of his tribe (Second Plaintiff).
Also C.P. No. 762/88 (Ngati Kahu, Second Plaintiff).
 18. Whina Cooper, Kuia of Ngapuhi of Hokianga suing on behalf of herself and the members of her tribe (Third Plaintiff).
Also C.P No. 762/88 (Ngapuhi Whanui, Third Plaintiff).
 19. George Parata, Kaumatua of Ngati Wai suing on behalf of himself and the members of his tribe (Fourth Plaintiff).
Also C.P No. 762/88 (Ngati Wai, Fourth Plaintiff).
 20. Russell Kemp, Kaumatua of Ngati Whatua suing on behalf of himself and the members of his tribe (Fifth Plaintiff).
Also C.P. No. 762/88 (Ngati Whatua Whanui, Fifth Plaintiff).

21. James Nicholls, Kaumatua of Ngati Maru suing on behalf of himself and the members of his tribe (Sixth Plaintiff).
Also C.P. No. 762/88 (Ngati Maru, Sixth Plaintiff).
22. William Ohia, Kaumatua of Ngati-Terangi suing on behalf of himself and the members of his tribe (Seventh Plaintiff).
Also C.P. No. 762/88 (Ngati-Terangi, Seventh Plaintiff).
23. Manu Cletus Paul, Kaumatua of Ngati Awa suing on behalf of himself and the members of his tribe (Eighth Plaintiff).
Also C.P. No. 762/88 (Ngati Awa, Eighth Plaintiff).
24. Claude Edwards, Kaumatua of Whakatohea suing on behalf of himself and the members of his tribe (Ninth Plaintiff).
Also C.P. No. 762/88 (Whakatohea, Ninth Plaintiff).
25. Tipi Stainton, Kaumatua of Whanau-a-Apanui suing on behalf of himself and the members of his tribe (Tenth Plaintiff).
Also C.P. No. 762/88 (Whanau-a-Apanui, Tenth Plaintiff).
26. Henare Ngata, Kaumatua of Ngati Porou me Nga Iwi o Te Tairawhiti me o ratou hapu suing on behalf of himself and the members of his tribe (Eleventh Plaintiff).
Also C.P. No. 762/88 (Nga Iwi o Te Tairawhiti, Eleventh Plaintiff).
27. Jules Ferris, Kaumatua of Naitanga Mahaki suing on behalf of himself and the members of his tribe (Twelfth Plaintiff).
Also C.P. No. 762/88 (Aitanga-a-Mahaki, Twelfth Plaintiff).
28. Hunara Tangaere, Kaumatua Nga Iwi o Te Tairawhiti me o ratou hapu suing on behalf of himself and the members of his tribe (Thirteenth Plaintiff).
29. Eru Smith, Kaumatua of Ngati Kahungunu suing on behalf of himself and the members of his tribe (Fourteenth Plaintiff).

30. Hikaia Amohia, Kaumatua of Ngati Maniapoto and Atihau-Niui-a-Paparangi (the River tribes of Wanganui) suing on behalf of himself and the members of his tribe (Fifteenth Plaintiff).
- Also C.P. No. 762/88 (Thirteenth Plaintiff).
31. Roger Preece, Kaumatua of Whare Kauri suing on behalf of himself and the members of his tribe (Sixteenth Plaintiff).
- Also C.P. No. 762/88 (Whare Kauri Rekohu, Fifteenth Plaintiff).
32. Charles Moihi Bennett, Kaumatua of Arawa suing on behalf of himself and the members of his tribe (Seventeenth Plaintiff).
- Also C.P. No. 762/88 (Te Araw Whanui, Sixteenth Plaintiff).
33. Mack Te Mara, Kaumatua of Tuhoe suing on behalf of himself and his tribe (Eighteenth Plaintiff).
- Also C.P. No. 762/88 (Ngai Tuhoe, Seventeenth Plaintiff).
34. Eru Smith, of Nga Iwi o Takitimu me o ratou hapu suing on behalf of himself and the members of his tribe (Nineteenth Plaintiff).
- Also C.P. No. 762/88 (Nga Iwi o Takitimu me o ratou hapu, eighteenth plaintiff).
35. Tamihana Bailey, Kaumatua of te Ati-awa suing on behalf of himself and his tribe (Twentieth Plaintiff).
- Also C.P. No. 762/88 (Nga Iwi o Te Tauihu o te Waka me o ratou hapu, Nineteenth Plaintiff).
36. Tui Ruruku Elkington, Kaumatua of Ngati Koata suing on behalf of himself and his tribe (Twenty-first Plaintiff).
- Also C.P. No. 762/88 (Ngati Koata, Twentieth Plaintiff).
37. Pene Turi Ruruku, Kaumatua of Waikauri suing on behalf of himself and his tribe (Twenty-second Plaintiff).
- Also C.P. No. 762/88 (Waikauri, Twenty-First Plaintiff).
38. James Walker, Kaumatua of Ngati Kuia suing on behalf of himself and his tribe (Twenty-third Plaintiff).

Also C.P No. 762/88 (Ngati Kuia, Twenty-second Plaintiff).

39. Matuaiwi Horomona, Kaumatua of Ngati Toa suing on behalf of himself and his tribe (Twenty-fourth Plaintiff).
40. Kapa Stafford, Kaumatua of Ngati Rarua suing on behalf of himself and his tribe (Twenty-fifth Plaintiff).

Also C.P. No. 762/88 (Twenty-Third Plaintiff).

41. Jean Andrews, Kuia of Ngati Haumia suing on behalf of herself and her tribe (Twenty-sixth Plaintiff).

Also C.P. No. 762/88 (Ngati Haumia, Twenty-Fourth Plaintiff).

42. Hamiora Raumati, Kaumatua of Nga Iwi o Taranaki me o ratou hapu suing on behalf of himself and his tribe (Twenty-seventh Plaintiff).

Also C.P. No. 762/88 (Taranaki Whanui, Twenty-Fifth Plaintiff).

43. Rangiharuru Fitzgerald, Kaumatua of Ngati Rangitane ki Manawatu suing on behalf of himself and his tribe (Twenty-Eighth Plaintiff).

Also C.P No. 762/88 (Rangi Tane ki Manawatu, Twenty-Sixth Plaintiff).

44. Whatakaraka Davis, of Ngati Raukawa ki Te Tonga me ona hapu suing on behalf of himself and his tribe (Twenty-Ninth Plaintiff).

Also C.P No. 762/88 (Ngati Raukawa ki Te Tonga, Twenty-Seventh Plaintiff).

45. Matuaiwi Solomon, Kaumatua of Ngati Toarangatira mee ona hapu me Te Ati Awa ki Whakarongotai suing on behalf of himself and his tribe (Thirtieth Plaintiff).

Also C.P No. 762/88 (Twenty-Ninth Plaintiff).

46. Ihakara Puketapu of Nga Iwi o Te Tauhi o Te Waka me o ratou hapu suing on behalf of himself and his tribe (Thirty-First Plaintiff).

VIII. C.P. No. 747/88

47. Tipene or Stephen Gerard O'Regan chairman of the Ngai Tahu Maori Trust Board (First Plaintiff).

IX C.P. No. 762/88

47. Taitoko Rangiwhakateka, Kaumatua of Nga Iwi o Whanganui me o ratou hapu suing on behalf of himself and members of Nga Iwi o Whanganui me o ratou hapu (Fourteenth Plaintiff).
48. Winifred Ngaroma McKenzie of Ngati Rauhoto a Tia suing on behalf of herself and members of Ngati Rauhoto a Tia (Twenty-Eighth Plaintiff).
49. Ihakara Puketapu of Taranaki ki Te Whanganui-a-Tara suing on behalf of himself and the members of Taranaki ki Te Whanganui-a-Tara (Thirtieth Plaintiff).

Key

- (i) A body incorporated under the Incorporated Societies Act 1908.
- (ii) A body established by the Ngai Tahu Trust Board Act 1946.
- (iii) A body corporate established by section 17 of the Maori Community Development act 1962.
- (iv) A body established by section 10 of the Maori Purposes Act 1936.
- (v) A body corporate buy virtue of the Maori Trust Boards Act 1955.

Insert Fourth Schedule Maori Signatures page here

Insert Fourth Schedule Maori (con't) page here

Insert ANNEXURE A page here

