

To all prospective tenderers for Crown quota shares

BACKGROUND INFORMATION RELATING TO THE TENDERING OF CROWN QUOTA SHARES

This fact sheet provides answers to many of the questions that have arisen on the process by which the Crown tenders its quota shares.

How does the Crown acquire quota shares?

There are several mechanisms by which the Crown can acquire quota shares. The most common mechanisms are discussed below.

a) New stocks entering the Quota Management System (QMS)

The majority of stocks that have entered the QMS to date have had quota allocated to fishers based on catch history. For some stocks there is a difference between the sum of catch history, the 20% of quota allocated to Maori (Te Ohu Kai Moana Trustee Limited) and the Total Allowable Commercial Catch (TACC). Any 'headroom' quota is allocated to the Crown.

Except for certain species listed on Schedules 4C and 4D of the Fisheries Act 1996 quota allocation for future QMS introductions will not be by way of catch history; 80% of quota will be allocated directly to the Crown and 20% to Maori (Te Ohu Kai Moana Trustee Limited).

b) Forfeited quota

If a quota owner is convicted of certain offences their quota may be forfeited to the Crown. After all legal processes are completed (i.e. appeals etc) this quota is transferred to the Crown.

c) Surrendered quota

When fishers wish to quit the fishing industry they may find themselves in a position where they are unable to sell very small parcels of quota as the cost of transferring the quota is greater than the value of that quota. Section 49A of the Fisheries Act 1996 allows fishers in such a position to transfer that quota to the Crown, who pays the transaction costs for the transfer.

Where does the Ministry of Fisheries get the authority to sell Crown quota shares?

In 1994 Cabinet agreed that, in principle, the Crown should not be a quota holder in future. This removes any perception of conflict with the other roles that the Crown plays (i.e. regulator and decision-maker). Cabinet also agreed to a process of divestment of Crown quota involving an open public tender and a reserve price mechanism set sufficiently high to ensure that sales by tender realise current average market prices. Additionally, Cabinet agreed that no preferential access should be given to any interest groups.

After a review of the sale of Crown-held quota in 2005, the Minister of Fisheries agreed that the Ministry should continue to dispose of Crown-held quota (and ACE) through an open public tender, except in specific circumstances, and that a reserve price should be employed in all circumstances.

Under what circumstances does the Ministry withhold Crown-held quota shares from a tender round?

The Ministry will generally include all Crown-held quota shares in a tender round unless:

- There are concerns about the sustainability of a stock
- The stock is in the Kermadec Fishery Management Area
- The species is the subject of litigation (e.g. scampi)
- There are outstanding Catch History Review Committee appeals to be resolved
- The chief executive considers it would not be in the public interest to do so

How are reserve prices calculated?

Reserve prices are not disclosed, and therefore the method by which they are calculated is not public information. Reserve prices are calculated on a stock by stock basis using all available information and are approved by the National Manager Fisheries Operations prior to consideration of the tenders.

How is the integrity of the process maintained?

There are four general roles in the tender process: administration, management, policy, and approval. These roles are kept separate, and only information required by each business group is provided to them. The administration of the round (advertising, accepting and organising bids, etc.) is done by FishServe. The management of the process (issuing instructions to FishServe, managing the Crown quota portfolio, etc.) is administered by the Regulatory and Registry group (MFish). The policy for tender rounds (any advice to Cabinet, setting reserve prices etc.) is undertaken by the economics

group at MFish. Finally, approval of reserve prices, and of actions on individual bids, is done by either the National Manager Fisheries Operations, or the Regulatory and Registry Services Manager.

Sensitive information relating to the tender process is only available to those Ministry staff that require it. For example, reserve prices are calculated by staff separate from those who administer the tender. Reserve prices are made available only to the National Manager Fisheries Operations and to the Crown Quota Broker upon conclusion of the tender process (to allow the Broker to recommend actions on each bid). Only those Ministry staff that analyse bids with the view to authorise sales are provided with bid information (and only in summarised form).

The Minister is not provided with any information relating to bids, except a summary at the conclusion of the tender (how many bids received across how many stocks, total revenue generated from stocks sold, etc.)

Can anyone bid for Crown quota shares?

Yes, although the Fisheries Act 1996 specifically precludes overseas people from owning quota unless that overseas person is a company that has obtained ministerial consent. You do not need to be an existing client or to have a fishing permit in order to bid for quota shares. Should your bid be successful you will be required to complete a client registration form with FishServe.

If I am a successful bidder do the quota shares in question have to be transferred to me?

No. If you are notified by the Crown quota broker that you have been successful in one of your bids this means that you now own the right to purchase the shares in question for a specific price. Once a bid is accepted, you are legally obliged to purchase those shares. However, you may assign that right to someone else so long as the money is paid by the due date.

What happens if my bid breaches the aggregation limits?

For most species, other than rock lobster, paua or bluenose, you are allowed to own quota shares up to the equivalent of 35% of the combined TACCs for that species. For the 43 species listed on Schedule 5 of the Fisheries Act 1996 this figure is increased to quota shares equivalent to 45% of the combined TACCs.

If you are a successful bidder, but the amount of shares that you have bid for would breach the aggregation limit provisions of the Fisheries Act, you will not be in breach of the Act. At some point you will be notified that the Ministry is unable to transfer all the shares in question, as to do so would be in breach of the Act. Your bid will be reduced to the level of the aggregation limit.

Similarly, if an “Included Person” (under the Fisheries Act) makes a bid for the same species without your knowledge, and if that bid is successful and puts the combined quota ownership in breach, then you must reduce ownership before those shares can be registered in your name.

Does the Ministry retain the money it makes from selling quota?

No, all funds raised by selling quota (and ACE) are transferred directly to the general government account.

Tender Request for the Purchase of Quota Shares

Tender Number 2008-01

The Ministry of Fisheries ("the Ministry") invites tenders for the purchase of quota shares as listed in the attached Schedule A. All tenders will be subject to the Conditions of Tender contained in this Tender Request.

CONDITIONS OF TENDER

1. Definitions

1.1 In these Conditions of Tender:

"Act"	means the Fisheries Act 1996.
"Aggregation Limits"	means the restrictions on the ownership of quota shares set out in Section 59 of the Act as described in clause 7.3 of these Conditions of Tender.
"Bid"	means an offer to purchase individual parcels of QUOTA SHARES on the Tender Offer Form, at a total price (the Bid Price).
"Counter-Offer"	means an offer made by the Ministry to a tenderer where the tenderer's original bid is unable to be fully accepted.
"GST"	means Goods and Services Tax.
"Quota Shares"	means the quota shares which are the subject of this tender request as listed in the attached Schedule A.
"Tender Close Date"	means 3.00pm, Thursday 28 August 2008.
"Tender Offer Form"	means the form on which the tenders are to be submitted, a copy of which is attached as Schedule B
"Transfer Form"	means the approved form for transfer of Quota Shares.

- 1.2 Other words, terms and phrases used in these Conditions of Tender and which are defined in the Act are to be interpreted using the definitions in the Act unless the context otherwise requires.
- 1.3 The Schedules are part of these Conditions of Tender.
2. The Tender Process
 - 2.1 Commercial Fisheries Services Limited (FishServe) has been appointed as the Crown Quota Broker. All decisions in respect of this tender, however, will be made by the Ministry.
 - 2.2 Bids must be sent to:

The Crown Quota Broker Tender Box
P O Box 24 346
Manners Street
Wellington 6142

or

The Crown Quota Broker Tender Box
level 6
Eagle Technology House
135 Victoria Street
Wellington
 - 2.3 Bids must:
 - 2.3.1 Be submitted on the Tender Offer Form;
 - 2.3.2 Be received by the Crown Quota Broker at the address in clause 2.2 above by the Tender Close Date;
 - 2.3.3 Be signed in the appropriate place on the Tender Offer Form to the effect that the terms and conditions of the tender are accepted in full by the tenderer;
 - 2.3.4 Be signed by the tenderer or a person duly authorised to sign on behalf of the tenderer in which case a copy of the power of attorney or authorisation to sign on behalf of the tenderer is required;
 - 2.3.5 Clearly show with each Bid:
 - i. The quantity of Quota Shares being bid for; and
 - ii. The Bid Price **exclusive of GST**; and
 - 2.3.6 Be submitted in original form (i.e. no facsimiles or emails will be accepted).
 - 2.4 Notwithstanding clause 2.3 the Ministry reserves the right to accept Bids received after the Tender Close Date but prior to the Ministry

having commenced consideration of Bids, or that are otherwise non-compliant.

3. Reserve

- 3.1 A reserve price will be set for each quota stock. Bids that are below the reserve price are unlikely to be accepted. Nevertheless the Ministry reserves the right to accept any bid despite it being below the reserve price.

4 Bids

- 4.1 Multiple Bids for different quantities and different bid prices are permitted.
- 4.2 No Bid will be considered which on its face (that is, without reference to the extended definition of "person" set out in Section 59 (10) of the Act and more fully described in clause 7.3 below) is for a quantity of shares in excess of the Aggregation Limits. Where any such Bid is submitted it shall be treated by the Ministry as being for the maximum number of Quota Shares which, on its face, does not breach the Aggregation Limits. No Bid will be considered which is otherwise in breach of the Act or any regulation, order or notice made under the Act.
- 4.3 Eligible Bids received will be considered in order of bid price per quota share from highest to lowest.

5. Acceptance of Bids

- 5.1 No Bids will be accepted before the Tender Close Date.
- 5.2 The Ministry may accept any or none of the Bids it receives at its discretion. The Ministry may also withdraw Quota Shares from the tender at any time.
- 5.3 Successful tenderers will be notified in writing of acceptance. Once a Bid is accepted it is binding on the tenderer.
- 5.4 In the event that there is more than one equally priced bid the successful tenderers' Bids will be apportioned on a pro rata basis if required.
- 5.5 In circumstances where there are insufficient Quota Shares to fully satisfy a Bid, the Ministry may make a Counter-Offer to the tenderer or tenderers. Acceptance of any Counter-Offer by the tenderer will be binding on the tenderer.

5.6 A tenderer's existing holding of shares plus Quota Shares accepted under these Conditions of Tender, may not exceed the relevant Aggregation Limit figures. Thus a tenderer may not obtain rights under these Conditions of Tender, to that number of Quota Shares which, if they became the owner of them, would put them over the Aggregation Limits. Any acceptance (however expressed) is to be read subject to this clause and any acceptance that would otherwise breach this clause shall be deemed reduced to the Aggregation Limit figure minus one.

6. Payment

6.1 For stocks subject to the 1 October fishing year full settlement funds (**including GST**) must be paid to the FishServe Crown Quota Broker Account no later than Thursday 25 September 2008 in order for the relevant quota shares to be transferred prior to 1 October 2008. In all other cases full settlement funds (**including GST**) must be paid to the FishServe Crown Quota Broker Account no later than Thursday 30 October 2008.

6.2 Where payment is not made by the end of the period set out in clause 6.1 or within such extended period as the Ministry may, in its discretion allow, the Ministry may offer the Quota Shares to another tenderer.

7. Rights of Successful Tenderers

7.1 Successful tenderers will not become the owner of any Quota Shares under the Act until:

- 7.1.1 acceptance of the tenderer's Bid is notified by the Crown Quota Broker in writing or the tenderer has, in writing, accepted a Counter Offer;
- 7.1.2 full settlement funds have been paid;
- 7.1.3 the Transfer Form has been completed; and
- 7.1.4 the transfer has been registered.

7.2 Where a tender is binding on a tenderer it means that the tenderer has a right to become the owner of the relevant shares and an obligation to pay for them in accordance with these Conditions of Tender. The right to acquire shares may be assigned, in whole or in part, to any other person (whether involved in the tender process or not). The successful tenderer may arrange for someone else to pay for the shares but the obligation remains with them.

7.3 Section 59 of the Act sets out the maximum number of quota shares a person can hold of different stocks and species. Section 59 of the Act extends the definition of "person" to include other persons such as business partners, fellow employees or directors, certain relatives, certain associated persons and certain fellow beneficiaries and trustees. [See Section 59 (10), (10A), and (11) of the Act]. Under

these provisions the quota holdings of these other persons can be deemed to be holdings of the tenderer and so put the tenderer's holdings over the Aggregation Limits. The Act also contains extensive provisions relating to foreign ownership of quota (and other rights). See sections 56-58 of the Act.

7.4 Quota held by any person in breach of the aggregation limits or foreign ownership restrictions referred to in clause 7.3 above may ultimately be forfeited to the Crown without compensation. It is the tenderer's responsibility to understand these provisions and if necessary to obtain their own legal advice on them.

7.5 It is the responsibility of the tenderer to be aware of all other provisions of the Act, and regulations made under the Act and if necessary to obtain their own legal advice on them.

7.6 It is the responsibility of the tenderer to be aware of all other relevant provisions including (where relevant) regulations relating to bivalve shellfish made under the Animal Products Act 1999 (including the Animal Products (Regulated Control Scheme-Bivalve Molluscan Shellfish) Regulations 2006 and if necessary to obtain their own legal advice on them.

8. Iwi Right of First Refusal

8.1 The following stock is the subject of a Right of First Refusal ("RFR") as part of deeds of settlement negotiated between the Crown and individual iwi: DAN9.

8.2 For the stock identified in clause 8.1 all or a portion of the available quota may first need to be offered to iwi as part of the RFR. Accordingly a tenderer's bid may not be able to be accepted in whole or in part until the RFR is accepted or declined.

9. Publicity

9.1 After the Tender Close Date the Ministry will release details of certain aspects of the tender. Information such as successful bid prices will be publicly available.

10 Privacy/Official Information

10.1 Except as may be otherwise required by law, information supplied in the Tender Offer and any other supporting material will only be used by the Ministry or its agent for the management of Crown-owned quota shares. Tenderers have the right to access and correct the information held by the Ministry pursuant to the Privacy Act 1993.

10.2 Any information submitted to the Ministry as part of the tender round is subject to the Official Information Act 1982.

11. Negotiations With Tenderer

11.1 The Ministry may, after the Tender Close Date, negotiate with any tenderer on any matter relating to any of their Bids.

12. Liability of Ministry/Broker

12.1 Neither the Ministry nor the Crown Quota Broker shall be liable for any costs that the tenderer may incur in participating in this tender round.

13. Disclaimer

13.1 No previous assurance by either the Ministry or the Crown Quota Broker whether oral or in writing shall be taken into account in the tender process.

14. No obligations

14.1 No legal or other obligations shall arise between the tenderer and the Ministry in relation to the conduct or outcome of the tender process unless and until the tenderer has received written notification of the acceptance of the tender or the tenderer has, in writing, accepted a Counter Offer. Specifically, but without limitation, no process contract shall arise out of the tender process.

Schedule A

Stock Code	Common Name	Number of Shares (ITQ)	Current TACC (kg)	ACE Equivalent
ANC1	Anchovy	29,092,000	200,000	58,184
ANC3	Anchovy	18,824,000	50,000	9,412
ANC7	Anchovy	31,839,000	100,000	31,839
ANC8	Anchovy	80,000,000	100,000	80,000
DAN9	Ringed dosinia	49,696,970	33,000	16,400
EMA3	Blue mackerel	304	390,000	1
FLA7	Flatfish	9,682	2,065,600	200
FRO1	Frostfish	44,968	149,000	67
FRO3	Frostfish	781	176,000	1
GLM7A	Green-lipped mussel	13,792,799	1,500,000	206,892
GMU2	Grey mullet	995,025	20,100	200
GSC3	Giant spider crab	18,471,429	14,000	2,586
GSC5	Giant spider crab	3,057,895	19,000	581
GSC6A	Giant spider crab	4,764,864	148,000	7,052
GSC6B	Giant spider crab	20,680,590	237,000	49,013
GSP1	Pale ghost shark	196	1,150,000	2
JDO3	John dory	45,141,065	31,900	14,400
JMA1	Jack mackerel	20,099	10,000,451	2,010
JMA7	Jack mackerel	30,734	32,536,763	10,000
KIN3	Kingfish	334,728	1,000	3
LDO3	Lookdown dory	20,376,059	614,000	125,109
LEA1	Leatherjacket	4,249	188,000	8
LEA2	Leatherjacket	26,217,192	1,136,000	297,827
MOO1	Moonfish	5,769,396	527,000	30,405
PAD1	Paddle crab	31,364	220,000	69
PAD2	Paddle crab	28,007,273	110,000	30,808
PAD3	Paddle crab	18,711,000	100,000	18,711
PAD8	Paddle crab	38,785,001	60,000	23,271
PIL1	Pilchard	12,067,900	2,000,000	241,358
PIL3	Pilchard	20,000,000	60,000	12,000
PIL7	Pilchard	14,632,001	150,000	21,948
POR3	Porae	79,850,000	2,000	1,597
PRK1	Prawn killer	27,057,143	24,500	6,629
PRK2	Prawn killer	66,228,572	3,500	2,318
PRK3	Prawn killer	80,000,000	1,000	800
PRK5	Prawn killer	80,000,000	1,000	800
PRK6A	Prawn killer	80,000,000	1,000	800
PRK6B	Prawn killer	80,000,000	1,000	800
PRK7	Prawn killer	80,000,000	1,000	800
PRK8	Prawn killer	80,000,000	1,000	800
PRK9	Prawn killer	80,000,000	1,000	800
RCO2	Red cod	452,182	500,018	2,261
RIB1	Ribaldo	3,306	121,000	4
RIB3	Ribaldo	508	394,000	2
RSK1	Rough skate	14,414	111,000	16
SKI7	Gemfish	18,000	300,000	54
SPD1	Spiny dogfish	27,575,227	331,000	91,274
SPE1	Sea perch	111,111	33,000	37
SPE3	Sea perch	13,415	1,000,000	134
SPR3	Sprat	18,245,614	285,000	52,000
SPR7	Sprat	76,470,588	85,000	65,000
SQU1J	Squid	10,754	50,212,100	5,400
SSK1	Smooth skate	16,216	37,000	6
TOR1	Pacific bluefin tuna	2,112,932	116,000	2,451
WWA2	White warehou	17,994,521	73,000	13,136

Schedule B



FishServe

Commercial Fisheries Services Ltd

Invitation to tender issued by:

The Crown Quota Broker

P O Box 24 346

Manners Street

Wellington 6142

Attention: Rachael Hepburn

Tender Offer Number

FishServe use only

Tender Number 2008-01 Tender Offer for the Purchase of Quota Shares

Client Number

Full Legal Name of
person or company
submitting tender

Business postal
address of person or
company submitting
tender

Contact Name

Contact telephone
number

Contact email address

Advertising – specify
where you first saw
the advert for this
tender

Received
copy of ad
in post

FishServe
website

Other

Details of Bid

Please Note - Acceptance of this bid is binding

Line	Stock	Number of quota shares	Total Price (<i>excluding</i> GST)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

I/we the tenderer, hereby offer to purchase quota shares in the quantities entered in the table above. I/we have read, understand, and accept the conditions of the tender as set out in "Tender Request for the Purchase of Quota Shares Tender Number 2008-01. I/we confirm that my/our tender if accepted will not breach any Aggregation Limits set out in the Fisheries Act 1996 and will not breach any of these Conditions of Tender.

Full Legal Name	Position	Signature	Date