

Ngai Tahu Sea Fisheries Report

Appendix 01 The Fisheries Claims

1.1 Amended Claim of 2 June 1987

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WHEREAS the Claimants have already filed claims dated respectively the 24th November, 1986 and the 16th December, 1986

AND WHEREAS both those claims were accompanied by schedules

AND WHEREAS they are now requested to particularise those claims

THE CLAIMANTS SAY:

THE CLAIM

From 1840 to the present day the Crown has, in respect of the Maori people, their land, their culture and their well being, consistently acted in ways contrary to the Treaty of Waitangi, and therefore has been and remains in breach of the Treaty and its principles.

The multiplicity of the Acts complained of and the extent of the lands involved, together with the range of cultural and social grievances is such that, short of calling the evidence to be presented at the hearing of the claims, it is not possible for the complainants to succinctly state their grievances. For this reason, the complainants are concerned lest any omission from this document should be held to deny them the right to later seek redress of grievance in respect of the omitted material. They therefore give notice that in the event of matters not covered by this document arising later, they will seek leave to further amend their claims.

PARTICULARS

LAND

In 1840 the Ngai Tahu people owned virtually all the land in the South Island south of a line drawn between Cape Foulwind in the West and White Bluff just north of Cape Campbell in the East. Today they own very little land. The acquisition of this land by the Crown and the subsequent sales to other owners, were contrary to Article 2 of the Treaty of Waitangi in that Ngai Tahu did not "wish or desire" to sell, nor were they "disposed to alienate" all of the land. Further, the prices paid for the various blocks were never "agreed upon" in the manner required by Article 2.

Land purchases apart, other Crown dealings with the land were contrary to Article 2 of the Treaty. In particular the Crown has:

- (a) Failed to allocate reserves which were an integral part of the agreements for sale and purchase of Ngai Tahu land to the Crown.
- (b) Failed to allocate all the reserves required by the South Island Landless Natives Act 1906.
- (c) Confiscated without compensation various reserves in the South Island.
- (d) Appropriated to itself Ngai Tahu land without consultation or agreement and, in at least one case, namely Greymouth, without the knowledge of its Ngai Tahu owners.
- (e) Without the consent of its Ngai Tahu owners has converted freehold land into Leases in perpetuity.
- (f) Without the consent of its Ngai Tahu owners has fixed unrealistically low rentals for their leased lands.
- (g) Without the consent of its Ngai Tahu owners has fixed unrealistically long rests between rent reviews in respect of their leased lands.
- (h) Has refused to permit registration of land in the names of the Maori tribes and/or in other ways which would reflect Maori customary land ownership.

All these actions are contrary to the preamble and Articles 2 and 3 of the Treaty of Waitangi in that the Crown:

- (i) Has failed to "protect the just rights and property" of the claimants.
- (ii) Has failed to "guarantee" to the claimants and their ancestors "the full, exclusive, and undisturbed possession of their lands and estates, forests and fisheries and other properties so long as they wished and desired to retain the same in their possession".
- (iii) Has failed to "import" to their ancestors all "the rights and privileges of British subjects".

The land transactions giving rise to these breaches of the Treaty occurred at Horomaka (Banks Peninsula), Te Pakihi o Waitaha (North Canterbury), Kaikoura, Otakou (Otago), Murihiku (Southland) Rakiura (Stewart Island) and on Te Tai Poutini (West Coast of the South Island). The lands which the claimants seek to have allocated to them or which they seek to be compensated in respect of are largely described in a schedule lodged with the Claim dated the 16th December, 1986. It should be noted that that schedule is as complete as the data made available by the Crown thus far permits and the claimants give notice that the schedule will be extended as further necessary data becomes available.

MAHINGA KAI

According to the Treaty of Waitangi and later specifically confirmed by the Kemp Deed the Ngai Tahu people were guaranteed "the full, exclusive and undisturbed possession" of their kainga and mahinga kai, but the acts and omissions of the

Crown and agents of the Crown have in fact dispossessed Ngai Tahu of their mahinga kai. Ngai Tahu have thus been deprived of a major economic and sustaining resource in their mahinga kai including birding, cultivation, gathering and fishing resources. Since the issue of Treaty rights to mahinga kai, especially in respect of fisheries, is subjudice in the Muriwhenua Claim now proceeding in the Waitangi Tribunal it would be inappropriate to detail it further at this stage, but notice is given now that claim will be pressed for a share in the fisheries, including the commercial fisheries, of Te Waipounamu and for the recovery of or compensation for birding and other traditional resources of which Ngai Tahu have been wrongfully deprived.

CULTURE

From shortly after 1840 down until the present time, all legislation affecting the Maori people, (and therefore the claimants) has reflected a policy of assimilation. As part of this process the Maori has been required to adapt to a Westminster system of Central and local government which gives little or no recognition to Maori ways of performing these functions. Wherever the Maori and Pakeha cultures have been in conflict it is the Maori who has had to bend. The result is that Maori cultural and social patterns and values have broken down and the people have become confused and dispirited, with some now tending to seek radical remedies for Maori grievances.

The claimants seek a recommendation that the policy of assimilation be reversed. This would involve a substantial programme of legislative reform to all statutes which reflect that policy.

The claimants believe that the Treaty of Waitangi can be read for the principles which it spells out and for the spirit which underlies the whole document. The former are currently under consideration by the Court of Appeal so comment on them would be presently inappropriate. The spirit which underlies the Treaty, and the instructions given to those who wrote it, is a simple acceptance of the fact that we are two races. The Treaty is a partnership between those two races and that partnership requires consultation, the absence of which is the root cause of all the grievances now held by the Maori people. The claimants therefore seek a recommendation that the Crown should now unequivocally give a public assurance that hereafter the Maori people will be consulted and listened to in all matters affecting them.

REMEDIES

Changes to Crown policies and attitudes have already been mentioned. These will need to be extensive and the detailed implementation of them will be difficult and may take a long time. The claimants believe that these changes are fundamental to the future of our country, and the only reason that they do not develop this aspect of the claims further at this stage is their belief that the changes will be largely uncontroversial if carried out with sensitivity.

The resolution of land based claims is quite another matter and is likely to be extremely controversial. For that reason it is important to state that the claimants acknowledge the sanctity of contracts and the provisions of the Land Transfer Act. Although they seek land as a partial remedy for their claims, they acknowledge that people who have bought or leased land for value cannot be dispossessed of it.

Contracts arising from the operation of the State Owned Enterprises Act may be another matter, but that Act is currently under consideration by the Court of Appeal, so the claimants reserve their position in respect of it.

For these reasons the claimants seek the allocation of Crown Land to them. The lands which are the subject of the claims have largely passed into private ownership and so other lands are sought in substitution. Any lands allocated to the claimants should be representative of the lost land in both character and geographic distribution. It may well be that any recommendation of the Tribunal should be limited to the kind and quantity of the land to be allocated leaving the identification of particular parcels for determination elsewhere. Alternatively, if the Tribunal is minded to recommend allocation of land, it might give an interim decision to that effect. The claimants and the Crown could then consult with each other and, hopefully, reach an agreement which they could present to the Tribunal for its approval.

The claimants recognize that complete compensation in the form of land may prove impossible. In that event they would seek compensation in the form of a mix of land and money. They have also considered whether they should claim interest on the money value of all disputed land from the date of the dispute down to the present day. At this moment they have not decided whether to make such a claim but hereby give notice of the possibility, so that those potentially concerned may take such steps as they are advised in case such a claim is finally made.

DATED at Christchurch this 2nd day of June 1987.

D. M. Palmer

Solicitor for the Claimants

Waitangi Tribunal, Department of Justice, Wellington.

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Appendix 01 The Fisheries Claims

1.2 Amended Claim of 25 September 1987

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NGAI TAHU MAORI TRUST BOARD

The Registrar,
Waitangi Tribunal,
Tribunals Division,
Justice Department,
WELLINGTON

ATTENTION: DR. MAARIRE GOODALL.

I write to notify you of the basis of the Ngai Tahu fisheries Claim in respect of WAI 27 currently proceeding before the Waitangi Tribunal.

The content of this claim was communicated to the Minister of Fisheries by the Secretary of this Board by FAX on September 24.1987.

You should note that the fisheries component of WAI 27 is contained within the "Mahinga Kai" section of the case. It is anticipated that this component will be dealt with separately pending the outcome of the Muriwhenua Claim currently being considered by the Tribunal.

The Ngai Tahu Fisheries Claim is as follows:

1. Ngai Tahu claim sole ownership of the fishery off their tribal coasts out to the twelve mile limit under the Treaty of Waitangi.
2. In the light of the partnership principle implicit in the Treaty and developed in some detail in the recent Court of Appeal decision, Ngai Tahu are prepared to grant to their Treaty Partner, the Crown, a full half share in that fishery.
3. Without prejudice to its position on the question that the Crown may have been in breach of the Treaty in imposing both general legislation in fisheries and the recently imposed ITQ system in particular, Ngai Tahu accept that the ITQ system is now a commercial and practical reality.
4. Ngai Tahu therefore retains for itself 50% of all ITQ for all species out to the twelve mile limit and grants to its Treaty partner, the Crown, the right to 50% of all ITQ within the twelve mile limit. This retention and grant apply only to those waters

offshore from the tribe's traditional boundaries. Those boundaries are currently being considered by the Tribunal.

5. On account of its Treaty partner's action in unilaterally imposing its own stewardship on the fishery described in past years with the effect that the fishery has become seriously depleted, Ngai Tahu claims compensation for its losses so sustained.

6. The tribe is prepared to accept such compensation from its Treaty partner in the form of an allocation of ITQ in the fishery beyond the twelve mile limit. The quantum of such allocation is regarded as being negotiable.

7. Should the negotiation on the quantum of ITQ beyond the twelve mile limit be acceptable to Ngai Tahu then the tribe is prepared to abandon its prosecution of the question that the Crown has acted in breach of the Treaty and the principles of the Treaty in respect of Ngai Tahu fisheries.

The above Claim is filed with you without prejudice to its substance being filed in a more formal way at a later date.

It is further filed without prejudice to Ngai Tahu consideration of a proposed MAORI FISHERY PROGRAMME currently being considered by Government but on which the tribe has not as yet been consulted.

Tipene O'Regan
Chairman

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

Appendix 01 The Fisheries Claims

1.3 Amended Claim in Respect of Fisheries (j7)

25 June 1988

1.3 Amended Claim in Respect of Fisheries (j7)
25 June 1988

Tena koutou nga Kaiwhakawaa o te Taraipiunara nei, tena koutou nga Rangatira o te Roopu Whakamana i te Tiriti. Tena koutou.

Anei matou e tu ake nei ko Ngai Tahu Whanui.

Kia whakarongohia a matou tangi mo nga uri a Takaroa i ngaro ai.

In accord with our earlier reservations and notice given that we would in due time bring our fishing claim up to date with events to the time of hearing we now seek leave to amend our claim as follows.

We previously stated to the Tribunal in written and also verbal submissions the kind of negotiated agreement with the Crown we then contemplated as possible as to sharing of the resource in various zones, but that we recognise no seaward limit to our fishery nor do we concede any derogation from our tribal TINO RANGATIRATANGA in the seas off our coasts. Because of the many significant changes in the New Zealand fisheries and in their management since our claim was first filed, and particularly due to recent developments in the work of the Courts, Government and the Waitangi Tribunal itself, it is necessary now to reformulate the detailed principles of the Ngai Tahu fishing claim.

We have already given evidence on our inland fishing claims, and further detail relating that information to our whakapapa and land usage rights will be given at this hui. Although it will be convenient to the Tribunal to deal with our sea fishing claim as a separate and major issue in itself, we would emphasise to you that Ngai Tahu consider their lands and seas to be a physical and spiritual unity, a seamless whole which cannot properly be divided into parts. Within that unity is our MAHIKA KAI, which cannot be separated from our mana as a Tribe.

WE THEREFORE NOW ASSERT OUR FISHING CLAIM:

Ngai Tahu Whanui encompasses all the hapu of Kaitahu, Kati Mamoe, Waitaha, and all of the earlier tangata whenua tribes or hapu of Te Waipounamu. For brevity in our claim we just say Ngai Tahu, which includes us all.

1. Ngai Tahu own the marine fishery adjacent to their Tribal territory. That fishery is our property and has been since time immemorial.
2. The geographic extent of our fishery is bounded laterally by perpendicular projection into the sea of our tribal land boundaries with other tribes at the coast at Pari-nui-o-whiti on the east, and at Kahuraki on the west, and sweeping southwards around the coast of Te Waipounamu and offshore islands including those to the south of Rakiura.
3. No seaward boundary offshore is recognised. Our traditional and customary tribal fishery is not limited by any past or present law or custom of Britain or of the Crown in New Zealand as regarding 3, 12, 200 or any other number of miles offshore, nor the alleged projectile strength of their cannon. We have the right to go to sea as far as we must, or are able, in order to obtain the fish that we require.
4. Our fishery includes inshore waters, beaches, inlets, fjords and tidal rivers and estuaries, as well as littoral swamps, and it includes submarine fishing grounds without any limitation as to their depth.
5. Ngai Tahu do not claim mana whenua on Rekohu-Chathams Island or the smaller offshore islands of that group, and therefore we do not claim that mana moana nor the Chathams fishery. Ngai Tahu do claim and acknowledge their blood and historical relationship with many Chathams people of mixed Moriori, Maori or Pakeha descent. Accordingly we do not ourselves claim in the Chathams fishery, instead we recognise the duty of whanaungatanga requiring us to support the Chathams people in making their own claim. Ngai Tahu do not wish to intrude on the mana of the Chathams and only offer their support on such terms and at such times as those people might request from the Chathams Islands community itself, so long as we are satisfied their runanga genuinely represents the Chathams community itself rather than [sic] any external mainland group. Ngai Tahu expects in due time to negotiate directly with the Chathams people agreements for the boundaries and regulation of their respective fisheries where they abut. Equally we expect to negotiate suitable agreements with the tribal authorities to the north of us on west and east coasts of Te Waipounamu.
6. The Ngai Tahu fishery includes all property and user rights inherent in the business and activity of fishing within their tribal waters defined above.
7. The Ngai Tahu fishery includes commercial sustenance and cultural aspects and is not subdivided into compartments by such categories as listed in the Fisheries Acts or Regulations made by the Crown purportedly for the general NZ fishery; instead our fishery is one whole entity or taonga controlled by our tribal authorities for the benefit of all and for those who come after us according to our traditional values.
8. The Ngai Tahu fishery includes the right to fish without any interference or restriction whatever by the Crown or by other British subjects or New Zealand residents or by foreign persons.
9. Ngai Tahu fully recognise the conservation and management duties inherent in their rights of ownership usage and control of their fishery, for the continuing benefit of themselves and all other citizens of New Zealand. In that respect the expensive but

disastrously ineffective management methods of the Crown intruded on our fisheries during the past half century or more must be modified to include the more sophisticated approach of Southern Maori tradition.

10. Ngai Tahu are entitled to the protection of the Crown against any interference in their fishery by other citizens including Maori of other tribes, or by other residents or foreigners.

11. The Ngai Tahu fishery comprises fish of all species finfish shellfish crustacea seals whales and sea plants existing from time to time in southern waters or on our coasts including migratory species passing through those seas, and including also anadromous and catadromous species migrating between fresh and salt waters. Certain particular species such as squid, barracouta, hoki, hapuku seals whales or shellfish had especial traditional economic importance for Ngai Tahu but all species without exception are part of our fishery.

12. The fish in our fishery include all those species now found there whether or not they were all used at any particular date in the past, and also included are any other species of fish or plant life which might be newly discovered there at any time in the future. We are conscious that various species have been newly commercially exploited after findings by independent fishermen, including foreigners in the famous case of orange roughy which we understand was first found by Japanese invited by the Crown for a substantial fee payable to themselves, into our fishery. Ownership of those fish resources has nevertheless been arrogated to itself by the Crown, in breach of the Treaty of Waitangi and our ownership and control rights guaranteed to us in the Treaty.

13. The Ngai Tahu fishery includes all those places within our tribal seas where fish can from time to time be caught whether or not they were all used at 1840 or at any other date. Our property belongs to us no matter what particular use we might choose to make of it at any time.

14. Ngai Tahu fisheries include all the gear that is apparatus nets lures pa weirs hinaki lines hooks navigational aids and the like used in fishing, and it includes all the methods of fishing which were at any time used or which may in future be used for the species and places accessible to our fishermen at any time past in the future. Our fishing property is in no way limited by past technology and we have every right to utilise modern knowledge in its development.

15. The Ngai Tahu fishery includes all the cultural and spiritual values held to be important by Ngai Tahu and its various hapu whether or not those values are recognised or considered important by the Crown in its legislation, or by other Maoris or other citizens residents or foreigners, or by corporations. Ngai Tahu are entitled under the Treaty to have those spiritual or non-material values identified by them protected by the Crown.

16. The management and control of their fishery is guaranteed exclusively to Ngai Tahu by the Treaty of Waitangi, and further by s.88(2) of the Fishing Act in our view of the law. Ngai Tahu were also entitled to the income and other benefits that may from time to time accrue from the activity and business of fishing in our tribal seas.

Furthermore the entire property in the fishery was guaranteed to Ngai Tahu however that property title might be expressed in modern legal terms following legislation by the Crown whether it is now in real or such abstract forms as "quota" "licences" or any other form of title or right to fish. In our view the Crown has never had any right to interfere in the management or control of the fishery, nor to divert away from the rightful owners the income and benefits of fishing, nor to issue "quota" "licences" or other forms of purported title in property or user rights in the fisheries that in right belong to Ngai Tahu. The fishery property still belongs to Ngai Tahu.

17. Ngai Tahu have long recognised the need to develop a conjoint Maori-Pakeha society based upon mutual respect and reasonableness as between partners in accordance with the Treaty of Waitangi. The file of submissions by the Deputy Chairman and the Chairman of our tribal Trust Board to the Minister of Fisheries clearly shows a responsible attitude, acknowledged by the Minister himself, in regard to management and sharing in the fishery resource. Such submissions have been made by our Tribe over a long period of time, but so far with no satisfactory result, requiring us now to prosecute our claim to the fullest.

18. Ngai Tahu historically as shown in evidence to this honourable Tribunal have always been generous in their view of the needs and reasonable wishes of MANUHIRI peoples coming within our tribal boundaries in peace and friendship or for trade or mutual benefit. Long before the Treaty of Waitangi our tribal leaders recognised and encouraged trading educational and religious interrelationships both with other Maori and with Pakeha. The reasonable needs of those manuhiri for sustenance fishing were always allowed and protected under our tribal mana, continuing right through to the landmark 1986 case acquitted from the District Court by Williamson J in which the learned Judge saw clearly that the accused person belonging to a northern tribe was in fact exercising a Ngai Tahu fishing right under our approval and control through our hapu leaders of Ngai Tuahuriri. Thus the law acknowledged that our fishing rights had not been extinguished, even though only a small part of those rights were in issue in that case. In fact that case turned on the aboriginal rights under British and New Zealand common law, and not at all upon our much greater rights reserved to us under the Treaty of Waitangi.

19. Ngai Tahu alone has the authority to give, and to revoke, fishing rights to manuhiri peoples coming into our rohe. We have in fact granted such rights since ancient times, which we call TUKU WHENUA or TUKU MOANA and which my colleagues will have referred to in other evidence. Any such grants are exercised under the mana of Ngai Tahu and have always been protected by us from intrusion by others, Pakeha or Maori, and equally may be revoked by us for good cause.

20. The policy of Ngai Tahu is no different today and we intend as a people to negotiate fair and reasonable arrangements with all those persons, Crown officers or foreign interests who will properly recognise our prior rights to do so, and our right to determine the best use of our inherent property in fishing. Therefore the single most essential requirement for those wishing to negotiate settlements within the Ngai Tahu fisheries as our Treaty partners will be that they need to acknowledge the fundamental fact that Ngai Tahu continue to hold the full and exclusive property and user rights in their tribal fishery as defined earlier and in their tribal activity and business of fishing. The Treaty of Waitangi guarantees nothing less.

21. Those who do acknowledge the proper basis to begin negotiations with Ngai Tahu as equals and as responsible Treaty partners, but only then, can expect honest negotiations for some share in the southern fishery to reach meaningful and practical results. In earlier pro forma and draft versions of this fishing claim we indicated the type of arrangement that Ngai Tahu might be willing to contemplate as a basis for negotiation.

Due to the significant developments in this field nationally following High Court orders, the issue of the Muriwhenua Fishing Report by the Waitangi Tribunal, and the executive negotiations between Crown and Maori representatives, we have reserved the right to modify our earlier offers (filed 25 September 1987) to negotiate, in light of the latest information. Hence our definition now of our full marine claim for your consideration.

However the principle earlier indicated, remains unchanged, that Ngai Tahu has always sought and still seeks proper recognition of our tribal property in the fishery, a fair and equitable negotiation with our Treaty partners in the Government representing the Crown today, and an equitable and practical arrangement in our fisheries. In seeking such a fair resolution Ngai Tahu cannot agree to abandon any of our fundamental rights, especially the clear property right in fishing guaranteed to us by the Treaty.

22. With acknowledgement of Ngai Tahu rights to at the least an equal share in the management and control of the southern fishery, an equal or at least very substantial share in the income and benefits of fishing and similarly in the equity or property involved, we foresee a constructive and peaceful relationship developing for the benefit of Maori and all others in this country. We say at least an equal share in the management and control Mr Chairman, and that is a very considerable concession by my tribe, bearing in mind that the Treaty of Waitangi guaranteed to us the total and exclusive rights to control, indeed to own, the fishery, and bearing in mind that both the English and the Maori versions of the Treaty were written by Crown agents. If there were any doubt in this matter, and it is hard for reasonable people to see how there can be, it must be construed in favour of the Maori ownership and control of the property so clearly reserved to us in Article Two of our Treaty.

If such fundamental values are to be further denied despite the Treaty of Waitangi signed in all good faith by Ngai Tahu, despite specific reservations of our MAHIKA KAI in our land sale Deeds in Te Waipounamu, despite findings of the Waitangi Tribunal, despite orders and determinations of the High Court and Court of Appeal, then New Zealand will be condemned to unending conflict.

KA WHAWHAI TONU MATOU, AKE AKE AKE!

The best time for peaceable settlement, is now.

23. Ngai Tahu continue to reserve their right to claim compensation at law in the Courts, and under the Treaty in this Tribunal, for damages to their fishery and for the exclusion of our tribesmen from fishing and the tribal benefits of our traditional activity and business of fishing caused by the wrongful actions of the Crown during past years. While our Tribal leaders hope that successful negotiations with our Treaty

partners might make it unnecessary to pursue that course we give notice that such claims will be prosecuted if no fair agreement is reached.

24. Because of its importance to all New Zealand we emphasise again the importance of conservation as raised in paragraph Nine above. Ngai Tahu acknowledge the responsibility to so manage their fisheries on soundly based conservation principles that there is assurance the fishery will provide a sustainable resource for future generations. Ngai Tahu consider they have a valid position in conservation based on traditional Maori values, and supplemented by modern scientific knowledge and expertise. We do not deprive ourselves of any technical progress or discoveries in the modern scientific world, and we are not afraid to employ the best brains of other Maori, of Pakeha, or of foreign experts when we think they will be able to assist us in the management of this most valuable resource.

You will recall the official motto in the seal of our Ngai Tahu Maori Tribal Trust Board:

MO TATOOU, A , MO KA URI A MURI AKE NEI.

Therein lies a difference from the hasty short term profits approach so prevalent today in the way fisheries are being mis-managed. You must have found amongst all the other Maori tribes which your Tribunal has heard throughout the land, the same thing that I say to you now on behalf of Ngai Tahu

Maori take a very long view.

We are grown from the seeds of Ra'iatea planted here, ours is a very great canoe, and we shall not disappear.

25. We thus look far to the future, as we do to the past when the taniwha Poutini brought to our tribal lands Waitaiki, the mother of the taonga pounamu by which we are known throughout the Maori world.

Kia whakarere iho au ko toku mokai Tapu,
Ko Poutini tena kei te tahu o te uru
Here ai toku kupenga ki te Taramakau
Ara ki te Ara hura hei awhi e
ei ano toku whakaaro ki nga roto
tapu ..
e aue Taiki e

Waitangi Tribunal, Department of Justice, Wellington.