

# Ngai Tahu Sea Fisheries Report

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*Waitangi Tribunal, Department of Justice, Wellington.*

# **Ngai Tahu Sea Fisheries Report**

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# Ngai Tahu Sea Fisheries Report

## Covering Letter

### Covering Letter

The Honourable Minister of Maori Affairs  
Parliament Buildings  
WELLINGTON

TE MINITA MAORI

Tihei mauriora!  
Karanga te pou whenua  
Karanga te pou marae  
Karanga te pou tangata.  
E nga mana, E nga reo,  
Tena koutou, tena koutou, tena koutou.

Tena koe te Minita mo nga take Maori. Kua rere atu koe i Whakatu ki Poneke hei kaiwhakarite mo nga hunga katoa o tenei motu o tena motu. Tenei matou te noho nei i roto i te pouri ranei, i te marama ranei, e tangi ana, e karanga ana ki a koe ena hoki kei te ringa kaha o te kawanatanga te ora mo tatou te iwi Maori e takoto ana. No reira tena koe.

I tenei ra ka oti nei te tuku atu ki a koe me to tari te ripoata mo te hi ika o Ngai Tahu. Ka kitea i roto nga whakaaro katoa o tenei roopu mo tenei o ona takenui.

Ka mutu ta matou mahi, ka timata ta koutou no reira e te kanohi o Te Puna Kokiri nga mihi nui ki a koe ara koutou ko nga kaimahi katoa. Tena koutou, tena koutou, tena koutou.

We present to you the tribunal's report on the Ngai Tahu sea fisheries claim. It is the second report of this tribunal on Ngai Tahu grievances and follows on the major land and mahinga kai report handed to your predecessor in office on 1 February 1991. There is yet to be completed by this tribunal its report into a large number of ancillary but generally small and specific claims brought to notice as the main claim was heard.

For your convenience we have included in chapter 13 a summary of the principal findings and conclusions of the tribunal. In the following and final chapter we have also summarised Crown breaches of the Treaty and then made six recommendations. You will observe that the first three recommendations, which relate to the substantive claim, simply recite the tribunal's findings as to Ngai Tahu sea fishing treaty rights; advise the parties to seek a settlement by negotiation; and suggest the settlement should include determination of an additional percentage quota allocated through the mechanism of the Maori Fisheries Act 1989.

A vast volume of evidence and submission was presented by the two parties and by the New Zealand Fishing Industry Board and the New Zealand Fishing Industry Association who were granted leave to appear and call evidence on behalf of the fishing industry. This evidence included traditional, historical, archaeological, anthropological and scientific material. The evidence not only went back in time to record the diverse and even sophisticated technology in specialised canoe fishing off the Ngai Tahu coast in the fourteenth century but it progressed through 1840 up to modern times. There was a massive input of present day fisheries knowledge by a large team of marine scientists, marine biologists and scientists. As happened in the first report the tribunal had overview reports presented by independent experts in the historical and marine biology areas.

You will also be pleased to read of the tribunal's acknowledgment that the Maori Fisheries Act 1989 is a positive step forward and certainly the only tangible and significant recognition since the Treaty of Maori treaty fishing rights. The tribunal refers in chapter 2 to the constructive discussion paper Sustainable Fisheries Tiakina Nga Taonga a Tangaroa prepared by the Fisheries Task Force.

These are the long overdue beginnings of a recognition of Maori sea fishing rights under the Treaty.

The tribunal hopes the report will provide the necessary background material, findings and recommendations to help in the continuing process of negotiation. We have pointed out to the parties that achieving a successful compromise often involves consideration of wider parameters than those necessarily at issue within the claim itself.

There is certainly a greater spirit of goodwill existing between the Crown and Maori today than was evident to this tribunal when it embarked upon this inquiry in 1987.

The tribunal urges both parties to build on that good faith in working towards an acceptable settlement of these longstanding Ngai Tahu grievances which in varying degrees are shared by all Maori iwi.

---

*Waitangi Tribunal, Department of Justice, Wellington.*

# Ngai Tahu Sea Fisheries Report

## Karakia

### Karakia

KARAKIA HI TUNA, HI IKA HOKI

Taku aho nei, ka tangi wiwini.  
Taku aho nei, ka tangi wawana.  
Taku aho nei, ka hinga, ka mate ra.  
Kai mai, kai mai, e te kokopu,  
Ki taku nei mounu nei.  
Tara wiwini, tara wawana,  
Kia ai he whakataunga mau  
Ki te uru ti, ki te makau.  
Tara wiwini, tara wawana,  
E tuapeka ki Wai-korire.

KARAKIA USED IN CATCHING EELS OR FISH

My fishing line here, its cry is awesome.  
My fishing line here, its cry is dreadful.  
My fishing line here, it is dropped, it sinks there.  
Bite here, bite here, O you kokopu,  
Bite here at my bait.  
Awesome point, dreadful point,  
That allows you to be landed  
By the sharp point, by the hook.  
Awesome point, dreadful point,  
Which will deceive at Wai-korire.

---

*Waitangi Tribunal, Department of Justice, Wellington.*

# Ngai Tahu Sea Fisheries Report

## Preface

### Preface

#### Preface

"Ahakoa kia paa te upoko o Te moana-Taapokopoko-a-Taawhaki  
ki ngaa takutai o Te Waka-o-Aoraki,  
Engari, i taakekea te kupenga a Tahu kia oioi i roto i te nekeneke o te tai""

"Although the shores of Te Waipounamu may be buffeted by the turbulent currents of the great waves of the southern oceans, the fishing net of Tahu has been made flexible so as to move at one with the tides.""

This is the second report on Ngai Tahu grievances. It deals with Ngai Tahu sea fisheries. The first report under the title Ngai Tahu Report 1991 addressed grievances arising out of eight regional purchases of Ngai Tahu lands by the Crown between 1844 and 1864. The 1991 report also dealt with mahinga kai; that term meaning "those places where food was produced or procured". Because of the sheer size of the earlier inquiry and because also of proceedings running contemporaneously in the High Court and Court of Appeal the tribunal decided to defer this sea fisheries report and a further third investigation into over one hundred smaller grievances so that the findings of the Ngai Tahu Report 1991 could be digested. That process has proved satisfactory and has provided a firm base for the Crown and Ngai Tahu to embark upon settlement negotiations. Unfortunately, the separate reporting of the land and sea-fisheries claims has tended to compartmentalise areas of inquiry which are really closely interrelated. To Maori the phrase "Nga hua o te whenua, nga hua o Tane me nga iwi o Tangaroa" (J10:5) embraces the resources of the land, the forests, the lakes, rivers and the sea. The severance of the claim has therefore somewhat affected the continuity and holistic appraisal of land and water resource.

It was put to the tribunal during the hearing of the land claim that Ngai Tahu considered its lands and seas to be a physical and spiritual unity, a seamless whole which could not be divided into parts. This concept caused some problems for Professor Alan Ward who was commissioned by the tribunal to overview the historical evidence. Professor Ward considered there was overwhelming evidence that rights to take shellfish and fish in the tidal zone and inshore waters were closely demarcated and that some rights seemed to have been exercised by the wider village or hapu community, others by families and others even by individuals. The concept also led to argument before the tribunal to which we shall later refer that when Ngai Tahu sold their land their exclusive rights to sea fisheries were modified to give rights to the transferee.

As we shall shortly see the tribunal's earlier findings that Ngai Tahu had well founded grievances in respect of their land claim have had considerable bearing on the tribe's

access to and development of its sea fisheries. And although this report is dealing with the major question of sea fisheries, to Ngai Tahu that involves not only the inshore, offshore and deep water fisheries, but also the highly important onshore kaimoana and the estuarine, lake, river and waterway resources. In the Ngai Tahu Report 1991 under the subject heading of mahinga kai the tribunal dealt in some detail with the land based fisheries and in this inquiry is more directly concerned with the tribe's sea resources. There will however be a number of references to the onshore and inland fisheries particularly in chapter 2 where we listen to the peoples' claims. By any standard this sea fisheries claim is of major proportion. Ngai Tahu claim the exclusive right to the fish in the sea off their tribal boundary without restriction as to species, depth or seaward boundary. Evidence was tendered to the tribunal that over 70 percent of the New Zealand fishing catch, by value, occurred in the area claimed by Ngai Tahu. Ngai Tahu have offered, without prejudice to their claimed Treaty right to 100 percent of the total allocated commercial catch (TACC) off their rohe to accept ITQ equivalent to one half of the TACC and to hold such quota as tribal property.

In the Ngai Tahu Report 1991 the tribunal found that certain governors and other officers in their negotiations and dealings with Ngai Tahu had at times acted arrogantly or dishonourably and their actions had resulted in grave injustices to Ngai Tahu.

In this report the predominant theme is one of Crown neglect and failure to consult and protect iwi in the retention of their Treaty sea fishing rights. In part this neglect arose from a concern to put in place measures intended to conserve or replenish the fisheries resource and in part from an assumption that, the clear provisions of the Treaty notwithstanding, the Crown owned or at least had the sole right to control and even dispose of sea fisheries which belonged to Maori.

In the early chapters of this report the tribunal will explain the nature of the claim first in relation to the land claim and then its particulars and how it was heard. There will be reported some of the personal expressions of grievance from members of the tribe as given in evidence to the tribunal as it moved around the South Island tribal area of Ngai Tahu. The poignant plea of ordinary people particularly in relation to pollution and the deprivation of traditional sea foods could not fail to affect tribunal members.

In chapter 3 the tribunal commences its survey of the huge volume of evidence covering the period before, up to, including and immediately after the Treaty as presented by the claimants, the Crown and the fishing industry. In this appraisal the tribunal looks at traditional, archaeological and scientific evidence. We examine the fishing capacity of Maori, the geographical limits of their fishing, their equipment, technology and expertise. We also examine the bartering and commercial dealings and Ngai Tahu relationship with European newcomers. In the following chapter (chapter 4) the tribunal considers Ngai Tahu Treaty rights at 1840. This report is not the first time the Waitangi Tribunal has inquired into Maori fishing rights. In its Muriwhenua Fishing Report of 1988 the tribunal, in addition to reporting on the factual nature and extent of Maori sea fisheries in the far north, also looked at modern fisheries administration, management and direction with emphasis on the Quota Management Scheme. The Muriwhenua Tribunal also looked at comparative overseas development. As will be seen we have drawn extensively on the Muriwhenua Fishing Report, making observations and distinctions where necessary and updating the

legislative and administrative changes since 1988. Our tribunal has not considered it necessary to traverse those areas in the Muriwhenua Fishing Report which are common to all Maori fisheries such as ethnographic and comparative studies of people and laws in other countries. We hope that both reports taken together will provide a useful analysis of Maori sea fishing activity and Treaty rights which will assist in the resolution of this area of Maori grievance. In chapters 5, 6 and 7 the tribunal reviews the total scene within the Ngai Tahu rohe from 1840 to 1988. In doing so the history of Ngai Tahu and Pakeha involvement in the industry is explained as is the gradual assumption of legislative control by the Crown. We see in this section of the report the development of Ngai Tahu attitudes and responses to Crown intervention and the lack of any consideration of Ngai Tahu rights under the Treaty. The report moves from consideration of Crown regulation to the Crown disposition of sea fishing rights and comprehensively examines events in the critical 1983 to 1988 period. In this period the quota management scheme was introduced followed by an interim finding of the Waitangi Tribunal (Muriwhenua Fishing Report). It led to strong Maori response and subsequent High Court proceedings and to interim declarations of Mr Justice Greig in 1987.

Government acted swiftly after the issue of the High Court declarations and pursuant to an agreement with the New Zealand Maori Council set up a Joint Working Group with four members on each side. This committee could not agree on the major issues and each side made a separate report. We shall look more particularly at these two reports in chapter 7. On 31 May 1988 the Waitangi Tribunal issued its Muriwhenua Fishing Report. Following this report the Crown and Maori again negotiated but could only reach limited agreement. On 22 September 1988 the Minister of Fisheries moved the introduction of a Maori Fisheries Bill. This Bill in its long title spelt out certain terms of agreement reached between Maori and the Crown which inter alia provided over a 20 year period for the Crown to acquire and then hand to Maori in each year from 1989 to the year 2008 quota representing 2.5 percent of the total allowable catch thus giving Maori a 50 percent interest in sea fisheries. A grant of \$10 million spread over 5 years was also to be made to assist Maori tribes engage in the business of fishing.

The 1988 Bill was referred to a select committee and the fishing industry strongly contested its enactment. Maori also criticised several proposals in the Bill. Further proceedings were filed in the High Court and there was strong debate in the media. This report traces these steps and how finally an interim agreement was reached by a working party set up by the (then) Deputy Prime Minister. In effect an interim arrangement was proposed and agreed to which allowed enactment of a substantially amended Maori Fisheries Act (passed on 20 December 1989). It was agreed by those parties before the courts namely, Maori, the Crown, and the New Zealand fishing industry to adjourn all proceedings sine die to give the new Act a chance to establish a transfer mechanism by which the Crown would issue quota to iwi and establish taiapure fishery reserves. The transition period is to expire on 31 October 1992. In chapter 8 we look at the content of the Maori Fisheries Act 1989 and the operation of the Maori Fisheries Commission. Under that Act Maori are to be given quota in four equal tranches of 2.5 percent over the period from April 1990 to October 1992. It was made clear to the tribunal by Ngai Tahu claimants that Maori did not accept the 10 percent quota as representing a full settlement of Maori fisheries claim. The object of the Act was to facilitate Maori entry into the business and activity of fishing and to

allow a settling down period. It also allowed further time for the Crown and Maori to negotiate a settlement rather than have the issues pursued in the adversarial setting of the courts. It also allowed time for this tribunal to report so that its findings would be available to the parties and to the courts if it was found necessary to resume the adjourned court hearings.

In chapter 9 the tribunal reviews the modern day South Island fishery. In this study the tribunal was greatly helped by the detailed evidence called by the Crown. The tribunal, in written report and by video presentation, was given by a number of MAFFish scientists and marine biologists a most interesting and comprehensive survey of the NZ modern fishery.

The tribunal expresses its gratitude to the Crown for the tremendous effort put into the preparation and presentation of this evidence. Whilst this report only captures the main statistics and details, we have on record and available for more detailed study by persons interested in the sea harvest a wealth of important data. The tribunal is most sympathetically supportive of the pleas made by these scientists for the provision of adequate resources to enable their important research to continue. Since our inquiry started a major improvement in resource occurred with the commissioning of the research vessel Tangaroa. It is imperative in the preservation and protection of our fishery resource that research facilities be provided so that accurate assessment can be made and proper decisions made.

It was appropriate that the tribunal receive this detailed evidence which clearly showed the extent of the deep water fisheries catch within Ngai Tahu rohe.

In chapter 10 the tribunal considers the nature and extent of Ngai Tahu sea fishery rights under the Treaty at the present time. As will be seen these are more extensive than in 1840. In chapters 11 and 12 the tribunal looks at Treaty principles applicable to the Ngai Tahu claim, and then reports on its findings as to Crown breaches of the Treaty.

A summary of the tribunal's findings and conclusions is given in chapter 13 and in the final chapter the tribunal makes its recommendation to the minister. It will be noted that there are six recommendations two of which relate to eel fisheries at Waihora (Lake Ellesmere) and one to the creation of fishery reserves generally. The principal recommendation is brief. It simply recommends that Crown and Ngai Tahu negotiate a settlement on the basis of the tribunal's findings.

As this report develops the reader will see explained the various steps and decisions reached in trying to find an acceptable settlement of the Ngai Tahu tribal claim and perhaps with it a settlement of the broader sea fisheries claim from all iwi. It is a complex issue involving numerous actions in the courts, hearings and inquiries of select committees of Parliament, negotiation and private discussion behind closed doors, hearings before the Waitangi Tribunal and considerable public debate. Although this report records the nature and extent of Ngai Tahu fishing activities and that tribe's Treaty rights it also necessarily traces the developments on the national scene particularly over the past five years. During this period there have been various percentage figures suggested as Maori entitlement rights under the Treaty. We shall refer to those figures and to the bodies recommending them. This tribunal for reasons

given later has not recommended a percentage figure but it believes it has now provided a factual background that will allow presently adjourned negotiations to reopen and be satisfactorily concluded by agreement.

What now follows is the record of this tribunal's long inquiry into the nature and extent of Ngai Tahu fishing activities and Treaty rights and our findings and recommendations under the statutory jurisdiction conferred on the tribunal by the Treaty of Waitangi Act 1975.

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*Waitangi Tribunal, Department of Justice, Wellington.*