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GOVERNMENT NOTICES

Departmental

Fisheries (Waka-te-hāua Taiāpure-Local Fishery Proposal—Report and Recommendations) Notice (MPI 795)

Pursuant to section 181(9)(b)(i) of the Fisheries Act 1996, the Minister for Primary Industries, after complying with section 181(9) of that Act, hereby publishes the report and recommendations of the Tribunal concerning a taiāpure-local fishery proposal over the fisheries waters surrounding Wakatehāua Island, Te Oneroa-a-Tōhē / Ninety Mile Beach.

The decision of the Minister for Primary Industries on the report and recommendations of the Tribunal has also been published in the notice titled "Fisheries (Waka-te-hāua Taiāpure-Local Fishery Proposal—Decision) Notice (MPI 810)", *New Zealand Gazette*, 27 September 2017, Issue No. 99, Notice No. 2017-go4252.

Dated at Wellington this 13th day of September 2017.

HON NATHAN GUY, Minister for Primary Industries.

Report and Recommendations of the Tribunal

In the matter of Part IX of the Fisheries Act 1996 and in the matter of a proposal by Te Aupōuri Māori Trust Board, Te Rūnanga o Te Aupōuri and Te Aupōuri Negotiations (Treaty) Claims Company to establish a taiapure-local fishery over Waka Te Haua:

Judicial Conferences: 19 November 2009, 23 March 2010, 18 November 2010.

Hearing: 29 August to 1 September 2011

Meeting: 11 October 2011 (Heard at Kaitāia)

Report: 31 October 2012

Report and Recommendation to the Honourable Minister for Primary Industries Pursuant to Section 181(8) of the Fisheries Act 1996

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A. PRELIMINARY MATTERS

Introduction

[1] This report is issued pursuant to s 181(8) of the Fisheries Act 1996 ("Act") following an inquiry into Te Aupōuri's proposal to establish a taiapure-local fishery ("taiapure") in relation to the waters surrounding Waka Te Haua – also known as Maunganui or Maunganui Bluff or the Bluff – on Te Oneroa a Tohe (Ninety Mile Beach).

[2] Judicial conferences were held in 2009 and 2010, followed by a four day hearing between 29 August and 1 September 2011 where the views of the proposer and objectors were considered. I also held a meeting with iwi representatives in October 2011. The inquiry process was extensive and is summarised in Appendix A.

[3] Objections to the proposal fell into two categories.

[4] First, members of the commercial fishing industry objected to the taiapure restricting mussel spat harvesting. Following discussions between Te Aupōuri and fishing industry representatives, mussel spat harvesting was removed from the scope of the taiapure. As a consequence, the industry withdrew its objection.

[5] Second, two iwi of Te Hiku o Te Ika (the Far North peninsular), Ngāti Kuri and Ngāi Takoto, objected to the taiapure on the basis that it would affect their mana over Waka Te Haua and Te Oneroa a Tohe in general. Notwithstanding considerable efforts by iwi representatives to resolve their differences during the inquiry process, they were not able to do so. The hearing was therefore, solely concerned with inter-iwi issues. This report focuses on those issues.

[6] I note that Ngāti Kahu belatedly withdrew its original support for the taiapure to oppose it. The fifth iwi of Te Hiku o Te Ika, Te Rarawa, did not file a submission and did not participate in the inquiry. (I refer to Ngāti Kuri, Ngāi Takoto and Ngāti Kahu collectively as the "iwi objectors").

[7] The overarching issue raised by the taiapure proposal is whether it is appropriate to give statutory recognition to Te Aupōuri as kaitiaki (stewards or guardians) of the fisheries waters surrounding Waka Te Haua

when other iwi claim mana-whenua and mana-moana[1] in the same area. This issue gives rise to four inter-iwi issues which I identify later in the report (paragraph 89).

The taiapure proposal

[8] Te Aupōuri says that it is the haukāinga (local community) in respect of Waka Te Haua, that it performs the traditional role of kaitiaki of Waka Te Haua and the surrounding fishery, and that a taiapure is appropriate to protect that fishery.

[9] Waka Te Haua is a small rocky tidal island or outcrop approximately three quarters of the way up Te Oneroa a Tohe. It is about 6.0500 hectares in area and forms part of a block of privately owned Māori freehold land, Parengarenga 5B2A (also known as the Maunganui Bluff Reserve), that is 37.8178 hectares in total. The balance of Parengarenga 5B2A is situated on the eastern, landward side of Te Oneroa a Tohe. The land was originally part of the Parengarenga 5 block awarded to Te Aupōuri owners. It was partitioned by the Native Land Court on 30 June 1928 and later set aside as a Māori reservation by notice in the New Zealand Gazette 24 February 1977. It is set aside as a Māori reservation "for the purpose of a camping ground and place of scenic interest for the common use and benefit of the Māori people of Te Kao". Te Kao is the traditional settlement of Te Aupōuri, which lies less than 10 kilometres to the north east of Waka Te Haua.

[10] The Aupōuri Maori Trust Board ("Trust Board"), Te Rūnanga o Te Aupōuri and Te Aupōuri Negotiations (Treaty) Claims Company jointly lodged the taiapure proposal in October 2006. It has since been amended on two occasions: first, prior to the then Minister of Fisheries agreeing in principle to the proposal on 28 July 2008 and, second, following public notification of the proposal. There have been four amendments in total.

[11] First, the area of the taiapure was amended on 7 August 2008 following discussions with the then Ministry of Fisheries. The co-ordinates of the taiapure as amended (and agreed to in principle by the Minister and publically notified) are:

The area subject to the proposal includes all those New Zealand fisheries waters below mean high-water springs that are enclosed by a line—

a. Commencing from a point near Te Arai (at 34°42.10′S and 172°54.79′E); then
b. Proceeding offshore in a southwesterly direction for 2.1km to a point at 34°42.78′S and 172°53.69′E; then
c. Proceeding in a northwesterly direction generally parallel to the shoreline for a distance of 2.7km, to a point at 34°41.82′S and 172°52.32′E; then
d. Proceeding in a northerly direction in a straight line for 1.8km to a point at 34°40.823′S and 172°52.176′E; then
e. Proceeding in a northeasterly direction to a point on mean high water springs (at 34°40.20′S and 172°53.23′E); then
f. Proceeding along mean high-water springs to the point of commencement.

[12] This is an area of approximately 10 square kilometres and is shown on the map annexed as Appendix B.

[13] Second, the proposal originally excluded "…all forms of commercial netting and long-lining…" (paragraph 1.3.6). On 7 August 2008, before the Minister agreed in principle to the proposal, it was amended to include "…a restriction on all forms of mussel spat harvesting (whether mechanical or otherwise)…" As mentioned, the fishing industry objected to restrictions on mussel spat harvesting. Following discussions between iwi and industry representatives and the execution of a Memorandum of Understanding ("MOU"), on 20 December 2010 Te Aupōuri advised that the amendment of 7 August 2008 to restrict mussel spat harvesting was withdrawn.

[14] Third, as a result of consultation with Ngāti Kuri and Ngāi Takoto, on 20 December 2010, Te Aupōuri removed the word "exclusive" with reference to Te Aupōuri's role as kaitiaki of Waka Te Haua (clauses 1.3.9 and 3.1.22).

[15] Fourth, Te Aupōuri originally proposed that the Trust Board be the committee of management under s 184, though the iwi did forecast that it was moving to establish a single iwi authority. On 20 December 2010 the Trust Board advised that Te Aupōuri had agreed that its new single iwi authority, Te Rūnanga Nui O Te Aupōuri Trust ("the Rūnanga Nui"), is to be the committee of management.

Legal framework

The term "taiapure"

[16] The term "taiapure" caused confusion for some iwi participants as it is not a word with which kuia and kaumātua in the district are familiar. Consequently, some were concerned about the potential ramifications of a taiapure. Mr Hone Taumaunu, who assisted me in the inquiry as assessor, agreed that the word could not be

found in the dictionary but suggested that the purpose of a taiapure was clear. I note that Hansard's record of the second reading of the Māori Fisheries Bill in 1989 refers to similar concerns about the term and notes that it was expressly composed for the bill:

> **John Luxton**
>
> …One of the notable submissions from the Māori people did not have a clue about the term about taiapure. It was not mentioned in their dictionary; it is a new word made up by the Minister for this occasion[2]. (sic)

[17] Notwithstanding the origins of the term "taiapure", I am satisfied that as a result of the discussions that took place at the hearing the iwi participants understood the nature of taiapure.

The nature of taiapure

[18] Taiapure are provided for in Part IX of the Act. Part IX was first enacted by the Māori Fisheries Act 1989 ("1989 Act") as a new Part IIIA of the then Fisheries Act 1983. The 1989 Act sought to address Māori Treaty claims to fisheries. The taiapure regime was the statutory tool to make better provision for Māori Treaty interests in local non-commercial fisheries.

[19] A taiapure may be granted in relation to specific fisheries waters that have customarily been of special significance to particular iwi or hapū (section 174):

> **174 Object**
>
> The object of sections 175 to 185 of this Act is to make, in relation to areas of New Zealand fisheries waters (being estuarine or littoral coastal waters) that have customarily been of special significance to any iwi or hapū either—
>
> a. as a source of food; or
> b. for spiritual or cultural reasons,—
>
> better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

[20] By Order in Council an area may be declared a taiapure (s 175):

> **175 Declaration of taiapure-local fisheries**
>
> Subject to section 176 of this Act, the Governor-General may from time to time, by Order in Council, declare any area of New Zealand fisheries waters (which waters are estuarine waters or littoral coastal waters) to be a taiapure-local fishery.

[21] The Minister is then required to appoint a committee of management for each taiapure (s 184). This occurs after consultation with the Minister of Māori Affairs and upon the nomination of the persons who appear to be representative of the "local Māori community". The committee of management may then recommend to the Minister the making of regulations under s 186 or s 297 or s 298 "for the conservation and management of the fish, aquatic life, or seaweed" in the taiapure (s 185).

[22] Thus, the nature of a taiapure in terms of its practical effect is that the local Māori community, through a committee of management, may recommend to the Minister regulations for the conservation and management of a particular fishery.

"Rangatiratanga" and the right secured in relation to fisheries by Article II of the Treaty

[23] The object of taiapure is to make "better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi" (s 174). The dispute between Te Aupōuri and the iwi objectors gives rise to the question, what is the rangatiratanga that this part of the Act seeks to promote?[3]

[24] During the inquiry I heard much about mana-whenua and kaitiakitanga, but little about "rangatiratanga" in relation to fisheries. Somewhat appropriately, the Waitangi Tribunal in its *Muriwhenua Fishing Report*[4] addressed rangatiratanga in relation to fisheries. The Tribunal discussed "tino rangatiratanga" in the Treaty by comparison with the English translation of "full authority":

> Mainly we are introduced to a concept of full chieftainship over lands and all things important or highly prized.
>
> We prefer "full authority" to the literal full chieftainship. Essentially. Māori authority is personified in chiefs but derives from the people. Māori understood 'rangatiratanga' to mean 'authority'. Accordingly, when discussing the Treaty, Māori often substituted mana which includes authority but has also a more powerful meaning.[5]

[25] It then discussed the difficulties in translating Māori concepts into Western terms:

a. There are obvious distortions when Māori concepts are translated in Western terms. It must be understood that the division of properties was less important to Māori than the rules that governed their user. These criteria underlie Māori thinking—
   i. A reverence for the total creation as one whole;
   ii. A sense of kinship with fellow beings;
   iii. A sacred regard for the whole of nature and it's resources as being gifts from the gods;
   iv. A sense of responsibility for these gifts as the appointed stewards, guardians and rangatira;
   v. A distinctive economic ethic of reciprocity; and
   vi. A sense of commitment to safeguard all of nature's resources (taonga) for the future generations.

   To meet their responsibilities for these taonga, an effective form of control operated. It ensured that both supply and demand were kept in proper balance, and conserved resources for future needs.[6]

[26] It identified three main elements in the guarantee of rangatiratanga, and related rangatiratanga to concepts of "mana":

c. "Te tino rangatiratanga o o ratou taonga" tells of the exclusive control of tribal taonga for the benefit of the tribe including those living and those yet to be born. There are three main elements embodied in the guarantee of rangatiratanga. The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically and spiritually. The second is that the exercise of authority must recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly, the exercise of authority was not only over property, but of persons within the kinship group and their access to tribal resources.

   In the Māori text authority is represented in rangatira, or chiefs who led by virtue of their mana, or personal and spiritual prowess. It was usual for Māori to personalise authority in that way, so that the one word 'mana' applies to both temporal authority and personal attributes.

   …

   'Mana' is the more usual Māori word for 'authority'. It is likely that Rev Henry Williams avoided using the word in the Treaty because of its particular connotations (see *Manukau Report* at 8.3). The missionaries were rarely keen on the word, for mana is said to have been inherited from heathen Māori gods. Nonetheless in debating the Treaty in 1879, it was 'mana' that Māori consistently used to describe that which they thought the Treaty had reserved, as the quotations at 5.5 show.[7]

[27] And further:

Neither 'rangatiratanga' nor 'mana' excludes ownership in our view. Stewardship was an aspect of the Māori way, but not one that meant tribal resources were automatically shared with all comers. Counsel for the New Zealand Māori Council was correct in contending that exclusivity is the essence of rangatiratanga, for the rangatira who welcomed people to their places, would nonetheless not tolerate an intrusion at will (doc H 17 p 12).

…

In more simplistic terms it can be said that, 'mana moana' (authority over the seas) applied in the same idiomatic form to land – mana whenua – and yet it has never been suggested that Māori land rights amounted to less than ownership when expressed in English terms.[8]

[28] Accordingly, the Tribunal found that Article II of the Treaty guaranteed to Māori their full, exclusive and undisturbed rights to maintain and develop their fisheries. This included rights akin to ownership of the fisheries. However, for present purposes, a critical distinction must be drawn between the full extent of rangatiratanga that the Treaty provided for, and the rangatiratanga that the taiapure regime seeks to promote. The taiapure regime does not purport to make "better provision" for the full extent of rangatiratanga in terms of ownership of fisheries or exclusive rights to harvest. Rather, the ultimate object of the regime is to make better provision for rangatiratanga as it relates to the "conservation and management" of local fisheries – being the practical effect of a taiapure as per s 185. That is a much narrower sense of rangatiratanga.

[29] In other words, the taiapure regime is focussed on promoting what the Muriwhenua Fishing Tribunal identified as the role of rangatira in the guardianship or stewardship of resources such as fisheries. In Māori terms, that is the kaitiaki role within rangatiratanga. There are two further qualifiers of the scope of that rangatiratanga in the Act. First, the taiapure regime is only concerned with fisheries that are of "special significance" to particular iwi or hapū. Second, the "local Māori community" has the key role in nominating the committee of management that then carries out the kaitiaki role under the Act. I return to these points when I discuss the inter-iwi issues.

"Littoral coastal waters"

[30] A taiapure may be declared in respect of any area of "New Zealand fisheries waters (which waters are estuarine waters or littoral coastal waters)". The present taiapure proposal does not relate to estuarine waters. The meaning of "littoral coastal waters" has been discussed in relation to several previous taiapure proposals and I quote extensively from three of these discussions.

[31] Judge Carter addressed the meaning of littoral coastal waters in three separate reports on taiapure proposals. In his report on the Whakapuaka Taiapure proposal he summarised his view:

> The question as to the size of a taiapure and the meaning of estuarine or littoral coastal waters have been argued before me in some detail in two previous applications; the Manukau Taiapure and the Kawhia-Aotea Taiapure. It is my understanding that the former report has yet to be released by the Minister but that the latter report was gazetted in the *New Zealand Gazette*, 12 August 1999, No. 94 at page 2239.
>
> In light of my findings in those reports, I do not see the present taiapure as being outside the contemplation of the Act. The area is clearly discernible by reference to landmarks. It is a relatively small area of coastal waters running along the coast between those landmarks. In my view those areas, which were once rich in fish life, are of a special significance to Ngāti Tama and constitute a taiapure-local fishery under the intent of the Act.
>
> In the Manukau Taiapure Report, I summarised my findings as to the meaning of littoral coastal waters as follows:
>
> "I have already determined that coastal waters applies to the waters along the entire coastline of New Zealand and the word 'littoral' qualifies their breadth or extent.
>
> **While littoral can mean between high and low watermark, it would make a nonsense of the legislation to apply this meaning. In this regard I prefer the meaning which relates to of or pertaining to the shore of the sea or adjacent to the shore. In this regard the littoral zone would comprise mostly shallow waters where the effect of tidal phenomena and currents is apparent. It would generally include those areas which have been significantly rich in sea life.**
>
> **I would be loathe to prescribe a finite limit on how far a littoral zone or region might extend. To be constituted a taiapure the fishery must be of special significance. Reefs, islands and other landmarks might well play a part in interpreting whether a particular area fell within the littoral coastal area.**"
>
> There is nothing in the submissions of the New Zealand Seafood Industry Council which would lead me to reverse those findings.[9] (emphasis added)

[32] In *Sea-Right Investments v The Minister of Fisheries*[10] Ronald Young J of the High Court addressed the meaning of littoral coastal waters in some detail:

> [13] The addition of the word "littoral" seems to be intended to further define coastal waters. Regretfully "littoral" does not have one clear meaning. Definitions in both general and scientific dictionaries describe littoral as referring either to the area between the high and low water mark, or to an area of or pertaining or adjacent to the sea shore. It can occasionally mean an area extending to the edge of the continental shelf.
>
> I set out below some of the definitions provided in both general and technical dictionaries of the word "littoral".
>
> **Definitions**

a. Penguin Dictionary of Geography

   Audrey N. Clark

   London 1998

   > **littoral zone** variously applied to 1. the aquatic zone between the marks of HIGH WATER and LOW WATER 2. in biology the upper part of the BENTHIC DIVISION from the water surface to a depth of about 200m (110 fathoms: 6_{55} ft) 3. The part of the benthic division favourable to the growth of green plants.
   > **littoral** *adj.* of, on, or along, the shore, whether of sea, lake or river.

Of interest also is the definition of littoral current in the same publication as:

> **littoral current** a CURRENT in the zone of the SURF running parallel to the SEASHORE, caused by waves breaking obliquely to the shore.

b. The Penguin Dictionary of Physical Geography

John B. Whittow

Penguin Books London 1984

> **littoral** Pertaining to a shoreline.
>
> **littoral zone** (1) That area of a shoreline that is a juxtaposition to a body of water. (2) More specifically, the zone between the high and low-water spring-tide marks. (3) Biologists extend the term's usage to include the underwater zone down to 200 m depth.

c. Funk & Wagnalls

New Standard Dictionary of the English Language

Isaac K Funk, Editor-in-Chief

> **lit'to-ral,** 1 lit'o-ral; 2 lĭt'o-ral, *a.* Of, pertaining to, or living on a shore; specifically situated between high and low water marks

d. Dictionary of Geography

W G Moore

> **littoral**, the seashore, the strip of land along a sea coast or more strictly the land line between the high and low tide levels pertaining to the seashore.
>
> **littoral region**, the littoral region of the ocean comprising the shallow was adjacent to the sea coast; this region has the richest vegetation and so supports the most abundant animal life.

e. The Shorter Oxford English Dictionary. (Fifth Edition) defines littoral as:

> **littoral** *adjective.* Of or pertaining to the shore of the sea, a lake, etc; existing or occurring on or adjacent to the shore.

And as used in an ecological and geographical sense:

> **littoral** *ecology* & *geology.* Designating, of, or pertaining to the zone of the shore extending from the high-water mark to the low-water mark, or (occasionally) to the edge of the continental shelf.

f. And Webster's Third New International Dictionary defines littoral as:

> **littoral** of or relating to or on or near a shore especially of the sea.

g. The Dictionary of Geological Terms, Third Edition, Robert L Bates and Julia A Jackson, Editors, Anchor Books, Doubleday defines littoral as:

> **littoral** (lit'-to-ral) 1. Pertaining to the benthic environment or depth zone between high water and low water… 2. In an obsolete usage, pertaining to the depth zone between the shore and about 200 m.

In the Dictionary of Geological Terms there are also definitions of littoral current, littoral drift and littoral shelf. Each involves the idea of an area very near the shore for example "littoral shelf" is "a nearshore terracelike" area.

[14] Because the word littoral is not in common usage and the definition by general and scientific dictionaries varies somewhat, I have included a number of quotes from a variety of dictionaries. I consider that the flavour of these various definitions are clear. This is especially so where as here littoral is used to further define a word or phrase. In examples given, littoral shore, littoral drift, littoral current, littoral shelf, each tie the other word or words to an area near the shore. For example "littoral current" is a current in the zone of the surf running parallel to the seashore. "Littoral drift" is the area of drift along that same area of surf running parallel to the shore. All, therefore, involve the idea of an area of coastal waters very near the intersection of land and sea. Applying this approach to "coastal waters" suggests that "littoral coastal waters" is the coastal water area close to the shore. While "closeness" to the shore is a relative term, the example of littoral current identified as in the area of surf parallel to the shore illustrates the closeness that is intended. And so the addition of the word littoral to coastal waters brings the idea of coastal waters to that area near to or close to

the shoreline for the purpose of considering s 175 to s185 of the Act.

[15] The use of the word littoral is there to emphasise and restrict the words "coastal waters". I do not consider, however, it is intended to restrict them to an area between the high and low level mark as contended for by the appellants. This interpretation does not fit either with the statutory regime or with the words used in s174, s175 and s176 referring as they do to areas of "New Zealand fisheries waters". The statutory regime is concerned with the management and conservation of fish, aquatic life and seaweed in the littoral coastal waters and estuarine waters. This implies sea life beyond the area between the high and low tide mark. The sections of the Fisheries Act are concerned with littoral coastal waters. The phrase within which littoral sits contemplates coastal water rather than a tidal area.

…

[25] To return to the phrase littoral coastal waters. **The context of the use of the phrase, the various definitions of littoral quoted and the Hansard references make it clear that what was intended by Parliament was an area of water close to the shoreline. Definitions of littoral involving "pertaining to" or "adjacent to" the shore all illustrate a close connection with the shore was intended. While it is not possible to define the area covered by littoral coastal waters precisely it is the close connection with the shore that is the important aspect. The addition of the word "littoral" to "coastal waters" is therefore in my view intended to more closely define or narrow the words coastal waters.** And as I have explained the area available for a taiapure-local fishery is further restrained by the need to establish that the area of littoral coastal water sought to be subject to an order was of special significance to iwi and hapu for food gathering and/or spiritual and cultural reasons. While a pedantic narrow approach to such a question is hardly likely to be helpful or practical, Maori occupation of an area and food gathering there may not by itself be enough to satisfy the statutory test set by Parliament. (emphasis added)

[33] The *Sea-Right Investments* decision resulted in the Tribunal tasked with considering the Akaroa Harbour Taiapure reconvening to hear further evidence. In its subsequent report, the Tribunal discussed the meaning and application of littoral coastal waters in light of the further evidence. That evidence included marine scientists' explanations of the use of the term "littoral" in the context of marine biology. This had not been addressed previously. The Tribunal observed:

The classical definition of "littoral zone" when applied to marine environments relates to the sea-land margin that is influenced by tidal movements: the region between the maximum spring-tide high water mark and maximum spring-tide low water mark (spanning the region of largest tidal variation). Eulittoral has been used to define the narrower region of tidal influence within the littoral zone that is exposed and submerged on a daily basis (irrespective of maximum tidal range that varies in conjunction with the lunar cycle).

However, like other taiapure tribunals before us, we rejected this narrow interpretation of "littoral" as inapplicable to the taiapure legislative context. His Honour Justice Young supported this view in his judgment. He said:[33]

> [15] The use of the word littoral is there to emphasise and restrict the words "coastal waters". I do not consider, however, it is intended to restrict them to an area between the high and low level mark as contended for by the appellants. This interpretation does not fit either with the statutory regime or with the words used in sl74, sl75 and sl76 referring as they do to areas of "New Zealand fisheries waters". The statutory regime is concerned with the management and conservation of fish, aquatic life and seaweed in the littoral coastal waters and estuarine waters. This implies sea life beyond the high and low tide mark. The sections of the Fisheries Act are concerned with littoral coastal waters. The phrase within which littoral sits contemplates coastal water rather than a tidal area. [Emphasis original]

Witnesses told us that the term sublittoral has been used to describe the biological zone beneath the region of immediate tidal influence. This is the region of most prolific plant and animal life and extends from the water surface to the depth of light penetration sufficient to support growth of large attached foliose plants (macrophytes). Drs Kenneth Grange and John Zeldis agreed that for the purpose of this application, understanding the term littoral to include this sublittoral zone made most sense with respect to future fisheries management. Because this zone contains the greatest biological diversity and abundance it is essential that it is included in the fishery management area if management practices are to be effective. There is a precedent for adopting this broader meaning of "littoral" because in the field of fresh water biology it is accepted that the littoral zone extends from the land/water margin to the depth at which macrophytes presence ceases.

After considering a number of sources, Dr Kenneth Grange told us: [34]

> It is my interpretation, therefore, that the term "littoral" encompasses the intertidal area (including the splash zone) [35] and the area that supports the majority of plants in the subtidal area (where suitable habitat allows plants to grow). The outer (or depth) limit is where light penetration is insufficient to support plant growth and it may even extent across the continental shelf…

> This definition incorporates the classical littoral, eulittoral and sublittoral zones.
>
> But would the deepest part of Akaroa Harbour be included in the definition? Dr Grange provided data to show macrophytes distribution to depths of 20m on the rock walls near the harbour. However, they were not reported as growing on the soft sediment in the middle region of the outer harbour. Dr Grange contended that their absence probably relates to their requirement of firm substrates for attachment rather than a lack of light. The outer region of the harbour to 25 metres depth has not been surveyed for presence/absence of macrophytes but Dr Grange argued that water turbidity is lower her and so the depth of light penetration to support plant growth would probably be greater and thus extend to the harbour bed. Although Dr Grange's views on these two points were unsupported by data, they were based on his considerable experience, and appeared to us to be logical and therefore persuasive, in the present context.
>
> Thus, using Dr Grange's definition for littoral coastal waters, and in the absence of plant or light distribution data for the entire harbour, we think that even the deeper reaches of the harbour at depths greater than 20 metres may properly be regarded as "littoral".[11]

[34] The Akaroa Harbour Taiapure Tribunal's discussion clearly amplified the meaning of "littoral" in light of the use of that term in marine biology. That approach is consistent with the approaches taken by the earlier Tribunals and the High Court. Nevertheless, given that amplification, I offer the following summation of the meaning of littoral coastal waters for the purposes of the Act.

[35] The term "littoral" is intended to narrow the term "coastal waters" so as to mean an area close to the shoreline. It is not possible to precisely define how "close" to the shoreline the waters need to be as closeness is a relative concept. Similarly, it is not possible to precisely define how "shallow" the waters need to be as shallowness is also a relative concept. The Akaroa Harbour Taiapure Tribunal clarified that the term "littoral" qualifies the term "coastal waters" not only in the geographical sense but also in the biological sense. This is unsurprising as the taiapure regime is concerned with protecting the ecology that is made up of the "fish, aquatic life and seaweed" in the waters and not merely the physical coastal waters.

[36] In the geographical sense, littoral refers to the area where the land and sea intersect and interact. Consequently, the area would be expected to comprise mostly waters where the effect of the surf, tidal phenomena and currents is apparent. Reefs, islands, land marks, surf breaks, currents and channels may be indicative of this area.

[37] In the biological sense, the area would be expected to include those areas that are or have been significantly rich in sea life. Once again, it is not possible to precisely define how "rich" in sea life the waters need to be as richness is a further relative concept. Nevertheless, the approach taken by the Akaroa Harbour Taiapure Tribunal – that littoral coastal waters will include the littoral, eulittoral and sublittoral zones – provides some scientific parameters to the waters that may be said to be rich in sea life. These may include the inter-tidal area and the sub-tidal area where the habitat allows plants to grow; that is, to the point where light penetration is insufficient to support plant growth or macrophytes. In the Akaroa Harbour example the depth was at least 20 metres. Hence, in some circumstances it may arguably extend to the edge of the continental shelf.

[38] Finally, as I discuss shortly, the fisheries waters that may be the subject of a taiapure are further restrained by the requirement that they be an area of "special significance" to iwi or hapū.

[39] Although each proposed taiapure must be assessed on its own facts to see whether it fits within the definition of estuarine waters or littoral coastal waters, I note that some taiapure have extended up to three kilometres from the shoreline into coastal waters. These include the following (I do not include examples of taiapure granted in respect of harbours or inlets as they are more likely to be "estuarine waters):

- The Maketu Taiapure includes a three kilometre radius from the Okurei Point shoreline;
- The Palliser Bay Taiapure extends 800 metres from the shoreline at Te Kopi and 300 metres from the shoreline at Te Kumenga;
- The Porangahau Taiapure extends one nautical mile from the shoreline.

"Special significance" of fisheries waters

[40] As noted, the fisheries waters also need to have customarily been of "special significance" to iwi or hapū as per s 174 of the Act. Ronald Young J emphasised this in *Sea-Right Investments Limited:*

> [20] …The object of Part IX is to make better provision "for the recognition of rangatiratanga and of the rights secured in relation to fisheries by Article 2 of the Treaty of Waitangi" for littoral coastal areas that have been of special significance to iwi and hapu as a source of food for spiritual or cultural reasons. **An area which has been typically used as a source of food by iwi or hapu by itself may not qualify. It must be an area of special significance. Applying the words "special significance to an iwi or hapu" to the littoral**

coastal water requirement will typically further narrow the areas subject to taiapure-local fishing management. (emphasis added)

The Tribunal's role

[41] The Tribunal's role is governed by s 181 of the Act. The Tribunal conducts a public inquiry into all objections and submissions (s 181(1)). In conducting its inquiry the Tribunal may be assisted by an assessor (s 181(2)), who in this case was Mr Taumaunu. On completion of the inquiry the Tribunal is to make a report to the Minister in terms of section 181(8):

8. On completion of the inquiry, the tribunal shall, having regard to the provisions of section 176(2) of this Act—
    a. Make a report and recommendations to the Minister on the objections and submissions made to it, which report and recommendations may include recommended amendments to the proposal; or
    b. Recommend to the Minister that no action be taken as a result of the objections and submissions made to it.

[42] The Tribunal is to have regard to the provisions of section 176(2):

2. The Minister shall not recommend the making of an order under section 175 of this Act unless the Minister is satisfied both—
    a. That the order will further the object set out in section 174 of this Act; and
    b. That the making of the order is appropriate having regard to—
        i. The size of the area of New Zealand fisheries waters that would be declared by the order to be a taiapure-local fishery; and
        ii. The impact of the order on the general welfare of the community in the vicinity of the area that would be declared by the order to be a taiapure-local fishery; and
        iii. The impact of the order on those persons having a special interest in the area that would be declared by the order to be a taiapure-local fishery; and
        iv. The impact of the order on fisheries management.

B. THE POSITIONS OF THE IWI

[43] In this part of the report I summarise the submissions and evidence of the iwi in order to provide context to my subsequent discussion of the issues. I also summarise the meeting with iwi representatives. Although the iwi took opposing positions on the taiapure proposal, there was reasonable consistency in the evidence as it related to the issues that are relevant to this report.

Te Aupōuri

[44] Te Aupōuri lodged a detailed taiapure proposal which, as explained, was subsequently amended in response to feedback and changes in circumstances. The iwi says that the taiapure is in the interests of the local community. It wishes to exclude commercial netting and long-lining from the taiapure. It believes these fishing methods threaten the sustainability of the fishery and that their exclusion will improve customary and recreational fishing for the whole community.

[45] Te Aupōuri says that it has historically performed the role of kaitiaki of Waka Te Haua and the surrounding fishery, that the people of Te Kao (being Te Aupōuri) own Waka Te Haua, and that the people of Te Kao are the local Māori community or haukāinga for the purposes of the Act. It sees the role of kaitiaki as an inherited responsibility, carried on from generation to generation. It does not claim exclusive fishing rights and seeks only to ban commercial netting and long-lining.

[46] Te Aupōuri says that, while its neighbouring iwi, Ngāti Kuri and Ngāi Takoto, also fish at Waka Te Haua, it is not of special significance to them and they have not performed the role of kaitiaki. Rather, Ngāti Kuri and Ngāi Takoto have their own fisheries that are of special significance to them, and in respect of which they perform the role of kaitiaki.

[47] Te Aupōuri presented detailed evidence from Louise Mischewski, Joe Conrad, Pereniki Conrad, Tutangiora Nathan, Tireiniamu Kapa, Rosie Conrad, Winiata Brown, Walter Kapa, Henry Ihaka, Raymond Subritzky, Anaru Rieper and Hugh Karena (who also acted as Te Aupōuri's representative). As most of the evidence was not challenged, I need not give an account of what each witness said but provide an overall summary.

[48] The witnesses spoke of Te Aupōuri's historical association with Waka Te Haua and Te Hiku o Te Ika in general. They addressed the origins of Te Aupōuri, its key whakapapa links, its land holdings and its tribal rohe (territory). They relied on the title determinations of the Native Land Court and Native Appellate Court in favour of Te Aupōuri in relation to the Parengarenga block, and the 1957 findings of Chief Judge Morison of the Māori Land Court in relation to the investigation of title to Te Oneroa a Tohe. The factual findings of Chief Judge Morison (which were not overturned on appeal to the Supreme Court or Court of Appeal) included that: the northern portion of Te Oneroa a Tohe was within the territory of Te Aupōuri and the southern portion was within the territory of Te Rarawa; members of the iwi had their kāinga and burial grounds scattered inland from the beach at intervals along the whole distance; the iwi occupied their respective portions of the land to the exclusion of other iwi; the beach and the rocks around Waka Te Haua were a major source of food supply for the iwi; Māori caught various fish species off the beach and from waka; from time to time various rāhui were imposed on the beach and sea itself; and the beach was generally used by members of the iwi.

[49] The witnesses spoke of the origins of the name "Waka Te Haua". They identified by traditional name numerous fishing and other sites on Waka Te Haua itself, in the neighbouring parts of Te Oneroa a Tohe and in the surrounding fisheries waters. Many of these names are associated with Te Aupōuri. They identified numerous fish species that are caught on and around Waka Te Haua, including the maratea (red moki), ngākoikoi (rock cod) and kotore (sea anemone), which are of particular cultural significance to Te Aupōuri. Walter Kapa estimated that, of the persons who fish at Waka Te Haua, approximately 70 percent would be Te Aupōuri, 10 percent from other Te Hiku o Te Ika iwi and 20 percent from the general community.

[50] The witnesses discussed the Maunganui Bluff Reserve (which includes a camping ground and Waka Te Haua) and the role of the trustees of the reserve and Te Aupōuri in general as kaitiaki of Waka Te Haua and the surrounding fishery. Interestingly, not all people of Te Aupōuri are eligible to be appointed as trustees of the reserve as the custom is that trusteeship is reserved to those whānau from the western side of Te Kao, that is, the side closest to Waka Te Haua. The witnesses gave detailed accounts of how their role as kaitiaki manifests itself on a day to day and week to week basis, including: the exercise of tāpu ceremonies when there has been a drowning in the area; the imposition of rāhui when the fishery is under threat or there has been a drowning; asking visitors fishing on Waka Te Haua not to gut or clean fish there, and not to fish at night (which has traditionally been banned because of safety issues); advising visitors of where to fish and not to fish; directing visitors' vehicles away from Waka Te Haua and towing their vehicles off Te Oneroa a Tohe when they have become bogged in the sand; gathering rubbish from Waka Te Haua and Te Oneroa a Tohe.

[51] The witnesses spoke of the process Te Aupōuri undertook in applying for the taiapure and why a taiapure was chosen instead of other fisheries management tools, such as mātaitai. The catalyst was the discovery of a large commercial fishing net off Waka Te Haua in 2004. This incident was raised with the Trust Board which then instigated the process of applying for the taiapure. Following the lodgement of the taiapure proposal and the commencement of the Tribunal's inquiry, Te Aupōuri engaged with objectors, in particular Ngāti Kuri and Ngāi Takoto, to endeavour to resolve their differences. Te Aupōuri resolved issues with the fishing industry but not with their neighbouring iwi except to remove the reference to "exclusive" kaitiaki from the proposal.

[52] The iwi objectors did not challenge the witnesses' evidence of Te Aupōuri's longstanding association with Waka Te Haua, their role as kaitiaki of Waka Te Haua, or their intimate knowledge of traditional place names, fishing spots and fish life at and around Waka Te Haua. Instead, the iwi objectors concentrated on challenging Te Aupōuri's evidence of the commercial netting incident, aspects of Te Aupōuri's whakapapa evidence, and Te Aupōuri's rationale for a taiapure. I address the commercial netting incident and the challenge to Te Aupōuri's whakapapa evidence at this juncture.

[53] Joe Conrad and his nephew, Pereniki Conrad, gave evidence of the incident in 2004 when they discovered a commercial fishing net, approximately two kilometres in length, set about 400 metres off the shore at Te Arai (south of Waka Te Haua) and extending north west of Waka Te Haua. This was regarded by Te Aupōuri as a significant incursion by the fishing industry into this traditional fishery. Joe and Pereniki Conrad raised the issue with Matiu Wiki, the then chairman of the Trust Board. This eventually led to the lodgement of the taiapure proposal. Graham Neho, who represented Ngāti Kuri, Whiti Awarau, who represented Ngāi Takoto, and Karaka Karaka, who represented Ngāti Kahu, challenged these and other Te Aupōuri witnesses about the incident, although they did not present any evidence to contradict it. While the incident is not a major issue for the inquiry – and it was unclear to me why the iwi objectors focussed on it to the extent they did – I am well satisfied that the incident occurred as Joe and Pereniki Conrad said it did, and that it was the catalyst for Te Aupōuri lodging the taiapure proposal.

[54] Winiata Brown gave evidence of the Native Land Court and Native Appellate Court determinations of title of the Parengarenga block (approximately 49,000 acres) in the late 1890s. This block extended from Te Oneroa a Tohe (including Waka Te Haua) to the southern shores of Parengarenga harbour. The majority of the block (over 46,000 acres) was awarded to Te Aupōuri owners and came to be known as Parengarenga No. 5. The owners were the direct descendants of the children that Te Ikanui had with his two wives, Tihe and Kohine, who were the daughters of Te Amongaariki. They are said to be the founding ancestors of Te Aupōuri. Mr Brown's purpose in referring to the Courts' title determinations was to demonstrate that Te Aupōuri's mana-whenua interests have

long been confirmed.

[55] Mr Neho of Ngāti Kuri questioned Mr Brown and challenged the basis of the Courts' title determinations in favour of Te Aupōuri, suggesting that Ngāti Kuri had been wrongly left out of the land. Mr Brown disagreed and deferred to the evidence given in Court in the 1890s. He referred to Te Aupōuri's rights in the land by conquest of Ngāti Kuri, though he acknowledged that Ngāti Kuri were not exterminated and emphasised the common links between the two iwi. He referred to the founding ancestors, Te Ikanui and his two wives, Tihe and Kohine. Mr Neho asked whether Tihe and Kohine were of Ngāti Kuri. Mr Brown did not know.

[56] In light of this questioning, Te Aupōuri called Anaru Rieper to give whakapapa and historical evidence of the origins of Te Aupōuri. Mr Neho questioned Mr Rieper in regard to Te Ikanui's origins in Whangape and the whakapapa of Tihe and Kohine. Mr Rieper acknowledged that Tihe and Kohine had Ngāti Kuri whakapapa but said that Te Amongaariki's land interests did not come from her Ngāti Kuri whakapapa. Mr Neho disputed the Courts' title determinations, suggesting that Ngāti Kuri were not present at the hearings. Mr Rieper disagreed and maintained that Ngāti Kuri was represented at the hearings.

[57] At the conclusion of the hearing Te Aupōuri emphasised that the issue was not one of competing mana but recognising the role and responsibility of the local Māori community as kaitiaki of the fishery. In this case, Te Aupōuri says that local Māori community is Te Kao and therefore the people of Te Aupōuri.

Ngāti Kuri

[58] Mr Neho, as chairman of the Ngāti Kuri Trust Board, filed a submission dated 11 November 2008 opposing the taiapure proposal. Ngāti Kuri agreed that Waka Te Haua should be accorded greater protection and that those who hold mana-whenua should have greater management control over the area and its resources. It noted that Te Aupōuri, Ngāti Kuri and Ngāi Takoto simultaneously claimed mana-whenua over Waka Te Haua. The iwi had agreed to use the Te Hiku o Te Ika Iwi Forum ("the Forum")[12] to resolve mana-whenua issues. Ngāti Kuri held the firm view that the Forum's mana-whenua resolution process should be completed before the taiapure should be given effect to, and was concerned that the taiapure proposal might predetermine the outcome of that process. Ngāti Kuri therefore opposed the proposal but wished to discuss its concerns directly with Te Aupōuri.

[59] Mr Neho took a lead role as representative of Ngāti Kuri at the judicial conferences and the hearings but did not give evidence. Ngāti Kuri called evidence from Malcolm Peri, Tom Bowling Murray and Wayne Petera.

[60] Mr Peri, who is of Te Rarawa, presented evidence at the request of Mr Neho. This was in the form of a historical paper concerning battles from the Hokianga to Te Oneroa a Tohe which led to Te Ikanui leaving Whangape and eventually settling on Te Hiku o Te Ika. Mr Peri placed the timing of the migration at the mid 18th century, though I note that other evidence placed it about 50 years before Captain Cook's arrival in New Zealand, that is, in the early 18th century. Mr Peri had not prepared his paper for the purposes of this inquiry and acknowledged that it represented a Te Rarawa version of history. Overall, the relevance of Mr Peri's paper was that it confirmed that Te Ikanui originally came from Whangape in the early to mid 18th century – a fact that Te Aupōuri acknowledges.

[61] Mr Murray, who is of Ngāti Kuri, was primarily concerned that granting the taiapure would signal that Te Aupōuri have mana-whenua in the area. He explained that Ngāti Kuri does not claim to have a waka as the iwi has resided on the land since time immemorial. In contrast, he said that Te Aupōuri could not show evidence of original occupation, conquest or extermination of Ngāti Kuri. Te Aupōuri only came to occupy the area by reason of Ngāti Kuri accommodating them as whanaunga (relations) but Ngāti Kuri did not cede mana-whenua to Te Aupōuri.

[62] Mr Murray acknowledged that Te Aupōuri had been caretakers of Waka Te Haua and had lived on the land for approximately 250 years but maintained that Ngāti Kuri's mana-whenua remained.[13] In terms of the Native Land Court's findings in favour of Te Aupōuri in relation to the Parengarenga block, Mr Murray acknowledged that the block is predominantly Te Aupōuri's but said that the Court had not been given the full picture of Ngāti Kuri's interests. Accordingly, he invited the Tribunal to ignore that evidence. He asserted that Te Aupōuri had subjugated Ngāti Kuri history by taking on roles as interpreters and staff in the Native Land Court, and in teaching Te Aupōuri history in schools. Under questioning, he could not substantiate these claims. He did not give any evidence of Ngāti Kuri performing a role as kaitiaki at Waka Te Haua.

[63] Mr Petera was the final witness for Ngāti Kuri. He saw his role as articulating information gathered from his kaumātua and kuia. He touched on key ancestors of Ngāti Kuri, and emphasised Ngāti Kuri's longstanding occupation of Te Hiku o Te Ika. Te Aupōuri, in contrast, had settled at Te Kao by the "tacit approval" of Ngāti Kuri and not by conquest – this occurred no more than 50 years prior to the arrival of Captain Cook.

[64] Mr Petera discussed various options for fisheries management including taiapure, mātaitai and customary fishing regulations, and offered the view that mātaitai would have suited Ngāti Kuri better in relation to Waka Te Haua. In answer to questions, Mr Petera modified this view by explaining that his difficulty was that there had been "no dialogue", that the kaumātua and kuia of Ngāti Kuri struggled to understand the concept of "taiapure",

but that otherwise he saw no problem with it as a model.

[65] Mr Petera raised a number of concerns with the taiapure process. He suggested that Ngāti Kuri would be excluded from Waka Te Haua, that Te Aupōuri was receiving a payment from the fishing industry and that Te Aupōuri would not be excluding commercial fishers. After some questioning, Mr Petera conceded that many of these concerns were based on supposition and not fact and agreed that: Ngāti Kuri would not be excluded from Waka Te Haua; that there was no evidence of Te Aupōuri receiving payment from the fishing industry; and that Te Aupōuri does intend excluding commercial fishers with the exception of those collecting mussel spat.

[66] In response to my questions regarding Te Aupōuri's role as kaitiaki of Waka Te Haua, Mr Petera said that both he and his father were also kaitiaki. In explanation of his role, he said that while he did not fish Waka Te Haua he would sometimes sit on Waka Te Haua or pause there while travelling along Te Oneroa a Tohe. I note that this evidence had not been put to the Te Aupōuri witnesses who had spoken in detail about their kaitiaki roles.

Ngāi Takoto

[67] Rangitāne Marsden filed a submission on behalf of Ngāi Takoto on 4 November 2008. The submission analysed and responded to Te Aupōuri's proposal in detail. Ngāi Takoto supported a desire for resource management and kaitiakitanga responsibility, but was concerned at possibly being excluded from being a participant in an area of coastline over which it claims mana-whenua/mana-moana. It identified particular concerns with the manner in which the proposal was originally expressed, including: the omission of Ngāi Takoto and Ngāti Kuri as iwi of Te Hiku o Te Ika; the reference to Te Aupōuri's exclusive kaitiakitanga over Waka Te Haua; the suggestion that there had been sufficient consultation with tāngata whenua; the reference to Waka Te Haua being owned by the people of Te Kao; and the claim that Waka Te Haua is exclusive to Te Aupōuri. Ngāi Takoto was particularly concerned at the proposal's implications of exclusivity in favour of Te Aupōuri and considered that any committee of management must include Ngāti Kuri and Ngāi Takoto.

[68] The submission concluded by noting that Ngāi Takoto was willing to be consulted. As explained elsewhere, Ngāi Takoto participated in discussions with Te Aupōuri and Ngāti Kuri and while their overall differences were not resolved, Te Aupōuri subsequently removed reference to "exclusive" kaitiakitanga from the proposal.

[69] Mangu and Whiti Awarau gave evidence for Ngāi Takoto at the hearing.

[70] Mangu Awarau gave whakapapa evidence identifying some of the common ancestors and close links of the five iwi of Te Hiku o Te Ika. He emphasised a commonality of interests and sought to promote unity and harmony within the five iwi.

[71] I note that in the final statement on behalf of Ngāi Takoto filed on 1 December 2011, Whiti Awarau stated that it is:

> "a historical fact that Te Aupōuri came under the mana of both Ngāi Takoto and Ngāti Kuri through the arranged unions of marriage which my tuakana, Mangu Awarau had articulated in his recital of the whakapapa of Muriwhenua at the judicial hearing that was held at the Kaitaia District Court, with tuku whenua established the implementations of kaitiakitanga was able to proceed under the mana of Ngāi Takoto and Ngāti Kuri:"

[72] This statement infers that Mangu Awarau gave evidence that Te Aupōuri came under the mana of Ngāti Kuri and Ngāi Takoto. That is not the case. A careful reading of the transcript confirms that Mangu Awarau did not claim that Te Aupōuri came under the mana of Ngāi Takoto and Ngāti Kuri, whether by arranged marriages, tuku whenua or otherwise. Rather, he was very careful to emphasise the commonality of interests and relationships. Whiti Awarau's statement otherwise has very little evidential value as it was unsubstantiated, and I certainly do not accept that it is evidence of "historical fact". It certainly represented Ngāi Takoto's final position, which appeared to have hardened following the hearing where it was more conciliatory.

[73] Returning to Mangu Awarau's evidence, he emphasised that Ngāi Takoto sought a unified approach to fisheries issues and saw the Forum and the proposed Statutory Board for Te Oneroa a Tohe as the best path forward.[14] He maintained that discrete taiapure were not the solution for fisheries management and that a fisheries plan for the whole of Te Hiku o Te Ika was required.

[74] In answer to questions, Mangu Awarau clarified that the Ngāi Takoto kāinga (communities) were at Mahimaru, Waimanoni, Waipapakauri, Paparore and Kaimaumau, which are all near or on the shores of Rangaunu Harbour. He said that Ngāi Takoto also fished at Waka Te Haua, Te Oneroa a Tohe and elsewhere. He acknowledged that at times some of Te Aupōuri went to Rangaunu Harbour to fish, which is within Ngāi Takoto's rohe (he did not regard Rangaunu as belonging to Ngāi Takoto, but rather Ngāi Takoto belonging to Rangaunu).

[75] Mangu Awarau spoke of the customs and practices applying to the harvesting of pioke (dogfish) in Rangaunu Harbour to illustrate the different roles and relationships of the iwi of Te Hiku o Te Ika. (This would seem to be the same historical practice discussed in some detail in the *Muriwhenua Fishing Report*.[15]) That is, at a certain

time of the year the rangatira of Ngāi Takoto would call to the iwi of Te Hiku o Te Ika, and even as far south as Ngā Puhi and Ngāti Whatua, to harvest the pioke at Rangaunu. This was a very controlled and ritualised harvest. Mr Awarau agreed that Ngāi Takoto's invitation to others to share in the pioke resource was an expression of rangatiratanga.

[76] It occurred to me during the hearing that this example of one iwi acting as stewards of a fishery for other iwi to share in was highly relevant to the discussion concerning Waka Te Haua. I invited Mr Awarau to comment further:

Court: But, what I want to get to is that I am being told (and there is detailed evidence) that it was the Te Kao community that looked after that fishery at Wakatehaua. Do you accept that?

M Awarau: Well, let me say this (and I mentioned it before) our tupuna fished off there all the time.

Court: Yes, I am not debating the question of whether your tupuna fished there. I am talking about the day-to-day, week to week mahi of looking after the place in terms of that level of responsibility.

M Awarau: I think we all looked after that place because we must have if our people have been fishing off there on a day to day basis.

Court: Well, isn't that similar to the situation you talked about in terms of Rangaunu, where your tupuna were the kaitiaki of that area but others could come in from time to time to take from the resource.

M Awarau: Absolutely, I mean, yes I think so. But, you don't understand that we didn't need to go to a Court to do that we would hui about it. So, what I was saying is that we are at a stage now – and the real facts are is that we are already sitting and discussing these areas.

[77] Whiti Awarau began his evidence in a conciliatory manner by deleting certain paragraphs from his written statement that he obviously thought were not constructive to Ngāi Takoto and Te Aupōuri's relationship. He discussed concepts of mana, iwi management principles, the need for unity, Ngāi Takoto's specific concerns with the MOU negotiated with the fishing industry, concerns about the potential ramifications of the taiapure for other issues being discussed by the iwi, and generally expressing a desire for a unified approach to fisheries and other issues.

[78] I discussed with Whiti Awarau the example of harvesting pioke at Rangaunu Harbour and asked whether Te Aupōuri's practices as the haukāinga in managing Waka Te Haua could be seen in a similar light, and why a taiapure at Waka Te Haua could therefore not be accommodated. He explained that Te Oneroa a Tohe is of special significance to all the iwi of Te Hiku o Te Ika. We discussed the role of particular iwi in looking after particular fisheries. I quote the exchange because of its importance:

Court: Yes, I understand that and I actually don't understand Te Aupōuri to be saying it doesn't belong to all of us but what they are saying is, "But, we have a particular duty and role to look after this bit of the fishery. Te Rarawa has a responsibility elsewhere…

W Awarau: Kia ora.

Court: …Ngāti Kuri elsewhere; Ngāi Takoto elsewhere…

W Awarau: Ae.

Court: …Ngāti Kahu elsewhere."

W Awarau: Yes.

Court: And that is what I am hearing and I just wonder what your response to that is?

W Awarau: Well, you see, as it stands we have never ever had a problem with Maunganui trustees. They have been – and the people of Te Hau [Te Kao] they have inherited that position and they are the haukāinga. They don't belong to a part of corporate that is suggested by the newly formed Te Rūnanga Nui O Te Aupōuri. Now, that is where we have our difference of opinions. It is not different to a marae committee.

Now, I mean, Uncle Niki and them they were always part of the Maunganui Bluff. He used to bring fish to my Nans, we used to eat when he used to come down. That there is the function, basic function. It does not have any political attachments or appendages to it as it has been suggested through Te Rūnanga Nui O Te Aupōuri. That is what I am talking about being the tikanga. It is no different to Whare Maru where they allow the people to come into the harbour for the purposes of collecting kina. We allow that.

Court: Okay. You see, I think, you are addressing the issues and I think the marae analogy is an important one because with the marae you can't cut across people's whakapapa in terms of their connection.

W Awarau: Kia ora, ae.

Court: But, the reality of the workings of a marae is you have trustees, you have committees, you have people on the paepae and the kitchen and elsewhere.

W Awarau: Kia ora.

Court: That's fine. But, can I come to this then, if Te Kao is the haukāinga and the haukāinga is responsible for looking after that fishery and they say, "Well, we do want to use this new body, Te Rūnanga Nui O Te Aupōuri to carry out that function", what is the issue with that? What is the problem with that?

W Awarau: The issue being it is not – and you know, like I have said earlier, we have no problems as it has stood in terms of its management being held by the Maunganui Bluff trustees. It is the transitional agency where we have an issue with because that is where their corporate body stands. Now – and the issue of the taiapure, I think, it needs to be responded in terms of the decline of fishes right across Te Oneroa a Tohe. Because, you know, fishes don't – I mean, they travel and they don't have boundaries. So, what – if they are not caught – if a pier net doesn't catch them at Te Wakatehaua the pier net will still catch them up at Tanutanu on Reef Point in Ahipara or the pier net will catch them on–

Court: So, there is a need for it elsewhere?

W Awarau: That's right.

Ngāti Kahu

[79] Ngāti Kahu's approach to the inquiry process was problematic. It withdrew its support for the taiapure at the last moment, presented evidence that could not be tested or verified to any degree, and expressed views on Waka Te Haua when it lies outside of its own rohe. Ngāti Kahu's stance on Te Aupōuri's interests in Te Hiku o Te Ika was by far the most uncompromising.

[80] Ngāti Kahu originally filed a submission dated 8 November 2008 advising that (in bold) "**Ngāti Kahu supports the application**". The submission was filed by Mr V C Holloway, Environmental Resource Manger of Te Rūnanga-a-Iwi o Ngāti Kahu. Ngāti Kahu, like all other submitters, received notice of the judicial conferences in 2009 and 2010, and Mr Holloway in fact attended one on 18 November 2010. But the iwi gave no notice of its change of position until the first day of the hearing on 29 August 2011. Although I had concerns about whether I should allow Ngāti Kahu to change its position almost three years after the closing date for submissions, I nevertheless allowed it to participate fully in the hearing.

[81] On the first day of the hearing Mr Karaka advised that Mr Holloway and a kaumātua, Herewini Karaka, would give evidence on behalf of Ngāti Kahu.[16] However, at the beginning of the third day Mr Karaka advised that Ngāti Kahu would only be presenting a letter explaining why Ngāti Kahu had withdrawn its support for the taiapure, and that no other evidence would be presented.[17] Mr Karaka presented the said letter and nevertheless gave evidence. He spoke of his limited experience of fishing at Waka Te Haua and Ngāti Kahu's interests on Te Hiku o Te Ika. He said that on the one or two occasions that he went to Waka Te Haua to gather kaimoana as a child of about 12, a kaumātua of Ngāti Kahu would first ask the permission of Moko Rewi, a kaumātua of Ngāti Kuri. He also referred to Mr Herewini Karaka having signed a letter in the 1980s whereby Ngāi Takoto (which was said to have formerly been a hapū of Ngāti Kahu) purportedly became an iwi in its own right.

[82] The primary relevance of Mr Karaka's evidence is that Ngāti Kahu claims its traditional territory as far north as Hukatere on Te Oneroa a Tohe, which is approximately 30 kilometres south of Waka Te Haua. That is, Ngāti Kahu does not claim mana-whenua in relation to Waka Te Haua.

[83] The letter Mr Karaka presented was from Professor Margaret Mutu as chairperson of Te Rūnanga-a-Iwi o Ngāti Kahu. It was dated 30 August 2011. Professor Mutu did not attend the hearing. In the letter she explained that Ngāti Kahu's initial support for the taiapure proposal was withdrawn once it had viewed Te Aupōuri's application. She did not explain when Ngāti Kahu changed its view – and Mr Karaka was not able to provide an answer – but clearly Ngāti Kahu would have had an opportunity to view Te Aupōuri's application well before the judicial conferences began in 2009. Professor Mutu said that from Ngāti Kahu's perspective, Te Aupōuri "are not and have never been mana-whenua anywhere on Te Oneroa a Tohe including at Waka Te Haua". She said that Te Aupōuri originated in the Hokianga and "came only relatively recently to their present location around Te Kao." She referred to various texts and archival records which purportedly support this view but did not provide copies of them and nor did she identify the particular statements that she was relying on.

The meeting with iwi representatives

[84] At the conclusion of the hearing the differences between the iwi were clear yet I perceived there remained an opportunity to resolve those differences. I indicated that Mr Taumaunu and I were interested in having a round-table discussion with iwi representatives to explore possible solutions to the impasse. All the parties agreed. This meeting took place on 11 October 2011 and was recorded and transcribed at the request of the parties.

[85] A brief summary of the meeting is all that is required. I explained to the iwi representatives that I considered that, given their shared concern for fisheries management, the merit in taking a unified approach and the fact that the taiapure proposal was the first of its kind in the area, there might be an opportunity for the iwi to reach agreement and thereby establish a template for approaching fisheries management in this and other areas of Te

Hiku o Te Ika. We had a robust discussion but the iwi representatives could not agree. Te Aupōuri maintained that the taiapure was the best tool available to address the fishery at Waka Te Haua. The other iwi maintained that a collective approach was required and suggested that a new solution could be negotiated with the Crown as part of the Treaty settlement negotiations.

[86] We concluded the meeting on the basis that the parties would file final statements of their positions, which they later did. Their fundamental differences remained.

C. ISSUES

Inter-iwi issues

Introduction

[87] The taiapure proposal has arisen at a time when the five iwi of Te Hiku o Te Ika are in the throes of the Treaty settlement process. This has obviously been an arduous process and has resulted in significant tensions between some, if not all, of the iwi. These tensions arise from their respective views on history, whakapapa and traditional interests; their respective experiences since 1840; and their respective aspirations and strategies for the future wellbeing of their people.

[88] The tensions have certainly made my task of assessing the taiapure proposal more challenging. It was suggested that a judge of the Māori Land Court should not decide a matter of such significance to iwi and that my decision will have a significant impact on the future relationships of the iwi. I agree it is preferable for iwi to agree on such matters. But that is not always possible. The iwi have had sufficient time to agree and are clearly unable to do so. I must therefore perform my role. As for the impact of this report on iwi relationships, that is a matter that I cannot control or forecast.

[89] The inquiry gives rise to four inter-iwi issues. First, the challenge to Te Aupōuri's mana-whenua. Second, the role of kaitiaki in relation to Waka Te Haua. Third – and this speaks to the overarching issue identified at the outset of the report – whether the recognition of Te Aupōuri as kaitiaki of Waka Te Haua would contravene Ngāti Kuri and Ngāi Takoto's mana-whenua. Fourth, is it preferable that I recommend that the taiapure not be implemented so that the iwi can pursue a unified approach to fisheries management through the Forum, the Statutory Board or negotiations with the Crown?

Mana-whenua

[90] Ngāti Kahu and some within Ngāti Kuri argue that Te Aupōuri has no mana-whenua in relation to Waka Te Haua, Te Oneroa a Tohe and Te Hiku o Te Ika, and that the iwi is therefore, not tāngata whenua. Ngāi Takoto did not take that extreme position at the hearing, though its position hardened in its final statement. Te Aupōuri says it has mana-whenua but that the real issue for the Tribunal is Te Aupōuri's role as kaitiaki.

[91] Like most courts or tribunals, I tread warily into the realm of mana, mana-whenua or mana-moana. These are certainly issues that are better resolved by iwi themselves. But where iwi have not been able to resolve such issues – as is clearly the case here – I must address them to the extent that they are relevant to the taiapure proposal.

[92] As noted, the Act does not use the term "mana" but speaks of "rangatiratanga". Given the relationship between mana and rangatiratanga – as discussed earlier in the context of the *Muriwhenua Fishing Report* – it is necessary that I address the claim that Te Aupōuri has no mana-whenua as, if Te Aupōuri has no mana-whenua, it cannot be said to have the "rangatiratanga" that the taiapure regime seeks to promote. But I only address mana-whenua as it relates to the taiapure proposal and not for any other purposes.

[93] Interestingly, Professor Hirini Moko Mead avoided concepts of mana-whenua and mana-moana in his text on *Tikanga Māori* "because they are political ideas which are used especially in laying claims to resources."[18] Nevertheless, the terms are used in the *Muriwhenua Fishing Report* and may be defined in simple terms (though their application to specific circumstances may be more difficult): "mana" equates to authority; "mana-whenua" is traditional or customary authority over land; and, similarly, "mana-moana" is traditional or customary authority over the sea or fisheries.

[94] In my assessment of the evidence, Te Aupōuri's mana-whenua (and mana-moana) in relation to Te Oneroa a Tohe and Te Hiku o Te Ika in general, and Waka Te Haua in particular, is well established. That evidence includes the traditions of Te Ikanui's occupation of the land and unions with Tihe and Kohine in the early to mid 18th Century – anywhere between 70 and 120 years before the Treaty; Tihe and Kohine's own land interests through their mother, Te Amongaariki; Te Aupōuri's occupation of the land since that time; the Native Land Court and Native Appellate Court title determinations of the Parengarenga block in the 1890s; the subsequent partition of the Parengarenga No. 5 block (including Waka Te Haua) in favour of Te Aupōuri owners; setting aside Waka Te Haua as a Māori reservation for "the people of Te Kao"; and the 1957 investigation of title of Te Oneroa a Tohe by Chief Judge Morison.[19]

[95] Ngāti Kahu challenged Te Aupōuri's interests in the strongest terms but presented the least evidence. Professor Mutu's statements in her letter of 30 August 2011 were unsubstantiated and have limited evidential value. Those of Ngāti Kuri who did challenge Te Aupōuri's mana-whenua – and I note that not all did – nevertheless acknowledged Te Aupōuri's occupation of the land from 50 years before the time of Captain Cook. The essence of Ngāti Kuri's position is that it says that it is an ancient tribe and that Te Aupōuri's occupation of Te Hiku o Te Ika for over 250 years is not long enough to establish mana-whenua. This argument is plainly contradicted by the numerous examples of iwi elsewhere in the country who established their mana-whenua a mere decade or two before the Treaty, often displacing the mana of earlier iwi. I reject the argument. As for Ngāi Takoto's position, contrary to the final statement submitted by Whiti Awarau, the evidence of Mangu Awarau did not purport to challenge Te Aupōuri's mana or suggest that its rights derive from particular arranged marriages or tuku whenua. Overall, the evidence of Ngāti Kahu, Ngāti Kuri and Ngāi Takoto simply does not displace the substantial evidence of Te Aupōuri's mana-whenua.

[96] Ngāti Kuri and Ngāi Takoto's primary concern is that granting the taiapure will undermine their mana-whenua. They gave evidence of their mana-whenua on Te Hiku o Te Ika in general – which, I note, was not challenged – but very little evidence in relation to Waka Te Haua itself. Te Aupōuri expressly acknowledged Ngāti Kuri and Ngāi Takoto's "ancestral connections" to Waka Te Haua and their right to harvest there, but did not go as far as to expressly acknowledge their "mana-whenua". Te Aupōuri's approach is consistent with its view that mana-whenua is not the issue between it and Ngāti Kuri and Ngāi Takoto. Instead, it sees the real issue as its role as kaitiaki.

[97] Nevertheless, the evidence from the iwi objectors lacked the substance and detail for me to conclude that Ngāti Kuri and Ngāi Takoto also hold mana-whenua at Waka Te Haua. Importantly, I do not conclude that they do not hold a mana-whenua interest. Rather, the evidence presented was simply insufficient to persuade me on balance that they do hold an interest. Certainly, I reject the claim that Te Aupōuri's mana-whenua derives from Ngāti Kuri or Ngāi Takoto. But even if the evidence was sufficient for me to conclude that Ngāti Kuri and Ngāi Takoto also hold mana-whenua at Waka Te Haua, that would not answer the more relevant issue raised by the taiapure proposal. As I explained earlier, the Act is not primarily concerned with the mana of iwi or hapū but rather the exercise of rangatiratanga by iwi or hapū in terms of the management and conservation of a fishery. That is, the actual exercise of kaitiakitanga. I now turn to the issue of kaitiakitanga.

Kaitiakitanga

[98] In my view, the question of who exercises the role of kaitiaki in relation to Waka Te Haua requires an assessment of three interlinked factors. These are either explicit or implicit in the Act. They are also factors that mirror the concept of kaitiakitanga discussed by the various iwi witnesses. First, who is the haukāinga or local Māori community? The evidence is clear that within the Māori world the haukāinga has a particular role as kaitiaki of resources. Second, for whom can the fishery be said to be of "special significance"? This is an express qualifier in s 174 of the Act. Third, who has traditionally exercised the role of kaitiaki in terms of the management and conservation of the fishery? Each of these factors must be assessed on the evidence.

[99] Te Aupōuri says that its community at Te Kao is the haukāinga, that Waka Te Haua is its kāpata kai (food cupboard) and of "special significance" to it, and that it has carried out the role of kaitiaki for generations.

[100] In my assessment, the evidence clearly demonstrates that the people of Te Kao, being Te Aupōuri, are the haukāinga in relation to Waka Te Haua. This was in fact, expressly acknowledged by Ngāti Kuri and Ngāi Takoto. In traditional terms, they would be regarded as the ahikāroa – those who have maintained the fires on the land.

[101] The evidence also demonstrates that the Waka Te Haua fishery is of special significance to Te Aupōuri. That is because of its historical association with Te Aupōuri, its abundance as a resource for Te Aupōuri, its close proximity to Te Kao, and the fact that Maunganui Bluff Reserve is administered by and for the people of Te Kao. Conversely, the evidence of Ngāti Kuri and Ngāi Takoto did not establish that the fishery was of "special significance" to them. The fact that from time to time the people of Ngāti Kuri and Ngāi Takoto also fish there is insufficient to prove special significance for the purposes of the Act.

[102] The evidence also clearly demonstrates that it is the people of Te Aupōuri who practice the role of kaitiaki in relation to Waka Te Haua and the surrounding fishery. The Te Aupōuri witnesses gave detailed evidence in this regard, which I summarised earlier (paragraph 50). They spoke of a longstanding, intimate and comprehensive exercise of kaitiakitanga. The iwi objectors did not challenge that evidence and their witnesses in fact, acknowledged Te Aupōuri's role. The fact that Te Aupōuri performs that role should not come as a surprise given the iwi's close connection to Waka Te Haua.

[103] It is worth recording Ngāti Kuri and Ngāi Takoto's acknowledgements of Te Aupōuri's role as the haukāinga and kaitiaki. Although Mr Neho chose not to give evidence, he did not challenge the minutes of an iwi taiapure hui held at Potahi Marae, Te Kao on 2 October 2010 where he acknowledged Waka Te Haua to be synonymous with Te Kao and Te Aupōuri:

> Tautoko Bob Wells and Mere Rollo. I acknowledge that Waka Te Haua is a "cupboard" synonymous to Te Kao

and Aupouri widespread. This issue needs delicate handling. The application is seen as "Exclusive Rights" to Aupouri for food gathering.

Co-management gives the right to establish bylaws, and Aupouri remain as kaitiaki with the support from its neighbouring iwi. Inter-iwi relationships must be maintained.[20]

[104] Mr Murray, in explaining his concern that the taiapure would have ramifications for mana-whenua issues and the Treaty settlement process, also readily acknowledged Te Aupōuri's role as kaitiaki:

Court: How does the recognition of a kaitiaki role prejudice the Treaty settlement process for Ngāti Kuri?

T Murray: Because it will lead into that other part which is still to come. If that is approved here now that is a wedge into the bigger picture of settlement and claims.

Court: Alright.

T Murray: So, then that gives them – now, they have been caretakers, we understand that. They have lived there for many years, we understand that.

Court: 250 years I have been told.

T Murray: Absolutely. But the thing about it is the land hasn't gone.[21]

[105] Mangu Awarau acknowledged that Te Aupōuri performed a role at Waka Te Haua similar to that of his Ngāi Takoto tūpuna (ancestors) in relation to pioke at Rangaunu (as quoted earlier at paragraph 76). Importantly – and this is a point I will return to shortly – he emphasised that in the past the tūpuna would hui and discuss such matters. Whiti Awarau also readily acknowledged that the people of Te Kao have inherited the role of kaitiaki and that they are the haukāinga (also quoted earlier at paragraph 78). He had no difficulty with the Maunganui Bluff Reserve trustees and their management role in relation to Waka Te Haua – his real concern was with the shift in responsibility to a corporate body such as Te Aupōuri's Rūnanga Nui.

[106] What then is the evidence of Ngāti Kuri or Ngāi Takoto carrying out a role as kaitiaki? Te Aupōuri claimed in the original taiapure proposal that it was the "exclusive" kaitiaki. This was apparently a major point of contention for Ngāti Kuri and Ngāi Takoto, and their concern eventually led to the removal of that statement from the taiapure proposal. However, the role of kaitiaki remained a major issue for the inquiry hearing. Te Aupōuri filed and served its evidence on 5 August 2011 and in that evidence it referred in considerable detail to its role as kaitiaki. Ngāti Kuri and Ngāi Takoto had until 19 August 2011 to file their evidence. I expected that, if Ngāti Kuri and Ngāi Takoto seriously claimed to be kaitiaki of Waka Te Haua, they would file detailed evidence. The evidence they filed was silent on the issue. It was only in answer to questions that their witnesses made passing mention of a role as kaitiaki.

[107] Mr Petera of Ngāti Kuri offered the following:

Court: But look, the evidence that is here is there is acknowledgement by members of Ngāti Kuri to say, "Well yes, Te Aupōuri have been the caretakers".

W Petera: Sir, Moko Rewi in evidence yesterday was called by Te Paatu before they went into the rohe of Ngāti Kuri to meet them to take them to the Bluff. Moko Rewi is my tupuna. Moko Rewi, like I said, is the father of my father's older brother. His name Ratima continued that role as kaitiaki. What am I supposed to do? My father continues that role of kaitiaki.

Court: Are you saying in relation to Wakatehaua?

W Petera: Wakatehaua. Sir, I did not in my evidence state that aged 7 I was there fishing with my father, that every month every bi-month as often as I can I don't fish Wakatehaua I go and sit on Wakatehaua. I sit there. True. I travel past it both ways every time I will stop on my journey at Maunganui. Kaitiaki, wairua. Kaitiaki, tangata. Na wai? Ma wai? Mo ngā tupuna i tuku iho wena taonga ki a mātou.

Court: Well, you see the difficulty is this. We are getting right to the end of a four-day inquiry…

W Petera: Ae.

Court: …and we have heard plenty of evidence about the actual carrying out of the function of kaitiakitanga and we are not quite sure how significant this is going to be in terms of the decision we have to make. But, here at the last of the process you are now saying that, in fact, you and your family perform that role of kaitiaki.

W Petera: As well. We participate in that. We can't get away from it. It is our responsibility. Sir, one aspect that there is a difference here, we don't own Maunganui but we do tiaki it.[22]

[108] Mangu Awarau of Ngāi Takoto offered the following:

M Awarau: I think we all looked after that place because we must have if our people have been fishing off there on a day-to-day basis.[23]

[109] Given that Ngāti Kuri and Ngāi Takoto had readily acknowledged Te Aupōuri's role as kaitiaki, and the

significance of the issue in the inquiry, I regard these statements of Mr Petera and Mangu Awarau as being of limited value. Mr Karena, for Te Aupōuri, described Mr Petera's evidence of his role as kaitiaki as merely amounting to occasionally sitting on Waka Te Haua. To be fair to Mr Petera, I believe he was endeavouring to articulate the spiritual significance of the area rather than suggesting that he performed a role similar to that of Te Aupōuri. As for the reference to Mr Karaka's evidence of Moko Rewi's role, that evidence certainly speaks to Moko Rewi's relationship with Ngāti Kahu kaumātua and their deference to him. But it explains very little of his role as kaitiaki of the fishery resource or how his harvesting of kaimoana at Waka Te Haua sat in cultural terms with Te Aupōuri's role as the acknowledged haukāinga and kaitiaki. Mangu Awarau's evidence lacked any detail or examples.

[110] Overall, the evidence of Ngāti Kuri and Ngāi Takoto was so lacking in detail of the nature, frequency and duration of their performing a kaitiaki role that I can only conclude that they do not perform a role akin to that which Te Aupōuri performs. But that is not a criticism of Ngāti Kuri and Ngāi Takoto – it is simply the reality of them not being the haukāinga, their communities being much more distant and they having other fisheries of special significance to look after.

[111] I therefore conclude that Te Aupōuri performs the role of kaitiaki in respect of the conservation and management of the fishery at Waka Te Haua, and that Te Aupōuri's role falls within its rangatiratanga under the Treaty. At the time of the Treaty, Te Aupōuri would no doubt have exercised a far greater degree of control of the fishery than it does today. I further conclude that Te Aupōuri's role mirrors that of Ngāi Takoto in relation to pioke at Rangaunu, as recounted by Mangu Awarau – a role, no doubt, performed by other iwi in relation to various fisheries on Te Hiku o Te Ika. But, importantly, Te Aupōuri performs that role as the haukāinga on behalf of the wider community, including its neighbouring iwi. Tutangiora Nathan of Te Aupōuri best expressed it in this way:

> Te toka, na tātou katoa, horekau na Te Aupōuri anake. Engari ko Te Kao ngā kaitiaki.
>
> (Waka Te Haua belongs to us all, not just Te Aupōuri, but those of Te Kao are the guardians.)

[112] Finally, I note that when Mangu Awarau compared Waka Te Haua and Rangaunu, he said that the difference was that in the past there was always discussion through hui. I accept this. In my view, that means that Te Aupōuri's role as kaitiaki includes a duty to consult with their fellow iwi who claim interests, namely, Ngāti Kuri and Ngāi Takoto. I return below to what that means for the taiapure proposal.

Will the recognition of Te Aupōuri as kaitiaki of Waka Te Haua contravene Ngāti Kuri and Ngāi Takoto's mana?

[113] Having concluded that Te Aupōuri has mana-whenua, that it is the haukāinga and that it performs the role of kaitiaki, the question then arises as to whether recognition of that role will contravene Ngāti Kuri or Ngāi Takoto's mana – whether mana-whenua or mana-moana.

[114] The iwi objectors' concerns were best summed up in Whiti Awarau's final statement on behalf of Ngāi Takoto. That is, first, that mana-whenua and kaitiakitanga cannot be separated, and second, that the approval of the taiapure will adversely affect their Treaty settlement process:

> As stated in the submissions by Mr Subritzky of behalf of Te Aupōuri that the fundamental differences of opinion in reference to Mana Whenua and Kaitiakitanga are at odds with Te Aupōuri . Ngāi Takoto strongly opposes these views and statements as we view Mana Whenua and Kaitiakitanga as intrinsic to the lores and practices of Tikanga Māori, as one cannot work without the other unless it has been given under the protocols of Tuku Whenua.
>
> …
>
> We Ngāi Takoto maintain our customary rights under the articles of Te Tiriti of Waitangi that with the approval of this application will adversely affect a just and fair outcome to our Treaty Settlement Claims. (sic)

[115] As to the first point, I do not agree that what Te Aupōuri seeks amounts to a distortion of tikanga Māori (Māori customs) by separating mana-whenua and kaitiakitanga. Rather, it merely recognises that within tikanga Māori certain groups amongst iwi or hapū take on the responsibility of kaitiaki of a resource for others. That is an exercise of rangatiratanga, most usually performed by the haukāinga. But the suggestion that all who claim mana-whenua also exercise that aspect of rangatiratanga is plainly not supported by the evidence. Te Aupōuri, as the haukāinga, clearly carries out that role at Waka Te Haua, just as Ngāi Takoto performed that role in relation to the pioke resource at Rangaunu.

[116] As to the second point, I do not agree that recognition of the role that Te Aupōuri performs as kaitiaki will have a significant impact on Treaty settlements or other aspects of mana-whenua. Any findings and recommendations that I make relate only to the taiapure and not Treaty settlement or other issues. The taiapure will not substantially change the role that Te Aupōuri has performed in the past as kaitiaki – a role that Ngāti Kuri and Ngāi Takoto both acknowledge. Te Aupōuri will simply be able to recommend regulations to the Minister. Furthermore, the taiapure will not alter the relationship of the various iwi with Te Oneroa a Tohe. As for the nomination of the Rūnanga Nui as the committee of management, that simply reflects a modernisation of iwi

institutions. I certainly do not consider that Te Aupōuri should be denied a fisheries management tool such as a taiapure simply because other iwi do not agree with the Te Kao community's nomination of the Rūnanga Nui as the committee of management.

[117] In summary, while I recognise that Ngāti Kuri and Ngāi Takoto are genuinely anxious about any statutory recognition of other iwi on Te Hiku o Te Ika, I conclude that their concerns are misplaced. As I have been at pains to explain, the taiapure regime aims only to recognise the kaitiaki role of iwi and hapū – and Ngāti Kuri and Ngāi Takoto openly acknowledge that Te Aupōuri performs that role in relation to Waka Te Haua. Furthermore, it does not impact on the relationship of the various iwi with Te Oneroa a Tohe. Were I to adopt the approach advocated by the iwi objectors, I would be guilty of over-simplifying the dynamic relationships and roles of iwi, hapū and haukāinga within tikanga Māori. Further; I would be ignoring the plain evidence of the practice of tikanga Māori at Waka Te Haua. To the extent that Ngāti Kuri and Ngāi Takoto have an interest at Waka Te Haua, it can be appropriately accommodated by requiring Te Aupōuri through the Rūnanga Nui to consult those two iwi before recommending regulations to the Minister.

Should the taiapure not be implemented so that the iwi can pursue a unified approach to fisheries management through the Forum, the Statutory Board or negotiations with the Crown?

[118] The iwi objectors argue that the taiapure will undermine the efforts by the five iwi of Te Hiku o Te Ika to achieve a unified approach to fisheries management through the Forum, the Statutory Board and possible negotiations with the Crown. Some argue that there are more appropriate fisheries management tools within the current statutory framework, while others argue that they should be negotiating with the Crown for a more comprehensive and innovative fisheries management plan for Te Hiku o Te Ika.

[119] While I agree that it would have been ideal for the five iwi to take a unified approach to fisheries issues – and as noted, the very reason Mr Taumaunu and I returned to Kaitāia for the private meeting was to explore such possibilities – I do not believe that is a sufficient reason to delay or decline the taiapure proposal.

[120] First, the five iwi have expended a significant amount of time, energy and resources in endeavouring to take a unified approach to Treaty settlements, management of Te Oneroa a Tohe and fisheries issues, with varying degrees of success. The position at the conclusion of the hearings was that each of the five iwi were negotiating Treaty settlements independently of each other; the Forum only comprised four of the iwi following Ngāti Kahu's withdrawal; the proposed Statutory Board had yet to be finalised (and it is unclear what impact Ngāti Kahu's withdrawal from the Forum will have on that proposal); and there was simply no agreed approach to fisheries management issues. Indeed, even the MOU, which the taiapure inquiry process appears to have helped to bring to finalisation, has only been signed by Te Aupōuri, Ngāti Kuri and Te Rarawa. Furthermore, Te Rarawa has initiated its own fisheries management strategy at the southern end of Te Oneroa a Tohe at Tauroa Point. I have no confidence that the iwi will reach a consensus on fisheries issues were the taiapure to be delayed.

[121] Second, the proposed Statutory Board relates to Te Oneroa a Tohe only, that is, the beach. It does not relate to the fisheries waters. Indeed, I was told that the Ministry of Fisheries did not want fisheries issues bundled together with beach issues. Accordingly, the taiapure will have no impact on the proposed Statutory Board and its functions, and the Statutory Board in turn will have nothing to do with fisheries waters.

[122] Third, the evidence does not satisfy me that a taiapure is the wrong fisheries management tool for Waka Te Haua. Clearly, given that the mussel spat industry will continue at Waka Te Haua, a mātaitai is not suitable. Te Aupōuri explained in some detail why it had decided on a taiapure and those reasons appear valid.

[123] Fourth, I acknowledge that the iwi representatives have a genuine desire to negotiate with the Crown a total-fishery management regime for Te Hiku o Te Ika. The options discussed with Mr Taumaunu and I appear to fall well outside the current fisheries management tools. The iwi will no doubt continue to negotiate with the Crown. But any such regime remains purely hypothetical at this point in time. I do not believe it would be appropriate to delay or decline the taiapure proposal on the basis of a hope that something better can be negotiated.

[124] Finally, given Te Aupōuri's traditional interests and role in relation to Waka Te Haua, it is appropriate that the iwi's wishes be given effect to through the taiapure.

Statutory criteria

[125] Having addressed the inter-iwi issues I now address the statutory criteria set out in s 176(2) of the Act.

Section 176(2)(a) – will the order further the object set out in s 174?

[126] I am satisfied that a taiapure order will further the object of s 174 of the Act.

[127] The area of the taiapure was adjusted following advice from the Ministry of Fisheries. None of the original submitters or the iwi objectors disputed that the taiapure related to "littoral coastal waters", and the issue was

not the subject of contested evidence. Nevertheless, I must be satisfied that the taiapure does relate to littoral coastal waters.

[128] As noted earlier, Waka Te Haua is a tidal island or outcrop of about six hectares in area that extends out from Te Oneroa a Tohe into the Tasman Sea. It is a unique geographical feature on Te Oneroa a Tohe that otherwise comprises a relatively uninterrupted expanse of beach. Waka Te Haua's geological features mean that it has significant attributes in attracting sea life and has a significant effect on the prevailing winds, tides and currents in the surrounding coastal waters.

[129] The fishing industry referred to these features in its original submissions opposing the inclusion of mussel spat within the ambit of the taiapure. The industry said that 80 percent of mussel spat within New Zealand is harvested from Te Oneroa a Tohe and that 20 percent of the mussel spat harvested on Te Oneroa a Tohe comes from within the approximate five kilometres of shoreline of the proposed taiapure – that is, 17 percent of the overall national mussel spat harvest. Aquaculture New Zealand explained that the high take of mussel spat is due to the natural phenomena caused by Waka Te Haua:

> The area is particularly important because it faces a number of directions and captures a number of currents and wind directions so it captures spat strandings in a number of different environmental conditions.[24]

[130] Sanford Limited also referred to this:

> The location and landing of beach cast volumes vary by storm event, with the quality of the spat collected from the proposed taiapure location very high. The Bluff Island produces an "eddie" effect from the Tasman Sea's wild storms and allows the beach cast seaweed to gather around the Bluff …[25]

[131] Mr Ihaka of Te Aupōuri explained the rationale for the area of the taiapure. He said that the southern point of the taiapure, Te Arai, and the northern point of the taiapure, Waipakaru, were selected because they mark traditional areas within which Te Aupōuri concentrated its fishing. The iwi selected one nautical mile as the distance from the shoreline for the taiapure as it is a well understood distance for commercial fishers. The relevant hydrographical chart of the seabed (N.Z.41) shows the approximate depth of the waters at one nautical mile at Te Arai at less than 21 metres; at Waka Te Haua at between 21 and 35 metres; and at Waipakaru at less than 21 metres. I am therefore satisfied that in terms of the depth of the waters, the bulk of the area comprises waters in which plants might be expected to grow. This is consistent with being littoral coastal waters. While there is a small element of "buffering" in choosing a one nautical mile limit, I believe any such buffer is negligible. As noted earlier, a distance of one nautical mile is not out of keeping with other taiapure.

[132] Pereniki Conrad spoke of his knowledge of the underwater terrain within the taiapure. Apart from the island of Waka Te Haua itself, there are many submerged and partly-submerged rocks including Waimahuru, out from Te Arai, other rocks to the south of Waka Te Haua, and rocks and a reef extending up to 150 metres off Waka Te Haua. A deep trough runs in front of Waka Te Haua, which I infer is caused by the coastal currents. The area is subject to strong currents that contribute to it being an abundant source of mussel spat, and I conclude that these currents also contribute to the rich sea life in general. Mr Conrad confirmed that the whole area of the taiapure is (or, more to the point, was) very abundant in sea life. Evidence from other witnesses supports this conclusion.

[133] The combination of the evidence of the known fishing rocks and reefs; the extensive band of surf in the very shallow waters; the significant effects of tides, currents and winds on the waters in general as a result of the features on the land; and the evidence of the rich fishery resource throughout the waters, satisfies me that the area of the proposed taiapure is an area of "littoral coastal waters" for the purposes of the Act.

[134] I am satisfied that the fisheries waters surrounding Waka Te Haua have been of "special significance" to Te Aupōuri as a source of food. I heard detailed evidence from Te Aupōuri witnesses regarding the range of kaimoana gathered and caught off Waka Te Haua itself, the shoreline within the taiapure and the waters of the taiapure. I am satisfied in particular that this area is of special significance given its natural features referred to above (which makes it unique within Te Aupōuri's area of interest on Te Oneroa a Tohe), the prolific kaimoana that existed there in the past, its unique attributes as a fishery today, and Te Aupōuri's strong and longstanding association with the area.

[135] I am also satisfied that the proposed taiapure will make better provision for Te Aupōuri's rangatiratanga and right secured in relation to fisheries by Article II of the Treaty. As explained in some detail, Te Aupōuri has performed the role of kaitiaki in accordance with that rangatiratanga and wishes to be able to recommend regulations to the Minister for the purpose of the conservation and management of the taiapure area.

Section 176(2)(b) – is the taiapure appropriate having regard to its size, impact on the general welfare of the community in the vicinity, impact on those persons having a special interest in the taiapure, and impact on fisheries management?

[136] I am satisfied that the taiapure is appropriate in relation to each of the factors in s 176(2)(b).

[137] I am satisfied that the size of the taiapure is appropriate. I note that the taiapure is approximately 10 km^2 in size. It is a negligible area to be excluded from the netting and long-lining commercial fishery but is obviously significant to Te Aupōuri, and is important to the wider Māori and general communities that undertake customary and recreational fishing.

[138] I am satisfied that the taiapure will not have an adverse impact on the general welfare of the community in the vicinity. I note that, apart from those within the fishing industry involved in mussel spat harvesting and the iwi objectors, no one else within the general community objected to the taiapure. I conclude that it would be in the interests of the general community in the vicinity for Te Aupōuri to be able to recommend regulations for the conservation and management of the fishery.

[139] I have considered the impact of the taiapure on those persons having a "special interest" in the taiapure.

[140] First, it can be said that Ngāti Kuri and Ngāi Takoto (as well as other iwi of Te Hiku o Te Ika) might have a special interest in the taiapure in terms of their harvesting of kaimoana. The ability of those iwi to continue to undertake those tasks will not be so affected that the taiapure could be considered to be inappropriate. In particular, in accordance with my earlier findings, I conclude that it is appropriate for Te Aupōuri, through the committee of management it has nominated, to be responsible for recommending regulations to the Minister. This is consistent with its traditional role as kaitiaki. I do not consider that Ngāti Kuri or Ngāi Takoto should share in that primary role through the committee of management. However, I consider that Te Aupōuri has a duty to consult with Ngāti Kuri and Ngāi Takoto before recommending any regulations to the Minister.

[141] Second, the fishing industry might also be considered to have a special interest in the taiapure. As explained, the concerns of the fishing industry in relation to mussel spat harvesting have been addressed and the industry's objections have been withdrawn. I note that there was no objection from the fishing industry to the proposed banning of commercial netting and long-lining, and that significant industry members such as Sanford Limited filed submissions on the mussel spat issue.

[142] Finally, given all of the factors and evidence presented, the taiapure is appropriate having regard to its impact on fisheries management.

D. CONCLUSION

Recommendation

[143] In terms of s 181(8)(a) of the Act, I recommend that the Minister implement the current taiapure proposal (as previously amended) but with a further amendment to provide that the proposed committee of management, the Rūnanga Nui, be required to consult with Ngāti Kuri and Ngāi Takoto before recommending any regulations to the Minister.

Concluding remarks

[144] On behalf of Mr Taumaunu and myself, I wish to express our appreciation to all of the parties, iwi representatives and witnesses for the dedicated manner in which they presented their submissions and evidence to the Tribunal. I regret that various circumstances have meant that this report could not be completed earlier.

[145] I emphasise that my findings are based on the submissions and evidence presented to the inquiry. I have considered all the submissions and evidence, even though the detail of some may not have been expressly referred to in this report. Furthermore, I emphasise that the findings and recommendations relate to the taiapure only, and not any other issues between the iwi.

[146] Finally, Mr Taumaunu and I consider that the taiapure has great merit and trust that it can be implemented without too much further delay.

Dated at Whangarei this 31st day of October 2012.

JUDGE D J AMBLER, Tribunal.

MR H. TAUMAUNU, Assessor.

APPENDIX A

Inquiry process

Publication of proposal and objections

[1] Following the lodging of the proposal and the initial amendments, the then Minister agreed in principle to the proposal on 28 July 2008 in terms of section 178(2) of the Act. The proposal was published in the New Zealand Gazette on 11 September 2008. In terms of section 180 of the Act, any objections or submissions had to be lodged with the Māori Land Court at Whangārei by 11 November 2008.

[2] A number of objections and submissions were received. A full list is set out in Appendix C. Several members of the fishing industry objected to any restriction on mussel spat harvesting and two iwi, Ngāti Kuri and Ngāi Takoto, objected to the proposal in general. Te Rūnanga-a-Iwi o Ngāti Kahu lodged a submission supporting the proposal but at the commencement of the hearing in 2011 changed its view and opposed the proposal.

Appointment of Tribunal and judicial conferences

[3] On 8 May 2009 I was appointed as the Tribunal to enquire into the proposal and submissions pursuant to s 181(2) of the Act. I convened three judicial conferences in Kaitāia in preparation for the hearings.

[4] On 19 November 2009 I conducted the first judicial conference. This was publically notified beforehand. Following the conference, I adjourned the inquiry to enable Te Aupōuri, Ngāti Kuri and Ngāi Takoto to discuss their respective interests and concerns, and to enable the fishing industry interests to discuss whether they would be taking a common approach to the inquiry.

[5] The second judicial conference took place on 23 March 2010. The three iwi sought further time to continue their discussions. Aquaculture New Zealand, representing the fishing industry interests, also expressed a wish to continue working with the iwi on a management plan. I adjourned the inquiry for six months to enable those discussions to take place.

[6] The third judicial conference took place on 18 November 2010. The three iwi had held discussions but without resolving their differences. Aquaculture New Zealand was continuing its discussions with iwi representatives. Te Aupōuri indicated that it would be amending its proposal. I allowed Te Aupōuri until 20 December 2010 to confirm any amendments to the proposal and adjourned the inquiry to a teleconference of the parties in early 2011 to prepare for the hearing.

[7] On 20 December 2010 Te Aupōuri advised of its amendments to the proposal (as discussed in the body of this report) and, in particular, advised that the restriction on mussel spat harvesting was withdrawn.

[8] Teleconferences took place between January and August 2011 to prepare for the hearing.

[9] On 19 April 2011 Mr Taumaunu was appointed as an assessor to assist me with the inquiry pursuant to s 181(3) of the Act.

[10] On 15 June 2011 a new objection to the proposal was received from Mr Kahi Harawira, purportedly on behalf of Ngāti Kuri. The objection was dated 31 May 2011. Any such objections had to be filed by 11 November 2008. As Mr Harawira's objection was out of time, I rejected it and noted that consequently Mr Harawira was not entitled to make presentations at the hearing.

[11] On 4 August 2011 Aquaculture New Zealand, Te Aupōuri and Ngāti Kuri signed a Memorandum of Understanding ("MOU"). The MOU provides for an industry Code of Practice and the GLM 9 Management Plan, and for these two documents to be the subject of ongoing review. These documents addressed among other things mussel spat harvesting on Te-Oneroa-a-Tohe. Te Rūnanga o Te Rarawa, which did not express a view on the taiapure proposal, also signed the MOU. Ngāi Takoto had yet to sign the MOU at the time of the hearing. Ngāti Kahu resolved not to sign the MOU.[26]

Hearing

[12] The hearing took place at the Kaitāia District Court between 29 August and 1 September 2011. The iwi were not represented by counsel and used their own representatives.

[13] On 29 August 2011 Aquaculture New Zealand made a brief presentation confirming the withdrawal of the fishing industry's objections. Between 29 August and 1 September 2011 Te Aupōuri, Ngāti Kuri, Ngāi Takoto and Ngāti Kahu presented submissions and evidence.

The meeting with iwi representatives

[14] At the conclusion of the hearing on 1 September 2011 the differences between Te Aupōuri and the iwi objectors remained. Mr Taumaunu and I agreed to return to Kaitāia for a final discussion with the iwi representatives to explore possible solutions to the impasse. Although the discussion was to be in the form of a meeting, the parties requested that it be recorded and transcribed as per a hearing.[27] The meeting took place on 11 October 2011. The meeting did not resolve the differences between the iwi.

[15] At the conclusion of the meeting I gave the parties an opportunity to file final statements. Final statements were received from Te Aupōuri dated 16 November 2011, from Ngāi Takoto dated 1 December 2011, from Ngāti Kuri dated 2 December 2011 and from Ngāti Kahu dated 7 December 2011. The positions of the iwi did not change in substance.

[16] A transcript of the hearing and meeting has been produced.[28] The transcription of the hearing encountered

technical difficulties and contributed to the delay in the production of this report.

APPENDIX B

Map of the proposed taiapure

APPENDIX C

Schedule of submissions

Name	Date of Sub	Support or Oppose
AJ King Family Trust & SA King Family Trust • *Andrew King*	26 October 2008	Neutral
Te Iwi o Ngāi Takato • *Rangitane Marsden*	4 November 2008	Oppose
Rob Pooley	4 November 2008	Support
Victor Jacobson	5 November 2008	Oppose
Spat Supply Ltd • *Robbie Denison*	5 November 2008	Oppose
Port Aquaculture Ltd • *Andrew Schwass*	6 November 2008	Oppose
Marine Farm Association • *Quentin Davies (Gascoigne Wicks, Lawyers)*	6 November 2008	Oppose
Bruce Lock	7 November 2008	Oppose
Denison Enterprises Ltd • *Kirk & Heather Denison*	10 November 2008	Oppose
Sanford Limited • *Andrew Bond*	10 November 2008	Oppose
Ngāti Kuri Trust Board Inc • *Graeme Neho*	11 November 2008	Oppose
Waitapu Fishing Co Ltd • *Winston A Rountree*	11 November 2008	Oppose
Te Rūnanga-ā-Iwi o Ngāti Kahu • *VC Holloway*	11 November 2008	Support

Liberty Fishing Company Ltd • *Marty Doody* • *Diane Wedding* • *Michelle Wedding* • *Angela Wedding* • *Katrina Wedding*	12 November 2008	Oppose
Coromandel Marine Farmers' Association • *pp Tom JB Hollings (Gilbert James)*	12 November 2008	Oppose
Kaitaia Spat Ltd • *Chris Henslev*	12 November 2008	Oppose
Aquaculture New Zealand • *Peter Vitasovich*	12 November 2008	Oppose
Crown Mussel Farm • *Josephine Cowin* • *Jeffrey Cowin*	14 November 2008	Oppose

Endnotes

1. I address the definition of mana-whenua and mana-moana later in the report.

2. (12 December 1989) 504 NZPD 273.

3. I use the term "rangatiratanga" to include the right secured in relation to fisheries by Article II of the Treaty as, in the context of fisheries, they mean the same thing.

4. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (WAI 22, 1988).

5. Ibid p 174.

6. Ibid p 179.

7. Ibid p 181.

8. Ibid p 183.

9. Notification of the Whakapuaka Taiapure Proposal – Recommendation and Decision Notice (No. F190) (16 August 2001) *90 New Zealand Gazette* 2320.

10. *Sea-Right Investments Limited v The Minister of Fisheries and Te Rūnanga o Ngāi Tahu,* unreported judgment of the High Court, hearing 26 April 2004, judgment 20 May 2004, per Ronald Young J [*Sea Right Investments*].

11. Fisheries (Akaroa Harbour Taiapure-Local Fishery Proposal Recommendations and Decisions) Notice (No. F334) 194 *New Zealand Gazette* 4850 at 4861-4862.

12. Witnesses gave different versions of the name of this Forum. I simply use the term "the Forum" throughout the report.

13. 45 Taitokerau M B 466·467 (45 TTK 466·467).

14. The proposed Statutory Board for the management of Te Oneroa a Tohe is the subject of Treaty settlement negotiations. The proposal relates to the beach only and not the fisheries waters.

15. *Muriwhenua Fishing Report,* pp 68–74.

16. 45 Taitokerau MB 256 (45 TTK 256).

17. 45 Taitokerau MB 345 (45 TTK 345).

18. Hirini Moko Mead *Tikanga Māori – Living by Māori Values*, (Huia Publishers, Wellington, 2003) at p 7.

19. 85 Northern MB 126 (85 N 126).

20. Exhibit Te Aupouri No. 5, p 84.

21. 45 Taitokerau MB 466 (45 TTK 466).

22. 45 Taitokerau MB 497 (45 TTK 497).

23. 45 Taitokerau MB 402 (45 TTK 402).

24. Aquaculture New Zealand submission dated 11 November 2008, para 7.

25. Sanford Limited submission dated 6 November 2008, p 3.

26. 45 Taitokerau MB 197 (45 TTK 197).

27. 45 Taitokerau MB 115 (45 TTK 115).

28. 45 Taitokerau MB 177 (45 TTK 177) and 45 Taitokerau MB 115 (45 TTK 115).

2017-go3906

Fisheries (Waka-te-hāua Taiāpure-Local Fishery Proposal—Decision) Notice (MPI 810)

Pursuant to section 181(9)(b)(ii) of the Fisheries Act 1996, the Minister for Primary Industries, after complying with section 181(9) of that Act, hereby publishes his decision on the report and recommendations of the Tribunal concerning a taiāpure-local fishery proposal over the fisheries waters surrounding Wakatehāua Island, Te Oneroa-a-Tōhē / Ninety Mile Beach.

The report and recommendations of the Tribunal has been published as the "Fisheries (Waka-te-hāua Taiāpure-Local Fishery Proposal—Report and Recommendations) Notice (MPI 795)" in the *New Zealand Gazette*, 27 September 2017, Issue No. 99, Notice No. 2017-go3906.

Decision of the Minister

I have decided to accept the recommendation of the Tribunal that a taiāpure-local fishery be established over the fisheries waters surrounding Wakatehāua Island, from near Te Arai in the south, northwards along the coastline for approximately 4.5km, and offshore approximately 2km.

I have also decided to accept the Tribunal's recommendation that the committee of management consult with Ngāti Kuri and Ngāi Takoto before recommending any regulations to me. When I appoint a committee of management for the taiāpure-local fishery, I will include the necessary provisions to implement this recommendation.

Dated at Wellington this 13th day of September 2017.

HON NATHAN GUY, Minister for Primary Industries.

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