

**BEFORE THE WAITANGI TRIBUNAL
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

AND IN THE MATTER of the Crown's Treaty settlement policy regarding overlapping claims and the proposed redress in relation to the Hauraki Collective, Marutūahu Collective and individual Hauraki iwi settlements.

AND IN THE MATTER of a claim filed by **HAYDN THOMAS EDMONDS** on behalf of the Ngatiwai Trust Board and the iwi of Ngati Wai for an urgent inquiry into the Crown's settlement policy regarding overlapping claims and the proposed redress in the Hauraki Collective, Marutūahu Collective and individual Hauraki iwi settlements.

AFFIDAVIT OF HORI TEMOANAROA PARATA

31 July 2017

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WELLINGTON

ATH-102021-1-17-V5

AFFIDAVIT OF HORI TEMOANAROA PARATA

I, HORI TEMOANAROA PARATA of Whangārei, kaumātua, AFFIRM:

Introduction

1. I am of Ngātiwai and of Te Waiariki descent, from Te Kahu Whero of Ngāti Manaia. My principal marae are Patāua and Ngunguru.
2. I whakapapa to two Ngātiwai hapū, Ngāti Korora, (on my mother's side) and Ngāti Takapari, (on my father's side), both of which reside in Ngunguru Bay. On my Ngāti Takapari side I am a descendant of Mata Te Kura. Mata Te Kura was a niece of Paratene Te Manu, one of the main chiefs Hongi Hika would seek out from among Ngātiwai to accompany him in war.
3. Paratene's prowess as a warrior was legendary and he, along with others would partake in all the customs of war, as Ngātiwai were well known as warriors. Hongi relied on Ngātiwai to call others from the surrounding district to support his 'take' and cause when he was planning to go on a campaign. A call would go out from Whangārei Harbour and all the chiefs who responded were known as "tira paraoa", which is one of the reasons Whangārei Harbour has the name 'Te Rerenga Paraoa', meaning 'The Gathering-place of Whales'.

Personal Experience and Background

4. I and my 12 siblings were born and raised on our ancestral land at Patāua Island on the coast 16 miles due east of Whangārei. Our parents farmed our land and we were fortunate to be brought up with our old people. They taught us everything, including Maori environmental practices, both on the land and the sea.
5. At 19 I joined the 1st Battalion, New Zealand Regiment and served in the Sarawak Campaign in Borneo. By 1967 I had left the army and worked as a diver on inshore construction jobs in the Melbourne Harbour, and later as a deep-sea diver on oil exploration rigs in Bass Straights (Victoria) and in the Timor Sea (Darwin).
6. Following a brief prospecting stint in Far North Queensland, I returned to New Zealand to support my whānau, hapū and iwi on issues concerned with injustices toward Māori under Te Tiriti o Waitangi. I joined the Mana Motuhake political party and, at the same time I became a trustee of the Ngātiwai Trust Board (the **Trust Board**) representing Ngāti Takapari and the Paratene Te Manu Marae.
7. I served on the Trust Board from 1982 to 2004 and, as part of my mahi with the Trust Board I took on the development of the resource management and conservation portfolios. In that capacity, I was an inaugural member, on behalf of Ngātiwai, of Te Kotahitanga o Te Taitokerau. That group provided advice to the Department of Conservation (DOC) when it prepared its



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Northland Conservation Management Strategy and also the Northland Regional Council on its Regional Policy Statement.

8. I am the named claimant in the Wai 245 claim to the Waitangi Tribunal on behalf of my whānau. I am also a claimant in the Ngātiwai iwi claim, Wai 244 and a witness and spokesman for Ngātiwai in the Wai 262 claim, the mātauranga Māori and flora and fauna claim. I have been a Ngātiwai negotiator in relation to Marine Reserves as affecting our offshore islands.
9. After 25 years on the Trust Board I left about 10 years ago to advance my academic interests. I first obtained a Master's degree in Indigenous Studies from Te Whare Wānanga o Awanuiārangi and am now working on my PhD thesis.
10. I have long been a committed kaitiaki in te ao Māori for our tāonga tūturu. I am also a resource management practitioner and I am undertaking my PhD in this field, studying the impacts of Crown resource management and conservation policies on our tāonga, the kiore, on our offshore islands.
11. I am a kaumātua of Ngātiwai and the current chairperson of the Kāhui Kaumātua o Ngātiwai. I am authorised by the Trust Board to give this evidence in support of the application for an urgent Tribunal Hearing regarding the Hauraki Collective settlement, the Marutūahu Collective settlement and individual Hauraki iwi settlements.
12. This evidence will outline the Ngātiwai rohe and those areas of our rohe that overlap with protocol areas that the Crown is proposing to recognise for iwi of Hauraki. I will explain the existing role of Ngātiwai in relation to both tāonga tūturu and existing protocols between Ngātiwai and the Crown in the areas where the Crown is willing to engage with Hauraki on this issue.

Ngātiwai and Ngātiwai Rohe Moana

Ngātiwai

13. Ngātiwai are, quite literally, the people of the sea. The moana surrounding our mainland rohe (Te Moana nui o Toi te Huatahi), the islands, islets and rocks that dot that moana (Ngā Poito o te Kupenga o Toi te Huatahi) are an integral part of our identity as a people. This ancient name for our islands was referred to by our Ngātiwai tūpuna in a waiata oriori sung during the investigation into ownership of Hauturu over a century ago:

*Me piki taua ki te tihi
O Hauturu muia ao
Ma matakitaki taua
Ki nga poito o te kupenga
O Toi te Huatahi
E tama tangi kine e*



14. Ngātiwai is unified in descent from one of the oldest descent groups in Te Taitokerau, Ngāti Manaia, with an unbroken line of descent from the eponymous ancestor Manaia; his descendant Manaia II and his people of Ngāti Manaia. It was in the wake of the famous battle of Mimiwhangata that the Ngāti Manaia survivors dispersed south to Whangārei, Ōmaha and Pākiri and out to Aotea and other offshore islands. This has led to them being known as Ngātiwai ki te moana.
15. We are a coastal and seagoing iwi, who has travelled up and down the chain of islands from Aorangi and Tāwhitirahi to Aotea for centuries. More than any other iwi in Aotearoa, we are associated with constant travel on the sea, and with occupation of an extensive chain of islands.
16. Our seagoing traditions, as well as the moana and motu that make up a significant part of our tribal rohe, provide one of the origins of the name Ngātiwai. As the late Ngātiwai rangatira, Morore Piripi said:

Ko ngā mana katoa o Ngātiwai kei te wai, i ngā taniwha me o rātou mana.

All the mana of Ngātiwai comes from the sea, from its guardian taniwha and their spiritual force.

17. Our moana, motu, tauranga ika and other special places are all protected by kaitiaki, one of the most famous of which is the manu known as Tūkaiāia (or Tū Te Mahurangi). This manu is a kaitiaki of our whole tribal rohe, particularly the moana and motu and is referred to in one of our best-known whakatauāki:

*Kia tūpatol!
Ka tangi Tūkaiāia ki te moana,
Ko Ngātiwai kei te moana e haere ana.
Ka tangi Tūkaiāia ki te tuawhenua,
Ko Ngātiwai kei te tuawhenua e haere ana.*

*Beware!
When Tūkaiāia calls at sea,
Ngātiwai are at sea.
When Tūkaiāia calls inland,
Ngātiwai are inland.*

Ngātiwai Rohe Moana

18. The Ngātiwai rohe moana extends along the eastern coastline from Tapeka Point in the Bay of Islands, south along the eastern seaboard to the Matakanakana River in the south. It extends to the east well beyond the 12 nautical mile outer limit of the territorial sea and includes the chain of islands extending along the coastline, including, but not limited to:



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- (a) Motukōkako off Te Rāwhiti;
 - (b) Rimuriki off Mimiwhāngata;
 - (c) Tawhitirahi and Aorangi (The Poor Knights);
 - (d) High Peak Rocks;
 - (e) Sugar Loaf Rocks;
 - (f) The Marotiri Islands and Tāranga (The Hen and Chickens Group);
 - (g) Tūturu (Sail Rock);
 - (h) Pokohinu and Motukino (The Mokohīnau Islands);
 - (i) Te Hauturu o Toi (Little Barrier);
 - (j) Aotea (Great Barrier) and surrounding islets and rocky outcrops;
 - (k) Te Kawau-tūmaro-o-Toi (Kawau Island); and
 - (l) Te Mau Tohorā-o-Manaia (Motuora Island).
19. Annexed hereto, marked "HP-A" is a map showing the rohe moana.
 20. In addition, Ngātiwai has traditional and ancestral rights and interests that extend well beyond the rohe moana described above.
 21. Ngātiwai accepts and acknowledges that the rights and interests of its hapū and whānau in parts of this extensive rohe moana overlap and intersect with those of other iwi, hapū and whānau.
 22. Our relationship with our rohe moana is the subject of the following tauparapara:

*Tākina ake rā ki te tai tara ki Motukōkako
Whakataha ia ra ngā tikitiki a Tū-Te-Mahurangi
He manu i kawē ngā kī i roto o Pouerua
Ngā kohu i tatao o runga o Rākaumangamanga
Tahuna tapu te riri e
Whai mai ra ki au*

*Tū te Winiwini, tū te Wanawana
Ka tū putaina te whei ao, ki te ao mārama*

*Ko Manaia te maunga, ko Manaia te tupuna
Tū atu nei i raro te wahapū
O Whangārei Terenga Parāoa*

*Ko ngā uri whakatupuranga o Toi te Huatahi
Hei unaunahi i whakapiri
Ki te Ika Nui a Māui-Tiki-a-Taranga*



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Tikanga

23. There is extensive tikanga concerning the use of particular reefs and fishing grounds within Ngātiwai rohe, particularly tauranga whapuku, each of which have their own unique tikanga, karakia and kaitiaki and traditionally came under the mana of particular rangatira. Using a fishing ground without first obtaining permission was a great hara (misdeed), which could lead to conflict and even fighting.
24. These practices continue today, with hapū having authority over particular fishing grounds, throughout the rohe moana, and exercising that authority through appointed kaitiaki. Those of one Ngātiwai hapū would not fish in the area of another hapū without first obtaining the permission of the relevant kaitiaki. I should say that these are tikanga that operate independent of customary fishing regulations.
25. An example of the centrality of the moana to Ngātiwai tikanga is found in the cave of Manawahuna, beneath Motu Kōkako. The rangatira Morore Piripi tells of how when Ngātiwai went to battle, they would first visit this cave and if they became wet from moisture that dripped from the cave's roof, they would take that as a propitious sign. If they didn't receive this 'blessing', it would be a bad omen for the battle to come. Other wai whakatā (cautioning waters) were also found within the rohe, including at Taiharuru and Marotiri.
26. Particular uses and activities that we maintain within our rohe moana include:
 - (a) Fishing, utilising nets, hinaki and hand-lines to catch various species including but not limited to: whapuku (groper), haku (kingfish) kaeo (sea tulip), kahawai, kanae (mullet), koeke (shrimp), kotore / humenga (sea anemone), koura (rock lobster), ngoiro (conger eel), maomao, marari (butterfish), mako, maratea (red moki), paraki/ngaiore (common smelt), para (frostfish), patiki (flounder), patukituki (rock cod), piharau (lamprey), pioke (school shark/rig), reperepe (elephant fish), rore/rori (sea cucumber), tāmure (snapper), tuna (eels), wheke (octopus), conger eel and starfish;
 - (b) Harvesting, and in some cases seeding, of shellfish including but not limited to: kina, kutai (mussels), ngākihi (limpet), paua, pipi, karapupu (catseye), āpurimu (surfclam), pāpaka (crabs), rori (seasnail), tipa (queen scallops), toheroa, tuangi (cockles), tuatua, waharoa (horse mussel), waikaka (mud snail), and tio (rock oysters);
 - (c) Accessing and caring for stranded marine mammals, and obtaining bone and other cultural materials from deceased marine mammals, in accordance with tikanga;



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- (d) Activities related to spiritual practices such as caring for water burial sites and other wāhi tapu, and imposing rāhui;
- (e) Planting, cultivating and gathering plant species in the wet margins of the rohe moana (such as flax, tī kouka and pingao);
- (f) Gathering edible and aquatic plants, including kelp and other seaweeds;
- (g) Gathering and extracting minerals, including our unique taonga, Onerahi chert and accessing sources of other minerals on our offshore islands, in particular, obsidian;
- (h) Snaring, and accessing snaring and egg-gathering sites, for birds including but not limited to manu oi, hakoakoa (skua), kukupa (wood pigeon), kākā and kororā (little penguin);
- (i) Collecting driftwood and other natural resources;
- (j) Utilising temporary campsites for seasonal harvesting and ceremonial activities;
- (k) Navigation between coastal settlements on the mainland and offshore islands, using tauranga waka, safe harbours and refuge caves.

Taonga Tūturu

- 27. Our moana, motu, tauranga ika and other special places are guarded by numerous kaitiaki, in forms that include manu, tohorā (right whales), aihe or papahu (dolphins), whai (stingrays), mango (sharks) and even motu, such as the bush-clad Motu Tohorā just off the southern tip of Aotea. Among these, the shark, Tautahi, a protector of fishing grounds and shellfish beds, in the Whangaruru Harbour, is among the most famous.
- 28. Ngātiwai were traditionally a very mobile iwi, and our tūpuna were constantly moving around our rohe moana harvesting its abundant natural resources. We have maintained this resource use for the almost 180 years that has passed since the signing of Te Tiriti o Waitangi.
- 29. One example of this is the harvest of manu oi (mutton bird) which was undertaken from early to late summer on a number of motu, including those between Ōkokewa and Whangarara, Hauturu, Pokohinu and the islets and rocky outcrops around Aotea. This is a practice that continues to this day.

Ngātiwai's role as kaitiaki over taonga tūturu and existing protocols with the Crown

- 30. The ways in which we, as Ngātiwai, have exercised our mana, use and occupation over our rohe moana has changed over the years, but persist to this day, nevertheless. For example, we have worked with DOC on a number of issues, particularly in relation to our offshore islands.



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31. I have personally partaken in many of these traditional resource use practices, as well as working actively as a kaitiaki of those taonga over many years. One particular example of this is my research and work with whales. Over the years, I have continued and taught others the tikanga relating to beached whales. In 2010, this led to the development of a protocol on the management of marine mammal strandings being agreed between the Trust Board and DOC, the first of its kind in the country (Annexed hereto, marked "HP-B" is the protocol).
32. The objectives of the protocol are to:
- (a) provide guidelines for the joint management of marine mammal strandings in Ngātiwai rohe;
 - (b) in the event of a permit being granted, provide guidelines for the recovery of baleen, ink, sinew, spermaceti, ambergris (found in-situ), blubber, organs, tissue, and oil by Ngātiwai from dead marine mammals for cultural purposes;
 - (c) provide guidelines and opportunities for training in scientific sampling for Ngātiwai staff and their delegated representatives, if required by both the Trust Board and DOC;
 - (d) provide guidelines for the research and development of future resources from dead marine mammals for cultural purposes.
33. Another example is Mauitahi and Araara Islands in the Hen and Chicken group, which were traditionally occupied by our tūpuna, and are still regarded as spiritually significant to us. We have partnered with DOC to control access and to manage the nature reserve that now provides a safe haven for Ngātiwai taonga. No access is permitted to the islands without the Trust Board's approval (Annexed hereto, marked "HP-C" and "HP-D" is the management agreement and the Gazette Notice).
34. Similarly, we have undertaken a number of other activities over recent years to advance and protect our tāonga, which we regard as expressions of our kaitikitanga, including:
- (a) challenging the 1992 fisheries settlement, which purported to extinguish our customary rights without our consent;
 - (b) successfully defending our continuing ability to exercise our customary rights within the Poor Knights' Marine Reserve at Tawhitirahi and Aorangi;
 - (c) consistently opposing marine reserve proposals that would have the practical effect of extinguishing our customary rights;



- (d) negotiating and reaching agreements with developers and users of coastal land and resources within our rohe, including those extracting sand offshore from Pākiri; and
- (e) securing exceptions for customary (non-commercial) aquaculture activities from aquaculture prohibitions in the Northland Regional Council's Coastal Plan.

Overlapping Areas and Proposed Protocol Areas for Hauraki iwi

35. Those areas in which the Hauraki Iwi have claimed existing customary rights including manawhenua, manamoana and kaitiakitanga in the southern end of the Ngātiwai rohe include:
 - (a) Mahurangi on the mainland between Te Arai Point in the north and Matakakana – the Matakana river mouth in the south;
 - (b) Te Mou Tohora a Manaia (Motuora Island) off the Mahurangi coast. It is one of 'Ngā Tohora e Rima a Manaia' that define the Ngātiwai ancestral rohe;
 - (c) Hauturu (Little Barrier Island);
 - (d) Aotea (Great Barrier Island) and its surrounding islets and rocky outcrops.
36. Ngātiwai do not want our enduring manawhenua, manamoana, kaitiakitanga and our existing long-held relationship with the Crown diminished by settlement processes that do not include any tikanga process to enable customary rights in overlapping areas to be appropriately considered before redress is offered.
37. If tikanga was valued, kanohi ki te kanohi hui between Ngatiwai and Hauraki iwi would be mandatory so that Ngatiwai can understand the nature and basis for another iwi claiming customary interests within our Ngatiwai rohe.
38. By providing statutory acknowledgments or deeds of recognition to Hauraki iwi without providing any tikanga basis for such acknowledgements, the Crown is allowing Hauraki iwi to assert manawhenua within our rohe. This is a direct acknowledgement by the Crown of the spiritual, cultural, customary, historical and traditional association of another iwi within our rohe without any regard to tikanga. The Crown appears to be applying a Pakeha solution to a Maori issue, which will only create further divisions and grievances. Once established, the acknowledgements will allow those Iwi to cite them as evidence of their association with the area. This in turn will establish a legal basis for Hauraki to have a say over the Ngātiwai rohe where they have no legitimate customary rights and have never participated in such decision making before. This is contrary to tikanga Maori and tino rangatiratanga. In this way, the Crown is re-engineering our tribal landscape and damaging our tribal relationships.



Conclusion

39. Ngatiwai has existing protocols in place with Crown agencies in relation to areas of significance within our rohe. I have grave concerns that our relationships and role in relation to those existing protocols will be damaged if other iwi from outside of our rohe are recognised as having customary interests within the Ngatiwai rohe.
40. There has been no tikanga process that would enable Ngatiwai to understand the basis on which Hauraki iwi claim customary interests within our rohe. Based on my knowledge of tikanga, it would not be appropriate to allow another iwi to have a say within our rohe. This is especially so if we do not understand the basis for those interests.

SWORN at this 31st)
day of July 2017)
before me:)

STEPHANIE ALISON
McMILLAN.

S. A. McMillan J.P.
45 Kiripaka Road
Whangarei
09 437 3029



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Hori Temoanaroa Parata

~~Justice of the Peace for New Zealand.~~
~~A Solicitor of the High Court of New Zealand~~

AFFIDAVIT OF HORI TEMOANAROA PARATA

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Ngātiwai MACA Map

"HP-A"

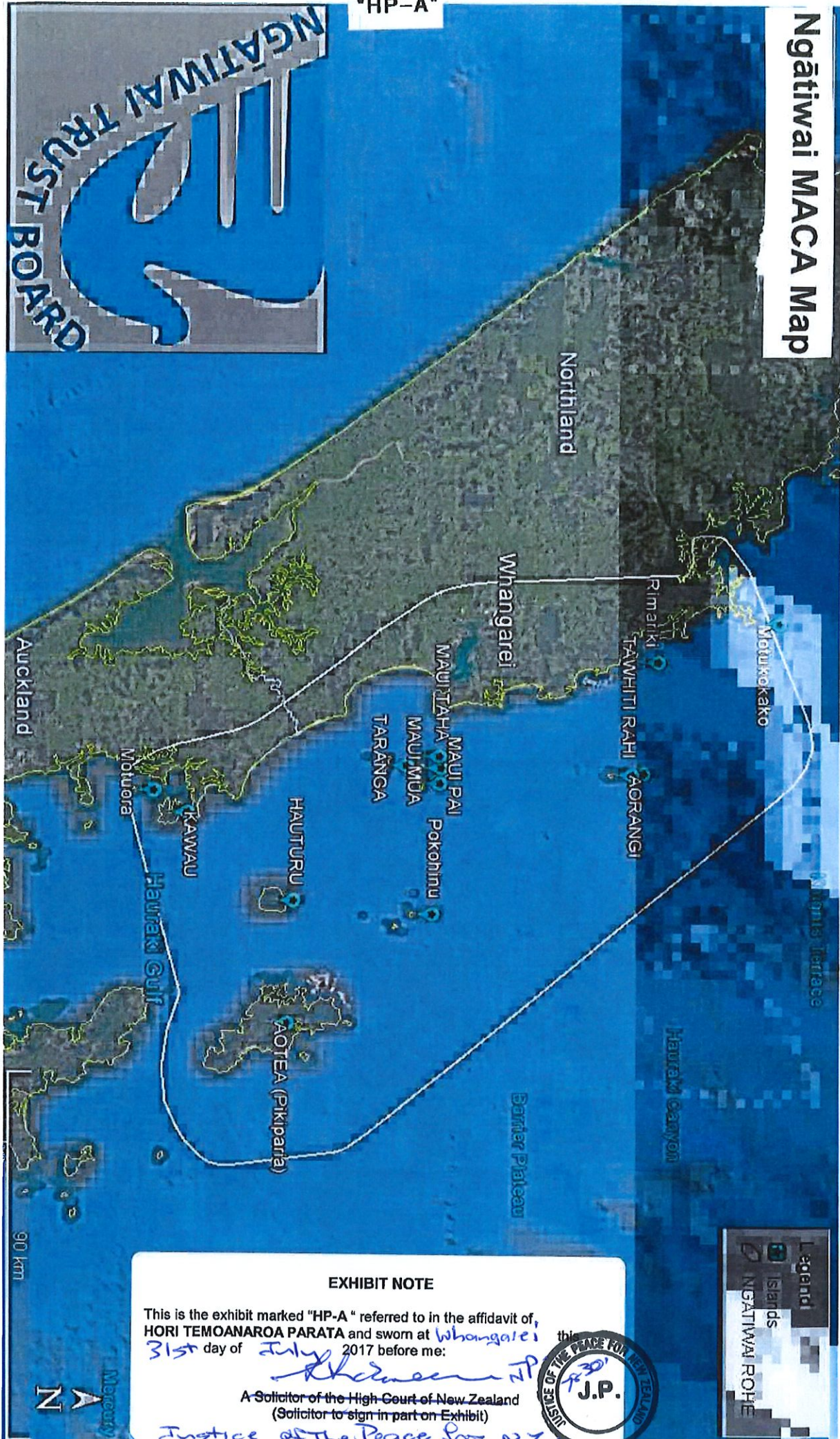
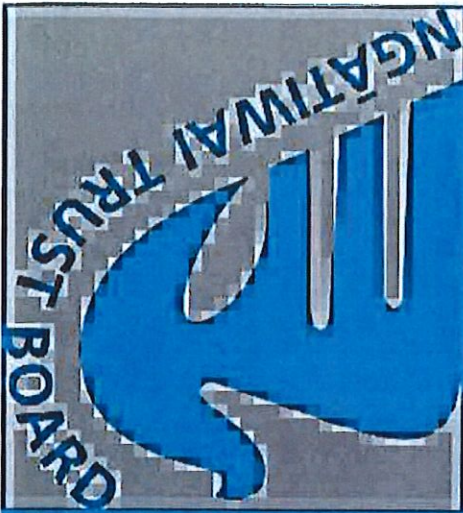


EXHIBIT NOTE

This is the exhibit marked "HP-A" referred to in the affidavit of, **HORI TEMOANAROA PARATA** and sworn at *Whangarei* this 31st day of *July* 2017 before me;

[Signature]
A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on Exhibit)



Justice of the Peace for NZ

"HP-B"

Amended Copy prepared for
signing by
Parties in
May 2010

Protocol for the management of marine mammal strandings in the Ngatiwai rohe

MAY 2010



EXHIBIT NOTE

This is the exhibit marked "HP-B" referred to in the affidavit of
HORI TEMOANAROA PARATA and sworn at Whangarei this
31st day of July 2017 before me:

A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on Exhibit)

Justice of The Peace for New Zealand

NGATIWA TRUST BOARD



Protocol for the management of marine mammal strandings in the Ngatiwai rohe

MAY 2010

Published by:
Department of Conservation
PO Box 147
Whangarei
New Zealand

Cover Photo: The first whale hensed called Te Kaurinui, November 1996
Photo: Ngatiwai Trust Board

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1. Tauparapara

Takina ake ra te tai tara ki Motukokako
Whakataba ia ra nga tikitiki a tu Temahurangi
He manu i kawe nga ki i roto o Ponerua
Nga kohu i tatao o runga o Rakaumangamanga
Tahuna tapu te riri e
Whai mai ra ki au

Tu te Winiwini tu te Wanawana
Ka tu putaina te whei ao, ki te ao marama

Ko Manaia te maunga, ko Manaia te tupuna
Tu atu nei i raro te wahapu
O Whangarei terenga paraoa

Ko nga uri whakatupuranga o Toi te Huatahi
Hei unaunahi i whakapiri
ki te Ika Nui a Maui-Tiki-a-Taranga

Tihei mauriora!

2. Introduction

2.1 PARTIES

- i. The Ngatiwai Trust Board was incorporated on the 22nd day of November 1966 with the purpose of addressing the collective needs of the Ngatiwai Iwi.
- ii The Director-General of Conservation acting by and through the Department of Conservation's Auckland Conservator, Auckland Conservancy and Northland Conservator, Northland Conservancy ("the Department").

3. Background

Ngatiwai are one of several Iwi Maori who have articulated the desire to strengthen their kaitiakitanga responsibilities and satisfy their cultural requirements by formalizing their role in the management of marine mammal strandings in their tribal rohe (see map Figure 1). This falls within the Northland and Auckland Conservancies of the Department of Conservation (hereinafter called "the Department").

Ngatiwai acknowledges that the Department, through the Director-General and the Minister, have certain management responsibilities in terms of the legislation it administers, in particular the Marine Mammals Protection Act 1978, and can only operate within the limits of that legislation.

The Department acknowledges that the Ngatiwai Trust Board has certain management responsibilities in terms of the Board Constitution, including the Board's responsibilities to meet the cultural requirements of Ngatiwai hapu and marae.

This Protocol is intended to meet the needs of Ngatiwai Trust Board and the Department by way of a co-operative approach to the management of marine mammal strandings. The co-operative approach upon which this Protocol is based, is intended to encourage reconnection and/or reinforcement of customary tikanga by interested Iwi through the process of active participation at a stranding and by the recovery of resources from dead cetaceans.

In doing so, Ngatiwai and the Department acknowledge the generous contribution made by various persons, regional, and national institutions to the development of this Protocol at the:

- Puhake ki te Rangi hui (March 1997)
- Department's Marine Mammal workshop (Tauranga, April 1997)
- National Ngatiwai wananga - recovery of taonga from stranded marine mammals (Whangarei, September 2001)
- Department's Marine Mammal workshop (Christchurch, May 2003)
- National Whale Wananga Matariki Celebration (Takahiwai, June 2007)
- Ngatiwai Whale Resource Recovery Training (Whangarei, November 2007)

Ngatiwai and the Department acknowledge that Ngatiwai are only one of several Iwi Maori who have expressed an interest in being involved in the management of marine mammal strandings. It is hoped that this Protocol may contribute, in part or full, to the development of similar protocols between other Iwi and the Department in respect to marine mammal strandings. In some cases similar protocols or arrangements with other Iwi or hapu may overlap or be within the Ngatiwai rohe.

Both agencies also recognize the needs of the scientific community to gather scientific information in regards to marine mammals.

This Protocol was approved by the Crown Maori Relationship Instrument Review Committee in September 2009 and supersedes the previous Protocol signed in 1998.

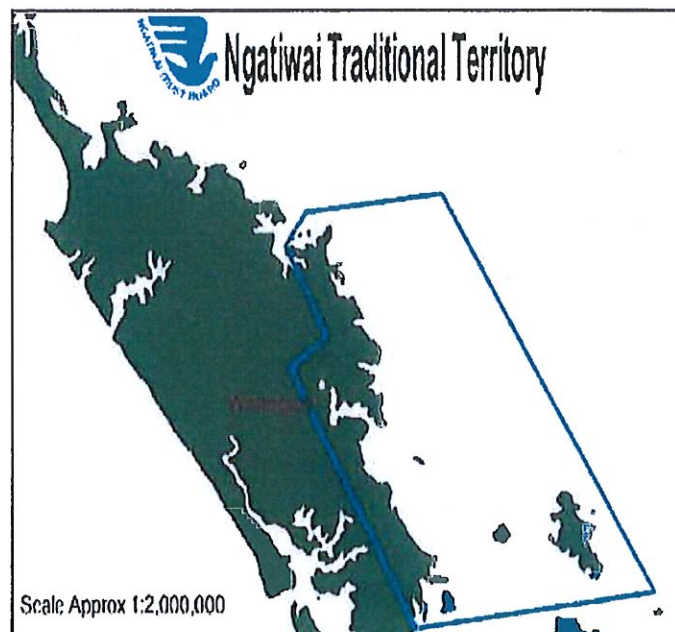
The area covered in this Protocol is that of the Ngatiwai rohe shown in the map below:

Figure 1.

Map of Ngatiwai rohe

Timata mai a Ngatiwai mai i Te Rawhiti ka rere ki te Tonga i te takutai moana tae noa ki Omaha ka whiti atu ki Hauraki, ki Aotearoa me nga motu maha i tana moana. Ko Pokohinu tetahi, ko Hauturu ko Taranga me Marotere, ko Tawhitirahi me Aorangi. Me etahi o nga tini mouere o Ngatiwai.

A Ngatiwai he iwi rawhito. I puta mai matou i enei tupuna. A Tahuhunuarangi a Tamatea a Manaiia. E pa hoki ana matou ki Tainui. I roto i enei ahuatanga ko te rangatiratanga me te mana o Ngatiwai nui tonu.



4. Objectives of this protocol

- To provide guidelines for the joint management of marine mammal strandings in Ngatiwai rohe.
- In the event of a permit being granted, provide guidelines for the recovery of baleen, ink, sinew, spermaceti, ambergris (found in-situ), blubber, organs, tissue and oil by Ngatiwai from dead marine mammals for cultural purposes.
- To provide guidelines and opportunities for training in scientific sampling for Ngatiwai staff and their delegated representatives, if required by both the Ngatiwai Trust Board and the Department.
- To provide guidelines for the research and development of future resources from dead marine mammals for cultural purposes.

In achieving these objectives, the Protocol also aims to enable the Department to give effect to the principles of the Treaty of Waitangi / Te Tiriti o Waitangi as expressed in Section 4 of the Conservation Act. Where the Treaty principles and the legislation are inconsistent, then the legislation takes priority.

The above objectives are based on the following agreement:

- a) The Northland and Auckland Conservancies of the Department and Ngatiwai will co-operate in managing strandings in the Ngatiwai rohe and will act with respect towards each other in this process.
- b) Each party undertakes to ensure that both the cultural and conservation needs as set out in this Protocol, the operational guidelines within Conservancy/Area Marine Mammal Contingency Plans and the Ngatiwai Trust Board Whale Management Guidelines are met. Each party also undertakes to share information pertaining to these documents and to marine mammal strandings in general.
- c) Both Conservancies and Ngatiwai will review this Protocol every three years unless both parties wish to review the Protocol earlier.

5. Current marine mammal legislation

The Marine Mammals Protection Act 1978 applies to all pinnipeds (seals and sea-lions) and cetaceans (whales and dolphins) and parts thereof in New Zealand waters. It prohibits the taking of a marine mammal, whether alive or dead, from its natural habitat or any other place without a permit to take and hold in possession.

However, upon application to the Director-General representatives of local Iwi Maori can be provided with a permit by the Minister or his or her delegate under the Marine Mammals Protection Act 1978 for the removal of a dead stranded marine mammal and hold in possession (see Appendix 5 for a copy of the permit).

6. Department of Conservation mandate

Under S 4 & 5 and S 18 (2) of the Marine Mammals Protection Act 1978, the Department has a responsibility to protect, conserve, and manage marine mammals in New Zealand waters. It is also responsible for the disposal of stranded marine mammals and/or the remains. Under Section 4 of the Conservation Act, any exercise of powers and functions under that Act or the Acts in the First Schedule is subject to the requirement to give effect to the principles of the Treaty of Waitangi / Te Tiriti o Waitangi. These principles include the duty of the Crown to actively protect Maori rights and interests guaranteed pursuant to Article 2. Any inconsistency between the Treaty principles and the Act would result in the Act taking precedence.

The Protocol area, based on the Ngatiwai rohe map on page 8, overlaps two Conservancies; Northland, Auckland and four Areas; Bay of Islands, Whangarei, Warkworth and Great Barrier Island.

In addition to these statutory obligations, the Department fulfils a scientific role in collating information on strandings on a national basis. Despite advances in the observation and study of marine mammals at sea, strandings remain the principle source of information on the social systems, distribution and biology of many rare and/or poorly known species of cetaceans.

Stranding records were consolidated to become the New Zealand Whale Stranding database, developed by the Department and now maintained by the National Museum, Te Papa Tongarewa (hereinafter known as the Museum). As one of the world's most comprehensive whale stranding databases, it is of both national and international importance, particularly with respect to certain lesser-known species such as beaked whales. The Museum also acts as the central repository for marine mammal skeletal material. Staff not only maintain and study these specimens, but also provide information (e.g. annual lists of stranding by species and by area) from the New Zealand Whale Stranding Database to the Department, the International Whaling Commission, other interested agencies (e.g. tribal Trust Boards, Universities) and to the public. The Department also contracts Massey University to undertake disease investigations in stranded marine mammals. The reports produced by the New Zealand Wildlife Health Centre, Massey University (hereinafter known as NZWHC) describe the collective knowledge of necropsy data relating to stranded and beached marine mammals. Appendix 3 contains a list of useful internet web sites.

The Department will endeavour to ensure that any decision on an application for marine mammal material from the Ngatiwai rohe, (via CITES or any other authority), will be made with the support of the Ngatiwai Trust Board. And taking into account Section 4 of the Conservation Act and specifically Article 2 of the Treaty of Waitangi.

The Department will work with other Iwi/hapu for the purposes of managing marine mammal strandings and allocating cultural materials. In some cases that may require the Department to work with other Iwi/hapu where there may be an overlapping interest which may ultimately result in cultural materials being allocated to them.

7. Outline of procedures to be followed at a stranding

7.1 CONSERVANCY / AREA MARINE MAMMAL CONTINGENCY PLANS

Conservancy/Area Marine Mammal Contingency Plans, outlining the procedures to be followed at a marine mammal stranding, are held by each Area Office within the Northland and Auckland Conservancies.

The Ngatiwai Whale Kit outlining the procedures to be followed for the recovery of customary resources from dead stranded marine mammals is held by each Ngatiwai marae and at the Ngatiwai Trust Board Resource Management Unit.

As a general principle, both parties to this Protocol agree that on receipt of information of a stranding, each party will immediately do the following:

(a) Inform the other party.

Delegates of the Ngatiwai Trust Board, and the Northland or the Auckland Conservancy Area Offices; if after hours, the duty officer.

The Department is also obliged to inform other Iwi/hapu where it understands that there may be an interest.

(b) Inform Anton van Helden at the Museum.

Anton will assist with the identification of the species involved, and (if necessary) with the collection and distribution of scientific samples to all interested scientific organizations. If the marine mammal is not required by the Board or is to be passed to the Museum by the Board, Anton can also advise on methods for the recovery and cleaning of teeth and bone. If Anton is not available, Wendi Roe of the NZWHC, or the School of Biological Sciences, University of Auckland, should be contacted.

For a list of contact numbers, see Appendix 1.

7.2 WHEN A DEAD MARINE MAMMAL MAY NOT NATURALLY STRAND OR NEEDS TO BE ARTIFICIALLY STRANDED

When a dead marine mammal from within the Ngatiwai rohe (see map) is required to be artificially stranded, the Ngatiwai Trust Board, in conjunction with the Department of Conservation, will give approval for the appropriate location, by considering; costs, which hapu should receive the whale and where an efficient recovery can be undertaken.

7.3 EUTHANASIA AND DETERMINATION OF DEATH

If at any stage of a stranding the animal(s) is/are in an obviously distressed condition, or it is clear that a re-floating operation is unsuccessful in part or full and live animals irretrievably strand, euthanasia will be required.

Before euthanasia is carried out, Iwi representatives may wish to perform certain rituals. For this reason, it is important that every effort be made to inform Iwi well in advance of any decision to euthanise. However, in the interests of the humane treatment of the marine mammals, if Iwi representatives are not present at the time, a decision to euthanise will be the sole responsibility of the Stranding Incident Controller.

Whether death occurs naturally or by euthanasia, it is important to check carefully that the animal(s) is/are clearly dead before scientific sampling can proceed and before attempts to recover teeth and bone are made.

Suggested guidelines for determining death are:

- a) Absence of breathing and active movement
- b) Complete dilation of the pupils
- c) No detectable movement of the iris in response to a light shone in the eye
NB: If the eye is exposed to sunlight, it should be gently covered for about 15 seconds then observed upon removal of the cover
- d) Absence of palpebral (closure of eyelid when corner of eyelid touched) and corneal (closure of eyelid if eye touched) reflexes
- e) Slack lower jaw
- f) Conditions (a) (b) and (d) should persist for at least ½ an hour

These guidelines are suggestions only and will be subjected to monitoring and possible revision. For this reason it would be helpful to provide

Wendi Roe of the NZWHC with feedback after each stranding concerning the efficacy of these guidelines.

7.4 NGATIWAI ASSESSMENT

On notification and where considered necessary to inspect the stranded marine mammals, Ngatiwai Trust Board will notify the appropriate hapu and with their involvement and the advice of the Department, will assess the following:

- Cultural requirements such as, resources from the harvest
- Scientific requirements such as, sampling or provision of whale skeleton to the Museum, in accordance with Appendix 2
- The degree of work that will be required to recover the above

Note: Where practicable it is the preference of Ngatiwai Trust Board to be present to carry out the collection of data and samples during the disposal of the stranded marine mammal(s).

7.5 SCIENCE AND TECHNOLOGY PROVISIONS

Ngatiwai Trust Board are continuing their pursuit of knowledge of marine mammals and developing technologies in regard to the different processing and uses of marine mammal resources. While Ngatiwai Trust Board develops these technologies they will maintain experimentation at the Iwi level until such time as the risks and benefits are fully known. Ngatiwai Trust Board are also improving their capacity around the scientific sampling, analysis, and research and wish to continue this work with marine mammals. Ngatiwai Trust Board recognizes the role of the Department in assisting with the conservation of marine mammal species by contributing to the collection of specimens and scientific data of national and international importance.

Where necessary and where there are competing requests, the Ngatiwai Trust Board will consult with the National Museum of New Zealand, Te Papa Tongarewa and Massey University over scientific sampling needs prior to recommending to the Department of Conservation allocation to other permitted research institutes or researchers.

7.6 HEALTH AND SAFETY REQUIREMENTS DURING RECOVERY

In accordance with Section 8.1 (a), prompt notification of all stranding events will be provided to the nominated Ngatiwai representatives:

Because the in-situ recovery of marine mammal resources involves issues relating to public health and safety, including the risk of infection from dead and decaying tissue, it will not be attempted by the uninformed and unskilled.

The Department and Ngatiwai Trust Board will share information or notify the other party, on hazards, disease risks and any new information that they receive relating to health and safety issues.

The Ngatiwai Management Guidelines including health and safety plans will be adhered to at all times (see Appendix 6 for a summary of the Ngatiwai Health & Safety Plan otherwise refer to the Ngatiwai Whale Kit for the full health and safety plan).

Ngatiwai Recovery teams will also want to ensure that the appropriate tikanga is understood and followed. However, both parties acknowledge that in certain circumstances quick disposal may be the most practical option.

Both parties to this agreement will accept responsibility for ensuring that the entire process, including the safe and proper disposal of dead animals and clean-up of the beach after a stranding, meets all public health and safety standards, and quality conservation management guidelines. These guidelines are included in each Conservancy/Area Marine Mammal Stranding Plan. However, the legislative responsibility rests ultimately with the Department's Stranding Incident Controller.

As part of the disposal process, burial sites will be discussed and where practical, agreed upon in advance by both parties in order to meet all health and safety requirements and to avoid the possible violation of waahi tapu (sacred sites). Consent from Territorial Local Authority will also be required.

7.7 COSTS

Subject to the written prior agreement of the Conservator or his delegate, where disposal of a dead stranded cetacean and the collection of research materials is carried out by the Ngatiwai Trust Board, the Department

will meet any reasonable costs incurred, up to the estimated cost that would have otherwise been incurred by the Department to carry out the disposal. Payment of personnel time cannot be funded.

7.8 LEGAL EFFECT

This Protocol does not create a legal relationship, but this does not diminish the intention of the parties to comply with its terms and conditions. It is only legally binding insofar as its terms are incorporated in the permit attached at Appendix 5.

7.9 REVIEW AND VARIATION OF PROTOCOL

This Protocol records a commitment to a long-term ongoing relationship. The parties acknowledge that over time the nature and focus of the relationship will evolve to reflect changing circumstances. Therefore, the parties will meet solely for the purpose of reviewing this Protocol every three years, or otherwise as mutually agreed.

The parties may at any time and by mutual agreement amend this agreement to reflect:

- (1) Changes to the goals of the relationship as they reflect changing circumstances; and
- (2) Any other changes both parties agree are necessary.

7.10 TERM OF PROTOCOL

This Protocol:

- (i) Commences upon signing by both parties; and
- (ii) May be terminated by one party giving 60 days notice to the other, or by mutual agreement at any time.

7.11 DISPUTE RESOLUTION

The parties will act at all times in good faith and with the goal of preserving their relationship. However, in the event of a dispute the parties agree to the following process:

- (1) In the first instance the agreed representatives of the parties will meet and attempt to resolve the dispute;
- (2) If following (1) the dispute is not resolved the parties will engage in mediation through an agreed process.

7.12 THE SIGNATURES BELOW CONFIRM THAT THIS PROTOCOL HAS BEEN AGREED TO BY THE NGATIWAI TRUST BOARD AND THE DEPARTMENT OF CONSERVATION, NORTHLAND AND AUCKLAND CONSERVANCIES.

SIGNED

DATE

Chief Executive Officer
for Ngatiwai Trust Board

SIGNED

DATE

Conservator
for Auckland Conservancy

SIGNED

DATE

Conservator
for Northland Conservancy

APPENDIX 1

Contact list

ORGANIZATION	NAME	PHONE NUMBERS
Ngatiwai Trust Board	Addie Smith CEO Ngatiwai Trust Board	09 4300939 ext. 1
	Ngatiwai Resource Management Unit	09 4300939 ext. 2
DOC Whangarei	Area Manager	09 4703362 (wk)
	Biodiversity Programme Manager	09 4703363 (wk)
	Biodiversity Assets Ranger	09 4703372 (wk)
	Duty Officer pager	086 823 584
	DOC 0800 DOC HOT	0800 362 468
DOC Bay of Islands	Area Manager	09 4070305 (wk)
	Biodiversity Programme Manager	09 4070312 (wk)
	Duty Officer pager	026 257 854
DOC Auckland	Area Manager	09 445 9314 (wk)
	Biodiversity Programme Manager	09 445 9163 (wk)
	Duty Officer pager	026 245 7910
	DOC 0800 DOC HOT	0800 362 468
DOC Warkworth	Area Manager	09 425 7834
	Biodiversity Programme Manager	09 425 7836 (wk)
	Duty Officer pager	026 248 1089
DOC Great Barrier	Area Manager	09 429 0065 (wk)
	Biodiversity Programme Manager	09 4290237 (wk)
	Standby Officer pager (via Auckland)	026 245 7910
National Museum of New Zealand (Te Papa Tongarewa)		
	Anton Van Helden	029 623 8010
		04 381 7323 (wk)
		04 475 6164 (hm)
New Zealand Wildlife Health Centre (Massey University)		
	Dr Wendi Roe	06 356 9099 (wk) ext. 4843
	Dr Richard Norman	06 350 6117 (wk)
	Mana Stratton	025 2462283
		08 6503761 pager
University of Auckland Dr Rochelle Constantine		09 373 7599 (wk) ext. 85093

Scientific sampling

1. GUIDELINES FOR SPECIES IDENTIFICATION

Stranded animals will first need to be identified. Subsequent disposal of dead animals and the nature of the scientific sampling to be carried out will be dependent on the species and the requirements of Ngatiwai Trust Board. Because accurate identification is of vital importance in determining the needs of the scientific community, it is important that advice is sought from Anton van Helden (the Muscum) who is available by phone 24 hours a day, 7 days a week (see Appendix 1 for telephone numbers).

Useful guides to species identification include:

Baker A.N 1990 Whales and Dolphins of New Zealand and Australia: an identification guide. Victoria University Press, Wellington.

Jefferson T.A., Leatherwood S. and Webber M.A. 1993 The FAO Guide to Marine Mammals of the World. U.N Environmental Program: F.A.O. of the U.N., Rome.

Carwardine M 1997 Whales Dolphins and Porpoises: The visual guide to all the world's cetaceans. Dorling Kindersley Limited, London.

2. SPECIFIC GUIDELINES FOR DATA COLLECTION AND THE PROVISION OF SCIENTIFIC SAMPLES

All stranded marine mammals are of scientific importance in that information gathered at a stranding contributes greatly to our knowledge of the biology, distribution and abundance of a species. In addition, because whales feed at the top of the food chain and are long-lived, analysis of tissue samples removed from dead stranded animals can provide vital information concerning the health/ill health of the marine ecosystem.

Whenever possible, members of NZWHC's seal and whale action team (SWAT) will attend a stranding to carry out autopsies and collect scientific samples, and in association with Anton van Helden of the Museum will organise the appropriate distribution of scientific material to all other interested scientific organizations. If the NZWHC or Anton van Helden, are unavailable, the School of Biological Sciences at Auckland University should be consulted (see Appendix 4 for telephone numbers).

The Minister, in approving the provision of any marine mammal from Ngatiwai rohe to NZWHC and/or the Museum, makes this provision on the condition that should NZWHC and/or the Museum not require that marine mammal (at some future date) the Museum may send any skeletal material to the Ngatiwai Trust Board (see Appendix 5 for copy of the permit and conditions).

Please note that either Ngatiwai and/or the Department may need to assist with the gathering of scientific data, or if NZWHC and Anton van Helden are not present, they will need to undertake this task.

The guidelines for sampling and data collection, as identified in the Conservancy/Area stranding plans, should be followed at all times. It is the responsibility of the marine mammals' protection ranger, Whangarei Area Office, to inform Ngatiwai of any amendments to Conservancy/Area stranding plans within the Ngatiwai rohe.

Recent information on species of cetaceans and the seasonality of their recorded stranding can be found in Brabyn 1991 "An analysis of New Zealand whale strandings". The Museum also provides annual updates on strandings by species and by area to the Department.

3. CATEGORY 1 SPECIES

These species are those that either strand most frequently on New Zealand shores or are common species. In principle, these species should be available to Ngatiwai Trust Board for the recovery of teeth and bone once scientific data and samples have been collected. If under certain circumstances there are reasons why this principle should not be followed, they must be discussed between the parties to this Protocol.

TABLE: LIST OF CATEGORY 1 SPECIES

Common dolphin	<i>Delphinus delphis</i>
Long-finned pilot whale	<i>Globicephala melas</i>
Sperm whale	<i>Physeter macrocephalus</i>
Pygmy sperm whale	<i>Kogia breviceps</i>
Fur seals	<i>Arctocephalus forsteri</i>
Leopard seal	<i>Hydrurga leptonyx</i>

3. CATEGORY 2 SPECIES

This lists species which are either not commonly encountered in New Zealand waters or are of special scientific interest, as well as those which may frequently strand here but are rare elsewhere in the world. For these reasons their scientific value has first priority.

(a) Baleen Whales

All freshly dead baleen whales should be made available for autopsy by NZWHC. This may occur on site by a team, or possibly shipped to Massey University. The autopsy team or Museum may request the removal of all or part of the animal and the Department should discuss this request first with Ngatiwai.

Following prior discussion with either NZWHC or the Museum; small specimens, e.g. juveniles or neonates required by either institution, should be dispatched in refrigerated transport.

(b) Toothed Whales

These species should also be made available for autopsy by NZWHC. Skulls of these species are of significance to the Museum and will on approval by Ngatiwai Trust Board be held on a permanent basis. If no longer required by the Museum, then they may be sent to Ngatiwai Trust Board. Any autopsy may occur on site by a team from NZWHC or be shipped to Massey University. The autopsy team may request the removal of all or part of the animal and the Department should discuss this request first with Ngatiwai Trust Board and the Museum.

Following prior discussion with either NZWHC or the Museum, small adult specimens up to 5 metres in length, juveniles or neonates require by either institution should be sent in refrigerated transport.

(c) Pinnipeds

The three species of pinnipeds shown in the table below are of scientific interest and unless agreed by both parties to this Protocol will go to the Museum.

TABLE: LIST OF CATEGORY 2 SPECIES

Short-finned pilot whale	<i>Globicephala macrorhynchus</i>
Beaked whales	<i>all species; Family Ziphiidae</i>
Dwarf sperm whale	<i>Kogia simus</i>
Bottlenose dolphin	<i>Tursiops truncatus</i>
Dusky dolphin	<i>Lagenorhynchus obscurus</i>
Hector's dolphin	<i>Cephalorhynchus hectori</i>
Risso's dolphin	<i>Grampus griseus</i>
Spotted dolphin	<i>Stenella attenuata</i>
Striped dolphin	<i>Stenella coerulescens</i>
Rough-toothed dolphin	<i>Steno bredanensis</i>
Southern right whale dolphin	<i>Lissodelphis peronii</i>
Spectacled porpoise	<i>Australophocaena dioptrica</i>
Melon-head whale	<i>Peponocephala electra</i>
Pygmy killer whale	<i>Feresa attenuata</i>
False killer whale	<i>Pseudorca crassidens</i>
Orca or killer whale	<i>Orcinus orca</i>
Elephant seal	<i>Mirounga leonina</i>
NZ sea lion	<i>Phocarctos hookeri</i>
Sub Antarctic fur seal	<i>Arclocephalus tropicalis</i>
Any species of marine mammal previously unknown in New Zealand waters - e.g. Fraser's dolphin (<i>Lagenodelphis hosei</i>)	

Please note that the Pygmy sperm whale *Kogia breviceps* may be confused with the Dwarf sperm whale *Kogia simus*. As Northland is the only likely area in New Zealand where a Dwarf sperm whale would come ashore it is very important that a correct identification of the stranded/ beach cast animal is made.

Note that where a positive identification is unable to be made, it is recommended that an animal(s) be treated as a Category 2 species.

APPENDIX 3:

Website addresses

Department of Conservation	www.doc.govt.nz
Massey University	www.wildlife.massey.ac.nz
	www.ivahs.massey.ac.nz
	www.vet-school.massey.ac.nz
Te Papa	www.tepapa.govt.nz
Auckland University	www.sbs.auckland.ac.nz/research/ popgenevol/baker/index.html

Acknowledgements

May 1998

A Protocol was developed between the Ngatiwai Trust Board and the Department of Conservation: Northland and Auckland Conservancies for the management of whale strandings in Ngatiwai rohe including the recovery of bone by Ngatiwai and the provision of scientific samples.

The document was the outcome of discussions initiated by Hori Parata of the Ngatiwai Trust Board and Mike Donoghue of the Department of Conservation. Both partners wish to thank the following people for their assistance in developing this Protocol:

Merc Roberts	The University of Auckland (Editor)
Ramari Stewart	Puhake ki te Rangi
Tungia Baker	Puhake ki te Rangi
Merel Dalebout	The University of Auckland
Scott Baker	The University of Auckland
Anton van Helden	Tc Papa Tongarewa (Museum of NZ)
Per Madie	Massey University Cetacean Investigation Centre
Himiona Munro	Ngatiwai Trust Board
Chris Roberts	DOC Auckland
Terry Smith	DOC Auckland
John Gardiner	DOC Northland
Keith Hawkins	DOC Northland
Richard Parrish	DOC Northland

January 2007

This update is the outcome of discussions initiated by the Ngatiwai Trust Board and the Department. Both partners would like to acknowledge and

thank the following people for their assistance in helping to update this Protocol:

Addie Smith	Ngatiwai Trust Board
Tui Shortland	Ngatiwai Trust Board
Fiona Davidson	Ngatiwai Trust Board
Clive Stone	Ngatiwai Trust Board
Te Warihi Hetaraka	Ngatiwai Trust Board
Hori Parata (on behalf of)	Ngatiwai Trust Board
Bryce Lummis	DOC Whangarei Area Office
Keith Hawkins	DOC Whangarei Area Office
John Gardiner	DOC Whangarei Area Office
John Beachman	DOC Bay of Islands Area Office
Rollen Elliot	DOC Warkworth Area Office
Thelma Wilson	DOC Warkworth Area Office
Dale Tawa	DOC Great Barrier Island Area Office

APPENDIX 5

Copy of the Marine Mammals Protection Act 1978 "Permit to take marine mammals"

NO-26334-077

MARINE MAMMALS PROTECTION ACT 1978

PERMIT TO TAKE MARINE MAMMALS

PURSUANT to Sections 4, 5, 6 and 7 of the Marine Mammals Protection Act 1978

THE NGĀTIWAI TRUST BOARD ("the Board")

is hereby authorized to:

1. Remove and/or hold the bone and teeth from dead marine mammals stranded in the Ngātiwai Rohe.
2. Take such measurements and samples of organs and tissue from dead marine mammals stranded in Ngātiwai Rohe as may be required by researchers/institutes approved by the Department of Conservation listed in appendix 1 for the purposes of scientific research.

Subject to the following conditions:

- a) The provisions of the operative 2004 Protocol for the Management of Marine Mammal Strandings in Ngātiwai Rohe as agreed between the Ngātiwai Trust Board and the Department of Conservation (including any amendment or replacement), shall form part of this permit and these provisions shall be strictly adhered to whenever actions are taken under the authority of this permit.
- b) Only nominated representatives who have completed a training course to the satisfaction of the Board and are authorized by the Board as set out in Appendix 2 may conduct actions through the authority of this permit.

Advice note: The protocol envisages that where appropriate the Department of Conservation will engage with other Iwi/Hapu and other parties within and outside of the Ngātiwai Rohe for the purposes of managing marine mammal strandings and allocating cultural materials. The protocol envisages that all parties involved will keep each other informed in the event this situation arises

- c) The "Ngātiwai Whale Kit" (Appendix 3) and the operational steps and health and safety plans contained therein shall be adhered to at all times when undertaking the permitted activities specified in this permit (namely the recovery and collection of teeth and bone, and measurements and samples of organs and tissue, from stranded deceased marine mammals within the Ngātiwai Rohe).

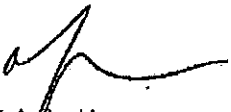
Advice note: The Ngātiwai Whale Kit also refers to activities beyond the scope of this permit. For the avoidance of doubt, it is only relevant insofar as it relates to activities authorized by this permit.


4.7.11.011

7/4/11

- d) The Ngātiwai Rohe is defined as the area of coastline from the Bay Of Islands to Mahurangi Harbor, and includes the offshore islands as shown on the map illustrated at page 5 of the 2004 Protocol for the Management of Marine Mammal Strandings in Ngātiwai Rohe.
- e) This permit is not transferable and is valid for a period of five (5) years.
- f) If the above conditions are not complied with the Minister may revoke this approval by giving notice in writing.
- g) The Ngātiwai Trust Board may use the cultural materials (whale bone, teeth) for customary purposes and/or allocate them by way of gift, bequest or other non-commercial transfer to marae/hapu or individuals within the Ngātiwai rohe to also use for customary purposes. Any such allocation must be accompanied by written authority from the Ngātiwai Trust Board, that records the number and type of whale bone or teeth being transferred and that written authority must be accompanied by a copy of this permit. Any such transfer should be notified to the Department in writing.
- h) This permit and its conditions prevail where there is any inconsistency between this permit and either the 2004 Protocol for the Management of Marine Mammal Strandings in Ngātiwai Rohe or the Ngātiwai Whale Kit. The terms of the 2004 Protocol for the Management of Marine Mammal Strandings in Ngātiwai Rohe prevail where there is any inconsistency between that document and the terms of the Ngātiwai Whale Kit.

Dated at Whangarei and Auckland this *21st* day of *September* 2009.


 Chris Jenkins
 Northland Conservator
 Acting under delegated
 authority from the Director-General of
 Conservation


 Sean Goddard
 Auckland Conservator
 Acting under delegated
 authority from the Director-
 Conservation

APPENDIX 1:

NOMINATED REPRESENTATIVES AUTHORIZED BY THE DEPARTMENT OF CONSERVATION TO RECEIVE MATERIAL TAKEN FROM STRANDED MARINE MAMMALS BY THE NGĀTIWAI TRUST BOARD THROUGH THE AUTHORITY OF THIS PERMIT:

1. **Steve O'Shae, Emma Beatson - School of Biological Sciences, University of Auckland**
2. **Dr Rochelle Constantine, Scott Baker - University of Auckland**
3. **Anton Van Helden - Te Papa Tongarewa**
4. **Wendī Roe, Karen Stockin, Brett Gartrell, Kerri Morgan, Laureline Meynier - New Zealand Wildlife Health Centre, Massey University**
5. **Dr Ingrid Visser - Orca Research Trust**
6. **Bruce Robertson, Neil Gemmell, Louise Chilvers - University of Otago**
7. **Joseph O'Keefe and Graham MacKereth - National Centre for Disease Investigation-MAF Biosecurity New Zealand**
8. **Karen Stockin - Massey University (Common Dolphin)**

APPENDIX 2

NOMINATED REPRESENTATIVES AUTHORIZED BY THE NGATIWAI TRUST BOARD TO CONDUCT ACTIONS THROUGH THE AUTHORITY OF THIS PERMIT:

Chief Executive Officer of the Ngātiwai Trust Board
Employees of the Ngātiwai Trust Board Resource Management Unit
Employees of the MOKO Resource Management Unit

Advice Note – The MOKO Resource Management Unit are employees of the Manuhiri Omaha Kaitiaki Ora (MOKO) Charitable Trust, incorporated under the Charitable Trust Act 1957 on 16 May 2002. MOKO represents the Ngāti Manuhiri hapu of Ngātiwai, based at Pakiri/Leigh. The registered address of MOKO Trust is 20 Cumberland Street, PO Box 57, Leigh, Rodney District, Auckland.
Tel: 09 422 6548.

423140



APPENDIX 3

Copy of Ngāliwāi Whale Kit - <dme://docdm-430582>

423140

5

4/13/17

Summary of the Ngatiwai Trust Board's Marine Mammal Health & Safety Plan

(Refer to the Ngatiwai Whale Kit Document - DOCDM-430582 for full details)

There is a significant range of hazards associated with marine mammal work. These include direct contact injuries, infections, injuries from equipment, maritime hazards, hypothermia, sunburn, drowning - the list goes on.

Marine Mammal Resource Recovery Site Management

With regard to marine mammals' resource recovery, all harvest sites should be managed as per Figure 1. Maintaining the integrity of the "3 zones" reduces the chance of disease transfer between the carcass and humans; and reduces the likelihood of accidents/injury.

1. "The Pit": This zone is occupied by individual(s) that are in direct contact with cetacean e.g. taking of scientific samples, boning etc. Once an individual is in this zone he/she should not move across the transfer zone into the clean zone until completion of the harvest.

There are two zones within The Pit:

Zone 1 - Where the Cutters are cutting back blubber and flesh and separating bone etc. Cutters' bodies are fully covered in barrier cream and they are dressed in overalls, slip free gumboots and long sleeve safety gloves.

Zone 2 - Where the Hookers are picking up the different resources and placing them in their relevant disposal piles within the Disposal Site. Hookers' torsos and arms are covered in barrier cream and they are dressed in overalls, slip free gum boots and short sleeve safety gloves.

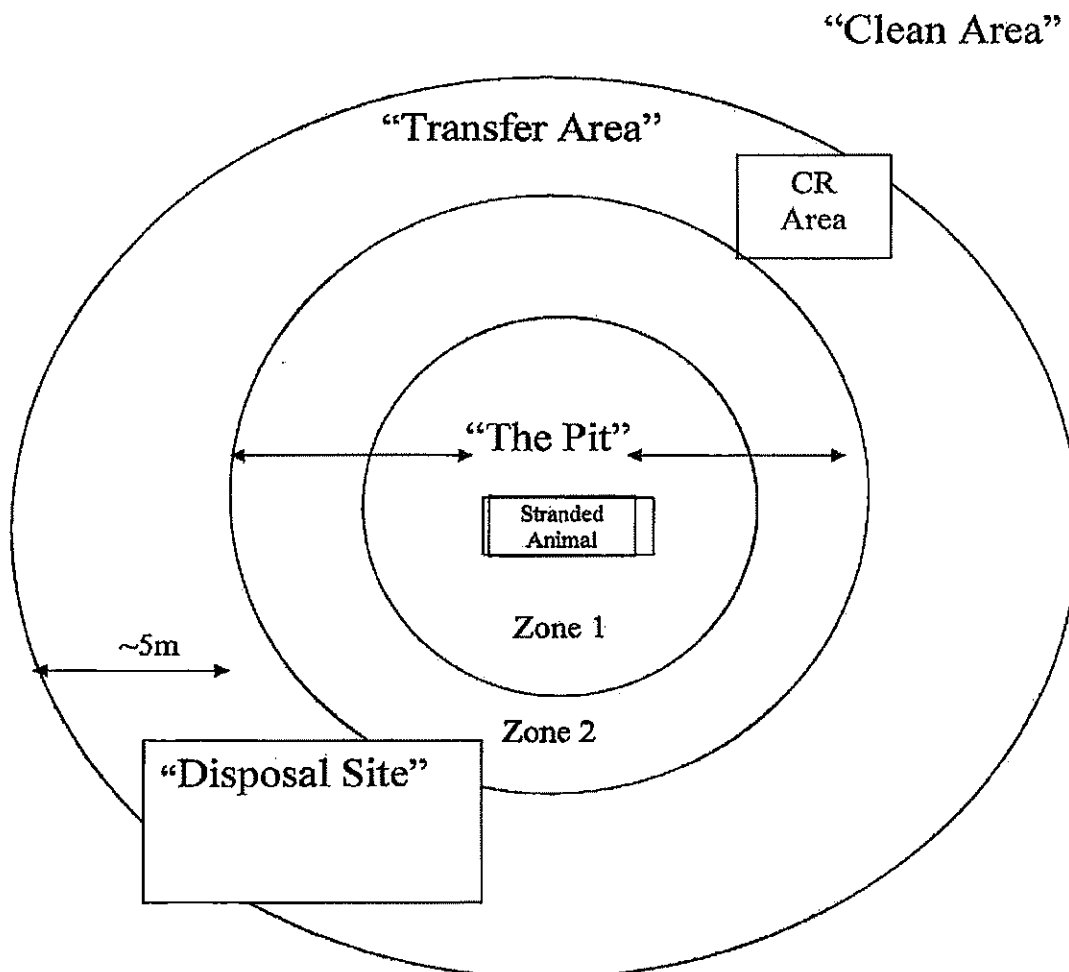
2. "Transfer Area": This zone is occupied by 2 people who move between the clean and the dirty zones. One person acts as first aid assistance and the other to sharpen knives (both people are available to refresh people in the "The Pit" with water, juice, barley sugar or fruit).

The Transfer Area has a Contaminated Refreshment Area (CR Area) set up for team members to rest and eat. On the opposite side of the Transfer Area is the Disposal Site. The Disposal Site contains the hole where unwanted remains are buried and an area for piling the required resources, to be held here until completion of the harvest and appropriate transportation is arranged.

3. **"Clean Area"**: This zone is occupied by individual(s) who do not come into contact with cetaceans. Primary positions include, Safety Monitor to advise the Site Manager of any safety issues and to be responsible for public safety, Media to carry out community relations, and another person to ensure appropriate refreshments are available to the clean team and the Contaminated Refreshment Area.

All strandings should have a dedicated first aid trained person present along with first aid kits. A major stranding should have this person available only for people first aid and care, and not looking after the whales.

FIGURE 1



1 HAZARDS AT A STRANDING

All participants are to be informed of the possible hazards and appropriate mitigation measures. Volunteers are to be briefed when arriving on site.

- i) Environmental hazards - sunburn, sunstroke, dehydration, heat exhaustion.
- ii) Injury inflicted by machinery, vehicles, boats, equipment (knives, blubber hooks, etc) or while handling whales.
- iii) Infection - includes disease contractible from marine mammals, or from inadequately treated cuts.

2 HAZARD MITIGATION

Each member of the Stranding management team is responsible for those they supervise with the Incident Controller having full responsibility.

i) Environmental Hazards - exposure to the elements

General:

- a) Harvest Site Manager is to be sure team and volunteers are prepared. People should have sun hats and use SPF 15+ sunblock.
- b) All members of the team should regularly check other members to ensure they are appropriately dressed, receive enough to drink, are not over tired and are relieved when necessary.
- c) At a large stranding there should be a shelter provided where the first aid person is based. This will provide shelter for people stressed from tiredness, heat, cold or when injured.
- d) There should be enough people on hand to provide relief teams.
- e) Drinks and food will be provided to the team, as well as having plenty of drinking water available.
- f) There will be no work carried out at night.

ii) Injury

- a) Effective crowd control will prevent injury to onlookers and minimise risks to the team.
- b) Injuries are likely to occur when whales are packed too closely together. Keep a sufficient distance between whales so people not confined to small spaces while working with sharp implements with their backs to each other.
- c) People must be encouraged to look after each other and contact the First Aid person if necessary.

Machinery:

- a) Only personnel experienced in the safe use of machinery to use machinery on site.
- b) The Harvest Site Manager will oversee the use of machinery and safety of people nearby.
- c) All machinery carrying whales or travelling on the site to move at a slow speed.
- d) All boat operators to respect the directives of the Harvest Site Manager.

(iii) Infection

- a) Anyone with unhealed cuts must wear gloves while handling marine mammals.
- b) Disposable gloves to be provided when autopsying dead animals is carried out. Onlookers to be kept a safe distance.
- c) Those performing autopsies to wash hands, face and any exposed parts of their bodies with antiseptic soap after completion of task.
- d) All cuts or bites to be immediately cleaned with disinfectant.
- e) No staff or volunteers are allowed to assist with the disposal of marine mammals without wearing protective rubber gloves and overalls.

"HP-C"

Second Draft



Department of Conservation
Te Papa Atawhai

19

MEMORANDUM OF AGREEMENT

DATED.....2010

Agreement

Between

MINISTER OF CONSERVATION

(DOC)

and

NGATIWAI TRUST BOARD

(Ngatiwai)

Mauitaha and Araara Islands
Operational Management Agreement

DOCDM-547223



- 1 -

EXHIBIT NOTE

This is the exhibit marked "HP-B" referred to in the affidavit of
HORI TEMOANAROA PARATA and sworn at Whangarei this
31st day of July 2017 before me:

A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on Exhibit)

Justice of the Peace
for New Zealand.

**MEMORANDUM OF AGREEMENT FOR THE CONTROL AND
MANAGEMENT OF AN AREA OF NATURE RESERVE**

(Pursuant to Section 29 of the Reserves Act 1977)

THIS AGREEMENT is made on this _____ day of _____ 2010

PARTIES:

- 1 THE MINISTER OF CONSERVATION acting through the Northland Conservator, Department of Conservation ("DOC")
2. NGATIWAI TRUST BOARD being registered as a charitable trust under the Charitable Trust Act 1957 ("Ngatiwai")

RECITALS

- A The Land subject to this agreement is the Mauitaha and Araara Islands (including the foreshore thereof), being part of the Hen and Chicken Islands Nature Reserve, held for the purposes of a nature reserve under the Reserves Act 1977; as shown on the plan attached as Appendix 2
- B For the better carrying out of the purposes of the Reserve the Minister intends, pursuant to section 29 of the Reserves Act 1977, to appoint Ngatiwai to control and manage the Land for the purpose of its classification and in accordance with the terms and conditions of this Agreement and the provisions of the Act
- C Ngatiwai, aided by the Department of Conservation staff, have the skills and necessary experience to manage all day to day operational management tasks on the Land.
- D The parties wish to record the terms and conditions of their agreement to the appointment in this document and its Schedules.
- E All references to "DOC" in this Agreement shall include any officer, servant, employee or agent of the Director-General of Conservation.

OPERATIVE PARTS

BY THIS AGREEMENT IT IS AGREED AND DECLARED as follows:

1. The Minister shall by notice in the New Zealand *Gazette* appoint Ngatiwai to control and manage Mauitaha and Araara Islands, being part of the Hen and Chicken Islands Nature Reserve held for the purposes of a nature reserve under the Reserves Act 1977 (as shown on the plan attached as Appendix 2) from the date of publication of the notice of appointment for the purpose of its classification and the provisions of the Reserves Act 1977 and in addition, subject to these agreed provisions detailed below.

2.00 BUILDING AND STRUCTURES

- 2.01 Pursuant to sections 57(9)(a) and 59(10) of the Reserves Act no buildings or structures may be erected without prior approval of DOC.

3.00 FIRE CONTROL

- 3.01 Pursuant to the Forest and Rural Fires Act 1977 DOC will by notice in the *Gazette* declare that the Land shall be a State Area and will therefore retain responsibility for and shall manage any issues related to fire control on the Land. This includes the power to recover costs arising from fires on the Land.
- 3.02 No open fires are permitted on any part of the Land.
- 3.03 Both parties shall take every precaution to prevent fire risks. Ngatiwai shall ensure that full and proper precautions are taken to safeguard the Land against fire and shall take all reasonable steps to control any fires that may be burning on the land.
- 3.04 Permit holders must be informed of their duties, obligations and potential liabilities with respect to fire on the Land.

4.00 COMPLIANCE

- 4.01 DOC shall continue to carry out its compliance and law enforcement functions in response to any offending reported on the islands.
- 4.02 Ngatiwai have powers under s.93 and s.8 of the Reserves Act 1977 to intercede to prevent any actual or attempted breaches of the Reserves Act or any relevant bylaw or regulation.
- 4.03 DOC will support Ngatiwai in any actions it may take under clause 3.02 above.

5.00 BIOSECURITY

- 5.01 The attached extracts from Part II of the Island Bio-security Plan for Northland Conservancy; "Standards for Island Biosecurity", attached as Appendix 2, and any amendments thereto as advised by DOC, must be followed in management of the Land.

6.00 LAND MANAGEMENT

- 6.01 In managing the day to day operations of the islands Ngatiwai shall act in accordance with every relevant Conservation Management Strategy and Conservation Management Plan for the time being in force, including any amendments to the Strategy or Plan, whether the Strategy or Plan or amendment was approved before, on or after the date on which the Agreement became effective.
- 6.02 DOC acknowledges that *Rattus exulans* (kiore) exist on the Land and that kiore is a taonga species for Ngatiwai.
- 6.03 The parties agree that kiore can continue to exist on the Land given the following factors:
- 6.03.1 Kiore is an important taonga species for Ngatiwai, and the Northland Conservancy CMS at page 142 requires that cultural association to be taken into account;
- 6.03.2 Ngatiwai intends to manage kiore on the Land as a taonga species, and this may include cultural harvest;
- 6.03.3 Monitoring the Land which is part of a nature reserve where kiore are present can provide data that may be useful generally and in a comparative sense for scientific and cultural species management, especially where kiore have been eradicated from other parts of the reserve.
- 6.03.4 That the eradication of *Rattus exulans* (kiore) on Tārangā (Hen) Island will be carried out at the earliest convenience to protect and enhance the indigenous fauna and flora values on this island. :
- 6.04 With DOC assistance Ngatiwai shall prepare a management plan under section 41 of the Reserves Act 1977, and undertake capacity building of all relevant skills and expertise in order to conduct all day to day tasks specified in the management plan.
- 6.05 DOC and Ngatiwai will conduct an annual inspection of the island for the purposes of ensuring compliance with the management plan, reviewing the past year's work plan and setting the forthcoming annual the work plan.
- 6.06 DOC supported by Ngatiwai shall be responsible for all exotic flora control within the Land and will act where appropriate in accordance with the regional pest and weed strategy of the Northland Regional Council.

7.00 **PROTECTION OF THE ENVIRONMENT**

7.01 Except where permitted by this Agreement Ngatiwai shall not, unless authorised in writing by DOC, whether by act or omission:

- a. interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Land; or
- b. bring any plants or animals onto the Land; or
- c. deposit debris, rubbish, or other dangerous, or unsightly matter, nor contaminate any water body.

7.02 Ngatiwai shall ensure that its clients and invitees do not carry out any acts prohibited under this clause.

8.00 **SAFETY**

8.01 Ngatiwai shall notify DOC in writing of any natural events or activities that have occurred on the land which may endanger any person or the environment.

8.02 Ngatiwai shall comply with the requirements of and its responsibilities under the Health and Safety in Employment Act 1992.

8.03 Both parties when managing their responsibilities under this agreement shall have their own safety plan for staff and persons going to and on the Land.

9.00 **COMPLIANCE WITH STATUTES**

9.01 Ngatiwai shall at all times comply with all statutes, ordinances, regulations, by-laws or other enactments affecting or relating to the Land and any activities on it including all conditions imposed by DOC in making this Agreement.

10.00 **TERMINATION**

10.01 Either party may terminate this Agreement upon notice in writing.

10.02 Termination of this Agreement by either party will result in the Minister revoking the control and management appointment.

11.00 **NOTICES**

11.01 All notices under this Agreement shall be in writing. They shall be delivered personally.

12.00 **COSTS**

Both Parties to this Agreement shall bear their own costs in carrying out their functions, powers and duties under this Agreement.

13.00 **ACCESS AND PERMITTING**

- 13.01 Ngatiwai, through the Chief Executive Officer is authorised, by this Agreement pursuant to section 57(1) of the Reserves Act 1977, to issue permits to land on the island to carry out day to day mutually approved management activities and any other agreed ecological or cultural function.
- 13.02 Because of its status as a Nature Reserve no person has access by right to any parts of the Land without the necessary permit issued by the CEO of the Ngatiwai Trust Board.
- 13.03 In issuing all permits Ngatiwai must ensure that any such permit is consistent with the classification of the Land as a nature reserve, consult with DOC and supply all the details surrounding the reasons the permit is requested and conditions proposed (if any) if it is proposed to be issued.
- 13.04 The Ngatiwai Trust Board agree that certain functions, such as fire control, compliance and law enforcement and weed control will continue to be managed and funded by the Department of Conservation. In emergency operations, post landing details will be advised at the earliest possible opportunity. Annual work planning for such activity is addressed in 5.03.
- 13.05 Any permits required in respect of species listed in the Wildlife Act 1953 (for example to research, handle, investigate, manipulate such species) shall be issued, if approved, by DOC after consultation with Ngatiwai.
- 13.06 Any concession applied for under section 59A of the Reserves Act 1977 will be considered by the Minister of Conservation (through DOC under delegated authority) after consultation with Ngatiwai.

14.00 **DISPUTE RESOLUTION & ARBITRATION**

- 14.01 If any dispute arises between the parties in connection with this Agreement, the parties shall without prejudice to any other rights they may have under this Agreement, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.
- 14.02 If the parties are unable to resolve the dispute by negotiation or other informal means within twenty-one (21) days of written notice by one party to the other of the dispute (or such further period as the parties agree in writing) either party may refer the dispute to arbitration in accordance with the Arbitration Act 1996.

- 14.03 It is agreed between the parties that all matters relating to this Agreement shall be governed by New Zealand Law and any dispute between the parties shall be settled by arbitration in New Zealand or in a New Zealand Court.

15.00 ENTIRE AGREEMENT

- 15.01 Except as provided by legislation, and the section 29 of the Reserves Act 1977 Gazette notice transferring the day to day control of the islands to the Ngatiwai Trust Board, this Agreement contains the entire understanding between the parties with reference to the subject matter of this Agreement and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Agreement.

16.00 WAIVER

- 16.01 Failure or neglect by DOC to enforce at any time any of the provisions of this Agreement is not to be construed or deemed to be a waiver of DOC's rights under it; and is not to affect in any way the validity of the whole or any part of it or prejudice DOC's rights to take subsequent action.

17.00 SEVERABILITY

- 17.01 Any illegality, or invalidity or unenforceability of any provision in this Agreement is not to affect the legality, validity or enforceability of any other provisions.

18.00 REVIEW OF AGREEMENT

- 18.1 This Agreement shall be reviewed every two years or at such other time(s) as may be agreed between the parties.

SIGNED on behalf of the Minister of)
Conservation by **Christopher Michael Jenkins**)
Conservator Northland, acting under a delegation)
from the Director General of Conservation)

in the presence of:

Witness Signature: _____

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

SIGNED on behalf of the Ngatiwai Trust Board)
by **Addie Smith**, Chief Executive Officer)

in the presence of:

Witness Signature: _____

Witness Name: _____

Witness Occupation: _____

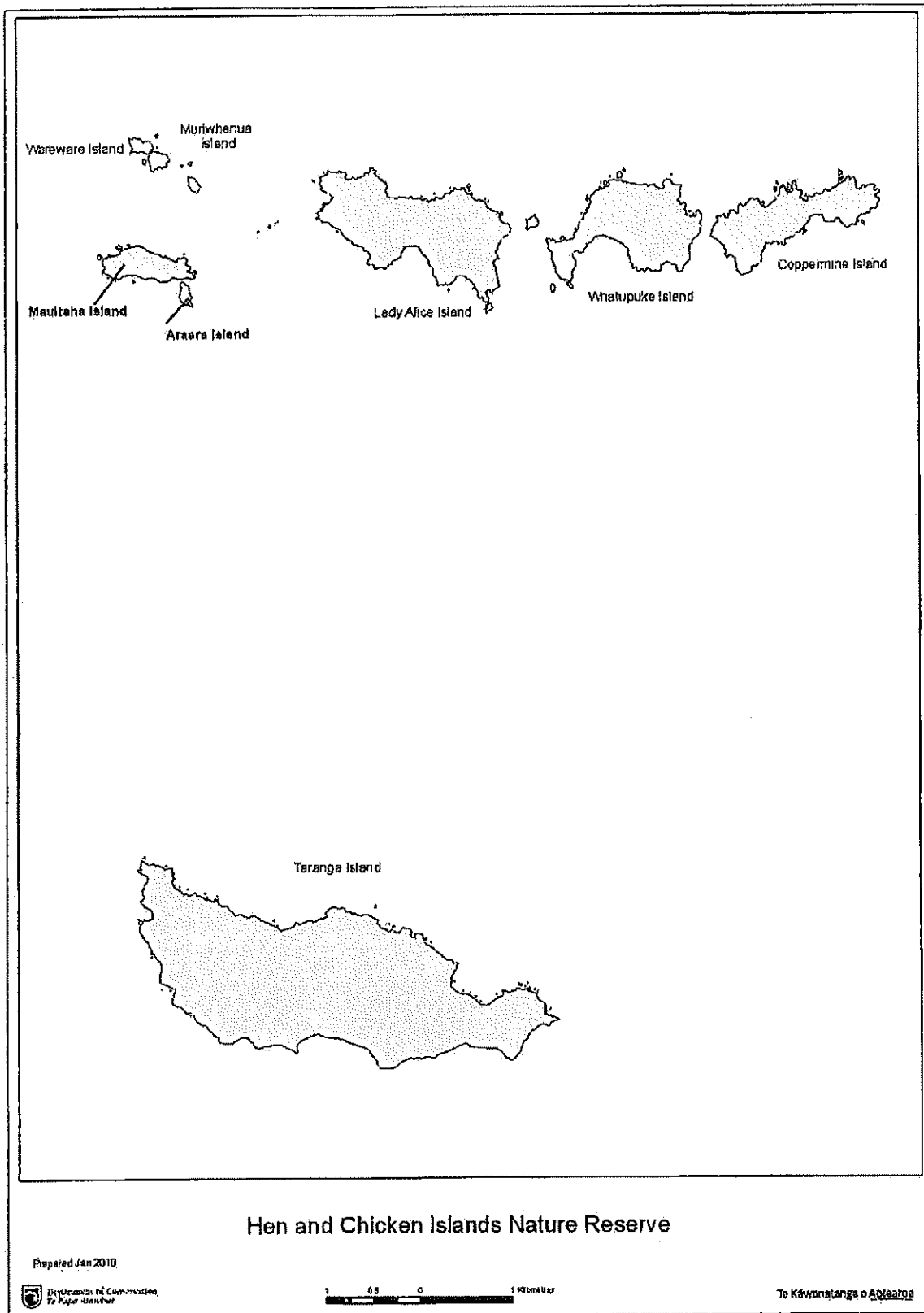
Witness Address: _____

APPENDIX 1

Locality Plan

(Attach)

APPENDIX 1



27 MAY 2010

NEW ZEALAND GAZETTE, No. 60

1729

Dated at Christchurch this 17th day of May 2010.
S. R. GILBERT, for the Minister for Land Information.
(LINZ CPC/2007/12496, CPC/2007/12502, CPC/2007/12503)
In3963

**Stopped Government Road Amalgamated—
State Highway 79, Waihi Bridge, Geraldine,
Timaru District**

Pursuant to section 117(3)(b) of the Public Works Act 1981, and to a delegation from the Minister for Land Information, Stephen Robert Gilbert, Land Information New Zealand, declares the land described in the Schedule to this notice to be amalgamated, pursuant to section 120(3), with the land in Computer Freehold Register CB113/105, subject to section 11 of the Crown Minerals Act 1991 and Part IVA of the Conservation Act 1987, on the date of publication hereof in the *New Zealand Gazette*.

**Canterbury Land District—Timaru District Council
Schedule**

Stopped Government Road Amalgamated

Area m ²	Description
1221	Section 5 SO 370092 (Computer Freehold Register 464980)

Dated at Christchurch this 18th day of May 2010.
S. R. GILBERT, for the Minister for Land Information.
(LINZ CPC/2003/9112)
In3969

Reserves Act 1977

**Amendment of a Notice Appointing the Friends of
Old Fairfield Incorporated to Control and Manage
a Local Purpose (Community Buildings) Reserve**

Under section 29(1) of the Reserves Act 1977 and an instrument of delegation from the Minister of Conservation dated the 24th day of March 2009, the Community Relations Manager amends the notice published in the *New Zealand Gazette*, 16 December 2004, No. 166, page 4172, appointing the Friends of Old Fairfield Incorporated to control and manage a local purpose (community buildings) reserve.

The notice is amended by removing

"This appointment is for a 10-year period commencing from 3 June 2003".

Dated at Nelson this 24th day of May 2010.
JOANNA MARY GOULD, Community Relations Manager.
(DOC DO PAR-10-08-02)
In4052

**Appointment of the Ngatiwai Trust Board to
Control and Manage Parts of the Hen and Chicken
Islands Nature Reserve**

Under the Reserves Act 1977, the Conservator for the Northland Conservancy of the Department of Conservation appoints the Ngatiwai Trust Board to control and manage the nature reserve described in the Schedule, being parts of the Hen and Chicken Islands Nature Reserve, for the purposes of the Reserves Act 1977 and subject to the terms and conditions set down in a memorandum of agreement dated the 25th day of May 2010.

**North Auckland Land District—Whangarei District
Schedule**

Area ha	Description
20.1331	Part of the Hen and Chickens Islands, more particularly known as Mautaha Island.
3.1362	Part of the Hen and Chickens Islands, more particularly known as Araara Island. Part <i>New Zealand Gazette</i> , 21 January 2010, No. 3, page 190.

Dated at Whangarei this 25th day of May 2010.

C. M. JENKINS.
(DOC PAR-01-04-07)
In4008

**Authorisation of Exchange of Part of a Reserve for
Other Land**

Under the Reserves Act 1977, the Community Relations Manager of the West Coast Conservancy of the Department of Conservation authorises the exchange of the local purpose (cemetery) reserve area described in the First Schedule for the land described in the Second Schedule and further specifies that the land in the latter Schedule be part of the local purpose (cemetery) reserve.

Westland Land District—Grey District

First Schedule

Area ha	Description
0.7899	Section 2 SO 430273 (part <i>New Zealand Gazette</i> , 27 August 2009, No. 128, page 2991).

Second Schedule

Area ha	Description
0.1998	Section 1 SO 430273 (part Computer Freehold Register WS2D/691).

Dated at Hokitika this 19th day of May 2010.

CHRIS HICKFORD.
(DOC HK PAL-06-11-35)
In4053

Classification of Reserve

Pursuant to the Reserves Act 1977, the Community Relations Manager for the Conservancy of the Department of Conservation classifies the reserves described in the Schedule as scenic reserves, subject to the provisions of the Act.

Westland Land District—Westland District

Schedule

Area ha	Description
12.7552	Rural Section 1305 (all Computer Freehold Register WS3A/561).
161.5165	Sections 1 and 2 SO 11954 (all Computer Freehold Register WS8A/80).
203.3200	Sections 1, 2 and 3 SO 11888 (all Computer Freehold Register WS8C/414).

D:

CI

EXHIBIT NOTE

(T This is the exhibit marked "HP-D" referred to in the affidavit of HORI TEMOANAROA PARATA and sworn at Whangarei (this 14th day of July 2017 before me:

A Solicitor of the High Court of New Zealand
(Solicitor to sign in part on Exhibit)



Justice of the Peace
for New Zealand