

**IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY**

CIV-2017-

IN THE MATTER OF

the Marine and Coastal
Area (Takutai Moana) Act
2011 (the Act)

AND IN THE MATTER OF

an application by the
Ngātiwai Trust Board for
an order recognising
Customary Marine Title
and Protected Customary
Rights.

APPLICATION BY THE NGĀTIWAI TRUST BOARD

**FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND
COASTAL AREA (TAKUTAI MOANA) ACT 2011**

Dated 31 March 2017

OCEANLAW NEW ZEALAND
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Solicitor acting: Justine Inns
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To: The Registrar of the High Court at Whangarei;

and to: Northland Regional Council

and to: Auckland Council

and to: Waikato Regional Council

and to: Whangarei District Council

and to: Far North District Council

and to: Kaipara District Council

and to: The Solicitor General on behalf of the Attorney-General

and to: Te Rūnanga a Iwi o Ngāpuhi

and to: Te Rūnanga o Ngāti Whatua

and to: Hauraki Maori Trust Board

This document notifies you that:

1. The Ngātiwai Trust Board (“the Board”) will apply to the High Court for an order pursuant to ss98 and 100 of the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) to recognise the customary marine title and protected customary rights of Ngātiwai whānau, hapū and iwi (collectively, “Ngātiwai”) in relation to the area described in paragraphs 6 and 7 below (“the rohe moana”).

Ngātiwai

2. Te Iwi o Ngātiwai includes the many related hapū and persons affiliated to the kāinga and marae occupying the eastern coastline of the North Island between the Bay of Islands (Pēwhairangi) and Whangārei, and beyond southward to Pākiri, Ōmaha and Mahurangi, and including the off shore islands Aotea (Great Barrier), Hauturu (Little Barrier), and other smaller island groups within the rohe moana. Ngātiwai has occupied the eastern coastline of lower Northland since the first period of human occupation, extending back to Māui-tikitiki-a-Taranga and Māui Pae. Through this, Ngātiwai has a unique right of “take whenua kite hou” - the right of discovery or first inhabitation.
3. Ngātiwai is unified in descent from one of the oldest descent groups in Te Taitokerau: Ngāti Manaia. Although Ngātiwai are an amalgam of a number of older Iwi groups, it is the unbroken line of descent from the eponymous ancestor Manaia; his descendant Manaia II and his people of Ngāti Manaia which gives the Iwi its unique and distinctive identity and ancient rights of “take tūpuna”. From Manaia II come the Ngāti Manaia lines, including Tahuhuniorangi and Te Rauotehuia, descending to Te Rangikapikitia. From Te Rangikapikitia come key tūpuna including Te Kura Makoha, Whāpapa and Te Wairua, Hikihiki I and Huruhurumaiterangi. From Whāpapa and Te Wairua come Toremātao, Te Rangapū and Te Rangihokaia and his descendants known as Ngāti Wai ki te moana.
4. These pūtake and take tūpuna are partly shared by other Iwi but collectively are unique to Ngātiwai. No other Iwi in the north can trace their ancestry

directly to Manaia and Ngāti Manaia which makes these lineages exclusive to Ngātiwai alone. The tribal name Ngātiwai applies collectively to all hapū who share descent from Manaia II and ngā kōpikopikotanga maha o Ngātiwai.

5. The Board is the mandated representative of Ngātiwai and has authority to make this application.

Area to which the application relates

6. The area to which this application relates (the rohe moana) is the common marine and coastal area (as defined in s9 of the Act) that is bounded:
 - a. On the landward side by the line of the mean high-water springs (except that where that line crosses a river, the landward boundary at those points shall be whichever is the lesser of one kilometre upstream from the mouth of the river; or the point upstream that is calculated by multiplying the width of the river mouth by five);
 - b. On the seaward side by the outer limits of the territorial sea;
 - c. On the northward side by a line that extends from the coast abutting Tāpeka Point to the outer limits of the territorial sea; and
 - d. On the southward side by a line that extends from the coast abutting Matakana River to the outer limits of the territorial sea.

7. The rohe moana (depicted on the map annexed to the affidavit of Hori Temoanaroa Parata filed herewith) includes the common marine and coastal area surrounding the chain of islands extending along the coastline referred to in paragraph 6 above, including, but not limited to:
 - 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 Tāraua (The Hen and Chickens Group);
 - g. Tūturu (Sail Rock);
 - h. Pokohinu and Motukino (The Mokohīnaui Islands);

- i. Te Hauturu o Toi (Little Barrier);
 - j. Aotea (Great Barrier) and the surrounding islets and rocky outcrops;
 - k. Te Kawau-tūmaro-o-Toi (Kawau Island); and
 - l. Te Mau Tohorā-o-Manaia (Motuora Island).
8. Customary rights and interests through the rohe moana largely vest in the hapū and whānau that comprise Ngātiwai. This application is made by the Board to provide a foundation for securing protection of those rights and interest and the Board acknowledges that amendments to the application may be required in the future as a result and leave is sought to make such amendments.
9. In addition, 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. These intertwined rights and interests are regarded as comprising a form of joint exclusivity.
10. It should be noted that Ngātiwai has traditional and ancestral rights and interests that extend beyond the rohe moana as described above.

Customary Rights

11. Ngātiwai ancestors practiced the full bundle of rights and responsibilities that comprise kaitiakitanga within the rohe moana and utilised that area for:
- 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;
- 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, particularly 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; and
- k. Navigation between coastal settlements on the mainland and offshore islands, using tauranga waka, safe harbours and refuge caves.

Grounds on which the protected customary rights order is sought

12. The grounds on which this order is sought are that:
 - a. Ngātiwai is made up coastal and island-dwelling hapū and whānau has relied heavily on the inshore fish and shellfish species referred to in paragraphs 11(a) and (b) above, and wetland food stocks foraged by whānau in the estuaries and coastal margins;

- b. Ngātiwai fishermen sought deep water fish (including the species referred to in paragraph 11(a) above) that were not available closer to shore;
 - c. Ngātiwai hapū, whānau and individuals also undertake the activities in the rohe moana including, but not limited to:
 - i. The practice of kaitiakitanga; and
 - ii. The further rights noted in paragraph 11(c) to (k) above;
 - d. Ngātiwai has undertaken the activities listed above since before 1840 and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga; and
 - e. The further grounds set out in the affidavit of Hori Temoanaroa Parata.
13. The Board will provide more information once funding for research and legal representation is secured.

Grounds on which the customary marine title application is made:

14. The grounds on which this order is sought are that:
- a. Ngātiwai whānau and hapū have held the rohe moana in accordance with tikanga since before 1840;
 - b. Ngātiwai whānau and hapū have exclusively (but for navigation by third parties) used and occupied much of the rohe moana from before 1840 to the present day without substantial interruption;
 - c. The customary title held by Ngātiwai in the rohe moana has not, since 1840 been extinguished as a matter of law; and
 - d. The further grounds set out in the affidavit of Hori Temoanaroa Parata.

Matters relevant to whether customary marine title exists

15. Members of Ngātiwai own land abutting some parts of the rohe moana and have done so, without substantial interruption, from 1840 to the present day. This includes islands and rock outcrops around Aotea (Great Barrier) found by the Māori Land Court in 1998 to still be Maori customary land (*da Silva v Aotea Māori Committee and Hauraki Māori Trust Board* 25 Tai Tokerau MB 212. 23 February 1998, Spencer J).
16. Members of Ngātiwai exercise non-commercial customary fishing rights and other customary rights in the rohe moana, as outlined in paragraph 11 above, and have done so from 1840 to the present day.
17. The Board will provide more information once funding for research and legal representation is secured.

Holder of the recognition order(s)

18. The holder of the order(s) as representative of the applicant group will be the Board or some other entity or person appointed by Ngātiwai hapū and whānau for that purpose.

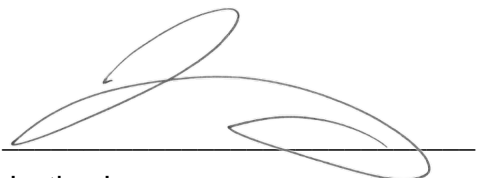
Contact Details

19. Contact details (address for service) for the Ngātiwai Trust Board, on behalf of Ngātiwai, are:

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20. This application relies on ss51, 58, 59 and 98-113 of the Act, and the affidavit of Hori Temoanaroa Parata dated 30 March 2017 and filed herewith.

Dated at Nelson on the 31st of March 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

Justine Inns