# Submission of Kurahaupō iwi
## (Ngāti Apa ki te Rā Tō; Ngāti Kuia; Rangitāne o Wairau)
## on the
# New Marine Protected Areas Act

Submission prepared by:

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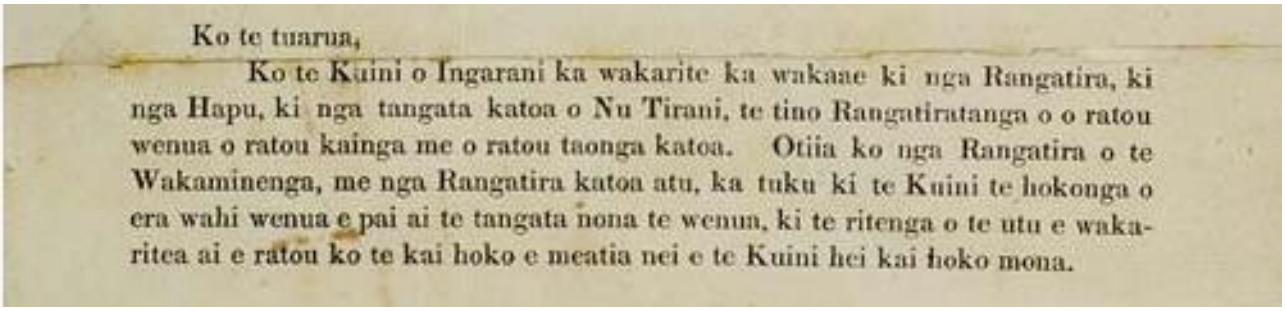
# Treaty of Waitangi: Article the Second



Ko te tuarua,

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga, me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

"Her Majesty the Queen of England confirms and guarantees to the Chiefs
and Tribes of New Zealand and to the respective families and individuals thereof
the full exclusive and undisturbed possession of their Lands and Estates, Forests Fisheries
and other properties which they may collectively or individually possess
so long as it is their wish and desire to retain the same in their possession…"

## 1. The submitters

1.1. The three Te Tauihu iwi of the Kurahaupō waka have been in possession of the lands of Te Tauihu for more than half a millennium. Over the course of establishing ourselves as the tangata whenua of Te Tauihu we faced many hardships and challenges.

1.2. In the 1820s we endured and survived the devastation wrought by northern iwi armed with muskets provided by Pākeha.

1.3. We endured and survived the chicanery and greed of a rapacious New Zealand Company in the 1840s.

1.4. We endured the machinations of the colonial government and the Native Land Court in the 1860s and beyond.

1.5. It appears that, once more we must fight to ensure that the rights and privileges that were so recently negotiated with the Crown are upheld.

2. ***Ngāti Apa ki Te Rā Tō Charitable Trust*** is a Mandated Iwi Organisation in the Māori Fisheries Act 2004 and is an Iwi Aquaculture Organisation as prescribed in the Māori Commercial Aquaculture Claims Settlement Act 2004.

***3.*** ***Te Runanga o Ngati Kuia Trust*** is a Mandated Iwi Organisation in the Māori Fisheries Act 2004, Iwi Aquaculture Organisation as prescribed in the Māori Commercial Aquaculture Claims Settlement Act 2004 and is the PSGE for Te Whakatau (Ngati Kuia ToW Settlement)

***4.*** ***Rangitāne o Wairau*** is a Mandated Iwi Organisation in the Māori Fisheries Act 2004 and is an Iwi Aquaculture Organisation as prescribed in the Māori Commercial Aquaculture Claims Settlement Act 2004.

**Please Note:** This submission should be read as being submitted on behalf of both the PSGE/Asset Holding companies and the Charitable Trusts of each of the three iwi of Kurahaupō. We make this point to reflect the fact that customary and commercial fisheries Treaty rights have been negotiated and are, in practice, 'held' by separate entities under the korowai of each of the iwi.

## 5. Introduction

5.1. The submitters tautoko (support) and endorse the arguments put forward against the adoption of the proposed Marine Protected Areas Act in its current form by:

- The Conservation Iwi Advisor Group (IAG) of the Iwi Chairs Forum
- Te Ohu Kaimoana
- Other mandated iwi organisations of Te Tauihu, Te Waipounamu and Te Ika a Māui
- Aotearoa Fisheries Ltd
- Marlborough Marine Futures
- The commercial fishing industry and wider industry organisations; and
- Other groups with rights and interests in the sustainable management of our fisheries.

5.2. We jointly submit that the proposed Act as outlined in the Consultation Document lacks detail and is based on insufficient, inadequate research and incomplete data. The Consultation Document represents an example of poor law-making, is poorly thought-out, confused in its intentions and misdirected in its scope.

## 6. Upholding Treaty Obligations

6.1. The Te Tauihu iwi of the Kurahaupō waka, being Ngati Apa ki te Rā Tō, Ngāti Kuia and Rangitāne o Wairau wish to place on record that we are opposed to the Marine Protected Areas Act in its current form.

6.2. The creation of Marine Protected Areas as described in the consultation document, 'A New Marine Protected Areas Act' amounts to little more than another act of Raupatu by the Crown.

6.3. In its present form, we believe the proposed Act contravenes the Crown's obligation to act in a manner that contributes to the enduring nature of the various Settlement Acts relating to Te Tauihu.

6.4. Specifically, it is our submission that the proposed legislation contravenes the Crown's obligations to the Kurahaupō iwi on two fundamental levels:

6.4.1. It threatens our Commercial Fisheries settlements as held through the Mandated Iwi Organisation (charitable) mechanism: and

6.4.2. It impinges on our rights as pertaining to customary fisheries settlements, as held through the three Settlement Trusts (non-charitable).

6.5. These Settlement Trusts, as recognised in our respective Deeds of Settlement, and enacted through Deed of Settlement legislation, are explicit in their intent when they specify that these Acts are to bind the three Kurahaupō iwi individually, and the Crown.

6.6. The obligation to protect our wai māori (freshwater) and marine customary fishery is contained in the South Island Customary Fisheries Regulations. Rivers and creeks flow into bays. These regulations bind both the Crown and its agencies (Primary Industries, Conservation and Environment) to both protect and enhance those rights.

6.7. We submit that the proposed legislation in general – and the establishment of a Recreational Fishing Park in the Marlborough Sounds in particular – usurps the historical and traditional rights of Kurahaupō iwi to exercise tino rangatiratanga over our fisheries.

6.8. Marine reserves, as envisaged, will extinguish customary non-commercial fishing rights and prohibit the exercise of customary commercial fishing rights.

6.9. Specifically, the MPA Act envisages:

6.9.1. Species-specific sanctuaries – these will restrict the exercise of commercial fishing rights

6.9.2. Seabed reserves – may, in fact, impinge on the exercise of customary fishing rights in some instances.

## 7. Giving effect to the Treaty Relationship

7.1. We object to the treatment of iwi Māori in the current round of consultations as one of a number of stakeholders. We are Treaty partners and as such must be accorded an <u>equal</u> role in the development of any legislation that may have an effect on our Article Two rights under the Treaty of Waitangi.

7.2. Provision should be made for active Iwi involvement at every step of the proposed MPA establishment process.

7.3. We submit that a panel of iwi representatives, similar to the IAG, is established to assist in the process of developing proposals from submissions and amending the proposed legislation in the light of the submissions received during this consultation round.

7.4. We are of the collective view that direct engagement between the Crown and Iwi is essential before any new Bill is presented to Parliament, especially this MPA reform and specifically iwi affected directly with the proposed Recreational Fishing Park.

## 8. Legislative protections for existing Treaty Rights

8.1. We submit that there must be a requirement for all persons exercising or performing functions, duties or powers to act in a manner consistent with the provisions of the Fisheries Settlement legislation (i.e., the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, the Maori Commercial Aquaculture Claims Settlement Act 2004 and the Maori Fisheries Act 2004).

8.2. Furthermore, we submit that there must be a statutory test to ensure that an MPA does not interfere unduly with fishing rights including customary commercial and customary non-commercial rights (similar to Marine Reserves Act 1971 section 5(6)).

8.3. Our assessment of the proposed new MPA Act is that it will not deliver better protection of marine biodiversity. Rather, we believe it undermines the Maori Fisheries Settlement and will interfere with, and in some instances extinguish, our customary commercial and customary non-commercial fishing rights.

## 9. Recreational Fishing Parks

9.1. The Te Tauihu Kurahaupō iwi support measures to protect marine diversity. We have always regarded our kaitiaki responsibilities to Tangaroa as part of who we are as Māori.

9.2. To that end, for example, we have individually and voluntarily shelved commercial and customary quota entitlements when we deemed it appropriate and as part of our contribution to ensuring a sustainable fishery for all.

9.3. Recreational fishing parks directly impact on our Treaty settlements.

9.4. There is no evidence that the establishment of Recreational Fishing Parks will do anything to protect and enhance biodiversity and should be removed from the MPA Act (generally, and specifically with regard to the Marlborough Sounds).

9.5. It is our belief that they will not enhance recreational fishing and, in reality, this proposal purports to give recreational fishers priority rights at the expense of the iwi of Kurahaupō customary non-commercial and commercial fishing rights. This is fundamentally unacceptable and contradicts our expectations of the Fisheries Settlement.

9.6. We believe making better provision for recreational fishing is best addressed under the Fisheries Act and through voluntary arrangements between fishing sectors.

9.7. We take particular issue with the repeated assertions by the Minister for the Environment that Recreational Fishing Parks are a measure designed for the "one million New Zealanders who are recreational fishers." Nowhere has this figure been substantiated.

9.8. Recreational fishing parks will prohibit the exercise of our commercial fishing rights for "the main recreational species". They will also diminish the exercise of customary non-commercial fishing rights by encouraging high levels of recreational fishing pressure, and may in fact hinder our right to establish fisheries management tools such as mātaitai and taiāpure (if these were subsequently to be judged to be incompatible with the management of a recreational fishing park).