

Departmental Memo



Department of
Conservation
Te Papa Atawhai

GS ref: 19 - B - 0970

DOCCM: 6164761

In Confidence

Date: 20 December 2019
To: Minister of Conservation
From: Marie Long, Director Planning, Permissions and Land Unit
Subject: **Update to inform your decision on the Moutere Ihupuku/Campbell Island Marine Reserve Extension.**

Purpose – Te Pūtake

1. This memo provides further information for your consideration to help inform Ministers' decisions on the Moutere Ihupuku/Campbell Island Marine Reserve extension.

Background and context – Te Horopaki

2. On 2 December, DOC and MPI officials provided fulsome advice on the Moutere Ihupuku/Campbell Island marine reserve extension, seeking a decision from you and the Minister of Fisheries by 13 December 2019 (19-B-0702 refers).
3. On 6 December, you met with Minister Nash and agency officials to discuss the decision.
4. You provided officials a directive to seek further engagement with Ngāi Tahu to understand what management mechanisms or measures they may consider acceptable for Moutere Ihupuku.
5. On 12 Dec, we provided an email update noting Ngāi Tahu had undertaken to provide a written response. We are still awaiting this response.
6. On 16 December you met with DOC officials to discuss what legislative options might be available to accommodate Ngāi Tahu interests. Throughout this process, officials have considered a range of options for achieving extension of the marine reserve while accommodating Ngāi Tahu's views. ^{9(2)(h)}
7. DOC and MPI have now received signed briefings. These briefings indicate differing directives from Ministers. Agency officials request Ministers and their staff work together to resolve these differences and provide a clear directive.
8. 10 January 2020 is the very final date by which your decision (in agreement with Minister Nash), would need to be made. This is due to the time required to undertake the statutory steps to enact an Order in Council (OIC), if the decision is to extend. If the decision is to extend, you or your delegate would need to be available from mid-January through February 2020 to take the OIC to Cabinet.
9. You have also requested a copy of the Letter from Ta Tipene O'Regan (attachment 1) and the Envirostrat report (attachment 2) these are attached for your reference.

We are awaiting a written response outlining Ngāi Tahu's views

10. As noted, On 12 Dec, we provided an email update noting Ngāi Tahu had undertaken to provide a written response. We are still awaiting this response.

9(2)(g)(h)



Providing the requested documents to support your discussion with Ta Tipene O'Regan

16. Please find attached the requested a copy of the Letter from Ta Tipene (attachment 1) and the Envirostrat report (attachment 2) for your reference.

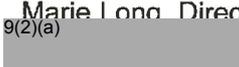
Next steps – Nga Tāwhaitanga

17. Officials have requested your joined-up Ministerial decisions on the extension by 10 January 2020.
18. Officials are available to meet with you in advance of the 10 January decision deadline.

Contact for queries:

Marie Long, Director Planning, Permissions and Land, Department of Conservation. Mobile:

9(2)(a)



ENDS

Moutere Ihupuku / Campbell Island Marine Reserve review

Letter 1

Moutere Ihupuku / Campbell Island Marine Reserve Review

Independent Review conducted by Envirostrat Consulting Ltd

Briefing to Ministers of Conservation and Fisheries

Comment from Sir Tipene O'Regan, Kai Tahu / Te Runaka o Awarua

Governance Group Member

Tena koutou

This note follows the final meeting of the Governance Group on **11 Dec.** in the course of which it was agreed that the most suitable place for the various Kai Tahu reservations on the Report and consequent conclusions should be brought to the attention of Ministers via the **Briefing Document**.

- **It is acknowledged by Kai Tahu** that Terms of Reference of the Governance Group included a statement to the effect that the proposed extension of the Marine Reserve was not able to be re-litigated *per se*. However, our concerns here are focussed on the consequent inadequacy of the process and the **lack of a credible evidence base** for the decision.
- **It is further acknowledged that** Kai Tahu accepts the present level of, and area of protection around, Moutere Ihupuku as both appropriate and sufficient.
- **It is noted that the** existing regulations around Moutere Ihupuku include benthic protection measures which already severely limit the form of any potential fisheries which might be developed. It is also the case that the immediate surrounding waters are already at their maximum available level of protection.
- It is further noted that the recommendation in the Report to proceed with the extension is based entirely on values and not on reliable and up-to-date evidence and this should be clearly stated and not fudged by an appearance of scientifically robust assessment.

Nonetheless Kai Tahu believes that the Ministers should be advised of the following concerns:

A fundamental plank of the Treaty Fisheries Settlement of 1992 was Maori acceptance of the Quota Management System (QMS) . a system funded on the principle of **evidence-based sustainability**. As the Maori position had proceeded, initially, on the basis that the QMS **was unlawful** and that

position had been supported in some degree by the Courts there was considerable difficulty in finding a basis for negotiation. Achieving an alignment between Maori customary rights and the various assertions made by the Crown in respect of the QMS was ultimately achieved. That alignment centred on the central concept of evidence-based sustainability by which abundance may be assessed.

In the present instance what evidence that does exist in respect of fisheries abundance is over 40 years old and relates to only one species. No formal research has been conducted across the very substantial proposed extension to the reservation. The report refers to the '**absence of evidence**' as if it equates to '**evidence of absence**'. This reflects a fundamental weakness in the proposed decision making process.

The proposed extension of the Marine Reserve is entirely within the **Ngai Tahu Zone of Maritime Interest** which is statutorily defined in the **Ngai Tahu Claims Settlement Act 1998**. It covers a substantial area of sea in which there has been no research in respect of its fisheries abundance in the last 40 years and in which Kai Tahu has a substantial potential interest. The Iwi has a reasonable prospect of extending its fisheries activity into this wider zone as circumstances change both in terms of climate change and technological capacity. The current position of the Iwi is, therefore, an entirely pragmatic response to Terms of Reference which are themselves inadequate given the circumstances of completely out-of-date data and the total absence of current research as to fisheries in the area.

For the State to pre-empt that possibility by a massive and unilateral reduction of the effective QMA is **contrary**, in the Kai Tahu view, to the **TOW Fisheries Claims Settlement Act of 1992** by which Ngai Tahu and others accepted the QMS.

Put simply, officials have a responsibility to point out to the relevant Ministers in the Briefing Document that the Crown should consider the risk of potentially challenging litigation should it proceed unilaterally with this proposal.

There are potentially innovative alternatives to the presently conceived absolutism of Marine Reserve policy which might usefully and collaboratively be explored but these have been beyond the mandate of the present Governance Group.

Tipene O'Regan Kt.

Awarua Kai Tahu

16 Dec. 2018

Letter 2

SIR TIPENE O'REGAN

9(2)(a)

Tel: 9(2)(a)

Fax: 9(2)(a)

9(2)(a)

10 Jan.2019

By electronic transmission

Rebecca Bird
Marine Protected Areas
Significant Projects Manager
Dept. of Conservation
PO Box 10-420
Wellington 6143

Tena koe Rebecca

Moutere Ihupuku / Campbell Island : Marine Reserve Extension

Thank you for requesting my comment on the Departmental Briefing paper to the Minister of Conservation. I respond as follows.

I acknowledge that I participated in the functioning of the Governance Group overseeing the above extension on the nomination of Te Runaka o Awarua which, in this matter carried the delegated authority of Te Runanga o Ngai Tahu (TRONT) and –

- **That**, in my view, the process undertaken complied with what I understood to be all the statutory requirements of the governing legislation although those requirements themselves were in conflict with significant aspects of other Treaty-based legislation and settlements and -
- **That**, the views that I have expressed on behalf of Ngai Tahu in that process are, to the extent that they have been reported, are fairly and accurately recorded in **paragraphs 30,31,32, & 33** of the Departmental Briefing paper and -
- **That**, throughout the process I and others who have, from time to time represented me, have been treated in a courteous, respectful and friendly manner.

However, I believe it necessary to record formally -

- **That** my participation in the work of the Governance Group cannot be construed as a formal Treaty-based consultation with Ngai Tahu such as might be envisaged or required in terms of **Sec.4** of the **Conservation Act** and –
- **That**, in the view of Ngai Tahu, other more collaborative and less absolutist options more consistent with the terms and intent of the Treaty of Waitangi Maori Fisheries Settlement Act 1992 are available and should be explored.

I further wish to record that Ngai Tahu does not concur with the view in **Paragraph 34** of the paper in respect of the status of **Te Ohu Kai Moana** and that body's responsibility to deal with the generality of Treaty questions on behalf of the Iwi it represents.

Finally, I am not requesting that you should necessarily include the foregoing in a redrafted version of the Briefing paper unless, of course, you see fit to do so. I should be content, for present purposes, that both Ministers are aware of the positions articulated and that this document is regarded as part of the official record.

With every best wish to you and your colleagues for the New Year 2019.

Rere atu aku mihi ki a koe me o hoa mahi.

Heoi ano

Tipene O'Regan Kt.

Upoko Runaka o Awarua
Kaumatua o Kai Tahu

Proactive release



23 October 2018

Tania Wrightson
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Tēnā koe Tania

Independent Review of the Moutere Ihupuku / Campbell Island Marine Reserve

Thank you for the opportunity to provide feedback on the Draft Report from Envirostrat, the independent consultants engaged by the Department of Conservation (the Department) to report on the option to extend the Marine Reserve at Moutere Ihupuku / Campbell Island to include the entire coastal marine area. We provide this response to the Envirostrat Draft Report on behalf of Te Rūnanga o Ngāi Tahu (Te Rūnanga), and Awarua Rūnanga as mana whenua mana moana for the area.

Te Rūnanga o Ngāi Tahu

Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui, functioning as kaitiaki of the tribal interest. We respectfully request that the Department and the Minister of Conservation accord this response the status and weight due to the tribal collective, currently comprising over 60,000 members, registered in accordance with the Ngāi Tahu Claims Settlement Act 1998 (refer Appendix One below).

This response is also made on behalf of Awarua Rūnanga, the Papatipu Rūnanga of Ngāi Tahu with mana whenua mana moana for Moutere Ihupuku. Tā Tipene O'Regan has been involved in the Marine Reserve review process and in the preparation of this response.

The Ngāi Tahu takiwā incorporates the area of Te Waipounamu south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast, including the coastal marine area and the Exclusive Economic Zone adjacent to the seaward boundary (refer Appendix Two below).

In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring sustainable management of natural resources for future generations.

At all times, Te Rūnanga is guided by the tribal whakataukī: “*mō tātou, ā, mō kā uri ā muri ake nei*” (for us and our descendants after us).

The Envirostrat Draft Report

Te Rūnanga appreciates the opportunity to attend the presentation from Envirostrat at the Department’s Wellington office on 14 June 2018, and the direct engagement with the Department and the consultants on this matter. Our response to the Draft Report reiterates our concerns already expressed to you in those meetings.

Te Rūnanga supports the recommendation of the Draft Report, that the Minister of Conservation extend the area of the Marine Reserve at Moutere Ihupuku / Campbell Island to extend over the entire territorial sea.

However, Te Rūnanga asks that it be understood that this is a pragmatic position given the absence of any reliable, substantive, up-to-date information on the potential for a crab fishery to be established in the additional areas originally excluded from the Marine Reserve.

Te Rūnanga is concerned that the decision to extend the area of the Marine Reserve is dependent on 40-year-old research. Without adequate recent survey data to assess the extent of any potential crab fishery, any decision on the future status of the additional coastal marine area around Moutere Ihupuku / Campbell Island will be based not on scientific evidence but on assumptions, and on inferences drawn from the current Benthic Protection Area and Danish seine ban over the area. Lacking solid evidence, any such decision will by default be susceptible to the influence of the wishes and world views of interested parties including the conservation lobby groups.

Te Rūnanga does not support the assertion in the consultants’ Draft Report that, once the original decision was made to exclude the additional area from the Marine Reserve, the onus was solely on the fishing industry to undertake the necessary research into the possible viability of a crab fishery and potential impacts of such a future fishery on coastal marine ecosystems in that area. We are aware that through the intervening years a number of applications were made for research funding from the Crown to develop this information base. None of those applications was successful.

Te Rūnanga has already drawn the Department’s attention to major changes taking place in marine ecosystems around New Zealand due to climate change and the effects of large volumes of greenhouse gases on marine ecology. These include increased temperatures and acidification with significant impacts for a wide range of marine and coastal species, habitats and ecosystems. These changes will continue and only increase the importance of having up-to-date information as the basis for decisions.

Once again, we thank the Department for the opportunities to comment, and look forward to further engagement.

Nahaaku noa, nā

9(2)(a)


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APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

- i. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngāi Tahu understanding of the Crown’s responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

- ii. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu’s use, and to provide adequate economic and social resources for Ngāi Tahu.
- iii. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu’s use and ownership of such of their land and valued possessions as they wished to retain.
- iv. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying ‘Te Hapa o Niu Tirenī!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb ‘Te mate o te iwi’ (‘The malaise of the tribe’).
- v. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in

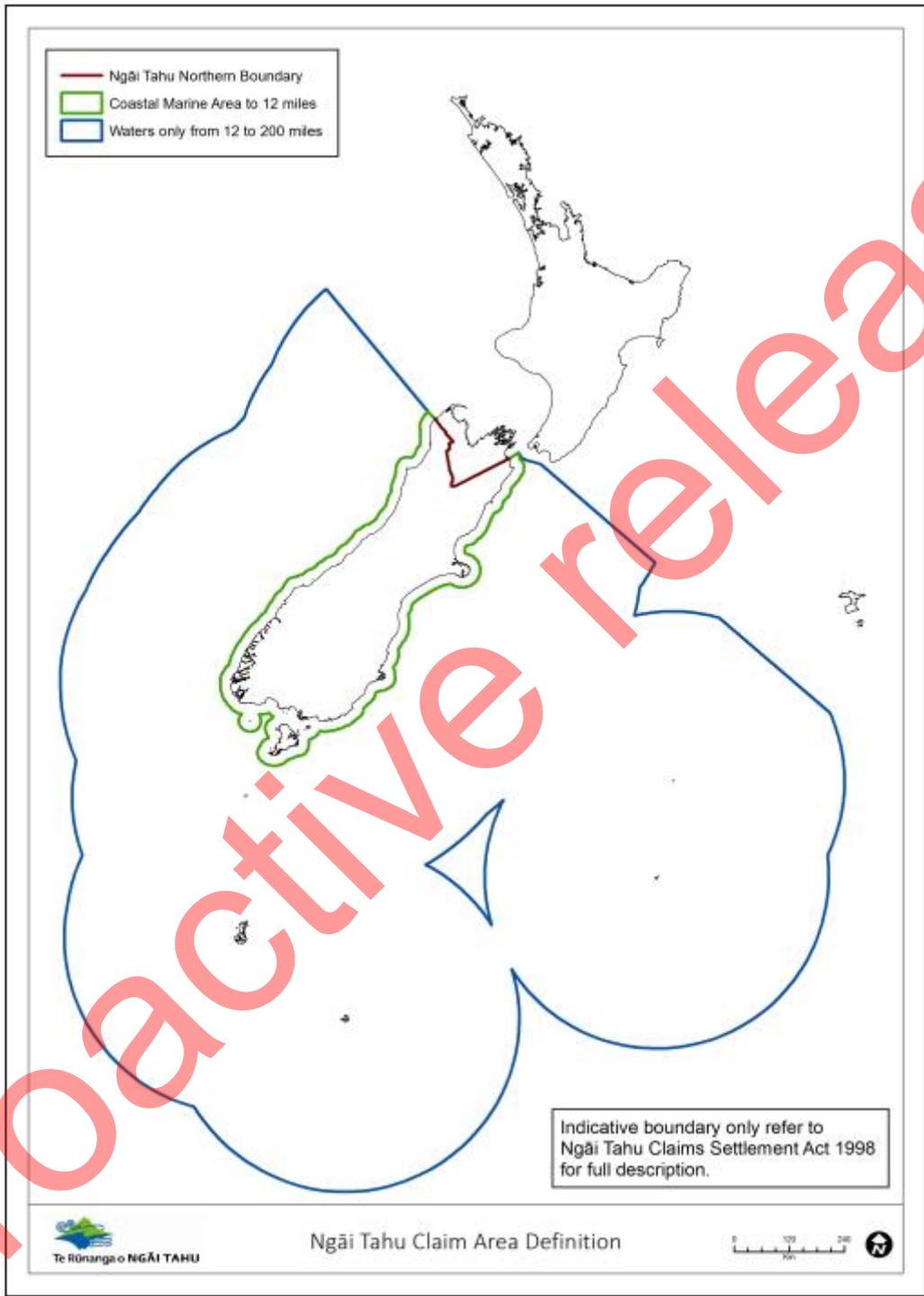
their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

- vi. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.
- vii. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.”

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APPENDIX TWO: NGĀI TAHU TAKIWĀ



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Attachment 2: Please note 19-B-0970-Attachment 2-Envirostrat Review Report is published here <https://www.doc.govt.nz/globalassets/documents/about-doc/news/issues/campbell-island-marine-reserve-review-report.pdf>

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