

13<sup>th</sup> Māruaroa/June

Marine Technical Support Officer  
Department of Conservation  
Private Bag 4715  
ÖTAUTAHI/CHRISTCHURCH

Tēnā koe,

Wairewa Rūnanga is a Ngai Tahu Papatipu Rūnanga as recognised in the First Schedule of the Ngāi Tahu Act 1996. There are approx 9,000 persons who can affiliate to Wairewa Rūnanga.

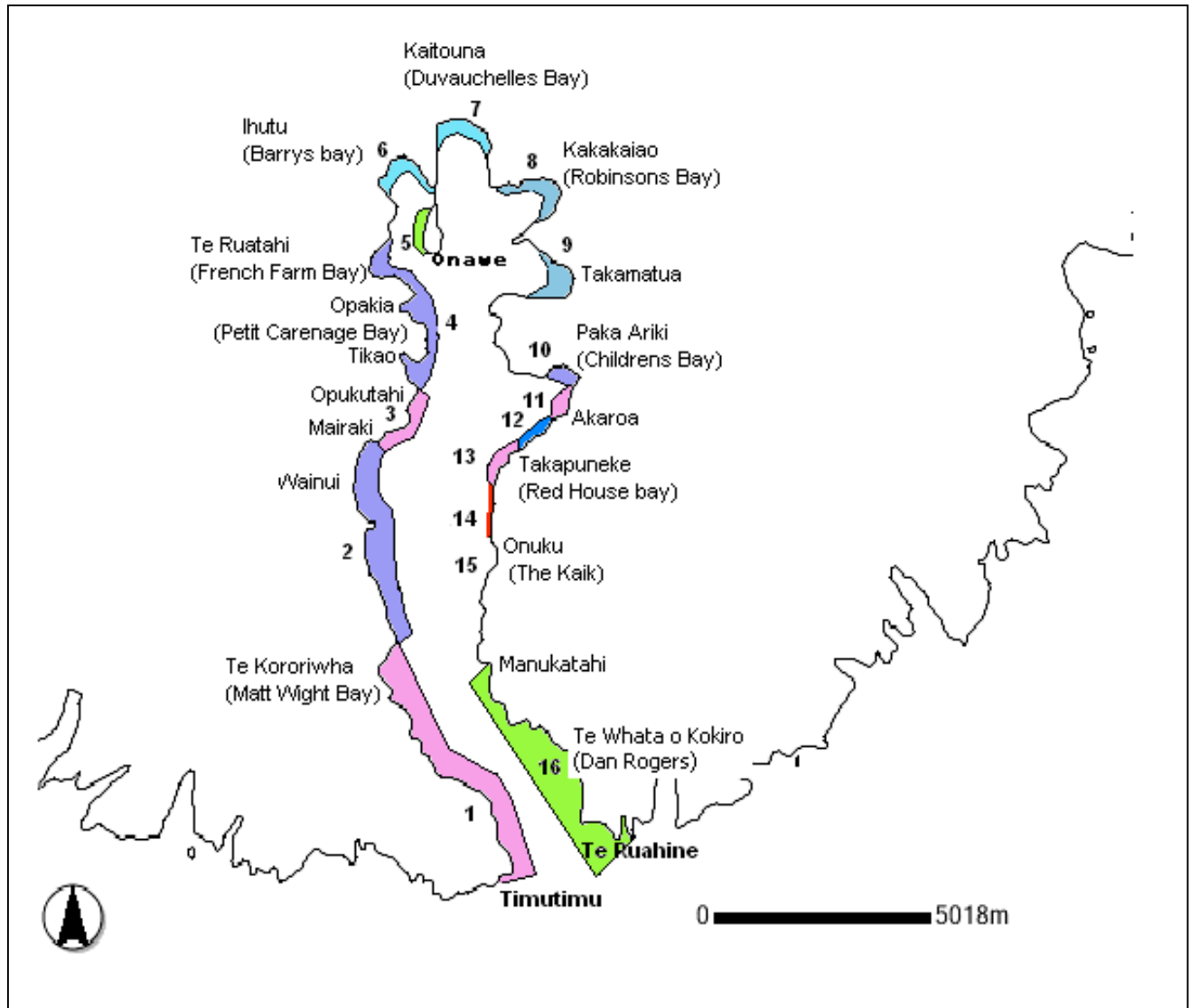
Wairewa Rūnanga strenuously objects to the establishment of a Marine Reserve in Dan Rogers.

Pollution and over fishing within certain areas of the Harbour have diminished the areas available within our traditional fishing grounds to gather mahika kai as demonstrated in the evidence provided to the Maori Land Court (MLC) 2003 Taiāpure Hearing. Akaroa Harbour has “customarily been an area of special significance... as a source of food and for spiritual and cultural reasons” to us as confirmed by the MLC Tribunal 2005 report and recommendations to the Minister of Fisheries. Further to the evidence supplied to the MLC and the tribunal’s report, we also supply the information that was outlined at the meeting with the Minister of Conservation, June 1<sup>st</sup> 2006 regarding the loss of our customary fishing along the shoreline of the harbour as outlined by John Panirau and Naomi Bunker.

From about the early 1940’s the people of Wairewa and Önuku (aka The Kaik) combined as one people and fished the harbour together. Since that time also, we have witnessed the loss of the luxury of being able to fish freely and almost with monopoly most of the shoreline of Akaroa harbour.

Sharing the fishing grounds with others is not a problem but losing an established customary fishing ground entirely is another matter. We have taught many a visitor how to ‘drag’ for flounder and show them where to gather mussels and then show them how to cook them. Together we have enjoyed and shared the resources within the harbour for a long, long time.

We would like to show what has happened to our resource over the years and will start with the western shoreline.



**2**

The Wainui area. Was once a good place to gather kütai, kaeo, püpü and paua and also at one time a good fishing ground for Moka (red cod). Köura were sometimes taken in this area as well. This is where we taught some local farmers how to drag for flounder. A number of holiday homes have sprung up over the years and the shoreline in this area is too readily accessible. Too many people fish the area now. One real concern is that

some people have been caught using piano wire to scrape everything from the rocks thus destroying an important part of the food chain.

### **3**

Although some parts of this area are still fishable, there is a small ancient urupä near the shoreline and a recent rubbish dump and more recently an under-water sewerage outlet. We will not fish this area now. Out from Mairaki and near Öpukutahi is a rua taniwha in which reside two taniwha (*Te wahine-Marukore* and her male escort *Te Rangi-hora-hina*) whose task is to protect all users of the harbour. Before the time of the rubbish dump and sewer outlet and when we wanted to fish these areas our elders would undergo certain rituals, principally karakia, before allowing us to proceed.

### **4**

Tikao to Te Ruatahi. Huangi, pipi, kina, tuatua and paua were taken from this area at one time. Sea horses were free to breed at Öpakia at that time but again this area has been frequented by people who use piano wire to strip the rocks bare of all life forms (and take away bucket loads of sea horses). Archaeological evidence has been found of early pre-European Mäori working with whale and shark in the area 4 as marked on the above map.

### **5**

Önawe Peninsula. Evidence of the seeding garden can still be seen along the western shoreline of this small peninsula. It provided the old pa site with a ready supply of kaimoana (probably mostly paua) and was perhaps the first 'sea farm' of the area. It is also evident that shell fish didn't propagate easily without assistance at any time. Önawe southward is protected by sea with an unobstructed view to the Akaroa Heads. It is protected northward by a narrow neck of land connecting it to the mainland, a strip of land so narrow as to allow single file passage only. East and west are flanked on both sides at low tide by thick sticky mudflats. This area was good for set netting and was well fished, however to sewage and over fishing we rarely fish this area now.

### **6 – 7 – 8 & 9**

From Ihutu to Takamätua. Mostly thick sticky mudflats in the bays. Whitebait in season in the streams flowing seaward and a known set netting area. Over the past 15-20 years the number of holiday homes have trebled and recreational fishing has increased proportionately. Shellfish do not appear to survive very well in this area and are mostly very, very small kütai. Takamätua used to be the exception producing good-sized kütai at one time. Again, we are reluctant to overfish the area.

### **10**

Paka Ariki (Childrens Bay). A bay at the northern most end of Akaroa Township. A good area for pätiki, manga and moka. Also good for kütai and paua. This is where the Akaroa County Council wanted to build a marina and the local Mäori, both Önuku and

Wairewa managed to dissuade them. Water skiing and pleasure boats have disturbed the customary flounder fishing in this area.

## 11

**Akaroa Township.** No kaimoana here. A sewer outlet is in this area as well.

## 12

This is the area near to the Akaroa boat sheds where the first verbal submissions for and/or against a Taiāpure in Akaroa Harbour were held with the Māori Land Court in session. Immediately alongside and southwards from the boatshed was once a good fishing area for pātiki and manga. Rock-oysters were also abundant. Over the past 15 – 20 years boat moorings for pleasure boats have taken precedence and customary fishing is no longer possible in this area.

## 13

### **Takapūneke.**

An area of important historic significance. An ancient Māori pā site used by the paramount Ngāi Tahu chief *Te Maiharanui* until it was sacked by the invader, Te Rauparaha. Near the top of the site and in a narrow gully running down through the pā site the Akaroa County Council established a public rubbish dump and at the base of Takapūneke at the shoreline, the same council built a sewerage plant. All this without consultation with the hapū of the area. The ancient Maori often built their pā sites close to an abundance of kai. That makes sense. Local hapū cannot and do not fish in this area now that it has been polluted. Close to Takapūneke is the Britomart Monument where an ancestor of the Ngāti Irakehu helped foil the French by assisting the timely raising of the Union Jack.

## 14

This particular area shown by a thick red line on the above map, is steep, hilly and inaccessible land in private ownership. It is not possible to fish except by boat.

## 15

### **Önuku**

This area, Önuku as far as Mänukatahi (the proposed northern boundary of the proposed Marine Reserve) is all that remains of the freedom we once enjoyed in regards to customary fishing if the proposed marine reserve goes ahead. A very, very small percentage of what we once had and what we have been using for generations before colonisation.

## 16

### **The area of the proposed marine reserve.**

The Māori name for this area – Te Whata o Kōkiro - explains more of what it means to Māori and other fishers than the name ‘Dan Rogers’ could ever do. It is a pantry, a

storehouse of kaimoana. Always has been, always will be. Throughout this submission we have mentioned only some of the species that we have gathered traditionally around the shoreline of Akaroa Harbour, there are many more not mentioned such as shark, moki, kina, groper etc.

In Māori tradition Te Whata o Kōkiro belongs to the people, to be used by the people and to feed the people. We will continue to fight and oppose a marine reserve to achieve this end.

We are a patient people as evidenced by the 14 years of debate, arguing, consultation and submissions that preceded the granting of a Taiāpure in Akaroa Harbour. This Marine Reserve will breach our treaty rights; it will breach our customary rights and will breach the rights of recreational fishers as well. We strongly oppose this concept of a marine reserve in the Dan Rogers area.

#### **17 Peni's Hat** (Not shown on the above map)

Taua Naomi mentioned a particular rock that lies out near the Harbour Heads. It is a black rock shaped very much like a bowler hat. Blue cod, terakihi and shark could be taken at or near this rock and the rock was also used as a navigation marker to the groper fishing grounds. Taua Naomi is 99% sure that the rock lies within the boundaries of the proposed marine reserve.

We also ask that the Minister of Conservation take the following matters into consideration.

Section 5(6)(e) of the Marine Reserves Act 1971 states that the Minister must uphold an objection (in this case the objection from Wairewa) if the Minister is satisfied that declaring the marine reserve would be contrary to the public interest.

We vehemently state that it is not in the public interest for the Minister to declare a marine reserve and effectively over-ride the taiāpure application (a component of a Treaty settlement provided to make better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi) that has been made for the same area – especially when the Taiāpure Tribunal of the Māori Land Court has found that the entire taiāpure application (not just the area that has been gazetted) meets all the statutory tests (i.e.: that the Dan Rogers area is an area of special significance to the Tangata Whenua, as a source of food and for spiritual and cultural reasons).

Section 4 of the Conservation Act 1987 states that the Act (and all the Acts listed in its First Schedule) must be interpreted and administered to give effect to the principles of the Treaty of Waitangi. Furthermore, section 10(a) of the TOW(FC)SA states that in accordance with the principles of the Treaty of Waitangi, non-commercial fishing rights

continue to give rise to Treaty obligations on the Crown – it could be strongly argued that these obligations apply equally to the Minister of Conservation.

Relevant Treaty principles include:

- Rangatiratanga – Tāngata Whenua exercising their traditional authority over fisheries resources and other taonga in accordance with manawhenua, manamoana.<sup>1</sup> It cannot be extinguished otherwise than by the free consent of the native occupiers.<sup>2</sup> The Crown is bound by the common law to give full recognition to customary rights.<sup>3</sup> The Crown assured them...their existing rights would be guaranteed, not only in terms of possession of their fishing grounds, but in the mana to control them.<sup>4</sup>
- Kaitiakitanga – Tāngata Whenua exercising their customary duty as kaitiaki over fisheries resources.<sup>5</sup>
- Partnership – A solemn compact between two parties (Tāngata Whenua and the Crown).<sup>6</sup> Legitimate acquisition of sovereignty in return for protection of chieftainship and property rights.<sup>7</sup> The Treaty imposed a duty upon the partners to act reasonably and in the utmost good faith.<sup>8</sup> The basic object of the Treaty was that two people would live in one country.<sup>9</sup>
- Active Protection – Active protection of the taonga of the Tāngata Whenua<sup>10</sup> to the fullest extent reasonably practicable<sup>11</sup> including Tāngata Whenua fishing rights.<sup>12</sup> Cannot extinguish the rights of Tāngata Whenua without their free consent.<sup>13</sup>

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<sup>1</sup> DOC, *Giving Effect to the Principles of the Treaty of Waitangi in the Work of the Department of Conservation* February 2001; *Muriwhenua Fishing Report* 1992, p187; and “taonga” includes all valued resources and intangible cultural assets (Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motonui - Waitara Claim*, 2<sup>nd</sup> ed, Wellington, Government Printing Office, 1989, p51)

<sup>2</sup> *R v Symonds* (1847) NZPCC 388

<sup>3</sup> *In re The Landon and Whitaker Claims Act 1871* (1872) 2 NZCA 41, 49; With regard to customary fishing rights, this was confirmed by *Te Weehi v Regional Fisheries Officer* (1986) and then altered by the fisheries settlement acts – replaced the common law customary right with statutory definition – refer to footnote 35 for more discussion on this point.

<sup>4</sup> Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motonui - Waitara Claim*, 2<sup>nd</sup> ed, Wellington, Government Printing Office, 1989, p51

<sup>5</sup> DOC February 2001

<sup>6</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 673

<sup>7</sup> *Ibid*, p641, 663; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motonui - Waitara Claim*, 2<sup>nd</sup> ed, Wellington, Government Printing Office, 1989, p52; Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols, Wellington, Brooker and Friend Ltd, 1991, Vol 1, p236.

<sup>8</sup> Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2<sup>nd</sup> ed, Wellington, Government Printing Office, 1989, p70; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 3<sup>rd</sup> ed, Wellington, Government Printing Office, 1996, p147; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 3<sup>rd</sup> ed, Wellington, Government Printing Office, 1996, p190-192; Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992*, Wellington, Brooker and Friend Ltd, 1992, p273.

<sup>9</sup> Waitangi Tribunal, *The Turangi Township Report 1995*, Wellington, Brookers Ltd, 1995, p289.

<sup>10</sup> *New Zealand Maori Council v Attorney-General*, p 664; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2<sup>nd</sup> ed, Wellington, Government Printing Office, 1989, p70; *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 544.

<sup>11</sup> Waitangi Tribunal, *The Mohaka River Report 1992*, 2<sup>nd</sup> ed, Wellington, GP Publications, 1996, p77.

<sup>12</sup> *Ngai Tahu Sea Fisheries Report 1992*, p270.

<sup>13</sup> *R v Symonds* (1847) NZPCC 388.

- Protection of the customary rights, aboriginal title and other rights inherent in the rangatiratanga of Ngāi Tahu Whānui<sup>14</sup>
- Kawanatanga – The Crown should provide laws and make related decisions for the community as a whole.<sup>15</sup>
- Duty to remedy past breaches – The Crown needs to avoid actions, which would prevent the redress of Treaty settlements and avoid creating further grievances.<sup>16</sup> The Crown has an obligation not to devalue the currency of the settlement – in respect of both the QMS and the customary fishing provisions.<sup>17</sup>

### **Tangata Tiaki**

In 2002 the Minister of Fisheries confirmed the appointment of the Wairewa Tangata Tiaki in the area from the northern bank of the Hakatere River, following the coast to Ounu Hau Point at Pohatu, excluding Te Waihora (Lake Ellesmere as defined as Quota Management Area ANG 13 in the Fisheries Act 1996) and its catchment, and excluding Lake Forsyth, then due east to the limit of the South Island fisheries waters, then following the boundary of the South Island fisheries waters to a point due east of the Hakatere River, and finally back to the northern bank of the Hakatere River. Notice Number: 8389

The Minister confirmed the Tangata Tiaki/Kaitiaki of Wairewa Rūnanga, being the representative of tangata whenua holding manawhenua manamoana over the area/rohe moana, as Steve Tuuta, Rei Simon, Tony Edwards, Theo Bunker, Wayne Robinson and Robin Wybrow.

This means Wairewa Rūnanga Tangata Tiaki are authorized to issue permits for customary food gathering in this area, which includes the area we know as Te Whata o Kōkiro aka Dan Rogers.

This process was open and transparent and entered into in good faith.

We believe the proposed establishment of a Marine Reserve at Te Whata o Kōkiro aka Dan Rogers will seriously undermine and transgress the Minister of Fisheries agreement under the customary regulations. We wonder how this can be reconciled.

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<sup>14</sup> Tribal Policy on Principles of a TRoNT Treaty Framework – Refer to January 2002 TRoNT Minutes

<sup>15</sup> *New Zealand Maori Council v Attorney-General*, p 716.

<sup>16</sup> DOC February 2001

<sup>17</sup> MFish, *The Crown's Fisheries Obligations to Māori – An Overview*. 2000.

It is important to reiterate once more that, based on the information provided by Wairewa Rūnanga, Ōnuku Rūnanga and Te Rūnanga o Kōkourārata throughout the taiāpure application process, the Taiāpure Tribunal of the Māori Land Court confirmed the area occupied by the marine reserve application meets the statutory test for a taiāpure set out in section 174 of the Fisheries Act 1996 – the area is of special significance to the local hapū for spiritual and cultural reasons and for customary food gathering purposes. They stated that if the Dan Rogers marine reserve application is declined by Ministers (for whatever reason) then this area should then be included within the taiāpure. It is our view that Ministers cannot extinguish the customary fishing rights of us, the resident hapū and act consistently with the TOW(FC)SA.

Once again we reiterate our strong opposition to the establishment of a Marine Reserve at Te Whata o Kōkiro for the reasons outlined above. We also believe the taiāpure management tool provides adequate management options for this area.

Nāhaku noa,  
Nā

Rei Simon  
*Secretary*  
*Customary Fisheries Team Leader*  
**Wairewa Rūnanga**

CC: Hon Jim Anderton, Minister of Fisheries  
Hon Parekura Horomea, Associate Minister of Fisheries, Minister of Māori Affairs  
Hon Mahara Okeroa, Associate Minister of Conservation  
Russell Burnard, Allocations & Regulatory Services, Ministry of Fisheries  
Carl Ross, Customary Relationship Manager, Ministry of Fisheries  
Joe Wakefield, Pouhononga ki Kai Tahu, Ministry of Fisheries  
Nigel Scott, Customary Fisheries, Te Rūnanga o Ngāi Tahu