

## chapter nineteen



Ngātiwai and marine reserves

Ngātiwai presently has four marine reserves within its rohe (territory). New Zealand's first marine reserve, the Cape Rodney-Okakari Point reserve at Leigh, was created during 1975 in the rohe of Ngātiwai's hapū, Ngāti Manuhiri. The site of the reserve, surrounding Motu Hawere (Goat Island), is significant to Ngātiwai as the place of landfall of the historic waka, Moekakara. Although it has been nearly 40 years since the creation of the marine reserve, there has been no direct involvement of the tāngata whenua in its management, and no benefits specific to the hapū or iwi. Recently a second marine reserve in the immediate vicinity has been created at Tawharanui.

## Poor Knights Islands marine reserve

When the Poor Knights Islands marine reserve was proposed, Ngātiwai, in correspondence with the Department of Conservation, did not oppose it in principle but insisted that their customary rights in the reserve must not be extinguished. The establishment of the reserve took place in 1981, but there was no explicit recognition of the tribe's customary right in the gazettal.

Ngātiwai have been very protective of their customary rights. The Ngātiwai Trust Board, on clear instruction from the Ngātiwai iwi, refused to sign the Sealords deal for settlement of fisheries assets because Ngātiwai's customary rights would be compromised. When the Sealords deal was enshrined in statute, Ngātiwai with two other iwi, challenged through litigation the impact on their customary rights. The case was lost, but it has enabled Ngātiwai to assert that it has never ceded customary fishing rights.

Subsequent to the gazettal of the Poor Knights marine reserve in 1981, recreational fishing was permitted in more than 95 per cent of the reserve area, and this also enabled iwi to fish in the area under the recreational fisheries regulations. In 1997, the Minister of Conservation announced that the entire marine reserve would be closed to fishing.<sup>1</sup> Before the new regulations could come into effect, Ngātiwai challenged the Minister's decision in the High Court. The Court held that the Minister's decision had been unlawful *"to the extent [and in no other respect] that it related to customary Māori fishing interests"* and directed the Minister to reconsider. This was on the basis that the iwi *"had a legitimate expectation that its customary rights should have been considered"*.<sup>2</sup>

The High Court decision highlighted the fact that the Marine Reserves Act does not explicitly address Māori customary fishing rights. If provision was to be made

for their continuance within marine reserves, this could only be achieved through the Minister of Conservation exercising his or her general discretion under section 3(3) if the Act to authorise fishing within the reserve through a *Gazette* notice. The Minister can only authorise such fishing after having regard to the purpose of marine reserves which is 'preserving' the areas 'for the scientific study of marine life'.

Soon after the High Court decision, the Northland Conservancy asked Ngātiwai to identify the customary rights in question, so that the Department could appropriately provide for them. However, determining what customary rights are in any instance is not a simple matter. Although considerable commentary on customary rights has been written, for example in relation to fisheries rights and foreshore and seabed rights, there has been no systematic determination of the actual nature and extent of those rights.

Customary rights are determined in practice through tikanga, are variable and changeable, and seldom have written records. It would have been no simple exercise for Ngātiwai to codify those rights in relation to the Poor Knights marine reserve. A later attempt was made to resolve the issue through a longer process, but this also failed to produce a result, and the customary rights associated with the marine reserve remain undetermined today.

## **Aotea (Great Barrier Island) marine reserve proposal**

In 1989, the Department of Conservation initiated informal discussions about marine protection around Aotea (Great Barrier Island), again within Ngātiwai's rohe. In 1994, a draft application was prepared which covered a small area of sea adjacent to the north-east coastline of the island.<sup>3</sup> Tāngata whenua agreed to this in principle. The area was not one where they often fished, but was open to commercial fisheries. It was felt that closure of that area would not affect customary fishing rights unduly, and had potential benefits. This application was subsequently not pursued due to competing Departmental priorities.

In 2000, the Department revived the idea of a marine reserve at Aotea and recommenced consultation and investigations. In August 2004, a proposal was notified for a much larger marine reserve, which extended along around half of the east coast of the island, and out to the 12 nautical mile extent of the territorial sea. This would have had significant impacts on the customary fishing rights of

Ngāti Rehua, the hapū on Aotea. Despite opposition from Ngātiwai, the Department decided to progress the application.

Ngātiwai expressed concern to the Ministry of Fisheries, and held a series of hui throughout the rohe. A report from those hui was sent to the Minister of Fisheries. As well as the general issues of customary fishing rights, that report emphasised the importance of access to traditional fishing grounds for an island community. As a result, the Minister declined to give his concurrence, and the marine reserve application failed.

The Ngātiwai responses to marine protection illustrate the issues that arise for iwi in response to marine protection proposals. Customary rights can have high importance, but their nature is little understood by most non-Māori, and are also not easy for Māori to articulate. Only tāngata whenua have interests in all formally defined fishing sectors – customary, commercial and recreational; all of which can be impacted by marine protection measures. Further, iwi recognise the tension between commercial drivers and kaitiaki perspectives. Most other parties addressing marine protection projects come from sector groups such as commercial fishing or environmental non-governmental organisations. Iwi often need to resolve and reconcile internal tensions across these issues before addressing them publicly.

## Further marine protection proposals

Currently Ngātiwai are responding to two further marine protection proposals in their rohe – conversion of a marine park at Mimiwhangata into a marine reserve; and a marine park with restricted take in the area between the Bay of Islands and Whangarei Harbour. In each case creative solutions to conflict resolution are possible and need to be sought.

## Endnotes

1. Carnachan H, 2002, 61
2. Gregory A, 1998, 'Don't be tempted to fish, iwi told', *New Zealand Herald*, 24 December, [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=627](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=627) (accessed 18 August 2012)
3. Auckland Conservancy, 2004, 11