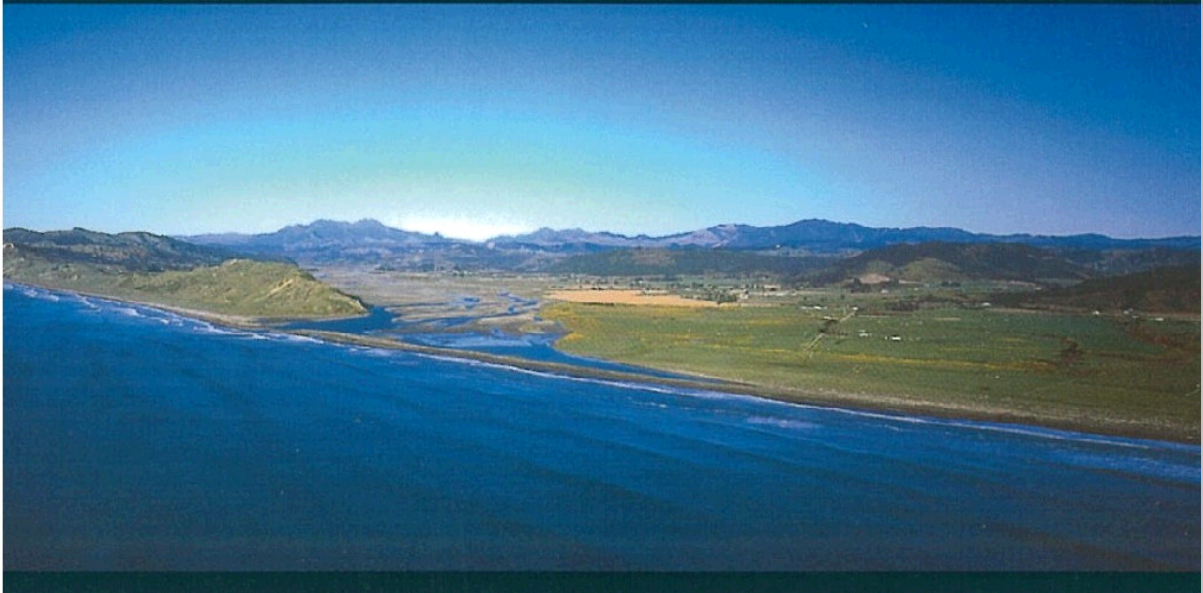


Te Runanga O Ngati Porou



Submission to
The Fisheries and Other Sea-Related
Legislation Select Committee
on the
Foreshore and Seabed Bill

19 July 2004

Contact:

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PART A: INTRODUCTION

1. Introduction

- 1.1. This submission is by Te Runanga o Ngati Porou ("**Runanga**") in relation to the Foreshore and Seabed Bill ("**Bill**").
- 1.2. The Runanga's contact address is:

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- 1.3. The Runanga requests that its representatives be permitted to appear before the Select Committee to speak to this submission. The Runanga proposes that the following people to be heard:
 - (a) Mr Apirana Mahuika, Chairman, Te Runanga o Ngati Porou;
 - (b) Ms Amohaere Houkamau, Chief Executive Officer, Te Runanga o Ngati Porou; and
 - (c) any Ngati Porou pakeke (elders) and spokespersons nominated by their respective whanau, hapu and marae.
- 1.4. The Runanga's preference is to present its submission to the Select Committee in the Ngati Porou rohe (territory), on the East Coast of the North Island. The Runanga therefore requests that the Select Committee consider convening in the East Coast region to hear the Runanga's oral submissions and the oral submissions of other submitters from the Ngati Porou rohe. The Runanga would be happy, in conjunction with various whanau, hapu and marae, to liase with the Select Committee as to the most appropriate venue(s).

PART B: INTRODUCTION TO TE RUNANGA O NGATI POROU

2. Te Runanga o Ngati Porou

- 2.1. The Runanga was established on 1 September 1987 by the Te Runanga o Ngati Porou Act as a body corporate operating as a Maori Trust Board within the meaning and for the purposes of the Maori Trust Boards Act 1955.
- 2.2. The Runanga's principal function is to administer its assets for the general benefit of its beneficiaries. The beneficiaries of the Runanga are "nga uri o nga hapu o Ngati Porou mai Potikirua ki Te Toka a Taiiau" ("the descendents of Ngati Porou hapu from north-west East Cape to Gisborne Harbour"). A map showing the rohe of Ngati Porou is annexed to this submission as "**Appendix 1**".
- 2.3. Ngati Porou is the second largest iwi in New Zealand, with a population of 63,000 (*Census 2001*).

PART C: EXECUTIVE SUMMARY

3. Executive summary

- 3.1. The Runanga affirms Ngati Porou's position in terms of its undisturbed and uninterrupted relationship with the takutaimoana (foreshore and seabed).
- The whanau and hapu of Ngati Porou own approximately 90% of the coastal lands within their rohe (territory) and therefore exercise kaitiakitanga (guardianship), tantamount to ownership and control, over the vast majority of the takutaimoana within their rohe.
 - Ngati Porou has, in the past, and continues, in the present, to observe and exercise the full range of customary rights in respect of the takutaimoana in accordance with Ngati Porou tikanga (lore).
 - The rights of Ngati Porou in the foreshore and seabed amount to customary ownership at common law and, through the operation of the relevant provisions of Te Ture Whenua Maori Act 1993, would enable Ngati Porou to obtain title to at least 90% of the takutaimoana in their rohe.
 - To date, more than 20 Ngati Porou groups have applied to the Maori Land Court for determination of the customary ownership of the takutaimoana.
 - The proposal to vest the ownership of all of the takutaimoana in the Crown (except those parts of the foreshore and seabed for which a Land Transfer Act title exists or is in the process of being granted) ignores the special position of Ngati Porou and will extinguish their rights in respect of the takutaimoana, in breach of the Treaty of Waitangi.
 - The proposal to limit the jurisdiction of the Maori Land Court by restricting the Court's ability to hear applications for Maori customary title will deny Ngati Porou due process. This breaches the Treaty of Waitangi and the basic principles in our legal system that require observance and protection of citizens' rights.
 - The assertion of Crown ownership and accompanying extinguishment of Ngati Porou rights will serve to increase the control exercised by the Gisborne District Council in respect of the takutaimoana within the Ngati Porou rohe. The vesting of this level of control in the Council is inconsistent with the nature and extent of the rights currently observed and exercised by Ngati Porou. It is also at odds with the ongoing exercise by Ngati Porou of mana motuhake, mana atua, mana moana, mana whenua and mana tangata within its rohe.
- 3.2. The Ngati Porou position is not, and has never been, about trying to gain some greater right or advantage. What Ngati Porou enjoy is a full range of rights in the takutaimoana. The strength of these rights is reflected in the ability of Ngati Porou to obtain title under the current law. The position of Ngati Porou has always been to simply protect and maintain its takutaimoana rights.

PART D: THE NGATI POROU POSITION

4. The basis of the Ngati Porou position

Ancestral Signatures

*Ko taku upoko ki tuawhenua
Ko aku matimati ki te huka o te tai*

- 4.1. This quote comes from Rerekohu, a tipuna (ancestor) who lived at Kawa Kawa mai Tawhiti (now Te Araroa) during the late 17th and early 18th centuries. An ope taua (war party) approached the rohe of Rerekohu, intending to travel through that area to the rohe of Te Whanau a Apanui. Rerekohu advised the ope taua to find another way, saying:

*My head lies landward;
my toes are stretched out to the waves breaking on the sea.*

- 4.2. This was a declaration of his authority and one that the ope taua could not ignore. As a result, the ope taua left the rohe of Rerekohu, travelling the long way around to their destination.
- 4.3. This incident is one example of the relationship that our tipuna had, and the authority that they exercised, over the whenua (land) and takutaimoana. There are many others.
- 4.4. These are what we refer to as the “signatures” of our tipuna. These “signatures” are in some cases reflected in the names of places such as boundary markers like “Te Toka a Taiau” (at the Turanagui River Mouth) and “Kopua Kanae” (at Rangitukia), coastal urupa (cemeteries) like Te Rangi Wehe Rua and Te Umu Tao Roa (both at Tuparoa) and fishing grounds like Kamokamo (at Whareponga). They are also reflected in the continued recollection by Ngati Porou of the coastal areas where various battles were fought by our tipuna. Examples include “Te Maniaroa” (on the beach stretching from the Te Araroa Motor Camp back to the Karakatuwhero river mouth), “Te Roro Huka Tai” (on the beach adjacent to Iritekura marae at Waipiro Bay) and “Taitimuroa” (on the beach at Akuaku).
- 4.5. A further example of the relationship with the takutaimoana can be found in the fact that numerous Ngati Porou pa were located adjacent to the takutaimoana. Today, those pa are no longer occupied, but a large number of Ngati Porou marae remain in coastal areas, immediately adjacent to the takutaimoana. These marae are:

Tuwhakairiora	Wharekahika
Pikitanga	Punaruku
Hinerupe	Te Araroa
Matahi o te Tau	Horoera
Ohinewaiapu	Rangitukia
Hinepare	Rangitukia
Pokai	Tikapa
Tu Auau	Reporua
Umuariki	Tuparoa
Ruataupare	Tuparoa
Te Poho o Materoa	Whareponga
Taharora	Waipiro Bay
Kiekie	Waipiro Bay
Iritekura	Waipiro Bay
Te Aotawarirangi	Waima
Waiparapara	Tokomaru Bay

Pakirikiri	Tokomaru Bay
Tuatini	Tokomaru Bay
Hinetamatea	Anaura Bay
Te Amowhiu	Puketawai
Te Rawheoro	Tolaga Bay
Hauti	Tolaga Bay
Whitireia/Wahoterangi	Whangara

- 4.6. Marae are the focal points of Ngati Porou communities. The fact that these important places are found overlooking the takutaimoana is indicative of the ongoing importance of the takutaimoana to Ngati Porou whanau and hapu.

Retention of Relationship and Authority

- 4.7. The relationship and authority of Ngati Porou tipuna to the takutaimoana has been passed down and remains vested today in the whanau and hapu of Ngati Porou, who continue to exercise undisturbed and uninterrupted authority over the takutaimoana.
- 4.8. The continued existence of the relationship and authority of Ngati Porou whanau and hapu over the takutaimoana is reflected by the fact that Ngati Porou own approximately 90% of the coastal lands within their rohe.
- 4.9. While there is typically access to the coast, not all of the access ways are public roads and the relevant whanau and hapu reserve to themselves the right to deny access. Although this right is rarely exercised, there have been recent instances where this has occurred at Whangara (where it is understood that the proposed purchaser of a section of land was advised that he would not be granted access to the beach by the Whangara B5 Incorporation) and Te Kautuku (where the Haha Station has said that it will no longer allow beach access).
- 4.10. Ngati Porou has, in the past, and continues, in the present, to observe and exercise the full range of its customary rights in respect of the foreshore and seabed in accordance with Ngati Porou tikanga.
- 4.11. Members of Ngati Porou are approximately 30% of the total Gisborne/East Coast population (*Census 2001*). Ngati Porou whanau and hapu have maintained, managed and cared for the takutaimoana within their rohe, and continue to do so, with minimal input or interference from outside groups, including the Gisborne District Council.
- 4.12. Whanau and hapu members maintain the kapata kai (food resources) of their respective whanau and hapu. They monitor the take from these areas and berate errant commercial and customary fishers. In more recent years the whanau and hapu of Ngati Porou have taken to imposing and enforcing rahui (customary prohibitions) over various coastal areas. In the 12-month period prior to the filing of this submission, the Runanga is aware that rahui have been in place at Tokomaru Bay, Waipiro Bay, Whareponga, Horoera and Wharekahika (Hicks Bay). These rahui are publicly notified and are enforced by local whanau and hapu members.
- 4.13. In addition to rahui, Ngati Porou whanau and hapu continue to observe and exercise their various tikanga in relation to the takutaimoana.
- 4.14. Examples of the tikanga that the whanau and hapu of Ngati Porou observe include rules such as seeking the consent of local whanau and hapu before fishing within their rohe. They also include the continued exercise of customary fishing rituals, such as those associated with the taking of kahawai at the mouth of the Waiapu River.

PART E: SUBMISSION ON THE BILL

5. Vesting in Crown Ownership

- 5.1. As noted, Ngati Porou own approximately 90% of the coastal lands in their rohe. Ngati Porou therefore exercises kaitiakitanga, tantamount to ownership and control, over the vast majority of the takutaimoana in its rohe. Also as noted, and consistent with that ownership and control, Ngati Porou continues to observe and exercise a full range of rights in the takutaimoana.
- 5.2. Because of the extensive exercise of ownership and control, Ngati Porou would, under the common law and Te Ture Whenua Maori Act 1993 (in its current form), obtain title to at least 90% of the foreshore and seabed in their rohe. This title would be communally owned by the whanau and hapu of Ngati Porou and should be vested in the names of the tipuna of the relevant whanau or hapu.
- 5.3. Clause 11(1) will vest the full legal and beneficial ownership of the takutaimoana in the Crown as its absolute property. This proposed vesting ignores the extent of the authority that Ngati Porou exercises over the takutaimoana. It will extinguish the rights of Ngati Porou whanau and hapu in the takutaimoana, which are tantamount to ownership and control. In effect, those rights will be confiscated.
- 5.4. The assertion of Crown ownership and accompanying extinguishment of Ngati Porou rights will also serve to increase the control exercised by the Gisborne District Council in respect of the takutaimoana within the Ngati Porou rohe. The vesting of this level of control in the Council is inconsistent with the nature and extent of the rights currently observed and exercised by Ngati Porou. It is also at odds with the ongoing exercise by Ngati Porou of mana motuhake, mana atua, mana moana, mana whenua and mana tangata within its rohe.

6. Due Process

- 6.1. The Court of Appeal, in the *Ngati Apa* decision, stated that Crown ownership of the takutaimoana could not be assumed, and that Maori could apply to the Maori Land Court for the determination of Maori customary title in the takutaimoana. As a consequence of this ruling, Ngati Porou whanau and hapu have filed applications in the Tairāwhiti Registry of the Maori Land Court for investigation of customary title in the takutaimoana around the East Coast.
- 6.2. Ngati Porou believe that Parliament should support this due process (and indeed urges them to do so). Until the Maori Land Court's process is completed, the Government and Parliament cannot and should not assume that ownership of the takutaimoana resides in the Crown.
- 6.3. Clause 29(1) of the Bill acknowledges that Ngati Porou whanau and hapu will be losing something as a result of the vesting of ownership in the Crown. That is because the High Court may, on the application of a group, make a finding that the group would, but for the vesting of the full legal and beneficial ownership of the takutaimoana in the Crown, "have held territorial customary rights to a particular area of the public foreshore and seabed at common law".
- 6.4. These "territorial customary rights" are what would, at common law, amount to a right to exclusive occupation and possession of a particular area in the takutaimoana. That is akin to the rights that Ngati Porou whanau and hapu currently exercise in relation to the takutaimoana.

7. Access to Justice

- 7.1. Clauses 9(1) and 10(1) remove the current jurisdiction of the High Court and Maori Land Court to determine the status of, and make vesting orders in relation to, the takutaimoana. This means that Ngati Porou whanau and hapu are being denied the right to go to the Court to get determination as to whether they have customary title in the takutaimoana.
- 7.2. Under the Bill, Ngati Porou whanau and hapu may apply for “ancestral connection” (clauses 39, 40) or “customary rights” orders (clauses 41-43). It is through these mechanisms that the Bill proposes to provide for those interests that Maori have in the takutaimoana.
- 7.3. In terms of the recognition of “ancestral connection”, the shortcoming, insofar as Ngati Porou is concerned is that the rights that the Bill attaches to the recognition of “ancestral connection” are limited to rights of participation in decision-making processes. These participation rights are significantly weaker than the rights that Ngati Porou currently enjoy and fall well short of the ownership interest that Ngati Porou has under the current law.
- 7.4. In terms of the proposed customary right orders, what is proposed by the Bill (protection against significant adverse effects for certain discrete rights) is also significantly weaker than the rights that Ngati Porou currently enjoys and falls well short of the protection that would be available to Ngati Porou through the confirmation of ownership under the current law.

8. Rejection of One Size Fits All Approach

- 8.1. The Bill is a “one size fits all” solution. That is not an appropriate approach because iwi are not all the same, in terms of:
 - (a) their historical circumstances;
 - (b) the extent to which they have retained and continue to occupy their coastal lands and the subsequent ability to interact with and continue to exercise authority over the takutaimoana; and
 - (c) the extent to which they actually continue to exercise authority over the takutaimoana.
- 8.2. The Runanga therefore opposes the proposal in the Bill to, at least as a starting point, deal with the takutaimoana on a “pan-Maori” or “pan-iwi” basis. Such an approach ignores Ngati Porou’s special position. History has also shown that a “pan-Maori” or “pan-iwi” approach to dealing with customary rights (such as the fisheries settlement) is invariably fraught and problematic. Iwi must be treated by reference to their own particular circumstances, and be able to make decisions for themselves and take responsibility for those decisions.

9. Breach of recognition of Te Tiriti o Waitangi etc

- 9.1. For the various reasons set out above, the Bill is contrary to Te Tiriti o Waitangi.
- 9.2. To the extent that Maori are being denied due process, the Bill is also contrary to the basic principles in our legal system that require observance and protection of citizens’ rights.

PART F: CONCLUSION

10. Conclusion

*E kore te mana tipuna e waimeha. He mana tuturu mo ake tonu.
(Ancestral mana never diminishes. It endures forever).*

- 10.1. The Ngati Porou position is not, and has never been, about trying to gain some greater right or advantage. What Ngati Porou enjoy is a full range of rights in the takutaimoana. The strength of these rights is reflected in the ability of Ngati Porou to obtain title under the current law. The position of Ngati Porou has always been to simply protect and maintain its takutaimoana rights.
- 10.2. Ngati Porou does not accept that the ownership of the takutaimoana should be vested in the Crown.
- 10.3. Ngati Porou through its various whanau and hapu has a major interest in this debate because of the unique circumstances of our relationship with the takutaimoana.
- 10.4. Any step by the Crown to vest ownership of the takutaimoana in itself, while reserving to Ngati Porou only limited rights to participate in decision-making processes, and protecting only limited customary usage rights, will be a major diminution of the rights that Ngati Porou hold currently in respect of the takutaimoana.
- 10.5. The Runanga, and various whanau and hapu of Ngati Porou, have taken steps over the last year to express their position in respect of the takutaimoana:
 - (a) at the Government hui at Whangara in September 2003;
 - (b) by participating in judicial processes, including the initial stages of the Waitangi Tribunal inquiry and the Maori Land Court investigation process (which is ongoing); and
 - (c) in direct discussions with the Government.
- 10.6. The Runanga has spent significant sums in taking steps to ensure that Ngati Porou whanau and hapu maintain the position that they currently enjoy. That cost has been met from the Runanga's own resources. In addition to the financial costs, the Runanga's representatives and individual hapu members have contributed their time to arrange and attend hui and wananga, to prepare evidence, to assist in the writing of submissions, and to attend various judicial fora. It is wrong that Ngati Porou must spend such resources to protect what they currently have and to prevent the Crown from taking it away.

Appendix 1 - Map

