

## Ahu Moana: the Aquaculture and Marine Farming Report

“We find that Māori  
have a broad  
relationship with the  
coastal marine area  
and that, as an  
incident of that  
relationship, Māori  
have an interest in  
aquaculture, or more  
particularly marine  
farming”

- *Ahu Moana: the  
Aquaculture and Marine  
Farming Report (Waitangi  
Tribunal, WAI 953,  
2002) pg 76*



**Damian Stone - Senior Solicitor.**  
Damian acted as counsel for Te Rūnanga  
o Ngāi Tahu before the Tribunal.

Just before Christmas 2002, the Waitangi Tribunal released a pre-publication copy of its report, “Ahu Moana: the Aquaculture and Marine Farming Report” (the **Report**), on claims made by a number of iwi regarding aquaculture law reforms developed and proposed by the Crown. The Report contains several findings and recommendations, which will be of interest to all iwi.

### Background to the Report

Claims were filed with the Tribunal by several parties – including Ngāti Kahungunu, Ngāti Whātua, Ngāi Tahu, Ngāti Koata, Te Atiawa and Ngāti Kuia – on proposed reforms of the law governing marine farming and aquaculture. Bell Gully acted for Te Rūnanga o Ngāi Tahu and made submissions to the Tribunal.

The reforms to the aquaculture and marine farming regime had been proposed by the Crown to remedy a number of inadequacies with the current legislative system.

Under the current system, marine farmers must obtain both a coastal permit from local authorities to occupy coastal space and a marine farm licence from the Ministry of Fisheries, a time-consuming and costly process for applicants. In addition, it was considered that the current “first in, first served” basis was no longer appropriate for the allocation of coastal space.

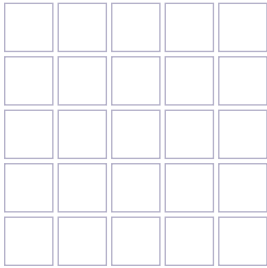
### The nature of the claims

The claimants sought recognition of their interests in the coastal marine area, including an interest in aquaculture. The claimants submitted that marine farming was an incident of iwi rights as customary owners of the coastal marine area and as guaranteed by Article II of the Treaty of Waitangi (the **Treaty**).

The claimants filed evidence in support of their claims, including evidence of whakapapa, customary practices associated with the coastal marine area, and the nature and extent of iwi participation in aquaculture (from both traditional and contemporary perspectives).

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**David Tapsell - Partner**

Claimants argued that in the proposed reforms the Crown:

- failed to have regard to iwi interests in the coastal marine area;
- did not investigate the extent of those interests; and
- did not consult sufficiently with iwi on the proposed reforms.

The claimants also submitted that the Crown’s proposed protection mechanisms were not adequate to protect Māori interests in the coastal marine area.

#### **The Crown’s response**

The Crown recognised that iwi have an interest in the coastal marine area but submitted that the Crown did not know and had not been informed of the extent of that interest.

The Crown also argued that mechanisms within the proposed

reforms would provide for Māori interests to be recognised at a later date when the extent of those interests were known. The Crown argued that the reforms were necessary and should not be delayed until Māori interests were identified.

#### **Jurisdiction of the Tribunal**

The Tribunal considered that it was within its jurisdiction to look into iwi claims, as the relevant Māori interests in the coastal marine area had not been settled by the 1992 fisheries settlement (which related only to commercial fishing interests and did not include aquaculture).

#### **Tribunal findings**

The Tribunal found that Māori do have an interest in the coastal marine area, which extends to an interest in aquaculture and marine farming. The Tribunal found that in its proposed reforms the Crown had not adequately taken into account Māori interests in the coastal marine area.

#### **Breach of the principles of the Treaty of Waitangi**

The Tribunal found that the reforms breached at least four Treaty principles. In relation to rangatiratanga as guaranteed by Article II of the Treaty, the Tribunal concluded that the reforms presented too many uncertainties and

demonstrated insufficient regard to Māori interests. It could not be said that, in Treaty terms, the Crown had done what it could to ensure that rangatiratanga had been provided for.

In relation to the Crown's duty to actively protect Māori interests, the Tribunal stated that it was not clear how the Crown could adequately protect and fulfil its obligation without having in place some mechanism to fully investigate the Māori interest in aquaculture and the coastal marine area in general.

In relation to the Crown's duty to consult with Māori, the Tribunal noted that, having received submissions, the Crown substantively changed the proposal favouring the establishment of aquaculture marine areas and that the final result was very different from the initial discussions with Māori. The Tribunal found that the Crown must go back and discuss the matter further with Māori if a policy significantly changes after consultation.

In relation to the principle of redress, the Tribunal found that if the full nature and extent of interests in the coastal marine area was not known, a mechanism was needed to ensure that the Crown can, in the future, provide redress and that further work was needed to discharge the Crown's obligations.

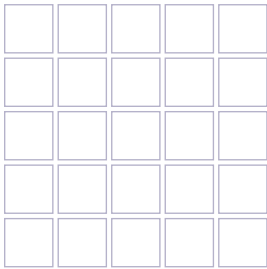
### Findings and recommendations

The Tribunal found that the Crown's proposed protection mechanisms went some way towards addressing claimant concerns, but needed further work.

The Tribunal recommended that the Crown establish a mechanism for consultation and negotiation with Māori, including the claimants, facilitated by Te Ohu Kai Moana. The Tribunal recommended that the parties use such a mechanism to discuss:

- a process for investigating the nature and extent of the Māori interest in marine farming;
- a process for agreeing on the mechanism needed to protect the Māori interest in marine farming, including a mechanism for preserving capacity to intervene once the full nature and extent of that interest is defined;
- a process for ensuring appropriate Māori participation in the development of aquaculture marine areas and the associated tendering process; and
- a mechanism for preserving the Crown's capacity to meet its Treaty obligations in the short term, until such time as the longer term planning issues are dealt with.

“The Tribunal recommended that the Crown establish a mechanism for consultation and negotiation with Māori, including the claimants, facilitated by Te Ohu Kai Moana.”



### Conclusion

As the Tribunal's Report was only released shortly before Christmas, the Crown has not yet advised claimants whether it will follow the Tribunal's recommendations. The Tribunal's recommendations are not binding on the Crown.

If the Crown does take steps to consult with iwi as recommended by the Tribunal, it will be important for all iwi with interests in the coastal marine area to have their views heard.

Bell Gully acted as legal counsel in the Tribunal hearing and has extensive knowledge of fisheries issues, including aquaculture. We are also the pre-eminent law firm in respect of Treaty settlement negotiations with the Crown.

If you require advice on or assistance with the aquaculture reforms or other Treaty settlement matters, please contact the advisers listed below.

For further information, please contact your usual Bell Gully adviser or:

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