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12 June 2006

Tënä koe,

AKAROA HARBOUR (DAN ROGERS) MARINE RESERVE PROPOSAL

Te Rünanga o Koukourarata objects to the proposal for a marine Reserve in Akaroa Harbour (Dan Rogers) proposed by the Akaroa Harbour Protection Society under Section 5 of the Marine Reserves Act 1971.

STATEMENT OF INTEREST

Te Rünanga o Koukourarata has a customary food gathering interest in this area through the genealogical inheritance and intergenerational usage of many of its' members. In addition to which Te Rünanga o Koukourarata is a member of the tri-partnership that established the Akaroa Harbour Taiäpure under Part IX of the Fisheries Act 1996 in March of this year.

EXISTING SITUATION

As you are aware in 1996 as a result of a dysfunctional relationship within the Akaroa community regarding the Dan Rogers proposal, the Akaroa Recreational and Commercial Fishers developed an alternative proposal for a Marine Reserve to be established at Flea Bay – Pöhatu, adjacent to Akaroa Harbour.

As the acknowledged tangata & mana whenua of this area (as confirmed in Schedule 1 of the Te Rünanga o Ngäi Tahu Act 1996), agreement for the proposal was sort in 1997 from Te Rünanga o Koukourarata. Being aware of the aspirations of our Irakehu whanauka[i] and interested Akaroa Community groups to establish a Fisheries Management Tool in the Akaroa Harbour, we agreed to assist them in their endeavors by supporting the establishment of the Pöhatu Marine Reserve.

This decision was not undertaken lightly due to the historical & cultural significance of the area to our people but at the time we believed that this would be the best outcome to assist in resolving what was becoming a very difficult situation. The Pöhatu Agreement, stipulating that all "the parties support[ed] the notion that the Dan Rogers application… would lie on the table and not be progressed… until after the establishment of the Taiäpure"[ii], was confirmed and signed in good faith on March 1999.

The promulgation of the Pöhatu Marine Reserve effectively extinguished our customary fishing rights within that area, a significant concession we were willing to make to ensure all parties concerned, including the Akaroa Harbour Marine Protection Society (AHMPS), achieved the implementation of their desired respective Fishery Management Tools for the Akaroa area fishery.

However despite our best efforts to reach an amicable resolution for all concerned, the attitude of the AHMPS has remained hostile towards attaining a compromise situation. Te Rünanga o Koukourarata is

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disappointed that AHMPS continued to promote Dan Rogers Reserve within the Banks Peninsula environmental forums during the processing of our Akaroa Taiäpure application despite Clause 5 of the Pöhatu Agreement, viewing this as spiteful rather than constructive behavior.

We therefore submit for your perusal our objections to the Akaroa Harbour (Dan Rogers) Marine Reserve.

OBJECTIONS TO THE APPLICATION

Upon reviewing relevant information available to us & the application & information from the Department of Conservation (DoC) web site (www.doc.govt.nz), Te Rünanga o Koukourarata raise the following objections as per the notification received by our Administration Office dated 26 April and in accordance with Part 5 Section (6) of the Marine Reserves Act 1971:

(a) "Interfere unduly with any estate or interest in land in or adjoining the proposed reserve"

The proposed Dan Rogers Marine Reserve is located in an area currently inaccessible by road. We believe that over time the proposed Marine Reserve will "Interfere unduly with…[the private owners] interest in land… adjoining the proposed Reserve"[iii] as land access will be required as part of effective policing and monitoring of this Fishery Management tool, and in accordance with Part 3 Section 2(d) of the Marine Reserves Act 1971.

In addition we question the affect the Foreshore and Seabed Act 2005 will impact on these landowners with regard to the general public gaining land access to the location of this proposed Marine Reserve as guaranteed under Part 3 of the Marine Reserves Act 1971 to "enjoy in full measure the opportunity to study, observe & record marine wildlife in it's natural habitat." We believe that neither the landowners nor the applicant have undertaken proper consideration of this legislation. Therefore we are of the belief landowner support for the application is based on current circumstances where there is nothing presently at this location to draw the general public to this specific area, which is currently only accessed by customary, recreational, and commercial fishers from the sea.

The frequent seasonal use of the Pöhatu Marine Reserve demonstrates that there is considerable curiosity from the general public in such areas. It would therefore be pertinent to presume that the Dan Rogers area would attract similar interest. Failure to give due consideration to Crown responsibility with regard to their statutory obligations of both Acts could result in significant future concessions being made by the respective landowners.

(b) "Interfere unduly with any existing right of navigation"

We note with concern that the seaward & western boundaries of the proposed Marine Reserve are placed within the only navigational entrance to Akaroa Harbour. Although right of passage is guaranteed under Section 23 of the Marine Reserves Act 1971, it is our belief that vessels will have difficulty assessing the exact boundaries of the proposed Marine Reserve using the Wainui leading lights in daylight due to environmental & physical conditions. Thus resulting in vessels inadvertently and unintentionally fishing within the outer boundaries of the proposed Marine reserve.

Albeit an officially recognized navigational aid, the Wainui leading lights were never intended to be boundary markers. Supported on a pole the light closest to the northern most point of the Manukatahi boundary is not visible. The applicant affirms this in 6.3 of their application stating, "in future it is expected that this line will be visible in daylight", confirming that they are not visible at present.

We contend that enhancement of the lights and/or poles will not overcome such environmental & physical conditions as sea haze, bright sunlight and distance that currently impede accurate boundary location and we emphasis that these natural phenomenons will continue to inhibit vessels ascertaining accurate bearings.

Although Section 22 of the Marine Reserve Act 1971 as amended by Part 2 Section 58 of the Conservation Law Reform Act 1990 gives provision for the marking the boundaries of Marine reserves, the use of large buoys would create navigational hazards for vessels particularly small water craft in addition to creating navigational confusion and "interfere unduly with… [the] existing right of navigation" should they break free of their moorings through normal wear or adverse weather conditions.

Additionally the closure of the proposed Marine Reserve for the purposes of scientific study will "interfere unduly with… existing right of navigation" to free access of all vessels entering the Harbour from the North or East forcing them into the Harbour channel creating congestion in the remaining water space thus increasing the potential of a maritime accident.

Furthermore despite the dismissive naive attitude of the applicant with regard to navigational interference it is our belief that the proposed Marine Reserve will significantly "interfere unduly with… [the] existing right of navigation" of commercial vessels in spite of Section 23 of the Marine Reserve Act 1971 confirming right of passage through and anchorage "in times of stress or emergency" within a Marine Reserve. Struthers v The Department of Conservation 2003 demonstrates that a person, in this case a ranger, has only to form a conclusion that a "vessel is inside a Marine Reserve" and become concerned with "the position and pace" of vessel to warrant a stop and search.

Given the continued personal animosity within the community regarding the proposed Marine Reserve, it is our belief that should this proposed Marine Reserve be established it would only be a matter of time before a malicious phone call was made to the respective Ministries reporting a commercial vessel acting suspiciously within the boundaries of the Reserve. Upon being stopped the vessel is required to prove that not only their catch was not obtained from the Reserve but also any fishing gear was not used or intended for use while passing through the area. The vessel, if unable to prove this, would be subject to not only Sections 18A & 18I of the Marine Reserves Act 1971 but also Part 13 of the Fisheries Act 1996. We believe that commercial fishers, aware of the ramifications of the respective Acts and the animosity of certain community members, will be forced to avoid the designated area thus unduly interfering with their existing right of navigation and increasing navigational hazards in the remaining water space.

(c) "Interfere unduly with commercial fishing" ***AND***

(d) "Interfere unduly or adversely affect any existing usage of the area for recreational purposes"

Akaroa Harbour has "customarily been an area of special significance… as a source of food and for spiritual and cultural reasons"[iv] to us as confirmed by the Mäori Land Court (MLC) Tribunal 2005 report and recommendations to the Minister of Fisheries. We acknowledge that in addition to the area of the proposed Marine Reserve being an "important mahinga kai"[v] area to our people, other sectors of the fishery also have interests in this area that would be unduly affected with the implementation of the proposed Marine Reserve.

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 MLC 2003 Taiäpure Hearing.[vi] As a result of the degradation of these areas the importance of the proposed Dan Rogers area has become even more paramount to our people in particularly to our Käi Tarewa whanauka of Önuku, who from time to time fish in this area under the provisions of the amateur fishing regulations (even for customary purposes).

The MLC Tribunal agrees that the loss of the proposed Dan Rogers area for mahinga kai [& recreational use] would be a "significant sacrifice, justified only by the desirability of returning part of the harbour to a pristine state".[vii] Furthermore the Tribunal states that "once a Marine Reserve is established, excellent results can be seen almost immediately"[viii] using Pöhatu Reserve as their example. We question the validity of this statement given the difference of the two areas – one is a coastal bay adjacent to Akaroa Harbour and the other is headlands and cliff faces located in Akaroa Harbour. Therefore we question how the applicant proposes to deal with the affects of current pollution & other external contaminates within the Harbour on their proposed Marine Reserve, given the expectation is for the area to "return to a pristine state"[ix]?

We contend that the applicant will expect the Taiäpure Management Committee (consisting of Tangata whenua, recreational fishing interest, commercial interests, tourism operators and environmental groups) to clean such things up for them and therefore raise the question as to the actual necessity of this Marine Reserve given the opportunity to achieve these environmental outcomes under the Taiäpure.

Furthermore the MLC Tribunal concedes "the success of Taiäpure as a conservation measure is unknown""[x] and thus we question again the necessity of this Marine Reserve when a Fisheries Management Tool that has the mechanisms to achieve the desired environmental outcomes already exists and has not yet been given an opportunity to demonstrate it's ability to ensure "use and preservation are kept in balance in Akaroa Harbour."[xi]

(e) "Otherwise be contrary to the public interest"

At the end of the original submission period, the Department of Conservation has stated 2334 supporting submissions were received for **this** Marine Reserve.[xii] Te Rünanga o Koukourarata contends that over a majority of those support submissions received by the Department actually supported Pöhatu (Flea) Bay as the alternative site for Akaroa not the proposed Dan Rogers site. We therefore believe that there has been a deliberate gross manipulation of information supplied by the Department to the general public to enable them to make a true informed decision on this application.

Furthermore the statistical data provided in the application regarding support for **this** application is inconclusive, as they do not supply any supportive material or data to confirm their claims. We find it interesting that in 1994 the applicant purports there was minimal support for the alternative site[xiii] and that within two years this grew to a significant level of support for the alternative site as identified in the 2334 submissions received. We therefore request that any submissions supporting the Pöhatu (Flea) Bay Marine Reserve received during the 1996 submission period be recorded correctly as opposition to **this** application and not support as they very clearly state Flea Bay (Pöhatu) as their preferred Reserve not Dan Rogers.

Moreover the information supplied by the applicant under section 4 of the application is misleading and dismissive with particular reference to 4.1. The applicant asserts that the only collection of mahika kai by Käi Tarewa is from Önuku to Manukatahi noting, "all the species that may be gathered [there] are available in other parts of Akaroa Harbour." Evidence provided to the MLC 2003 Taiäpure Hearing and confirmed in the MLC Tribunal 2005 Report not only refutes this assertion but also explains why these areas are not used. The offhanded dismissive attitude of the applicant is misleading and lacks credible evidence.

The applicant goes on to advocate Tangata Whenua support for **this** application by stating "that Ngäi Tahu are positive to the development of Marine Reserves, one condition being "that the

location does not interfere negatively with a traditional Mäori fishing site.""[xiv] Given the MLC Tribunal 2005 report not only confirms that the area of Dan Rogers is a traditional Mäori fishing site and of "special significance" [xv] to the people of Önuku in particular, they note that the loss of the site through implementation of this Marine Reserve would be a "significant sacrifice" [xvi] to the people of Önuku.

We contest that section 4.1 of the application has either been deliberately manipulated to mislead the general public or is demonstrating that there was a true lack of research undertaken on the part of the applicant during the preparation of their application particularly given the tangata whenua of the proposed area submitted their objection to it in 1996.

Conformation of the proposed area of Dan Rogers Marine Reserve by the MLC as traditional fishing grounds therefore ensures that there is not tribal support for **this** application as advocated by the applicant under the previous tribal policy stated above nor the current tribal policy adopted in July 2002.[xvii]

With similar concern to us is Section 3.5 of the application that again gives misleading and untrue unqualified statements. The use of "was" throughout the section implies that there is no longer an associated relationship with the area by the tangata whenua. In addition to which the section on Dan Rogers is not only incorrect but again demonstrates the lack of research undertaken by the applicant. The evidence provided to the MLC 2003 Taiäpure Hearing and confirmed in the MLC Tribunal 2005 Report not only highlights the continued relationship of the Tangata Whenua with the area but also the fact that this information was available to the applicant at the time should they have undertaken their research properly.

Given these two sections contain misleading, manipulated misinformation we therefore must question the validity of the rest of the information supplied in this application and therefore believe that the establishment of this Marine Reserve would be "contrary to the public interest" given the general public have not been supplied with the information to enable them to make a true informed decision.

ADDITIONAL INFORMATION

In conclusion Te Rünanga o Koukourarata questions the necessity for the establishment of this Marine Reserve given that a Marine Reserve and a Fisheries Management tool already exist in the Akaroa area.

We have not forgotten the significant sacrifice we made with regard to the Pöhatu Marine Reserve in order to ensure all parties concerned, including the Akaroa Harbour Marine Protection Society (AHMPS), achieved the implementation of their desired respective Fishery Management Tools for the Akaroa area fishery. We do not believe that Önuku should have to make a similar concession as us given a Marine Reserve already exists.

Therefore should the Dan Rogers Marine Reserve be established we would question how the Department of Conservation intends to police and monitor the Reserve given that the area is inaccessible by road? We raise this issue as although the Pöhatu Reserve is subject to the same statute compliance provisions as the proposed Dan Rogers Marine Reserve under the Marine Reserves Act 1971, and Conservation Act 1986 there is little or no current resourcing provided for compliance on weekends and therefore the Pöhatu Marine Reserve has become subject to poachers. Despite raising this issue with the Canterbury Conservancy Office (attached A) the situation has not been resolved and in fact has become worse with the recent resignation of the Ranger who was responsible for overseeing the compliance of this Marine Reserve.

We are also interested to know if the Department has considered what impact the Foreshore & Seabed Act 2005 will have on the proposed Marine Reserve given that the MLC has determined that there has been ongoing customary use of this area by the Tangata Whenua and ask how the Department will meet its statutory obligations to Tangata Whenua under the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992 and the Conservation Act 1987 should the Minister declare the Dan Rogers area a Marine Reserve.

Furthermore we query how the Minister will be able to declare the Dan Rogers area a marine reserve given the application is for 12% of the Harbour and only 8% was left for determination at the time the Taiäpure was gazetted. Despite the reassurances of the MLC that the relationship between this Marine Reserve & the Taiäpure would be of a complementary nature it is our belief that to leave this area out of the Taiäpure jurisdiction would hinder the Taiäpure Committee functioning effectively.

Given the MLC Tribunal 2005 Report concludes, "in the event that it is decided that no marine reserve should be declared at Dan Rogers, then we recommend that the Dan Rogers area is included in the Taiäpure."[xviii] We therefore put to you that with the establishment of a Marine Reserve (Pöhatu) and a Fisheries Management Tool (Taiäpure) in the Akaroa area the Dan Rogers Marine Reserve has become unnecessary and therefore given the points previously raised the only logical conclusion is to allow the area to come under the gazettal of the Taiäpure as it provides an opportunity for "the community of Akaroa Harbour to be actively involved in managing and protecting their harbour"[xix] with not only mechanisms to help it to adapt to changeable situations but more importantly be able to provide the desired environmental outcomes with minimum impact to those who currently utilize the proposed Dan Rogers area.

Nähaku noa
Nä

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Chairperson
Te Rünanga o Koukourarata

Peter Ramsden
Deputy-Chair
Te Rünanga o Koukourarata

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CC: Hon Jim Anderton, Minister of Fisheries
Hon Parekura Horomea, Associate Minister of Fisheries, Minister of Mäori Affairs
Russell Burnard, Allocations & Regulatory Services, Ministry of Fisheries
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Joe Wakefield, Pouhononga ki Kai Tahu, Ministry of Fisheries

Mark Solomon, Kaiwhakahaere, Te Rünanga o Ngäi Tahu
Nigel Scott, Customary Fisheries, Te Rünanga o Ngäi Tahu
Martha Gray, Toitü te Mana, Te Rünanga o Ngäi Tahu

Endnotes

[i] Irakehu is the collective identity of the Banks Peninsula hapü, whanauka = relatives

[ii] Clause 5, Pöhatu Agreement 1999

[iii] Part 5 Section 6 (a), Marine Reserves Act 1971

[iv] Issue 194, Supplement to New Zealand Gazette of Thursday 17 November 2005, Wellington Friday 18 November 2005, p4859

[v] Ibid p4868

[vi] Evidence supplied to the Research Council, Judges Chambers, Mäori Land Court

[vii] NZ Gazette # 194 p 4868

[viii] Ibid p4866

[ix] Ibid p4868

[x] Ibid p4866

[xi] Ibid – Mike Cuddihy p 4867

[xii] Department of Conservation Website,

"Marine reserve proposed for Akaroa Harbour" Bay-Harbour News, Wednesday May 24 2006

"Marine reserve for Akaroa Harbour aired again" The Akaroa Mail, Friday May 19 2006

[xiii] Akaroa Marine Reserve, Banks Peninsula Application, January 1996, p8

[xiv] Ibid p16

[xv] Issue 194, Supplement to New Zealand Gazette of Thursday 17 November 2005, Wellington Friday 18 November 2005, p4859

[xvi] NZ Gazette # 194 p 4868

[xvii] Te Rünanga o Ngäi Tahu Tribal Policy adopted July 2002:

"It is the policy of Te Rünanga o Ngäi Tahu that there shall be no marine reserves in areas of traditional importance for customary fishing, wähi tapu or where it would diminish the development of an area management tool."

[xviii] NZ Gazette #194 p4871

[xix] Ibid p4870