

Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

**Māori Involvement in Natural Resource Management
in Aotearoa New Zealand; Do Statutory Processes
Create Benefits**

**A thesis for the partial fulfilment of the requirements
for
Master of Philosophy in Science
Māori Resource & Environmental Management**

Tina Patricia Latimer

August 2011

ABSTRACT

Māori have been under represented in natural resource management in Aotearoa New Zealand since the signing of the Treaty of Waitangi 1840 (Te Tiriti o Waitangi), and the establishment of the British Government in New Zealand in the 1850's. The establishment of the Waitangi Tribunal in 1975 as an independent commission of inquiry has provided a valuable role and assisted Māori in achieving recourse to land heritage entitlement and natural resource management through making recommendations to proprietary rights. The Declaration of Independence and the Treaty of Waitangi are currently before the Waitangi Tribunal to determine their validity in New Zealand municipal law. Notwithstanding, the United Nations Declaration on the Rights of Indigenous Peoples supports Māori human rights but is yet to be incorporated into domestic law in Aotearoa New Zealand.

The reform of natural resource management in Aotearoa New Zealand in the 1990's and in particular the Resource Management Act 1991, has partially paved a way forward in developing policy for Māori participation in the statutory application of natural resource management. However, the exemption of Māori proprietary rights to minerals, the conservation estate, marine and coastal area (foreshore and seabed) and compensation thereof remains a contentious debate for Māori. For this reason, Māori proprietary rights and statutory representation to land heritage entitlement and resource management continues to remain at the forefront of Māori contemporary grievances in Aotearoa New Zealand.

Treaty of Waitangi settlement legislation partially mitigates historical grievances created by the Crown and their representative agencies. However, the progress of compensating and providing redress to Māori for the alienation of natural resources has been slow-moving since the first national fisheries Treaty settlement in 1992. Eighteen years on Māori continue to seek a meaningful relationship with the Crown

to achieve parity for the Māori people as the indigenous people of Aotearoa New Zealand.

Providing Māori with their own legislation and opportunities to participate at a local government level in the application of statutory management of natural resources is one means of achieving this. A greater respect of the Treaty partnership can provide a pathway forward and resolve the indifferences that have been long-standing since the signing of the Treaty of Waitangi. Revamping the constitution of Aotearoa New Zealand and ensuring the same within a national Māori statutory body representing hapu and iwi is another means of balancing the inequities that have existed between Māori and the Crown over the last 170 years is also another means of achieving parity in Aotearoa New Zealand.

WHAKATAUKI

He mea hanga toku whare, ko Papatuanuku te paparahi,
Ko nga maunga nga poupou, ko Rangainui e titiro iho nei te tuanui.
Pihanga-tohora titiro ki Te Ramaroa;
Te Ramaroa titiro ki Whiria, kit e pakiaka o te riri ki te kawa o Rahiri;
Whiria titiro ki Panguru, ki Papata, kit e rakau tu papta kit e tai hauauru;
Panguru-Papata titiro ki Maungataniwha,
Maungataniwha titiro ki Tokerau,
Tokerau titiro ki Rakaumangamanga,
Rakaumangamanga titiro ki Tutamoe,
Tutamoe titiro ki Whakatere,
Whakatere titiro ki Pihanga-tohora
Ehara aku maunga I te maunga haere, he maunga tu tonu, tu te ao, tu te po.¹

My house is made with Papatuanuku [the earth] as the floor,
The mountains are the supports, and Ranginui [the sky] who looks down here is the
roof.
From Pihanga-tohora look to Te Ramaroa;
From Te Ramaroa look to Whiria, to the root of strife, the protection of Rahiri;
From Whiria look to Panguru, to Papata, to the leaning trees which stand together in
the west;
From Panguru-Papata look to Maungataniwha,
From Maungataniwha look to Tutamoe,
From Tutamoe look to Maunganui,
From Maunganui look to Whakatere,
From Whakatere look to Pihanga-tohora.
My mountains are not travelling mountains, they are mountains which stand
eternally, day and night.

¹ A description of the house or territory of Ngapuhi, the mountain supports which reflect the pride of the groups within the tribe and which symbolise the mutual protection and assistance one gets from looking to the other. Hohepa, 1981:8; Lee 1983:290 (Ngapuhi) in Department of Maori Affairs. (1987). He Pepeha, He Whakatauki no Tai Tokerau. Department of Maori Affairs, Whangarei, New Zealand. Government Printing Office, Auckland, New Zealand.

TABLE OF CONTENTS

Title Page	i
Abstract	iii
Whakatauki	iv
Table of Contents	v
List of Tables	x
List of Plates	xi
List of Appendices	xii
1. Chapter 1: Introduction	1
1.1 General Introduction	1
1.2 Hypothesis	2
1.3 Research Objectives	2
1.4 Thesis Outline	2
1.5 Introduction	4
1.6 Maori Participation in the Reform of Resource Management	9
1.7 Summary	13
2. Chapter 2: Methodology	14
2.1 Introduction	14
2.2 Kaupapa Māori Research (KMR)	14
2.2.1 Maturanga Māori	15
2.3 Research Ethics	15
2.3.1 Treaty of Waitangi	16
2.4 Research Methods	16
2.4.1 Qualitative Research	16
2.4.2 Personal Observation	16
2.4.3 Data Analysis	17
2.4.4 Case Study	17

2.4.5	Literature Review (including Statutes)	18
3.	Chapter 3: Treaties	19
3.1	Introduction	19
3.2	Declaration of Independence 1835	19
3.3	Treaty of Waitangi 1840 - Te Tiriti o Waitangi 1840	21
3.3.1	Article 1: Ko Te Tuatahi	22
3.3.2	Article 2: Ko Te Tuarua	23
3.3.3	Article 3: Ko Te Tuatoru	24
3.3.4	Article 4: Ko Te Toruwha	24
3.3.5	Post-Treaty Governance	24
3.4	Treaty of Waitangi Act 1975 & Amendment Act 1985 & 1988	26
3.5	Principles of the Treaty	27
3.5.1	The Principle of Essential Bargain: The Kawanatanga Principle	29
3.5.2	The Principle of Self-Management: The Rangatiratanga Principle	30
3.5.3	The Principle of Equality	31
3.5.4	The Principle of Co-operation	32
3.5.5	The Principle of Redress	32
3.5.6	The Principle of Partnership/Good Faith	33
3.5.7	The Principle of Active Protection	33
3.6	Declaration of Rights of Indigenous People	34
3.6.1	Indigenous Human Rights in New Zealand	35
3.7	Chapter Summary	37
4.	Chapter 4: Māori Values & Natural Resources	38
4.1	Introduction	38
4.2	Te Ao Māori: Māori World-View & Values	38
4.2.1	Whakapapa	40
4.2.2	Tikanga	40
4.2.3	Taonga	40
4.2.4	Tapu, Noa, Rahui and Mauri	41

4.2.5	Kaitiakitanga	42
4.3	National Resources	43
4.3.1	Fresh Water	43
4.3.2	Land	45
4.3.3	Foreshores & Oceans	47
4.3.4	Indigenous Forests, Flora and Fauna	49
4.3.5	Minerals	50
4.3.6	Air	51
4.4	Chapter Summary	52
5.	Chapter 5: Natural Resource Management in Iwi Legislation	54
5.1	Introduction	54
5.2	Ngai Tahu	55
5.2.1	Introduction	55
5.2.2	Treaty of Waitangi 1840 (Te Tiriti o Waitangi)	56
5.2.3	Statutory Acknowledgements	57
5.2.4	Minerals (Pounamu)	61
5.3	Te Uri O Hau	62
5.3.1	Introduction	62
5.3.2	Treaty of Waitangi 1840 (Te Tiriti o Waitangi)	63
5.3.3	Statutory Acknowledgements	64
5.3.4	Minerals	68
5.4	Ngati Tama	68
5.4.1	Introduction	68
5.4.2	Treaty of Waitangi 1840 (Te Tiriti o Waitangi)	70
5.4.3	Statutory Acknowledgements	70
5.4.4	Minerals	73
5.5	Chapter Summary	74

6.	Chapter 6: Natural Resource Legislation	75
6.1	Introduction	75
6.2	Resource Management Act 1991	76
6.2.1	Kaitiakitanga: Section 7	76
6.2.2	Treaty of Waitangi: Section 8	77
6.2.3	Water Use: Section 14	77
6.2.4	Transfer of Powers: Section 33	78
6.2.5	Minerals	78
6.2.6	Resource Management Amendment Act 1996	79
6.2.7	Marine and Coastal Area (Takutai Moana) Act 2011	79
6.2.7	Resource Management (Simplifying & Streamlining) Amendment Act 2009	80
6.3	Conservation Act 1987	80
6.3.1	Conservation Authority & Board: Integrated management	81
6.3.2	Freshwater Fisheries	82
6.4	Crown Minerals Act 1991	83
6.4.1	Minerals Programme	84
6.4.2	Exclusion of Petroleum from Minerals Programme	84
6.4.3	Crown Minerals Amendment Act 1997	85
6.4.4	Reviewing the Crown Minerals Act 1991	86
6.5	Historic Places Act 1993	86
6.6	Hazardous Substances & New Organisms Act 1996	88
6.7	Marine and Coastal Area (Takutai Moana) Act 2011	88
6.7.1	Minerals	90
6.8	Local Government Act 2002	90
6.8.1	Local Government & Māori Participation	91
6.8.2	Local Government Obligations to Māori	91
6.9	Environment Act 1986	92
6.10	Flora and Fauna	93
6.11	Chapter Summary	94

7.	Chapter 7: Discussion	95
7.1	Introduction	95
7.2	Treaties	96
7.3	Maori Values & Natural Resources	100
7.4	Treaty of Waitangi Settlement Legislation	103
7.5	Natural Resource Legislation	108
8.	Chapter 8: Conclusion	115
9.	Glossary of Terms	120
10.	References	125

LIST OF TABLES

Table 4.1:	Maori Use of Water	44
Table 6.1:	Integrated Management of the Conservation Estate	82
Table 6.2:	Freshwater Fisheries Management Plan 17	82
Table 6.3	Identifying Key Heritage Areas & Examples	87
Table 6.4:	Intersects of Foreshore & Seabed	89
Table 7.1:	The Treaty of Waitangi in Natural Resource Legislation	97
Table 7.2:	Statutory Acknowledgements in Treaty of Waitangi Settlement Legislation	105
Table 7.3:	Maori Statutory Representation in Natural Resource Legislation	108

LIST OF PLATES

Plate 5.1:	Te Runanga o Ngai Tahu Marae locations and papatipu boundaries for the purpose of resource management issues significance to papatipu runanga	58
Plate 5.2:	Affected areas under the Ngai Tahu Claims Settlement Act 1988 Canterbury	59
Plate 5.3:	Te Uri o Hau Rohe	63
Plate 5.4:	Crest Energy Turbines Placement	65
Plate 5.5:	Ngati Tama Rohe within the Taranaki region	69
Plate 5.6:	Ngati Tama Statutory Area: Statutory Acknowledgements	71

LIST OF APPENDICIES

Appendix 1:	He Wakaputanga o te Rangatiratanga o Nu Tireni	138
Appendix 2:	Translation of the Declaration of Independence 1835	140
Appendix 3:	Te Tiriti o Waitangi	142
Appendix 4:	Treaty of Waitangi 1840	144
Appendix 5:	United Nations Declaration on the Rights of Indigenous Peoples	146
Appendix 6:	Resource Management Act 1991	161
Appendix 7:	Conservation Act 1987	162
Appendix 8:	Conservation Authority	163
Appendix 9:	Map of New Zealand Exclusive Economic Zone (EEZ) Act 1988	164
Appendix 10:	Local Government Act 2002	165
Appendix 11:	The Role of the Parliamentary Commissioner for the Environment	167

CHAPTER 1

INTRODUCTION

1.1 General Introduction

The purpose of this thesis is to determine whether or not the statutory process applied to natural resource management in Aotearoa New Zealand contributes bilaterally to the evolving relationship between Māori and the Crown and their representative agencies. The thesis discusses and analyses the application of declarations and treaties in Aotearoa New Zealand society to natural resource management, to support the position of Māori as partners to the Treaty of Waitangi 1840 (Te Tiriti o Waitangi).

This thesis focuses on Māori values associated to natural resource management and the importance of Māori values and their application in legislation, regulations, plans and policies. This is supported by the Waitangi Tribunal and the Māori Law Commission who is instrumental in interpreting what Māori values might mean in municipal law. An analysis of the statutory provisions involving natural resource management provides an opportunity for Māori and the Crown and their representative agencies to act in good faith, fairly, reasonably and honourably in achieving the Treaty of Waitangi partnership in Aotearoa New Zealand.

Ensuring political correctness has become a key requirement in fulfilling statutory obligations affecting both Māori and the Crown and their representative agencies. The self-determination of Māori natural resource management is fundamental to the sustainability of resources for future generations. The statutory management of resources in Aotearoa New Zealand is fundamentally the right and responsibility of all peoples. The sustainability of resources within communities including Māori in Aotearoa New Zealand can ensure independence for future generations. This requires constructive collaboration, consultation and long-term planning of policy with all community groupings, and more importantly Māori and the Crown and their representative agencies.

1.2 Hypothesis

This thesis seeks to answer the question; does the statutory process applied to natural resource management in Aotearoa New Zealand contribute bilaterally to the evolving relationship between Māori and the Crown and their representative agencies for future benefits which are culturally acceptable.

1.3 Research Objectives

This hypothesis is supported by four key objectives:

Objective 1: To provide an understanding of declarations and treaties and their relevance in Aotearoa New Zealand society in Māori natural resource management.

Objective 2: To discuss Māori values and the evolving importance of their interpretation and application in the statutory process of natural resource management in Aotearoa New Zealand.

Objective 3: To establish how well the role of Māori in natural resource management participation is contained in current statutes including Treaty of Waitangi settlement legislation, regional and territorial authority policies.

Objective 4: To determine and discuss potential national response to the statutory process and design a framework for Māori representation in the administration and management of natural resources in Aotearoa New Zealand.

1.4 Thesis Outline

This thesis is presented in 8 chapters.

Chapter 1, Introduction, considers the purpose, expectations, hypothesis and objectives of the thesis. The chapter introduces the concept of natural resource

management in Aotearoa New Zealand including statutory obligations. The chapter also provides an overview of relevant declarations and treaties; significant court cases detrimental to the evolution of jurisprudence of the principles of the Treaty of Waitangi in legislation, and introduces Māori national representation in Aotearoa New Zealand.

Chapter 2, *Methodology*, provides the methodology and design of this thesis and the methods used to acquire and interpret the information included in this thesis. This chapter provides for both Māori and western science views in undertaking the research required in validating the thesis.

Chapter 3, *Treaties*, explains the significance of national and international declarations and treaties. The Declaration of Independence, Treaty of Waitangi and the Declaration of Rights of Indigenous People, all acknowledge the role of kaitiakitanga, rangatiratanga and tino rangatiratanga of Māori as an indigenous people of Aotearoa New Zealand. The Treaty of Waitangi Act 1975 and Amendment Act 1985 are also reviewed, as are the principles of the Treaty of Waitangi.

Chapter 4, *Māori Values & Natural Resources*, introduces the Māori epistemological world-view and the concept of values associated to natural resource management in Aotearoa New Zealand. This includes resources managed under the Resource Management Act 1991, and those natural resources outside of the Act.

Chapter 5, *Treaty of Waitangi Settlement Legislation* discusses three Treaty of Waitangi settlement case studies including Ngai Tahu (a South Island tribe), Te Uri o Hau (an iwi in their own right within the Ngati Whatua tribal area) and Ngati Tama, a tribe of Taranaki. The objective of the case studies is to identify significant common natural resource management provisions within legislation, regulations, plans and policies.

Chapter 6, *Natural Resource Legislation*, introduces key legislation presently governing Māori natural resource management in Aotearoa New Zealand and identifies statutory processes which may benefit Māori.

Chapter 7, *Discussion*, analyses the information presented and discussed in the context of the research hypothesis. The evolving relationship between Māori and the Crown and their representative agencies, and national statutory Māori representation is also discussed. The provisions of Māori natural resource management in Aotearoa New Zealand is also discussed and analysed.

Chapter 8, *Conclusion*, provides a direction for future solutions relative to the bilateral contribution statue can make to Māori natural resource management in Aotearoa New Zealand.

1.5 Introduction

Māori are the indigenous people of Aotearoa New Zealand dating their arrivals by Kupe who explored approximately 950 A.D., Toi and Whatonga around 1150 A.D., and the fleet migration having landed around 1350 A.D. (Dansey, 1963). When Māori arrived here the land was fertile and abundant in natural and physical resources, this provided prosperity for early Māori who settled in Aotearoa New Zealand. The arrival of immigrants in the 1830s established Aotearoa New Zealand as an independent state through the Declaration of Independence 1835. This was followed by Māori and the British signing the Treaty of Waitangi in 1840.

The British Crown established the 1852 Constitution Act which formalised the New Zealand Government. The Act denied any form of self-governance for Māori and disallowed Māori participation in voting. Having title to land was a key requirement to allow Māori to vote. What followed after the 1852 Constitution Act was a snowball of legislation disenfranchising Māori of their natural resources dishonouring Article 2 of the Treaty of Waitangi. This caused offence to Māori who continued to petition the Crown and their representative agencies against laws that would alienate them further from natural resource management among other things. Not until the 1962 Constitution Act was amended and passed through the New Zealand Parliament 110 years later, was there any reference to the Treaty of Waitangi in legislation (Harrison, 1998) as a founding document of Aotearoa New Zealand. Today, this is often

recognised through the Court by Article 2 and 3 of the Treaty of Waitangi or through negotiations (Kenneth, K. Rt. Hon. Sir, 1990, p. 2) between Māori and the Crown and their representative agencies.

The alienation of natural resources from Māori and their desire to be represented in resource management as promised by Article 2 of the Treaty of Waitangi has been widely ignored by the Crown and their representative agencies over the last century. The Declaration of Independence and the Treaty of Waitangi has always provided the foundation for Māori natural resource management in Aotearoa New Zealand. The relationship of Māori in the statutory management of natural resources continues to be widely debated, and remains a key issue for Māori. Māori are faced with proving their natural resources through the Waitangi Tribunal, Courts and/or direct negotiations with the Crown. Processes of policy development or through political coalition agreements, is another means of negotiating outcomes for Māori grievances but does not always prove successful.

The Treaty of Waitangi is fundamental to the Treaty relationships between Māori and the Crown and their representative agencies. The Treaty of Waitangi is represented in over thirty statutes in Aotearoa New Zealand. The discussion on natural resource management reform commenced in the 1970s, however statutes and regulations were not reviewed until the 1980s (Environment Council, 1980). This resulted in the review of more than 78 statutes and regulations and amended numerous others.

Reference to the principles of the Treaty of Waitangi in legislation has enabled the Appeal Court¹ to define what those principles are. Legal precedence by the New Zealand Māori Council v Attorney General [1987] 1 NZLR 641 case requires the Crown to “take into account” the principles of the Treaty of Waitangi, when considering amendments, repeals and new legislation. The case considered all lands transferred

¹ Now the Supreme Court in Aotearoa New Zealand.

to a state enterprise through the State Owned Enterprises Act 1987. The case was subject to a Treaty of Waitangi claim through the Treaty of Waitangi Act 1975 and Treaty of Waitangi Amendment Act 1985. The following years changed how Māori natural resource management would be managed by the Crown and their representative agencies in Aotearoa New Zealand. The loss of Māori natural resources by the Crown in the *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 (land and water) prompted the Crown and its representative agencies to continuously review natural resource legislation in Aotearoa New Zealand.

As a consequence, the Crown and their representative agencies removed Māori natural resource management entitlement to indigenous forests, marine and coastal area, flora, fauna and fresh water fisheries from claim by Māori. For example under Section 7 (1-2) of the Conservation Act 1987 the Minister may acquire land and the marine and coastal area for conservation purposes.² The Resource Management Act 1991 became the single piece of legislation to control land, air, soil and water, and acknowledged Māori participation in natural resource management through developing environmental management plans, and participating in policy objectives. This was followed by the Crown Minerals Act 1991, which exempted minerals from the Act and gave Crown statutory control over minerals and alienated Māori entitlement and natural resource management to minerals.

Māori challenges over fishing rights were settled by the Crown through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. In 1989 the Crown enacted the Māori Fisheries Act 1989, to make better provision for the recognition of Māori fishing rights secured by the Treaty of Waitangi. This provided for the transfer of 10 percent of the allowable commercial catch of all species subject to the quota management system. The preamble of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 confirms to Māori full exclusive and undisturbed possession of tino rangatiratanga of their fisheries. The Act also provided for three key elements of Māori customary

² With the exception of Crown Forest land adjacent to the marine and coastal area under Section 7 (3) of the Conservation Act 1987, with the exception of Crown Forest land having the meaning as prescribed in of Section 2 of the Crown Forest Assets Act 1989.

fishing rights. Firstly the settlement of Māori fishing claims, secondly non-commercial traditional and customary fishing rights, and thirdly the provision for participation in the management and conservation of Aotearoa New Zealand fisheries.

The Fisheries (Kaimoana Customary Fishing) Regulations 1998 and related rules provide for customary fishing, however the regulations did not meet the original expectations as intended by the Treaty of Waitangi Fisheries Deed of Settlement 1992. The Deed concluded legal rights and legal claims by Māori in customary fishing rights being addressed in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, and the Māori Fisheries Act 2004. Furthermore the Fisheries Act 1996 requires the sustainability of fishing resources in Aotearoa New Zealand (Parliamentary Commissioner for the Environment, 1999).

Other laws, such as the Historic Places Act 1993 aimed to ensure the protection of wahi tapu and other historic resources as provided for in the State Owned Enterprises Act 1986,³ although originally there was no intent of Māori participation in the resource management of wahi tapu.⁴ The Marine and Coastal Area (Takutai Moana) Act 2011 requires Māori to establish customary tests⁵ to the marine and coastal area.⁶ New to the legislative agenda of the Crown and their representative agencies is the Environment Protection Authority Act 2011.⁷ Honourable Dr Nick Smith (2010, Volume 669, p. 15704) stated that the centralisation of an Environmental Protection

³ Section 27D of the State Owned Enterprises Act 1986 provides for the resumption of Wahi Tapu from State Owned Enterprises to the Crown where land is of special spiritual, cultural, or historical tribal significance. Upon resumption the Crown may agree to transfer wahi tapu to the appropriate tribe in accordance with a recommendation made by the Waitangi Tribunal.

⁴ Section 27D also refers to Crown properties transferred to Regional and District Councils.

⁵ Continuous exercise and exclusive use and occupation over the marine and coastal area since 1840.

⁶ Now repealed the Foreshore and Seabed Act 2004 was another move by the Labour Government to extinguish Māori customary rights to the foreshore and seabed and made no reference to the principles of the Treaty of Waitangi.

⁷ The Hazardous Substances & New Organisms Act 1996 allowed for Māori representation and established a statutory committee Nga Kaihautu Tikanga Taiao, this is now replaced by a Māori Advisory Committee under the Environment Protection Authority Act 2011. The Local Government Act 2002 aimed for Māori representation in local government processes, but has failed Māori in achieving a partnership at a Board level.

Authority is about regulating the environment while ensuring a balanced growing economy strengthened by environmental structures.⁸

Māori and the Crown in natural resource management in Aotearoa New Zealand requires a collaborative approach. Participation in national and regional policy making decisions and natural resource management is slowly becoming more apparent through hapu and iwi Treaty of Waitangi settlement legislation, regional and district councils, and territorial authorities in regional statements, plans and policies. However, this needs to be met with national and regional Māori representation to ensure appropriate account is given to Māori human rights as the indigenous people of Aotearoa New Zealand. In achieving the Treaty partnership, providing Māori with the necessary tools and financial resources to undertake a participatory role is essential in achieving this.

The Treaty of Waitangi settlement process framework develops legislation, regulations, plans and policies for Māori to ensure participation in natural resource management. Acknowledgement of Māori cultural, spiritual, historical and traditional values within Treaty of Waitangi settlement legislation is also progressive. At a regional or community level, hapu and iwi environmental plans and policies can provide for greater consultation and participation in natural resource management. This requires developing positive proactive relationships and protocols for policy development, definition and implementation between Māori and the Crown and their representative agencies. At a national level ensuring the implementation of declarations and treaties is fundamental to the application of kaitiakitanga, rangatiratanga and tino rangatiratanga (mana) by Māori in natural resource management in Aotearoa New Zealand.

⁸ The administrative functions of the Hazardous Substances & New Organisms Act 1996 will now fall under the Environment Protection Authority Act 2011. However, Government has committed to provide for a statutory Māori Advisory Board whose role will be to provide advice on policy issues of concern to Māori.

1.6 Māori Participation in the Reform of Natural Resource Management

The 1962 Constitution Act was met by the establishment of the Te Kaunihera Māori o Aotearoa (New Zealand Māori Council)⁹ who became a national voice for Māori through the Māori Community Development Act 1962.¹⁰ Te Kaunihera Māori o Aotearoa was established by *“Keith Holyake’s National Government in 1962 to provide, for Government, a Māori view-point on major issues of interest and concern.”* (Harrison, 1998, p. 2) When set up, Te Kaunihera Māori o Aotearoa was not envisaged as being a participator in addressing Treaty of Waitangi grievances of the previous 120 years (Harrison, 1998).

Past legislation in Aotearoa New Zealand has not been beneficial to the independence or contribution of Māori natural resource management. Māori have petitioned the Crown and their representative agencies for the confiscation and alienation of resources prior to the signing of the Treaty of Waitangi. Out of growing concern for the management, retention and control of resources in the 1970s, the Crown and their representative agencies finally conceded to Māori that the Treaty of Waitangi

⁹ The Māori Community Development Act 1962 established the Te Kaunihera Māori o Aotearoa (New Zealand Māori Council), District Councils, Executive and Māori Committees to provide for the cultural, social and economic well-being of the Māori race, as a matter of national importance. Key objectives include self-reliance of Māori; the social and economic development of Māori; harmonious relationships between Māori and Pakeha; focus on housing, health and education; governance of Māori Wardens, advocacy for Māori and marae subsidies.

¹⁰ The Act consolidated and amended the Māori Social and Economic Advancement Act 1945. Delegates from District Māori Councils across Aotearoa New Zealand through the Māori Social and Economic Advancement Act 1945 would form Te Kaunihera Māori o Aotearoa. The composition of Te Kaunihera Māori o Aotearoa is defined by Section 14(1) of the Māori Community Development Act 1962 which provides that the Council may declare by resolution any part of New Zealand a District Council. Section 14(2) of the Act provides that all Māori Land Court Districts are Māori Council districts for the purpose of the Act. Māori Land Court districts for the purpose of representation to Te Kaunihera Māori o Aotearoa include under Section 18(2) of the Act, Tai Tokerau (Whangarei); Waikato Maniapoto (Hamilton); Waiariki (Rotorua); Tairāwhiti (Gisborne); Takitimu (Hastings); Aotea (Whanganui); and Te Waipounamu (Christchurch). The New Zealand Māori Council has by resolution under Section 14(1) has declared the following areas to be District Councils: Tamaki Makaurau (Auckland); Tamaki ki te Tonga (Auckland); Mataatua; Wellington; Raukawa; Hauraki; and Te Tau Ihu A Waka Te Maui, providing for representation by 15 District Councils to Te Kaunihera Māori o Aotearoa.

deserved recognition in statute. When the late Honourable Matiu Rata¹¹ became the Northern Māori Member of Parliament for the Labour Government in 1972 a committee was established to address Māori issues arising from the Treaty of Waitangi (Rata, 1994). Subsequently, the first reference to the principles of the Treaty, were formally written into the Treaty of Waitangi Act 1975. Among other things the Treaty of Waitangi Act 1975 established the Waitangi Tribunal, whose jurisdiction is to hear Māori grievances and to provide recommendations for compensation.

The alienation of Māori natural resources to the Crown was challenged by continuous protests by Māori, in which the late Dame Whina Cooper¹² initiated a group of younger people to establish Matakite *“the company of people with a vision for the future”*. (King, 1987, p. 60) The call for Māori to unite resounded throughout Aotearoa New Zealand. Dame Whina later formed Te Matakite o Aotearoa (King, 1987). On 14 September 1975 the first Māori land-march from Cape Reinga¹³ to Parliament Buildings in Wellington took place, in response to continued alienation of natural resources through legislation. He Tohu Whakamaharatanga Ki Nga Uri Matakite O Aotearoa¹⁴ was presented by Whina Cooper to Rt. Honourable W. R. Rowling the Prime Minister of New Zealand on the 13 October 1975, with the support of over 5000 people. Over the next ten years Māori continued in protest against the Crown and their representative agencies failure to honour the Treaty of Waitangi and continued alienation of natural resources in Aotearoa New Zealand.

¹¹The late Honourable Matiu Rata, of Ngāti Kuri, was largely responsible for the establishment of the Waitangi Tribunal in 1975 and was a principal claimant in the 1986 Muriwhenua hearings, which eventually resulted in the influential Muriwhenua Fishing Report (1988) and the Muriwhenua Land Report (1997). Rāwiri Taonui. 'Muriwhenua tribes', Te Ara - the Encyclopedia of New Zealand, updated 4-Mar-09 URL: <http://www.TeAra.govt.nz/en/muriwhenua-tribes/4/2>.

¹² Founding member of the Māori Women's Welfare League and the second Māori woman to be ordained a Commander of the British Empire in 1981.

¹³ Te Reinga Wairua (The departing place of the spirits of the dead – Māori Customary Narrative) in the Far North.

¹⁴ The Memorial of Right exemplified two key concerns: Firstly: That an enactment of Parliament which enshrines the spirit & intentment of this Memorial shall incorporate in it the protective principal of entrenchment whereby it shall not suffer repeal or amendment without the assent of the Māori people, such assent to be forthcoming by the expression of the majority of all those persons eligible to vote as Māoris in a National Referendum; and Secondly: That all pernicious clauses in every Statute of the present day or in new Statutes in the future, which have the power to take Māori Land, Alienate Māori Land, Designate Māori Land, or Confiscate Māori Land, be Repealed and never to be administered on the remaining Māori land at the present day, and whereas Management, Retention & Control remain with our People and the Descendants in Perpetuity.

By the 1980s international environmental reform (Environment Council, 1980) began to influence the need for Aotearoa New Zealand to improve its environmental management. The concept of institutional reform stemmed from the Labour Government, who however, lost power to the National Party in the 1980 general elections. In July 1988 the Labour Government was re-elected and reviewed the New Zealand environmental statutes to create a replacement single integrated natural resource management statute. However, it is likely that the 1987 State Owned Enterprise case had a serious impact on the management of resources in Aotearoa New Zealand. In December 1989, the Labour Government introduced the Resource Management Bill into Parliament. This was not passed into law until 1990 after Labour had lost power. When the National Government came into Parliament in 1990, a review group was appointed to re-examine the Resource Management Bill. The minerals section was dropped from the Bill. As a consequence the Crown Minerals Act 1991 was enacted (Environmental Defence Society, 2009, www.eds.org.nz). Significant resources such as minerals and the marine and coastal area remained outside the statutory management of the new Resource Management Act 1991 and the Crown and its representative agencies assumed a collaborative role in natural resource management. The Act became effective on the 22 July 1991.

Throughout the environmental reform process in Aotearoa New Zealand, Māori have continued to forge relationships with the Crown. This has been supported on a national basis over the past two decades by Te Kaunihera Māori o Aotearoa, who were successful litigants against the Crown. Te Kaunihera Māori o Aotearoa have in the past, aided hapu and iwi in securing natural resource management. Te Kaunihera Māori o Aotearoa has challenged the Crown in the ownership of resources including fisheries, land, foreshore and seabed, Māori language (taonga), fresh water and airwaves. Flora and fauna has also been subject to claim by Māori. Today, Te Kaunihera Māori o Aotearoa continues to support national issues concerning Māori, often called upon by the Crown and their representative agencies to provide advice on national policy issues regarding natural resource management in Aotearoa New Zealand. Lack of financial resources to Te Kaunihera Māori o Aotearoa to ensure the Crown meets their obligations under the Treaty of Waitangi has hindered the

possibility of ensuring Māori natural resource management as a fundamental human right. However, Te Kaunihera Māori o Aotearoa remains in a strategic position to influence national and regional policy concerning Māori.

The Iwi Chairs Forum was established in 2005 to provide a network for Māori leaders to encourage active participation in national issues concerning Māori. A key issue for the Iwi Chairs Forum was the relationship of Māori to fresh water. Fresh water discussions between Iwi Chairs commenced with the Labour Government in 2007. Key concerns of the forum are to ensure the provision for *“Iwi rights and interests and the tikanga, values and principles underpinning the relationship that iwi have with freshwater...”* (Iwi Chairs Forum, 2010, p. 4) In 2009 the Iwi Chairs Forum established the Iwi Leaders Working Group at Hopuhopu (Waikato) for the foreshore and seabed review. A key issue identified that the *“Treaty of Waitangi underpins the relationship between iwi and the Crown and is the basis for all engagement concerning the foreshore and seabed.”* (Iwi Chairs Forum, 2010, p. 9) The Crown's proposal to privatise the use of resources in electricity generation is inconsistent with national and international declarations and treaties without redress for loss of authority (mana) to fresh water and the marine and coastal area.

National representation for Māori has always been a contentious issue in respect of leadership responsibilities. In 2010 the Māori Affairs Committee commenced a review of the Māori Community Development Act 1962 and related issues. The National Government acknowledged that Te Kaunihera Māori o Aotearoa was established as a voice for Māori, and concluded that before any legislative changes are made that a comprehensive consultation process be undertaken, to seek input from key stakeholders (New Zealand Government, 2010). This provides a collaborative opportunity to develop a Māori national framework that reflects a 20th century organisation (Paul, 2010) to represent Māori in their cultural, social, environmental, political, economic and constitutional human rights. Developing a national framework for Māori to provide advice to the Crown and their representative agencies on land heritage entitlement, customary lore and natural resource management issues which

ensures Māori of statutory recognition is fundamental to the full authority (mana) of Māori. This thesis will contribute to this opportunity.

1.7 Summary

The Treaty of Waitangi is the founding document for the British Crown's governance in Aotearoa New Zealand but was not recognised in municipal law by the Crown. Continuous legislation enabled the British Crown to alienate Māori from their valued resources without their express permission. The Treaty of Waitangi was not recognised in municipal law until the Constitution Act 1962 was amended to incorporate the Treaty of Waitangi. However, loss of Māori natural resource management in Aotearoa New Zealand continued.

The enactment of the Māori Community Development Act 1962 established Te Kaunihera Māori o Aotearoa a national body to represent the interests of all Māori. This was the first statutory body in Aotearoa New Zealand that enabled Māori to discuss national issues. However, the Crown and their representative agencies continued to alienate Māori of their natural resource management, thus spiralling into racial disharmony and protests by Māori throughout Aotearoa New Zealand led by the late Dame Whina Cooper in 1975.

The introduction of the Waitangi Tribunal Act 1975 led by the late Honourable Matiu Rata put the Treaty of Waitangi and Māori grievances squarely before the Crown and their representative agencies. This provided Māori with an avenue in seeking recourse for the loss of natural resource management under the Treaty of Waitangi in Aotearoa New Zealand.

CHAPTER 2

METHODOLOGY

2.1 Introduction

This chapter introduces the approach, techniques, and procedure for this thesis. The research undertaken to support this topic requires a complimentary approach of Kaupapa Māori Research and qualitative research techniques and processes. Research undertaken includes a literature review, statute review, analysis of Waitangi Tribunal outcomes, media communications, analysis of judicial proceedings concerning natural resources and miscellaneous documentation.

2.2 Kaupapa Māori Research (KMR)

The emergence of the Kaupapa Māori Research concept was developed through urbanisation of Māori between the 1970s and 1980s (Bishop, 1996). Bishop (1996) explains that “... in the late 1980s and in the early 1990s, this consciousness has featured the revitalisation of Māori cultural aspirations, preferences and practices as a philosophical and productive educational stance and resistance to the hegemony of the dominant discourse.” (p. 11) This brings to mind the many unique characteristics and beliefs of the researcher, and the values of hapu and iwi to natural resource management in Aotearoa New Zealand.

The key research methodology is to ensure that appropriate research ethics are met when undertaking Kaupapa Māori Research. There is no single methodology for developing a Kaupapa Māori Research approach in considering theory (Takino, 1998). This approach however requires the incorporation of the Māori world-view which provides a basis in understanding values and beliefs within the Kaupapa Māori Research framework (Bevan-Brown, 1998) designed with the community in mind and research required. Kaupapa Māori Research supports this thesis in validating Māori

values and beliefs in the application of the principles of Treaty of Waitangi, Treaty of Waitangi settlement legislation and resource legislation in Aotearoa New Zealand.

2.2.1 Mātauranga Māori

The concept of an adaptation of Māori universal philosophies related to the scientific understanding of natural resources since time immemorial. This also includes defining qualitative data collection methods appropriate to the relative community involved. Key concepts of understanding the natural environment and Mātauranga Māori include: mauri, tikanga, tapu, wahi tapu, rahui, noa, ahi kaa, and kaitiaki. Māori for example, have always theorised their migrations throughout the Pacific through navigation by the stars. This proves the intellectual ability by Māori in science through observation and experiment.

2.3 Research Ethics

In comparing research ethics between the Kaupapa Māori Research method and qualitative research, it is evident today that researcher's are combining knowledge inherent of both the Māori and Pakeha world-views. For the purpose of this thesis, the researcher identifies with the traditional values associated and acquired over time in the context of understanding the spiritual, cultural, social, economic, environmental and political needs to achieve parity for Māori with all New Zealanders. Walker (1992, p. 3) discusses Māori ethics as being *"based on acknowledging bias and not imposing that bias on others."* Understanding the Kaupapa Māori Research methodology enables the researcher to provide a Māori world-view as an understanding of knowledge and information. Hudson & Ahuriri Driscoll (2006, p. 119) agree that *"the development of a Māori ethical framework is central to the inclusion of Māori values and beliefs within ethical reviews and research and new technologies."* A Māori focussed-view enables the researcher to take a modern technological approach to research discovery.

2.3.1 Treaty of Waitangi

Understanding the evolution of partnership between Māori and the Crown or their representative agencies since the signing of the Declaration of Independence and Treaty of Waitangi establishes the basic principles for Kaupapa Māori Research. Massey University (2006, p. 1) in their code of ethics for researchers give regard to the Treaty of Waitangi as having *“embedded concepts of protection, participation and partnership require that researchers consider carefully their research protocol where Māori are involved as participants, or where the project is relevant to Māori.”* This thesis provides an ethical review of the principles of the Treaty of Waitangi in determining the statutory relationship between Māori and the Crown and their representative agencies.

2.4 Research Methods

2.4.1 Qualitative Research

Qualitative research methods will show comparisons to justify this thesis in answering the question does the statutory process applied to natural resource management in Aotearoa New Zealand contribute to the evolving relationship between Māori and the Crown and their representative agencies for future benefits which are culturally acceptable. This thesis will undertake to provide an analysis of Māori, western academic research, legislative and policy frameworks. To broadly apply qualitative research methods a critical analysis of qualitative data of statutory legislation is required to answer the thesis question.

2.4.2 Personal Observation

Personal observation is a key requirement of fulfilling the objectives of this thesis. Personal observation is fundamental, and like western science is accumulated through science over a period of time. In theory Gray (2004, p. 241) explains the objective of this technique as *“...to generate data through observing and listening to people in their*

natural setting, and to discover their social meanings and interpretations of their own experiences..." Personal observation is also inherent within a culture whose values interact across generations, through learning and growing with the surrounding environment. This process requires one to rely on retained knowledge *"to understand their situation by experiencing it."* (Gray, 2004, p. 241) To fulfil the requirements of this thesis, useful qualitative data requires continual and timely personal observation of the social, cultural and economic environment relative to natural resource management in Aotearoa New Zealand.

2.4.3 Data Analysis

The data analysis process is necessary to improve the findings of this thesis. Analysis of raw data is critical in identifying key clauses in natural resource legislation concerning Māori. Interpretation of data is also essential to achieving the objectives of this thesis. De Wet & Erasmus (2005, p. 28) suggest that *"... systematic analysis refers to the conscious use of procedures to organise a mass of data methodically so that all the parts fit into a broader, structured whole."* Comparisons in case studies and natural resource legislation and their consistencies or inconsistencies will be used in the analysis of data.

2.4.4 Case Study

Case studies require the capture of multiple sources of data, which can be reviewed repeatedly, and are helpful to the investigation. Multiplicity of case study ensures accuracy of research, and provides for a broad analysis of timelines (Yin, 2003). There are three explanatory case studies undertaken for the purpose of this thesis. Yin (2003) states that:

"In general case studies are the preferred strategy when "how" or "why" questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context." (Yin, 2003, p. 1)

Explanatory case studies include the precedent case by Ngai Tahu in applying the statutory instruments within legislation; Te Uri o Hau a hapu of the Ngati Whatua tribe who successfully negotiated hapu interests within legislation; and Ngati Tama who have successfully gained statutory representation at local government level.

2.4.5 Literature Review (including Statutes)

Selective literature reviews will be undertaken to establish how well Māori are represented in the statutory application of natural resource management in Aotearoa New Zealand. This commences with national and international declarations and treaties relative to the human rights of Māori as the indigenous people of Aotearoa New Zealand and application in municipal law.

The Treaty of Waitangi Act 1975 and subsequent amendments also provide a foundation in Aotearoa New Zealand law in providing a basis for the interpretation of associated principles. The Waitangi Tribunal a permanent commission of inquiry enacted under the Treaty of Waitangi Act 1975, provides substantial evidence, conclusions and recommendations in respect of Māori natural resource management in Aotearoa New Zealand. Judicial conclusions concerning Māori natural resource management in Aotearoa New Zealand also justify Māori proprietary and co-management rights.

CHAPTER 3

TREATIES

“Those who study the Treaty will find what they seek. Those who look for the difficulties and obstacles, which surround the Treaty, will find difficulties and obstacles. But those who approach it in a positive frame of mind and be prepared to regard it as an obligation of honour will find the Treaty is well capable of implementation.”

(Sir Henare Ngata, quoted in He Korero mo Waitangi, Blank *et al.*, 1985:144)

3.1 Introduction

This chapter introduces relevant declarations and treaties aligned to legislation concerning Māori and the Crown and the Māori human rights dimension in natural resource management in Aotearoa New Zealand. The literature review provides an account of the Declaration of Independence the Treaty of Waitangi in legislation through the Treaty of Waitangi Act 1975. The Treaty of Waitangi Act 1975 established the Waitangi Tribunal to hear and investigate Māori grievances. The Act also made provision for use of both the Māori and English version(s) of the Treaty of Waitangi. The Treaty of Waitangi Amendment Acts 1985 and 1988 are also discussed. This provided for the Waitangi Tribunal to address Māori grievances dating back to 1840 and increase the membership of the Tribunal. The ratification of the Declaration on the Rights of Indigenous People (2010) and Māori indigenous human rights dimension in Aotearoa New Zealand is also considered.

3.2 Declaration of Independence 1835

The Declaration of Independence 1835¹⁵ was signed at Waitangi on the 28th October 1835 by thirty-five northern hereditary chiefs known as the united tribes (Taylor, 1960). Not all hapu and iwi in Aotearoa were party to this Declaration due to political indifferences with the British Crown. Walker (1990, p. 87) wrote that prior to this *“under missionary guidance, thirteen leading chiefs in the North petitioned the King of*

¹⁵Appendix 1: English Version in Taylor (1960). Facsimiles of the Treaty of Waitangi.

England to provide some form of control over British nationals in New Zealand and protection from the possibility of other foreign intervention.” In respect of this, the then King of England appointed James Busby as British Resident to Aotearoa New Zealand, although James Busby could not enforce any laws in Aotearoa New Zealand, this symbolised the prospect of official occupation by the British Crown (Walker, 1990).

In 1834, a meeting was convened by twenty-five northern hereditary chiefs at the residence of James Busby in Waitangi to select a flag (Walker, 1990). This was a result of *“the impounding in Sydney of a New Zealand-built ship for not flying an ensign, the master of the vessel was forced to fly a Māori mat from the masthead before it was allowed to sail.”* (Walker, 1990, p. 88) There were several designs offered for a Māori flag which was chosen by the northern chiefs, and gifted by James Busby for the purpose of advancing Māori trade (Jackson, 1999, p. 27).

In 1835, the Declaration of Independence was formally forwarded to His Majesty the King of England and acknowledged by the British Crown in 1836. The Declaration of Independence¹⁶ was signed up until the 22 July 1839, achieving fifty-two signatories. Those who signed included Potatau Te Wherowhero of the Tainui-Waikato tribes (Ministry for Culture and Heritage, 2009). Other signatures represented iwi from the North Cape to the Thames River on the Coromandel Peninsula (Turton cited in Taylor, 1960).

The Declaration of Independence declared that Māori would become an independent state under the auspice of the United Tribes of Aotearoa. It was also affirmed that the united tribes would retain their sovereignty, and not permit the British to assert any legislative authority or governance, unless the united tribes in congress had agreed otherwise. The united tribes agreed to meet annually at Waitangi to establish laws and regulations for trade. An invitation was also extended to the southern tribes to align with the northern tribes in signing the Declaration of Independence forming the

¹⁶ Appendix 2: Māori Version in Taylor (1960). Facsimiles of the Treaty of Waitangi.

confederation of united tribes. The Declaration of Independence concludes by ensuring their allegiance with His Majesty the King of England as an infant state, and acknowledgement of the Māori flag representing the Declaration of Independence (Turton cited in Taylor, 1960).

While not recognised by the Crown, the Crown remains accountable to upholding the underlying principles of the Declaration of Independence. These principles resound in the preamble and articles of the Treaty of Waitangi, and are subject to international law. The Waitangi Tribunal (1988, p. 291) in the Muriwhenua Fishing Report wrote *“since 1835 (the signing of the Declaration of Independence), Britain had recognized the independent authority of Māori as a right of sovereignty and New Zealand as an independent state. The Crown cannot argue now against that recognition.”* The belief of Māori is that sovereignty was never ceded. The Crown has not proven that under Article 2 of the Treaty of Waitangi that Māori authority (mana) is extinguished. The Crown's regard to exercising Māori sovereignty exists through the Treaty of Waitangi Settlement process. This is not so, the Declaration of Independence like the Treaty of Waitangi accords an equal authoritative, as does the Crown, to that of Governments under the Constitution Act 1962. The northern tribes, of Ngāpuhi Nui Tonu have met this challenge through lodging a claim to the Waitangi Tribunal to determine the status of the Declaration of Independence and the Treaty of Waitangi in New Zealand constitutional law. The late Rima Edwards¹⁸ a key Waitangi Tribunal claimant considered that Māori did not cede their mana (authority, sovereignty) to the Crown.

3.3 The Treaty of Waitangi 1840 – Te Tiriti o Waitangi 1840

New Zealand's official sovereignty from the British Crown arose from the Declaration of Independence 1835 (Orange, 1987). Orange (1987, p. 32) wrote that before 1840 the British Government had no *“official claim to New Zealand... therefore, the move to secure recognition, by Treaty of New Zealand's status was deemed wise.”* The annexation of Aotearoa New Zealand was a move by the British to regulate emigration

¹⁸ The late Rima Edwards former chairman of Te Runanga o Muriwhenua Incorporated, lead claimants of WAI 45. A collective Waitangi Tribunal claim of the Ngāti Kuri, Te Aupouri, Te Rarawa, Ngai Takoto and Ngāti Kahu Tribes (Far North Iwi).

by the New Zealand Company, and the French and American whalers arriving to ports of Aotearoa New Zealand. This was desirous of the British Government in order to establish a relationship with Māori in colonising Aotearoa New Zealand (Ministry for Cultural & Heritage, 2008). The New Zealand Company (without authority of the British Government) had before the signing of the Treaty of Waitangi in 1839, *“entered into land purchase deeds signed at Port Nicholson, Kapiti and Queen Charlotte Sound. Its aim was to purchase from Māori a huge area of the North and South Islands. It had then, also without government approval, sent a fleet of emigrant ships to Port Nicholson, establishing the new settlement of Wellington.”* (Ministry for Cultural & Heritage, 2008, p. 1) As Aotearoa New Zealand was declared an independent state by the Declaration of Independence 1835, the British Government had no powers to prevent such land purchases.

By 1840 Consul and Lieutenant-Governor, William Hobson in consultation with the British Resident at New Zealand – James Busby drafted several facsimiles in preparing a Treaty to be signed by the United Tribes and independent chiefs of Aotearoa. This was first presented to the Northern chiefs on the 5th and 6th of February 1840 at James Busby’s residence in Waitangi, for their approval and adoption (Turton cited in Taylor, 1960). The Royal Commission on Social Policy (1988) observed the Māori version(s) of the Treaty of Waitangi¹⁹ as the authentic version *“signed by 50 chiefs at Waitangi on February 6 1840 and eventually by [over] 500 chiefs at various places. It was countersigned by Hobson. The English version, the only one likely to have been understood by Hobson, was signed by 39 Waikato chiefs on April 26 1840.”* (Lange, 1989, p. 3)

3.3.1 Article 1: Ko Te Tuatahi

In Article 1 of the Treaty of Waitangi Māori ceded sovereignty to the Crown in return for protection, this is confirmed by the preamble of the Articles, as a consequence of

¹⁹ Appendix 3: Māori Version in Taylor (1960). Facsimiles of the Treaty of Waitangi.

emigration from Europe and Australia in ensuring the protection of the Chiefs and Tribes of just rights, property, the enjoyment of peace and good order. The Māori version of Article 1 is acknowledged as *ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua* (Orange, 1987). However, the term *kawanatanga* in Māori customary lore has a number of interpretations, and was not likely to be restricted to the English meaning of sovereignty (*ibid.*). Henare (2010, p. 91) has articulated this to mean “... *give completely to the Queen of England for ever all the Governorship of their country.*” The Oxford Dictionary (1996, p. 986) defines sovereignty as “*supremacy, self-government, or a self-governing estate.*” Orange (1987, p. 40) provides a more complex concept of sovereignty as “*involving the right to exercise a jurisdiction at international level as well as within national boundaries.*” As interpreted by Henare (2010) the term *governorship* (*n*) of governor is defined by the Oxford Dictionary (1996, p. 429) to mean “*a ruler, an official governing a province, a town, etc., and a representative of the Crown in a colony.*”

3.3.2 Article 2: Ko Te Tuarua

Article 2 of the Treaty confirms and guarantees to the chiefs and tribes and respective families and individuals, the full and exclusive and undisturbed possession of their lands, estates, forests, fisheries and other properties so long as they wish to retain them. Rata (1984) translated the Māori version as “*the Queen of England confirms and guarantees to the Chiefs, subtribes, all the people of New Zealand, the full ownership of their lands, of their homes and all their valuables...*” Orange (1987) acknowledged that the omission of forests and fisheries from the Māori version of Te Tiriti o Waitangi was likely to be unintentional. The Māori translation of this was expressed as *te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa* as “*covering only lands, dwelling places and property of all kinds.*” (Orange, 1987, p. 40) Henare (2010, p. 91) interprets *tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa* as having “*full (absolute) authority and power (chieftainship) of their lands... their settlements and surrounding environs (kainga), and all their valuables (property) (taonga)...*” *Tino rangatiratanga* has been defined by the Waitangi Tribunal

(1987) as full authority. Orange (1987) agreed that the term tino rangatiratanga was a closer approximation to sovereignty than kawanatanga. However, Winiata (1999 cited in Ministry for Environment, 2001, p. 2) described kainga as *“including everything that lies between Sky and Earth.”* Taonga are also tangible and intangible natural resources and phenomena.

3.3.3 Article 3: Ko Te Tuatoru

Article 3 of the Treaty extends to Māori the protection, rights and privileges of British subjects. Orange (1987, p. 42) explains that the Māori version of Article 3 *‘nga tikanga katoa rite tahi ki ana nga tangata o Ingarani’*. This is interpreted by Henare (2010, p. 92) as *“Queen of England will protect (tiaki) all the Māori people (pl.) of New Zealand and offers (tukua) the same English customary rights (tikanga) she offers her people.”*

3.3.4 Article 4: Ko Te Tuawha

Article 4 is only represented in the Māori version of Te Tiriti o Waitangi. This was not translated as part of the English version of the Treaty of Waitangi. The key language used in Article 4 refers to Māori customs. Henare (2010, p. 92) explains the unwritten fourth as ritenga Māori hoki – Māori custom.

3.3.5 Post-Treaty Governance

Māori did not foresee the early colonial Governments failure to accord Māori protection of their natural resources management after the signing of the Treaty of Waitangi. The alienation of land by way of pre-emptive sale to the Crown commenced after the signing of the Treaty of Waitangi. The first land purchase by the Government included Auckland in 1840, which was required to centralise Government at Waitemata the following year (Orange, 1987). By the late 1850s over 1.3 million hectares of lands had been confiscated from Waikato, Bay of Plenty and Taranaki (Orange, 1987) and acquired by the Crown.

The formation of the Government and subsequent legislation provided a means for the Crown to acquire substantial lands contrary to Article 2 and 3 of the Treaty of Waitangi. In 1877 the Treaty was nullified by Chief Justice Prendergast in the case of *Wi Parata v Bishop of Wellington* [1877] (McHugh, 1984). Māori concerns of loss of natural resources to the Crown were reiterated by tribal leaders throughout Aotearoa New Zealand. In the 1890s Māori continued to meet to discuss issues arising from the Treaty of Waitangi and local self-government (Harrison, 1998). Known as the Kotahitanga o Te Tiriti O Waitangi movement, in 1892 a meeting was convened at Waipatu in Hawkes Bay. Principal policy outcomes included:

“the right to make laws for Māori lands, take up land grievances after the signing of the Treaty of Waitangi, including lands wrongfully confiscated or unfairly purchased, Māori Fisheries, Oyster beds, Shellfish beds, Mud flats, Tidal estuaries and other Kai resources of the Māori people controlled by the Harbour Boards, and other Government Agencies, Abolition of the Native Land court and control of Māori Reserved Lands.” (Rickard, 1984. 38)

By the 1920s the remaining 202 million hectares were being alienated from Māori at an annual rate of 29.445 hectares (Rickard, 1984). Crown legislation was used to alienate Māori from their natural resource management in Aotearoa New Zealand. The Public Works Act 1928 enabled the Crown or their representative agencies to take land for any public works. The Petroleum Act 1937 gave the Crown pre-emptive rights to any mineral oil relative to hydro-carbon and natural gas on or under the ground. The Soil Conservation and Rivers Control Act 1941 embargoed Māori from land use activities such as the Urewera land and native bush comprising of some 28,327-30,351 hectares. The Māori Affairs Act 1953 under Part XXIII made provisions for the alienation of remaining Māori land by resolution of a quorum consisting of three Māori owners (Ngata, 1984). Māori rights to fresh water were taken by the Crown and their representative agencies under the Water and Soil Conservation Act 1967 (Tukiri, 1984).

By 1973, the Labour Government had established a committee to investigate the issues surrounding the Treaty of Waitangi. There were two Ministers and five members of Parliament appointed to the Committee. By February 1974 the Committee had prepared a report to the Labour Caucus Committee on Māori Affairs.

However, further elaboration was required making specific recommendations on the Treaty of Waitangi. As a result in April 1974 approval was granted to the Honourable Matiu Rata, Minister of Māori Affairs for the drafting of legislation to establish the Waitangi Tribunal (Rata, 1984).

3.4 The Treaty of Waitangi Act 1975, Amendment Act 1985, 1988

Before reviewing the principles of the Treaty of Waitangi, it is appropriate to examine the Treaty of Waitangi Act 1975 and the Treaty of Waitangi Amendment Act 1985. The long title of the Treaty of Waitangi Act 1975 provides for the observance and confirmation of the principles of the Treaty of Waitangi. The Act created the Waitangi Tribunal, a permanent commission of inquiry. The role of the Waitangi Tribunal is to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty of Waitangi. The Act also provides for the Waitangi Tribunal to recommend the necessary action to compensate for, or remove prejudice arising from past Crown actions in a well-founded case. In the Court of Appeal case, Judge Richardson²⁰ (1987) explains that the Treaty of Waitangi Act 1975:

“Was landmark legislation providing for the first time a legal forum to consider grievances arising under the Treaty... by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.” (Richardson, 1987, p. 4)

Duties of the Waitangi Tribunal include section 5(2) of the Treaty of Waitangi Act 1975 which requires the Waitangi Tribunal to have regard to the 2 texts of the Treaty which is the official version created by this legislation; have exclusive authority to determine the meaning and effect of the Treaty as embodied in the 2 texts; and to decide issues raised by the differences between them. The Royal Commission on Social Policy reaffirmed the statutory authority of the Waitangi Tribunal. The Royal Commission

²⁰ Appeal Court Judge presiding over Te Kaunihera Māori o Aotearoa (New Zealand Māori Council) land and water case.

agreed that *“these two texts of the three Articles can therefore be regarded as authoritative...”* (Lange, 1989, p. 3)

Section 6(1) (c) of the Treaty of Waitangi Act 1975 provides for the jurisdiction of the Waitangi Tribunal to examine any omission, Act, regulation or Order in Council by the Crown in which a Treaty claim has been submitted to the Tribunal, and is inconsistent with the principles of the Treaty, in respect of Treaty of Waitangi grievances after the inception of the Act being 10 October 1975. The Treaty of Waitangi Amendment Act 1985 permitted Māori to lodge retrospective claims to the Waitangi Tribunal dating back to the 6 February 1840. In 1988 the Act was amended again to increase the membership of the Waitangi Tribunal.

3.5 Principles of the Treaty of Waitangi

Widely interpreted by Māori and the Crown and their representative agencies, Courts and academics, the principles of the Treaty of Waitangi are not explicitly defined in legislation. However, inconsistencies in the use of language and application of the principles of the Treaty of Waitangi continue to be written throughout legislation. This requires detailed interpretation of wording which is consistent with Māori customary lore and principles of the Treaty of Waitangi in legislation. Court judgements and Waitangi Tribunal Reports continue to provide a significant role in developing an understanding in the definition of the principles of the Treaty of Waitangi (Hayward, 2008). Today, the Crown has a moral obligation to uphold the principles of the Treaty of Waitangi in order to minimise potential litigation by Māori in Aotearoa New Zealand.

Principles of the Treaty of Waitangi continue to evolve as Māori assert their role in natural resource management through the Courts, Waitangi Tribunal inquiries and Māori Land Court hearings. In the 1830s the Colonial Secretary for the British Crown instructed Hobson that *“all dealings with the Aborigines for their Lands must be conducted on the same principles of ‘sincerity, ‘justice’, and ‘good faith’* (Waitangi Tribunal, 2010). This instruction provides a benchmark in the earliest understanding of

a Treaty relationship between Māori and the Crown relative to natural resource management in Aotearoa New Zealand.

The Treaty of Waitangi is slowly being acknowledged through resource legislation by implementing Māori values, kaitiakitanga and Māori participation at local government level (Environmental Defence Society, 2009). For example, the Environmental Protection Authority is advised on Māori perspectives by a Māori Advisory Committee on policy, processes and decisions (Environment Protection Authority Act, 2011) in the statutory application of the Hazardous Substances and New Organisms Act 1996.

Another example is the Ministry for Environment who promote Māori participation in the management of resources and decision-making processes under the Resource Management Act 1991 (Ministry for the Environment, 2010). Section 33 of the Act enables the transfer of powers to a public authority including an iwi authority. Taking into account the principles of the Treaty of Waitangi by the Crown and their representative agencies in policy is one way of achieving the Treaty partnership. Tunks (2002) however, questions the partnership between Māori and the Crown and their representative agencies in natural resource management, and the ability to ensure the sustainability of natural resources to Māori. Tunks (2002) attests that:

“The language of legal precedent and of governing political policy promotes the relationship of the Crown’s (Kawanatanga) and iwi/hapu Rangatiratanga as a ‘partnership’. The essence of this partnership is the overriding obligation of the Crown to ‘actively protect’ the tribe Rangatiratanga of Māori (Article Two) while Māori support the Crown in its governance (Article One). These principles of partnership and protection are viewed as the core ‘principles’ of the Treaty of Waitangi.” (p. 324)

Key principles discussed include the principle of essential bargain (Kawanatanga principle); principle of self-management (Rangatiratanga principle) principle of equality; principle of co-operation; principle of redress; principle of co-operation/good

faith; and the principle of active protection. Hayward²¹ (2008) in an analysis of further six principles of the Treaty of Waitangi for the Waitangi Tribunal discussed a further five key principles *“the need for the compromise by Māori and the wider community; The Crown cannot divest itself of its obligations; The right of development; The Crown’s right of pre-emptive and its reciprocal duties; The principle of options...”* (Hayward, 2008, p. 477)

In the Court of Appeal President Cooke²² (1987, p. 29) adjudicated that in accordance with Section 9 of the State Owned Enterprises Act 1986, the Court must interpret the phrase *“the principles of the Treaty of Waitangi when necessary. In doing so we should give much weight to the opinions of the Waitangi Tribunal expressed in reports under the Treaty of Waitangi Act 1975.”* The jurisdiction of the Waitangi Tribunal in interpreting the principles of the Treaty supports the decision of President Cooke.

In 1989 the Labour Government went much further in developing Crown action principles for the Treaty of Waitangi. The former Prime Minister the late Rt. Honourable David Lange discussed five key principles: the principle of government; the principle of self-management; the principle of equality; the principle of reasonable co-operation and the principle of redress (Lange, 1989). Today, principles of the Treaty of Waitangi continue to evolve as Māori attest their human rights to natural resource management through the Courts, Waitangi Tribunal inquiries, and Māori Land Court hearings.

3.5.1 The Principle of Essential Bargain: The Kawanatanga Principle

The principle of Government was made clear in 1925, when an international tribunal known as the Anglo-American Pecuniary Claims Arbitration interpreted the Treaty of

²¹ Dr Janine Hayward is a former researcher and report writer for the Waitangi Tribunal, Wellington, New Zealand. Key interests include treaty and constitutional politics, public policy, and environmental and local government politics. Retrieved July 6, 2011 from: www.conferenz.co.nz/facilitators/dr-janine-hayward.

²² Sir Robin Cooke was the President of the Court of Appeal who presided over the *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 in the land and water case.

Waitangi as *“ceding sovereignty to Great Britain, the Treaty ceded sovereignty in Article 1.”* Lange (2009, p. 8) Article 1 provides for the Crown’s right to make laws *“and its obligation to govern in accordance with constitutional process.”* In Te Wahanga Tuatahi (1983) Te Kaunihera Māori o Aotearoa observed that *“the purpose of the Treaty, therefore, was to secure an exchange of sovereignty for protection of rangatiratanga.”* (ibid.) Lange (1989) also explains that the Waitangi Tribunal on several occasions expressed their opinions in regards to the cessation of sovereignty by Māori. The Waitangi Tribunal found in the case of the Muriwhenua Fisheries Report (1987) that:

“From the Treaty as a whole it is obvious that it does not purport to describe a continuing relationship between sovereign states. Its purpose and effect was the reverse to provide for the relinquishment by Māori of their sovereign status and to guarantee their protection upon becoming subjects of the Crown.” (Waitangi Tribunal, 1987, p. 8)

The Waitangi Tribunal in the Motunui – Waitara Report (1993, WAI 6) also provided a statement of this principle on which the Crown based the principle of Government as *“that then was the exchange of gifts that the Treaty represented. The gift of the right to make laws and the promise to do so as to accord the Māori interest an appropriate priority.”* (Waitangi Tribunal, 1983, p. 95) This is endorsed by Article 2 of the Treaty of Waitangi, the principle of self-management or te tino rangatiratanga (authority) of taonga.

3.5.2 The Principle of Self-Management: The Rangatiratanga Principle

Article 2 guarantees to Māori the control and enjoyment of those resources and taonga, so long as they wish to retain them. (Lange, 1989, p. 10) expresses this further as the *“preservation of a resource base, restoration of iwi self-management, and the active protection of taonga, both material and cultural, are necessary elements of the Crown’s policy of recognising rangatiratanga.”* The first report produced by the Waitangi Tribunal was the Te Atiawa Report (1983) WAI 6²³ concerning the fishing

²³ WAI 6 was filed on the 4 June 1981 by the late Aila Taylor “for and on behalf of Te Atiawa Tribe.”

grounds in the Waitara District. The Waitangi Tribunal (1983, p. 59) interpreted the Māori text as confirming *“to the Chiefs and the hapu ‘te tino rangatiratanga’ of the lands etc. This could be taken to mean ‘the highest chieftainship’ or indeed, ‘the sovereignty of their lands’.”*

The Waitangi Tribunal in the Orakei Report (1987, p. 134) interpreted the principle of self-management as *“rangatiratanga as authority, tino rangatiratanga, as full authority and to give it a Māori form we use mana.”* Further, the Waitangi Tribunal found that in the case of the Orakei people that *“the Māori text thus conveyed an intention that the Māori would retain full authority over their lands, homes and things important to them, or in a phrase, that they would retain their Mana.”* This was also expressed by the Court of Appeal in the case of *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641. The Court of Appeal observed that *“the duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable.”* (Cooke, 1987, p. 664) This was also supported by the Māori Affairs Bill (1987) which defined rangatiratanga as meaning *“the custody of care of matters significant to the cultural identity of the Māori people of New Zealand in trust for future generations”.* (Baragwanath, 1988, p. 29)

3.5.3 The Principle of Equality

The principle of equality is represented in Article 3 of the Treaty of Waitangi. Article 3 provides for social equities and equal human rights with all citizens of Aotearoa New Zealand. The Court of Appeal in the case of the *New Zealand Māori Council v Attorney General* [1987] 1 NZL acknowledged that *“the Treaty is a document relating to fundamental rights; that it should be interpreted widely and effectively and as a living instrument taking account of the subsequent development of international human rights norms.”* (Cooke, 1987, p. 655) Haywood (2008, p. 494) in a National Overview of the principles of the Treaty of Waitangi for the Waitangi Tribunal explained that the Government's relationship with the principle of equality that *“the Treaty establishes a fair basis for two peoples in one country. To ensure this can occur, the Treaty places an obligation of reasonable co-operation on both basis.”*

3.5.4 The Principle of Co-operation

The principle of co-operation is regarded in terms of the Treaty as *“establishing a fair basis for two people in one country.”* (Lange, 1989) This is supported by the findings of the Waitangi Tribunal (1983, p. 103) who stated in Te Atiawa Report that there *“is room for movement and scope for agreement between the Crown and the Māori people which involves a measure of compromise and change.”* In the Court of Appeal, President Cooke and Judge Richardson (1987) agreed with this in the New Zealand Māori Council v Attorney General, [1987] 1 NZLR 641 land and water case observing that the principle of co-operation required Treaty partners (principle of partnership) *“to act towards each other reasonably and with the utmost good faith.”* (p. 667; p. 673)

3.5.5 The Principle of Redress

The principle of redress in law originated from New Zealand Māori Council v Attorney General, [1987] 1 NZLR 641 lands and water case. The Court of Appeal judges acknowledged that there was fiduciary obligation of redress as integral to the Treaty partnership (Te Puni Kokiri, 2001). President Cooke (1987, p. 664) observed that *“if the Waitangi Tribunal finds merit in a claim and recommends redress, the Crown should grant at least some form of redress.”* Judge Richardson (1987, p. 674) in the lands and water case agreed *“...where grievances are established, the State for its part is required to take positive steps in reparation.”* In supporting the principle of redress the Waitangi Tribunal also noted in the Waiheke Island Report (1987) that *“it is out of keeping with the spirit of the Treaty... that the resolution of one injustice should be seen to create another.”* (Waitangi Tribunal, 1987, p. 99)

Rt. Honourable David Lange (1989, p. 15) acknowledged this by stating *“it is only by squarely facing these issues, not as excuses for inaction, but rather as guides to action, that durable redress and reconciliation will occur.”* More recently, Gibbs *et al.* (2007, p. 2) acknowledges that in maintaining a Treaty relationship with Māori, any breach of customary rights without compensation is also a breach of the Treaty of Waitangi. For

Māori today, the process for resolution and redress of historical grievances is more commonly sought through the direct negotiation process with the Crown and their representative agencies. The right for Māori to seek redress through the Courts or the Waitangi Tribunal remains open to all Māori (Lange, 1989, p. 15).

3.5.6 The Principle of Partnership/Good Faith

The principle of partnership between Māori and the Crown has been expressed often since the 1987 Court Appeal case of the New Zealand Māori Council v Attorney General [1987] 1 NZLR 641. Although each of the five Appeal Court judges expressed the view of partnership differently, collectively they agreed that Māori and the Crown as partners to the Treaty of Waitangi had a *“duty to act reasonably and in good faith.”* (Hayward, 2008, p. 478) Good faith between Māori and the Crown ensures that both parties to the Treaty of Waitangi benefit. The Crown has an obligation to ensure that its representative agencies empower Māori participation in community governance to natural resource management.

3.5.7 The Principle of Active Protection

Active protection is not only the responsibility of the Crown as partners to the Treaty of Waitangi, but extends to their representative agencies in the management and administration of legislation and policy. This supports Article 3 of the Treaty and the principle of equality between Māori and the Crown as partners to the Treaty of Waitangi. The principle of active protection was initially raised by the Waitangi Tribunal in early inquiry reports of the Tribunal (Te Puni Kokiri, 2010) and was also expressed widely in 1987 by Court of Appeal (Hayward, 2008) in the lands and water case. In this case the Crown accepted that the *“Court of Appeal’s description of active protection, but identified the key concept of this principle as a right for iwi to organise as iwi and under the law, to control the resources they own.”* (Haywood, 2008, p. 494) The Waitangi Tribunal elaboration of this principle extends to the exchange of sovereignty while protecting Māori rangatiratanga (Te Puni Kokiri, 2010). The Crown is

required to actively protect Māori as New Zealand citizens and partners to the Treaty of Waitangi.

3.6 Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples²⁴ has been on the international agenda in Aotearoa New Zealand for nearly four decades since the 1970s. Te Kaunihera Māori o Aotearoa was a founding member to the Indigenous Peoples World Council, and represented Māori at Copenhagen in 1975. The evolution of the Indigenous Peoples World Council was first mooted by the Brotherhood of Indians, as early as 1972. Sanders²⁵ (1980, p. 5) wrote *“in August, 1972, the General Assembly of the National Indian Brotherhood endorsed the idea of an international conference of indigenous peoples and authorized the National Indian Brotherhood to apply for Non-Governmental Organization (NGO) status at the United Nations.”*²⁶

The National Indian Brotherhood (now the Assembly of First Nations) of Canada was granted Non-Government Organisation status by the Economic and Social Council of the United Nations in 1974 (Sanders, 1980). The first conference of the Non-Government Organisation was held at Port Alberni, British Columbia in October 1975.²⁷ The policy board included Neil Watene²⁸ from Aotearoa New Zealand²⁹. Five key issues were discussed by the world indigenous peoples in attendance included representation to the United Nations; the Charter of the World Council of Indigenous People; social, economic, and political justice; retention of cultural identity; and

²⁴ Appendix 5: Human Rights Commission, 2008, Aotearoa New Zealand.

²⁵ Douglas Sanders, Professor of Law, University of British Columbia, Vancouver, British Columbia, Canada.

²⁶ The first preparation meeting was held between the 8th – 11th April 1974, Georgetown, Guyana, New Zealand was represented at this meeting.

²⁷ October 27th – 31st, 1975.

²⁸ Vice President of the Te Kaunihera Māori o Aotearoa (New Zealand Māori Council) in 1975.

²⁹ Other representatives included Sir Graham Latimer, Dr. Ranginui Walker and John Rangihau.

retention of land and resources. The National Indian Brotherhood also launched the world courier of indigenous people in 1975.

3.6.1 Indigenous Human Rights in New Zealand

In 1990 the Labour Government issued the first discussion document entitled Declaration on the Rights of Indigenous Peoples for consultation with tangata whenua (Te Puni Kokiri, 1994). The Labour Government acknowledged that the principle aim of human rights is to *“protect the dignity of individuals whatever their status or circumstances. Human rights require not only that, citizens are protected from abuse or power by governments but also that governments organise society in a way that enables all individuals to develop to their full potential.”* (Te Puni Kokiri, 1994, p. 4) The Labour Government also supported the development of human right standards in the United Nations for the indigenous peoples of the world (Te Puni Kokiri, 1994). However, Māori human rights as the indigenous people of Aotearoa New Zealand in municipal law have had little or no effect in the last 20 years. Te Puni Kokiri (1994) pointed out that the:

“Elaboration of the draft Declaration is encouraging the emergence of an international consensus on the principles by which indigenous people and the states in which they live should develop their relationships. The New Zealand Government supports this process. There is no doubt in its mind that indigenous peoples have the right to exist as a distinct community with their own cultural identity, that their relationship with the land is special and must be taken into account by those who arrived after them, and that they must be involved in determining their own economic and social destiny.” (Te Puni Kokiri, 1994, p. 4)

Section 2(d) of the Human Rights Amendment Act 2001 empowers the Human Rights Commission to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights in municipal law. Section 2(h) enables the Commission to inquire generally into any matter, including any enactment or law, practice, and procedure, whether governmental or non-governmental if it appears to

the Commission that the matter involves, or may involve, the infringement of human rights. Increasing recognition of the importance of the principles of the Treaty of Waitangi in relation to public policymaking also has important benefits for Māori participation in society and for Māori developmental aspirations. The role of the Treaty of Waitangi in wider society, however, has been the subject of much discussion in recent years and is a matter of on-going debate (Human Rights Commission, 2001).

Professor Sir Mason Durie (2005, p. 138) explained that the *“contemporary relevance of indigenous knowledge and culture is made explicit in the Draft Declaration on the Rights of Indigenous Peoples.”* The perspective of Māori indigenous human rights as the indigenous people of New Zealand is acknowledged by Durie (2005) who states that *“indigenous peoples should have access to the indigenous world with its values and resources, access to the wider society within which they live, access to a healthy environment, and a degree of autonomy over their own lives and properties.”* (p. 139)

The Human Rights Commission (2008, p. 1) reported that *“the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007.”* This was endorsed by the Minister of Māori Affairs on behalf of the National Government on the 20 April 2010 in New York before the United Nations Permanent Forum on indigenous issues (New Zealand Parliament, 2010). While not currently enforced in Aotearoa New Zealand, the Declaration provides a fundamental human right for Māori as the indigenous people of Aotearoa New Zealand, to freely exercise full authority to natural resources.³⁰

The possibility of the Declaration on the Rights of Indigenous Peoples becoming a Treaty agreement, as a matter of municipal law in Aotearoa New Zealand remains to be seen. As Treaties continue to be tested in Aotearoa New Zealand law the place of the Declaration in society may also become subject to legal interpretation. The Crown

³⁰ Article 26: Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection of these lands, territories and resources. Such recognition shall be conducted with due respect to customs, traditions and land tenure systems of the indigenous peoples concerned.

has an obligation to ensure Māori statutory participation in the exercise of authority and control of their natural resources in Aotearoa New Zealand including water,³¹ foreshores, oceans, seabed, land, indigenous forests, air, flora, fauna and minerals. The United Nations Human Rights Division recognises the rights of indigenous people to self-determination, ownership, control, management of traditional territories, lands and natural resources, exercise of customary law, and to represent themselves through their own institutions.

3.7. Chapter Summary

Since the signing of the Declaration of Independence in 1835 and the Treaty of Waitangi in 1840, Māori have continued to protest their rights for the loss of mana to their natural resource management in Aotearoa New Zealand. The Treaty relationship continues to evolve between Māori and the Crown and their representative agencies. Persistently differentiated over the past 170 years, the Declaration of the Independence and the Treaty of Waitangi remain the fundamental bases for Māori and Crown authority in Aotearoa New Zealand. Subsequent litigation by Māori against the Crown rose in the 1980s, effectively requiring the Crown to uphold the principles of the Treaty of Waitangi.

The United Nations Declaration on the Rights of Indigenous Peoples supports the Waitangi Tribunal in addressing historical Treaty of Waitangi grievances to natural resources. Under national and international law the Crown is required to ensure Māori retain natural resources in Aotearoa New Zealand. Acknowledging the dimensions of Māori human rights in national and international law and developing a robust framework for Māori to ensure the administration of treaties in Aotearoa New Zealand are positive gains for all New Zealanders.

³¹ Indigenous Peoples Kyoto Water Declaration, Third World Water Forum, Kyoto, Japan, March 2003 (9).

CHAPTER 4

MĀORI VALUES & NATURAL RESOURCES

4.1 Introduction

Cultural values are drawn from the underlying beliefs of traditional Māori and their relationship to the natural world. Indigenous natural resource management and the sustainability of resources was second nature to traditional Māori, to live in harmony with their surrounds and with all living things. This is about taking from nature what is only necessary to survive and ensuring the sustainability of resources for future generations. Understanding Māori environmental values is essential in order to have a wider perspective (Durie, 1998) as the indigenous people of Aotearoa New Zealand.

Māori environmental values express the customary lore of Māori, and how customary lore relates to indigenous traditional knowledge and the sustainability of resources. In contemporary times, whakapapa remains inherent in understanding the relationship between Māori and natural resource management. Ensuring the sustainability of resources for future generations is evident in the role of Māori as kaitiaki, which were applied in traditional tribal systems in Aotearoa New Zealand. However, it is clear that like western societies, Māori values continue to evolve to adapt to a changing society (Waitangi Tribunal, 1988).

4.2 Te Ao Māori: Māori World-View & Values

The Law Commission Act 1985 provides a statutory body which makes recommendations for the reform and development of New Zealand laws. A specific function of the Law Commission under section 5 (2) (a) of the Act is to take into account the Māori dimensions of Te Ao Māori (Law Commission, 2001). In taking into account the Māori dimensions of Te Ao Māori, the Crown and their representative agencies are not under any statutory obligation to give full effect to any recommendations by the Law Commission. Notwithstanding, the variation of Māori

customs and values require a separate and distinct context by the hapu and tribes throughout Aotearoa New Zealand.

The Māori world-view in traditional Māori society requires an understanding of one's identity, whakapapa and tribal histories. It requires knowledge of the creation of the universe, its beginnings and the mauri of all living things, and how the universe is intertwined in Māori cosmology. Orbell (1985, p. 215) in defining the traditional Māori world-view states that Māori *"... did not see their existence as something separate and opposed to the world around them. Birds, fish, insects and plants, also natural phenomena such as the moon, mist, wind and rocks, were felt to possess a life essentially similar to that of human beings."* This is correct in a traditional and contemporary sense of understanding customary lore, that Māori culture is founded on the basis of kaitiakitanga as the guiding principal of our relationship to God, man and universe.

The philosophical view of the Māori natural world is through Papatūānuku and Ranginui as the progeny (James, 1993). The Waitangi Tribunal (1988, p. 8 -14) in the Muriwhenua Fisheries Report explains the creation story as *"a reverence for the total creation as one whole... to the pre-European Māori , creation was one total entity – land, sea and sky, were all part of their united environment, all have a spiritual source. Myths and legends support a holistic view not only of creation, but of time and of peoples."* Māori customs require a holistic approach to ensure the sustainability of resources for future generations. Approaches by indigenous people to resource management include practices such as the understanding the role of the universe and all living things, the practicing of customs and language, understanding traditional knowledge, traditional hunting and harvesting methods. Kaitiakitanga supports the role of Māori authority to natural resource management.

4.2.1 Whakapapa

Whakapapa is an integral part of defining Te Ao Māori World view. Whakapapa may also be associated to ones turangawaewae or place of standing and belonging. The dynamics of whakapapa are expressed by Durie (1994) who explains that:

“Whakapapa was a highly developed politico-social tool, providing a flexible system of self and group identification and permitting descent line manipulation to suit different situations. Whakapapa were not used to constrain individual or group status but to enlarge it, and did not limit future direction but expanded on the possibilities. The widespread and bilateral genealogical lattice of whakapapa also prescribed the essentially inclusive nature of Māori society. Well developed whakapapa gave the individual an entry to numerous communities, and allowed communities of widely scattered persons.” (Durie, 1994, p. 5)

4.2.2 Tikanga

Tikanga Māori literally means cultural best practice. It is dynamic and capable of responding to the changing world. Tikanga Māori forms the basis of how we live in relationship to all living things and their environment, and how we manage those natural and physical resources and all mauri. Durie (1994, p. 5) explains that tikanga was *“flexible, subject to reinterpretation according to circumstances. Decisions were pragmatic, not bound by unbreakable rules. The principles of tikanga provided the base for the Māori jural order.”* In tradition tikanga Māori is also acknowledged as kawa which can be interpreted as practice or protocol (Durie, 1994; Mead, 2003). Tikanga Māori is defined under Section 2 of the Resource Management Act 1991 and Section 3 of Te Ture Whenua Māori Act 1993 as Māori customary values and practices. This is explained by (Durie, 1994, p. 3) as *“church law, western institutional law and institutional Māori land law.”*

4.2.3 Taonga

Taonga relate to those things considered culturally valuable to Māori which may have tangible or intangible elements. Article 2 of the Treaty of Waitangi acknowledges

taonga as being lands, estates, forests, fisheries and other properties. Taonga represents an element of the Māori philosophical world-view and all living things representing mauri. Taonga is conceptualised as enduring by the Waitangi Tribunal in the Muriwhenua Fisheries Report (1988, p. 257) who explain *“through fluctuations in the occupation of tribal areas and the possession of resources over periods of time, blending into one, the whole of the land, waters, sky, animals, plants and the cosmos itself, a holistic body encompassing living and non-living elements.”* All living and non-living rudiments retain a life force, where one cannot live without the other and where all intricately exist in harmony to sustain their being and existence on earth.

4.2.4 Tapu, Noa, Rahui and Mauri

Tapu is the association to the spiritual realm which concepts include restrictions or disciplines, that if were transgressed would be responded to by atua. Tapu is also a spiritual attribute which is possessed by all Māori, this is generally inherited through parents' genes. An important concept, tapu is also an important aspect of tikanga (Mead, 2003). Mead (2003, p. 30) explains that *“tapu is everywhere in our world. It is present in people in places, in buildings, in things, words, and all tikanga. Tapu is inseparable from mana, from our identity as Māori and from our cultural practices.”* Noa is explained by Williams (1985, p. 222) as being to be *“free from tapu or any other restriction.* This is the divergent or inverse of tapu. The New Zealand Law Commission (2001, p. 36) stated that *“tapu and noa are complementary opposites, which together constitute a whole. Noa has its own importance, as a counter and antidote to tapu...”*

The Ministry of Environment (2007) describes rahui as a lesser application of tapu. This provides for the replenishing and conservation of resources and species harvested by seasons. Tipa & Teirney (2001, p. 3) explain that rahui *“is an act of prohibition, often temporary, imposed to conserve or replenish a resource. When a rahui is placed upon a river, lake, forest or harbour, people are banned from using specific resources within a prohibited area.”* Another example of rahui in relation to water is in response to a drowning. In this example, a rahui is placed on the area where the drowning took place until the body is recovered. The rahui is then extended depending on the period

of time it took to recover the deceased. This was to ensure that shell fish and fish were cleansed of all associations with the deceased body before harvesting resumes.

Mauri is a spiritual attribute or a metaphysical concept (Patterson, 1999) that is traditionally centred on Māori values. Royal (2009, p. 1) explains Mauri as *“an energy which binds and animates all things in the physical world. Without mauri, mana cannot flow into a person or object.”* From a Māori world-view both tangible and non-tangible elements have a mauri.

4.2.5 Kaitiakitanga

Marsden & Henare (1992, p. 18) define kaitiakitanga in three separate syllables as kai-tiaki-tanga. Tiaki means to guard and contains other closer meanings depending on the context of use, this is defined as by Marsden & Henare (1992, p. 18) as *“... to keep, to preserve, to conserve, to foster, to protect to shelter, to keep watch over.”* As kaitiaki the traditional culture in Māori society includes the protection of all living things, natural resources, culture and people. In this regard, kaitiaki in traditional times were universal, the protection of our natural resources and culture, required a commitment throughout the whole Māori society which is evolving.

Tomas (1994) explains kaitiakitanga as a *“concept which has its roots deeply embedded in the complex code of tikanga – the cultural constructs of the Māori world which embody the way Māori perceive the natural world and their position within it. It includes the rules and practices which were the means by which Māori regulated the world.”* Kaitiakitanga not only relates to the environment but also extends to the socio-economic well-being of Māori. Kaitiakitanga is therefore only one aspect of cultural role for Māori as the indigenous people of Aotearoa New Zealand. Matunga (2002) states that:

“The world our ancestors inhabited may be quite different to the world we inhabit today; the underlying challenge, though more complex, are basically the same. Those challenges revolve around how to manage change in the environment and our interactions with the environment while protecting the

resource for future generations to use and enjoy – in other words, the practice and ethic of kaitiakitanga.” (Matunga, 2002, pg. 7)

Today, kaitiakitanga also extends to the management of specific natural resources, in pursuit of preservation and restoration for future generations. Kaitiakitanga in the statutory application of natural resource management in Aotearoa New Zealand has been widely reviewed and interpreted. Kaitiakitanga is defined under the Resource Management Act 1991 as the exercise of guardianship and the ethic of stewardship.

4.3 National Resources

4.3.1 Fresh Water

The Māori world-view and value of water is expressed in the language wairua, this is an underlying principle of Māori relationship to water. Traditionally water was always conserved by Māori, like all taonga water was protected. The spiritual relationship between Māori and water has co-existed as a source of spiritual life (Te Puni Kokiri, 1993; Tipa & Nelson, 2008). The Ministry for Environment (2007) reported that New Zealand has 425,000 kilometres of rivers and streams, Māori consider these to be the arteries of Papatūānuku. There are almost 4,000 lakes and approximately 200 aquifers, while Lake Taupo is considered to be Aotearoa New Zealand’s largest lake comprising of 62,000 hectares with a depth of 163 metres (Ministry for Environment, 2007).

The customary role of kaitiakitanga in the sustainable resource management of fresh water includes the method of rahui and tapu. A core value includes the life-force of the water or the mauri of fresh water, which Māori believe is essential to the sustainability of all living things. The mauri of water represents the life-force of water resources and the ecology systems that live within that resource. Human activities such as urbanisation, development, agriculture and horticulture often impact on the mauri of water which may have negative and/or positive effects. Tipa & Teirney (2001,

p. 9) suggest that *“one of the principal indicators by which Māori will assess the mauri of a water body is its productivity and the food and other materials sourced from it.”*

There are at least seven categories of water that Māori relate to. These values include waiora, waimāori, waikino, waipiro, waimate, and waitai/waitapu (Parliamentary Commissioner for the Environment, 2000). This is explained by Tipa & Teirney (2001) in Table 4.1.

Table 4.1 Māori Use of Water

Key Language	Use of Water
Waiora	Is of spiritual significance and is used in such ceremonies as baptising and dedicating children
Wai Māori	This water is used for everyday purposes such as drinking
Wai Tai	Sea water that is potentially dangerous
Wai Mate	Water that has lost its mauri, life force. It is damaged or polluted beyond its capacity to rejuvenate either itself or other living things
Wai Kino	Water that is spoiled or polluted and that contains large rocks or submerged snags. This water has the potential to be detrimental to life
Wai Tapu & Wai Taonga	Provides for the continuance of the protection of certain areas of physical and spiritual significance

Tipa (2001, p. 2) considers that the nature of wai tapu and wai taonga and the value of Māori relationship to be *“tapu, or sacred, because of its properties in relation to other water, tapu places or objects, and its close association with the gods”*. Māori survival is also dependent on the ability to cultivate mahinga kai and their ability to gather resources. This is considered to be the cornerstone of the Māori culture (Tipa, 2001). Tipa (2001, p. 10) acknowledges that *“the healthy water bodies were valued because they continue to; be a direct source of mahinga kai; provide ecosystems support for mahinga kai species; support other significant mahinga kai environments such as forests, riparian habitats and coastal environs”*. The issue of customary rights to fresh water are still argued in statutory law today (Gibbs *et al.*, 2007).

4.3.2 Land

Tikanga forms the basis for cultural best practice of the customary land tenure system in Aotearoa New Zealand by Māori. The customary land tenure system was managed by hapu, whanau and iwi prior to the signing of the Treaty of Waitangi up until the mid-19th century. The Ministry for Environment (2007) reported that Aotearoa New Zealand's land area consists of 270,000 km², approximately 26,822,000 hectares. The Labour Government in 1986 proposed a policy, the State Owned Enterprises Act 1986 which would alienate substantial lands from Māori. Baragwanath⁴² (2007, p. 1) wrote in terms of the proposed policy of the then Labour Government *“that policy affected the bulk of the so-called “Crown” assets, which term begged the question of whose they actually were. It involved 52% of the land area of the country, other assets worth some \$11.8b at the time...”*

The Waitangi Tribunal (1997) in the Muriwhenua Land Report explain several cultural concepts related to key Māori customary land tenure systems. The traditional land tenure system in Aotearoa New Zealand consists of a number of concepts this includes the relationships by whakapapa; relationships to the land; attachment to land; land rights by descent; community rights; individual right through the community, incorporation; incorporation by land allocation; and allocation to another hapu (Waitangi Tribunal, 1997).

Māori relationship to land by whakapapa is a fundamental concept. Today, this is incorporated into contemporary land tenure systems. This was also supported by the Muriwhenua Land Report (1997) which acknowledged that it was the people of the land that remained paramount, as in traditional mythologies, the substance of the land remained with the people (Waitangi Tribunal, 1997). Professor Dame Anne Salmon in a submission to the Waitangi Tribunal (1997) described the early Māori relationship to the land through whakapapa stating that:

⁴² Former Judge of the Supreme Court of New Zealand. Queens Councillor for the plaintiffs in the case of the New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641.

“It should be stressed that in 1840 in Northland, Māori were operating in a world governed by whakapapa (genealogical connections). Ancestors intervened in everyday affairs, mana was understood as proceeding from the ancestor-gods and tapu was the sign of their presence in the human world. Life was kept in balance by the principle of utu (reciprocal exchanges), which operated in relations between individuals, groups and ancestors.” (Waitangi Tribunal, 1997, p. 23)

Māori relationship to land provide for several unique concepts. The Waitangi Tribunal (1997) agreed that Māori were users of land. Māori understand whenua as to also mean placenta suggesting that Māori are attached to the land rather than being owners of land. Māori beliefs include the concept of Māori as having been born from Papatūānuku. Māori philosophies to land are often retold through karakia, waiata, whakatauki, and stories associated to the land. In Taranaki for example, the fact that on death you are returned to the land implies you are never disassociated in any way – you are born of the whenua (Roskrug, 2007).

Maunga are central in identifying a hapu, whanau or iwi surrounds. Connecting land marks such as maunga, streams, rivers, and harbours in identifying a hapu or tribal rohe is often demonstrated in tribal pepeha. This association could not pass out of the tribal or hapu descent group, with the exception of alienation by warfare. Understanding the Māori land tenure system requires acknowledgement of the fact that land was succeeded to generations from their ancestors, and as an acknowledgement of what sustains Māori. Identifying ones pepeha was essential to understanding the dynamics of the customary Māori land tenure system (Waitangi Tribunal, 1997). Community land rights by descent, is an important concept traditionally and in contemporary times today. The Waitangi Tribunal (1997) explained that:

“The main right, however, lay with the community in general. As a consequence, deceased forebears and generations to come had as much interest in the land as any current occupier. This view, once again, compelled punctilious observance of constraints on resource depletion. Thus, while there existed a complex variety of individual rights to use or take as their own – the individuals’ enjoyment of any part of the district was because through descent, and then also, but less perfectly, by incorporation. There was no right of land disposal independent of community sanction.” (Waitangi Tribunal, 1997, p. 24)

The incorporation of outsiders into the community within descent groups was also required to increase the members of the community. Rules which were applied within the community tribal systems also applied to the outsiders. Marriage and adoption was also another method of incorporating members into the community, and in ensuring connections within the community a new name may have been taken on by an adult member (Waitangi Tribunal, 1997). This was also a mode of establishing relationships. Incorporation by land allocation was also a concept used to secure Māori land tenure. The Waitangi Tribunal (1997) agreed that:

“Accordingly, land allocation was not a permanent alienation of the land. Nothing could alter the reality that it was held from the ancestral community, and that a stranger taking land held it only by becoming part of that community. Thus the recipients or their issue could not part with the land. If they left it, the land remained where it had always been, with the ancestral descendants. This was no construct of law, for to Māori it was normal or natural.” (Waitangi Tribunal, 1997, p. 25)

4.3.3 Foreshores & Oceans

Known as the coastal marine area the full extent of Aotearoa New Zealand’s Exclusive Economic Zone (marine) extends 200 nautical miles offshore. This encompasses 4.4 million km², being the 6th largest Exclusive Economic Zone in the world. There are approximately 16,000 marine species known in this area, and consists of 80% of New Zealand’s marine environment (Ministry for Environment, 2007). In 2004 the Labour Government vested the foreshore and seabed (coastal marine area) in the Crown alienating Māori from land and seabed heritage entitlement. Section 4(a) of the Foreshore and Seabed Act (2004) extinguished Māori customary rights to the foreshore and seabed by vesting ownership in the Crown. Now repealed and replaced by the Marine and Coastal Area (Takutai Moana) Act 2011, Māori are now required to prove customary exclusive use and occupation to the marine and coastal since 1840.

The protection of the marine and coastal area is paramount to the sustainability of resources for Māori as a valued food source. Māori continue to apply customary techniques to protect the mauri of foreshores and oceans through maintaining tikanga

Māori. Baragwanath (2007) supported the concept of tikanga Māori and noted that the Privy Council in a New Zealand Māori Council lands case that “...*the old custom as it existed before the arrival of Europeans [which] has developed, and become adapted to the changed circumstances of the Māori race of to-day.*” (p. 5) Today tikanga Māori evolves to adjust to the circumstances of evolving change through modernisation. Understanding marine and land tenure to Māori underlies the tikanga Māori values and relationship to foreshore and oceans. (Te Puni Kokiri, 1993, p. 10) agreed that “*marine tenure to Māori is no different from land tenure.*” In most cases the ownership right as kaitiaki rests with those who live adjacent to fishing grounds which was closely guarded by whanau and community (Te Puni Kokiri, 1993, p. 10).

Traditional management methods based on the concept of rangatiratanga included making territorial decisions, generally exercised on a hapu basis to ensure the sustainability of resources. For example the Waitangi Tribunal (1986, p. 108) in the Muriwhenua Fishing Report explained that “*the mana, or authority, over the kopua (the deep) was solely exercised by Popata te Waha, who had inherited it from his ancestors.*” It was also noted by the Waitangi Tribunal that Popata te Waha⁴³ a chief of the hapu of Te Rarawa was the primary person “*who issued the panui, or notice, of the date of the maunga (or catching).*”⁴⁴ (Waitangi Tribunal, 1986, p. 108) Marae committees and tribal Runanga in contemporary times offer represent whanau and hapu. (Te Puni Kokiri, 1993)

Perspectives such as challenging a rahui, conserving food sources and rahuitia also form part of the rituals and regulations of Māori. The maramataka⁴⁵ or lunar calendar helped regulate customary fishing. The Waitangi Tribunal (1986) in the Muriwhenua Fishing Report provided an example of the regulation of shark-fishing discussing that:

⁴³ Chief of the hapu Patu (now known as Te Paatu) Popata Te Waha was also known as Paerata. He headed the signatories of the Declaration of Independence 1835.

⁴⁴ Address by R. H. Matthews given to the Auckland Institute 1910 (Transactions and Proceedings of the New Zealand Institute 43, 598).

⁴⁵ The Māori lunar calendar also determines the harvesting of Kaimoana and Kaimaara through moon tides and spring tides.

“Fifty years ago shark-fishing was considered and looked forward to as a national holiday by the Rarawas and all the surrounding hapus. The traditional customs and regulations were strictly observed and rigidly enforced. The season for fishing the kapeta (dogfish) was restricted to two days only in each year ... Any one who killed a shark after this would be liable to the custom of muru. No one was permitted to commence fishing before the signal to start was given; a violation of the rule would lead to the splitting-up of the canoes of the offenders.” (Waitangi Tribunal, 1986, p. 107)

4.3.4 Indigenous Forests, Flora and Fauna

Today the majority of indigenous forests, flora and fauna within the Conservation Estate by way of the Conservation Act 1987 makes up 32% of Aotearoa New Zealand’s land area. Since 1987 Conservation lands have increased from 8.06 million hectares to 8.43 million hectares by 2007. Flora and fauna consists of some 80,000 species of native animals, plants and fungi which can only be found in Aotearoa New Zealand. There are some 2,500 land-based and fresh water species, which remain threatened (Ministry for Environment, 2007).

Mātauranga is also a key concept which defines Māori values and relationship to flora and fauna. All flora and fauna are related to Māori through whakapapa and cosmologies of the great creation stories of the universe and all living things. Today, understanding Māori environmental values is essential in order to have a wider perspective of the Māori and their relationship to their flora and fauna (Durie, 1998).

As kaitiaki of indigenous forests and flora and fauna, Māori continue to play a primary role in the protection and utility of natural resources. Paul (1987) provides an example of this explaining that Māori conserved natural resources, only using what was required to provide for the essential needs of continued existence as:

“Kai (food), whakawerawera (warmth) and kainga (shelters)... When taking kiripaka (bark) or wairakau (sap) from a particular tree, great care was taken to ensure they did not unnecessarily kill the tree. It was believed that by removing bark from the sunny side of the tree, the amount of water flowing up the tree was greatly altered, as most of the water flowed up the shaded side.” (Paul, 1987, p. 5)

4.3.5 Minerals

Statutes which promote prospecting of minerals for the “*compulsory opening of land development include the Atomic Energy Act 1945, the Geothermal Energy Act 1953, And the Bauxite Act 1959.*” (Anderson, 1996, p. 87) The previous legislation provides for the ownership of uranium and oil, and in the case of geothermal and iron sands provides for the sole right of access or the right to prospect and take land on payment of compensation to proprietors. The Crown gained jurisdiction of petroleum in 1937, which sparked the debate led by Māori ⁴⁶ who questioned the Crown rights to subsurface resources (Anderson, 1996). The then Labour Government determined that “*oil rights should be vested in the Crown, while owners of the land would be compensated for surface damage only.*” (Anderson, 1996, p. 88)

Māori land heritage entitlement to minerals is debated today between Māori and the Crown. In the case of *Mahuta and Tainui Māori Trust Board v Attorney General* [1989] 2 NZLR 513, the Court of Appeal concluded that coal as a mineral “*can be classified as a form of taonga, there was some limited Māori use of it before the Treaty.*” (p. 38) The Māori interest in minerals has been acknowledged by the Crown but not supported (Barnes, 2000) with the exception of pounamu for Ngai Tahu. Earlier evidence and subsequent claims by Rongomaiwahine, Nga Ruahine and Ngati Rahiri (which were put on hold until the outcome of a Waitangi Tribunal Report) acknowledged Māori had title to minerals (petroleum) prior to 1937 (Waitangi Tribunal, 2000). This is further evidenced by Dr. Anderson (1996) who describes Māori values to minerals as:

“The naming of geographical features, in the identification of their tupuna in stones, and in their story-telling, demonstrated a deep spiritual and cultural affinity with the land in all aspects, including any minerals to be found within it. Tuhua-nui, named Mayor Island by Pakeha, gained its name from the presence of obsidian. Pounamu was the child of Tangaroa, the sea god, and Anu-Hine-tu-a-kirikiri, were personifications of sandstone (hoanga), sand, and gravel... The presence of oil had also been marked by Māori in Taranaki who believed that

⁴⁶ Nga Hapu o Nga Ruahine of Taranaki and Ngati Kahungunu of Hawke’s Bay and Wairarapa in relation to their interests in the petroleum resource, and the taking of land heritage entitlement without compensation to the land owners.

Seal Rock, a submerged reef of the coast, had once been an island of bituminous matter which had been ignited by supernatural agency and had burnt to below sea-level. Ernest Diffenbach who visited the area in 1839 noted that the existence of a local legend that an atua had drowned and was 'still undergoing decomposition' at a spot where there were strong emissions of sulphuric hydrogen gas.⁴⁷ Although no example of pre-contact knowledge or mythologizing of god has been found, Māori clearly demonstrated interest in, and use of, other forms of minerals for example, coals, pounamu, sandstone, Tahanga basalt, before 1840."⁴⁸ (Waitangi Tribunal, 1996, p. 4)

Geothermal, also classified as a Crown mineral, was also reported by the Waitangi Tribunal (1993) in the Ngawha Geothermal Report. The Waitangi Tribunal heard evidence by kaumatua of the concept of geothermal as also having a mauri. The Waitangi Tribunal (1993) summarised this as follows:

"Mauri is a special power possessed by [the God] Io which makes it possible for everything to move and live in accordance with the conditions and limit of its existence. Everything has a mauri, including people, fish, animals, birds, forests, land, seas and rivers; the mauri is that power which permits these living things to exist within their own realm and sphere..." (Waitangi Tribunal, 1993, p. 136)

4.3.6 Air

Air pollutants affect health so it is essential to protect the health and environment of air. In contrast with other countries around the world, the air in Aotearoa New Zealand is relatively clean, however there are cities and towns which are polluted. They will cause long term affects on humans and the sustainability of the environment (Ministry for Environment, 2008).

Like other resources air is necessary to sustain the mauri of all living things. To Māori, air is a taonga. Under Article 2 of the Treaty of Waitangi the Crown have an obligation to protect air as a human right. The contamination of air affects the mauri of all living things including plants, animals and humans. The Ministry for Environment (2001) stated:

⁴⁷ Cited in J D Henry, *Oil in New Zealand*, London, 1911, p. 9.

⁴⁸ See P McHugh, *The Māori Magna Carta*, Oxford, 1991, p. 254.

“The protection of air resources is viewed by Māori in terms of the effects of activities on both inside and outside [sic] Māori tribe rohe (boundary). Activities which may impact on Māori boundaries may include airports, industry, buildings, rock concerts, telecommunications and global issues. Health concerns may also be included in the impacts of these activities on the domain of Ranginui, a protected taonga under the Treaty of Waitangi.” (The Ministry for Environment, 2001, p. 2)

Core elements are reflected in whakapapa through atua such as Ranginui, Papatūānuku and Tawhirimatea. The Ministry for Environment (2001) outline the traditional Māori view of air as being:

“Encapsulated by Ranginui (Sky Father) and Tawhirimatea (guardian of the wind). The expression Ko Ranginui e tu iho nei Ko Papatūānuku [e takoto nei] is heard throughout the country on marae and at hui. This classical expression denotes the creation of genealogy, and depicts how Māori see the world as being contained within Ranginui (the sky) and Papatūānuku (the land). Concepts such as tihei mauriora (the breath of life), Nga hau e wha (the four winds) and te hau o Tawhirimatea (the wind of Tawhirimatea) are also tohu (indicators) within Māori society to signify the importance of air for Māori.” (Ministry for Environment, 2001, p. 2)

4.4 Chapter Summary

In summary Māori values are essential to the way in which Māori interact with the natural world. The recognition of Māori values by the Crown are significant to ensuring Māori natural resource management (statutory or otherwise) as a human right. The exercise of kaitiakitanga, rangatiratanga and tino rangatiratanga (mana) is supported by national and international treaties.

The application of kaitiakitanga, rangatiratanga and tino rangatiratanga (mana) in legislation and policy requires appropriate interpretation. This is underpinned by the philosophies of Māori values to natural resource management for future generations in Aotearoa New Zealand.

Enhancing Māori values in natural resource management legislation and policy provides an opportunity for statutory managers to apply tikanga Māori principles,

philosophies and concepts of sustainable natural resource management in Aotearoa New Zealand. Māori representation in natural resource management is still not being fully addressed by accommodating a Māori statutory frame-work as determined by Article 2 of the Treaty of Waitangi and the Declaration on the Rights of Indigenous Peoples.

CHAPTER 5

NATURAL RESOURCE MANAGEMENT

IN IWI LEGISLATION

5.1 Introduction

The Treaty of Waitangi settlement process has provided a political vehicle to help resolve Māori historical grievances relating to natural resource management in Aotearoa New Zealand. Any further loss of resources through legislation without recognition of Māori land heritage entitlement may be a breach of Article 2 of the Treaty of Waitangi (Gibbs *et al*, 2007) and the Declaration on the Rights of Indigenous People. Gibbs explains that ownership over resources “*may be able to be met through the Treaty settlement process.*” (2007, p. 12) However, statutory instruments do not always provide for Māori interests in all natural resources, such as the Crown’s pre-emptive rights to minerals.

The future of Treaty of Waitangi settlement legislation in Aotearoa New Zealand remains negotiable between Māori and the Crown and their representative agencies. Preceding legislation provides a basis for negotiating and settling historical Treaty of Waitangi grievances. This chapter provides an overview of statutory instruments in legislation such as Māori values and customs within Treaty of Waitangi settlement legislation.

Māori natural resource management are identified as Māori having an interest guaranteed by Article 2 of the Treaty of Waitangi (Henare, 1997 cited in Palmer, 2008). Māori have a unique relationship to resources as the indigenous people of Aotearoa New Zealand and through the cultural medium of whakapapa. The current National Government have continued the preceding Labour Government policy for a wide-range of resources to be available as cultural redress through legislation and policy. Natural resources include: wahi tapu and other sites of significance; rivers and lakes

(waterways); wetlands, lagoons, indigenous forests and tussock lands; coastal areas including the foreshore and islands; customary freshwater and marine fisheries; geothermal and mineral resources; plant and animal species (flora and fauna); movable taonga (artefacts), and traditional place-names.

The first iwi centred Treaty of Waitangi claim was settled between the Crown and Ngai Tahu in 1998. Ngai Tahu is the first tribe to obtain natural resources entitlement to the 12 nautical mile limit (territorial sea) and to pounamu (nephrite). However, proving entitlement to natural resources has not always been successful in negotiations for other tribes with the Crown. However Gibbs (2007) and others note that Māori customary association to natural resource management is now being better defined through Treaty of Waitangi settlement legislation. For example Ngati Tama of Taranaki kaitiakitanga role is enhanced by ensuring that statutory acknowledgements are cited in local government plans and policies (Ngati Tama Claims Settlement Act, 2003).

5.2 Ngai Tahu

5.2.1 Introduction

Ngai Tahu, the dominant iwi of the South Island, are represented by some 33,000⁴⁹ beneficiaries. The Ngai Tahu claim WAI 27 was lodged before the Waitangi Tribunal in 1986. The inaugural Waitangi Tribunal Report on land claims was delivered in February 1991, while the Treaty of Waitangi Sea Fisheries Report was delivered in August 1992. This concluded with the passing of Te Runanga o Ngai Tahu Act 1996, and the commencement of negotiations for the settlement of their longstanding grievances against the Crown. By September 1997 the first Crown settlement offer

⁴⁹ Unlimited Inspiring NZ Business. (2003). Ngai Tahu Inc. Retrieved September 24, 2011 from <http://unlimited.co.nz/unlimited.nsf/growth/ngai-tahu-inc>.

was put to Ngai Tahu. This resulted in the passing of the Ngai Tahu (Pounamu Vesting Act) 1997 which was finalised by the Ngai Tahu Settlement Act 1998 (Te Runanga o Ngai Tahu, 1997).

Cultural redress for Ngai Tahu included resource options, a Crown apology and acknowledgement of the Treaty of Waitangi. In acknowledging the Treaty partnership, the Crown, in good faith, returned Aoraki (Aorangi/Mt Cook) the jewel of Ngai Tahu as part of the historical redress. Ngai Tahu in return gifted Aoraki to the people of New Zealand and proposed a co-management approach between Ngai Tahu and the Crown in recognition of the Treaty partnership (Ngai Tahu Claims Settlement Act 1998, Part 3, Section 16).

5.2.2 The Treaty of Waitangi 1840 (Te Tiriti o Waitangi)

Ngai Tahu was the first tribal settlement to provide references to the principles of the Treaty of Waitangi in legislation. This is defined by Section 6 and Section 10 of the Ngai Tahu Claims Settlement Act 1998. Ngai Tahu asserts that their relationship to the management of natural resources is founded by the Treaty of Waitangi. It is a requirement that all South Island local authorities give regard to the principles of the Treaty of Waitangi (Garven, *et al.*, 1997).

In Section 6(2) of the Ngai Tahu Claims Settlement Act 1998, the Crown acknowledged that it had acted unconscionably and repeatedly breached principles of the Treaty of Waitangi in its dealings with Ngai Tahu in the purchases of Ngai Tahu land. The Crown further acknowledged that in relation to the deeds of purchase it had failed in most material respects to honour its obligations to Ngai Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngai Tahu's use and to provide adequate economic and social resources for Ngai Tahu (Ngai Tahu Claims Settlement Act 1998, Section 6(2)).

Section 10(1) (a) (i) provides for all claims made at any time by any Ngai Tahu claimant. This is founded on rights arising in or by the Treaty of Waitangi, the principles of the

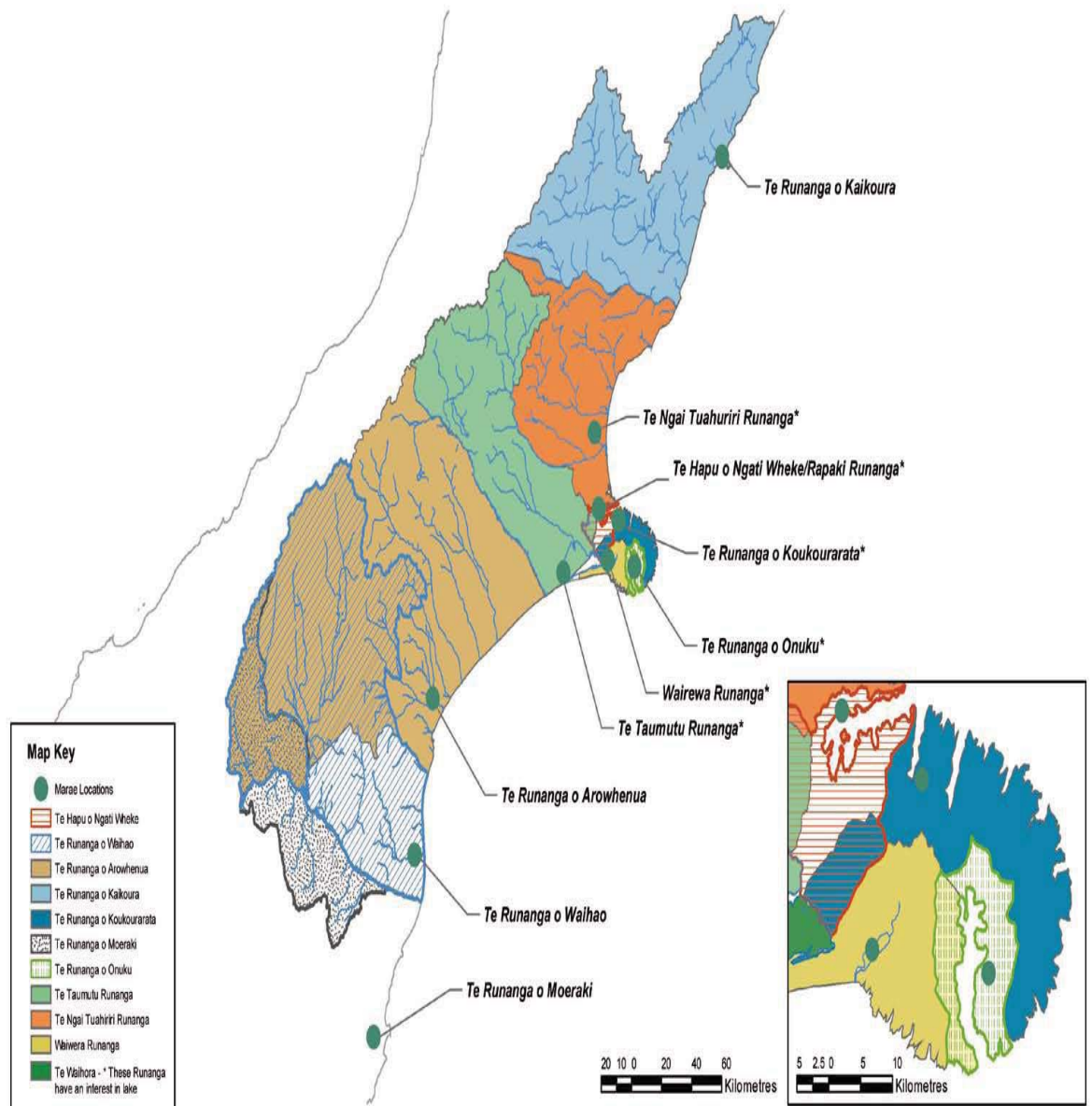
Treaty, statute, municipal law (including customary law and aboriginal title), fiduciary duty, or otherwise (Ngai Tahu Claims Settlement Act, 1998).

5.2.3 Statutory Acknowledgements

Under Section 206 of the Ngai Tahu Claims Settlement Act 1998 the Crown acknowledges statements made by Te Runanga o Ngai Tahu of their cultural, spiritual, historic, and traditional association to the coastal marine area. Section 207 of this Act provides for the distribution of consent applications to Te Runanga o Ngai Tahu governance entity. The Minister for the Environment may recommend to consent authorities to provide Te Runanga o Ngai Tahu with a summary of resource consent applications adjacent to or within Ngai Tahu's statutory area of interest. However, the consent authority has a discretionary role in notifying whether or not Te Runanga o Ngai Tahu are adversely affected under section 93 to 94C of the Resource Management Act 1991 (Ngai Tahu Claims Settlement Act, 1998). However the application of supporting legislation such as the Resource Management Act 1991 and the Historic Places Act 1993 support Ngai Tahu's natural resource management authority.

Environment Canterbury's current Draft Regional Policy Statements (2010) provide for natural resource management policies of significance to the Ngai Tahu governance entity in chapter 2. These policy statements are delegated to the 12 papatipu runanga within the Ngai Tahu rohe as appropriate. Environment Canterbury Natural Resources Plan (2011) has formally included natural resource management rules and policies *"relating to Ngai Tahu and natural resources, air quality, water quality, water quantity, beds and lakes and rivers, wetlands and soil conservation"* taking more than a decade for Ngai Tahu to ensure rangatiratanga in regional plans. (Scoop Independent News, 26 May 2011) Papatipu runanga boundaries are shown in the following Plate 5.1.

Plate: 5. 1 Te Runanga o Ngai Tahu Marae locations and papatipu boundaries for the purpose of natural resource management issues significance to papatipu runanga.

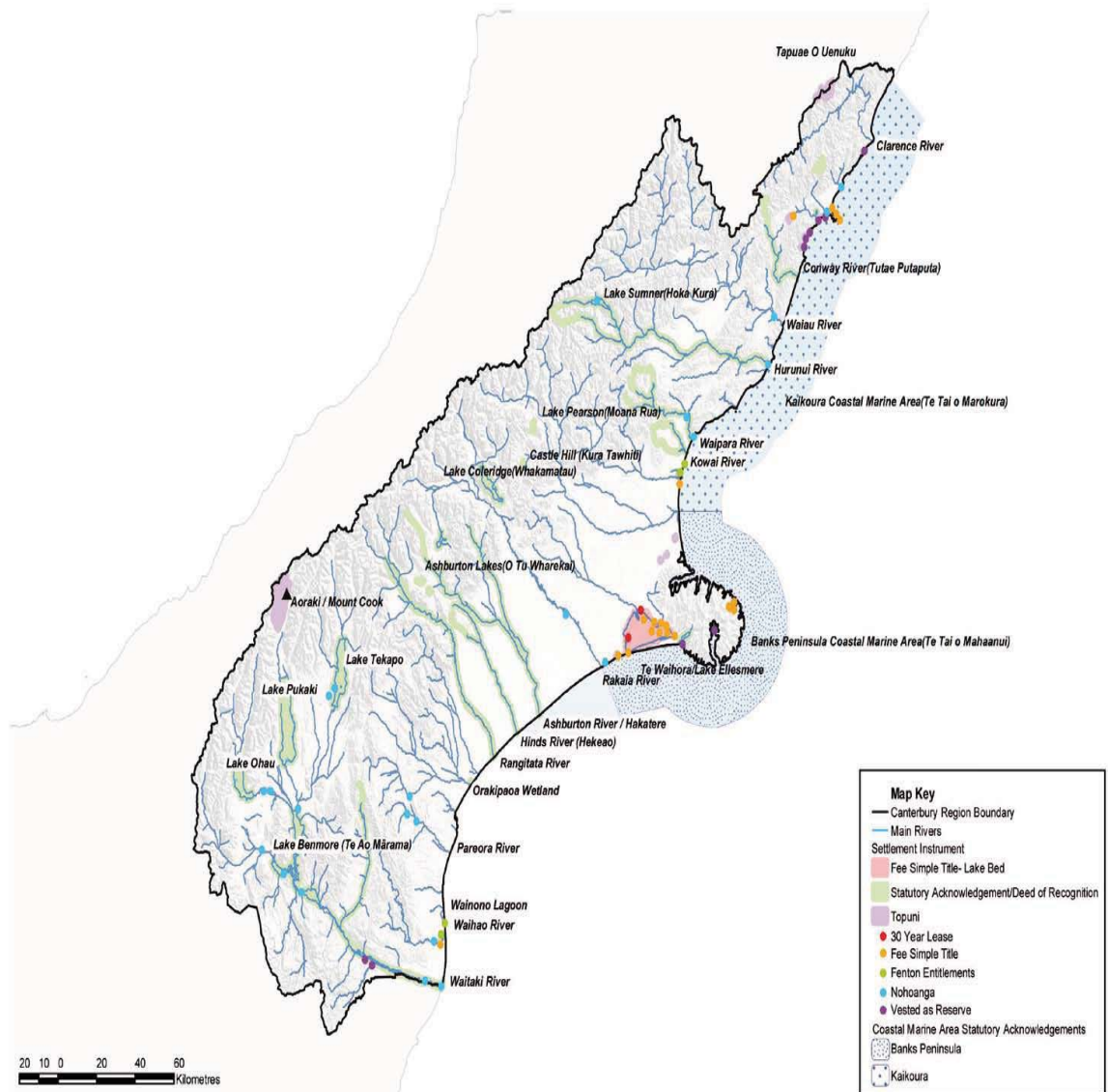


Source: Environment Canterbury (2010), Draft Canterbury Regional Policy Statement, <http://ecan.govt.nz/publications/Plans/draft-canterbury-regional-policy-statement-2010-chapter-02.pdf>.

Section 208 of sets a precedent within the Treaty of Waitangi settlement framework which ensures that consent authorities must give regard to statutory acknowledgements. A consent authority must have regard to statutory acknowledgements relating to any statutory area when forming an opinion in

accordance with sections 93 to 94C of the Resource Management Act 1991. Te Runanga o Ngai Tahu is an entity that may be adversely affected by the granting of a resource consent and this includes water for activities within, adjacent to, or impacting directly on, the statutory area. Plate 5.2 shows the statutory areas affecting Environment Canterbury under the Ngai Tahu Claims Settlement Act 1998.

Plate 5.2 Affected areas under the Ngai Tahu Claims Settlement Act 1998: Canterbury



Source: Environment Canterbury (2010), Draft Canterbury Regional Policy Statement, <http://ecan.govt.nz/publications/Plans/draft-canterbury-regional-policy-statement-2010-chapter-02.pdf>.

The Environment Court under Section 209 of the Ngai Tahu Claims Settlement Act 1998 must have regard to a statutory acknowledgement under Section 274 of the Resource Management Act 1991. This section reaffirms Ngai Tahu's interests within their statutory area of interest. A recent example is an application by Te Runanga o Ngai Tahu to appeal *"against a new \$200 million irrigation scheme in the Waimate district has been set down by the Environment Court."*⁵⁰

Under Section 210 Ngai Tahu are acknowledged as affected persons in respect of any archaeological site within the Ngai Tahu statutory area of interest. This section requires both the Historic Places Trust and Environment Court to have regard to statutory acknowledgments relating to Ngai Tahu's statutory area pursuant to Section 14 (3-3B)⁵¹ of the Historic Places Act 1993. Under Section 20(1) of the Historic Places Act 1993 Te Runanga o Ngai Tahu may appeal to the Environment Court on a decision which has imposed by the Historic Places Trust. This is supported by section 211 of the Ngai Tahu Claims Settlement Act 1998 where statutory acknowledgements must be entered into regional policy statements, coastal plans, and district and regional plans or a proposed plan under Section 2(1) of the Resource Management Act 1991.⁵² In Otago, the Waitaha Taiwhenua O Waitaki Trust Board have recently formalised a relationship with the Waitaki District Council. The relationship establishes a partnership on a range of issues *"cultural interpretation, Waitaha artefacts, historical recordings, wahi tapu (sacred places), koiwi (human bones) and mahinga kai (food*

⁵⁰Hearings are set down to commence in Oamaru on the 29 August 2011. The Hunter Downs scheme would irrigate up to 40,000 hectares approved as a water-take only resource consent by Environment Canterbury extracting up to 20.5 cubic metres from the Waitaki River (Otago Daily Times, 20 July 2011, <http://www.odt.co.nz/regions/north-otago/169868/environment-court-hear-appeals>).

⁵¹Where there is an application by an authority to destroy or modify archaeological sites of Māori interests the application will be forwarded to the Māori Heritage Council for consideration. The Māori Heritage Council will ensure regard is given to existing statutory acknowledgements (Historic Places Act, 1993). Section 14(3B) requires the Historic Places Trust to give regard to section 89 of the Marine and Coastal Area (Takutai Moana) Act 2011 where a customary marine title group have lodged a planning document with Historic Places Trust in regards to archaeological sites within their customary marine title area.

⁵²Section 2(1) of the Resource Management Act 1991 requires the recording of statutory acknowledgements within policy statements and plans by way of reference or by setting out the statutory acknowledgement in full.

gathering).⁵³ This supports Ngai Tahu statutory interest to natural resource management in the South Island of Aotearoa New Zealand.

5.2.4 Minerals (Pounamu)

Another milestone for Ngai Tahu was the negotiation of their entitlement and natural resource management of pounamu. Pounamu as a taonga of the Ngai Tahu people was high on their negotiation agenda with the Crown. Prior to the Ngai Tahu Treaty settlement, pounamu was considered by Governments as a Crown mineral under the Crown Minerals Act 1991. In 1988 the Waitangi Tribunal provided recommendations for the return and ownership of pounamu to the Ngai Tahu people. Professor Mason Durie (1998) explained that:

“The Tribunal considered that the unique nature of pounamu and its deep spiritual significance in Māori life and culture is such that every effort should now be made to secure as much as possible to Ngai Tahu ownership and control... We believe all such pounamu [on Crown land] and any other owned by the Crown should be returned by the Crown to Ngai Tahu.” (Durie, 1998, Pg. 37)

Subsequently the Ngai Tahu (Pounamu) Vesting Act 1997 was established to provide for the Deed of On Account Settlement.⁵⁴ This was signed on the 14 June 1996 by the Crown and Te Runanga o Ngai Tahu as representative of Ngai Tahu people. Under Section 3 pounamu was vested to Ngai Tahu within their statutory area of interest⁵⁵ and those parts of the seabed and subsoil beneath those parts of the territorial sea of New Zealand, that are adjacent to Ngai Tahu statutory area of interest as defined by Section 3-6 of the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977.⁵⁶ Section 4 (1) provides for existing permits whose privileges continue to exist.

⁵³ The Oamaru Mail, April 21, 2011, <http://www.oamarumail.co.nz/local/news/waitaha-council-partnership-deal-signed/3949141/>.

⁵⁴ Provides for the Crown to retain management of existing minerals licences within Ngai Tahu statutory area of interest until such time those mineral licences have expired, as supported by Section 4 of the Ngai Tahu (Pounamu) Vesting Act 1997.

⁵⁵ Has the same meaning as set out in Section 5 Takiwa of Ngai Tahu Whanui, Te Runanga o Ngai Tahu Act 1996.

⁵⁶ Section 3-6 of the Territorial Sea, Contiguous Zone and Exclusive Zone Act 1977 provide for the variation of base-line measurements for coastal areas, islands and bays extending to the 12 nautical mile zone.

Section 4 (2) of the Act provided for Ngai Tahu and Crown royalties, to be transferred to Ngai Tahu after the commencement of the Ngai Tahu Claims Settlement Act 1998.

The significance of the Crown Minerals Amendment Act 1997 provided a partial cultural redress by the Crown to Ngai Tahu. This was to amend a longstanding grievance over the ownership of pounamu. On the 29 October 1997 section 2 of the Crown Minerals Amendment Act 1997, section 11(1A) was inserted, which provided Ngati Tahu ownership to pounamu.

5.3 Te Uri o Hau

5.3.1 Introduction

In 1991 Te Uri o Hau sought redress for Crown breaches of the Treaty of Waitangi through the Otamatea Māori Trust Board in 1988, Pouto Topu Trust, Pouto 2F Forestry and the Oruawharo Incorporation. Research was undertaken within the northern boundaries of the Ngati Whatua iwi, commencing south from Wellsford, Taporā and Pouto north to Kaihu and east to the Mangawhai heads. In 1995 the Otamatea, Pouto and Oruawharo claims were amalgamated to achieve a comprehensive settlement through Te Uri o Hau Ltd. Te Uri o Hau are an iwi in their own right through traditional whakapapa and are located in the North Island surrounding the Mangawhai and Kaipara Harbours. Te Uri o Hau represent some 6500 descendants (Te Uri o Hau, 2011, www.uriohau.com/index.htm) who are regarded as both tangata whenua and kaitiaki of their natural resources (Kemp, 2008). Te Uri o Hau statutory area of interest is shown in Plate 5.3.

Plate 5.3 Te Uri o Hau Statutory Area of Interest



Source: Te Uri o Hau (2010), www.uriohau.com/index.htm.

Te Uri o Hau signed their Deed of Settlement with the Crown on the 13 December 2000. In the Te Uri o Hau Settlement Act 2002 the Crown acknowledged that Te Uri o Hau suffered past injustices that impaired the economic, social and cultural development of Te Uri o Hau. The settlement Act recorded the matters required to give effect to a settlement of all the historical claims of Te Uri o Hau. The Crown unreservedly apologised and profoundly regretted that its actions (loss of land heritage entitlement) had extensive and enduring consequences, which resulted in Te Uri o Hau losing control over most their lands (Te Uri o Hau Claims Settlement Act 2002, S10, p. 15).

5.3.2 Treaty of Waitangi (Te Tiriti o Waitangi)

The Treaty of Waitangi is acknowledged in Schedule 1 of the Te Uri o Hau Settlement Act 2002. Part 1, Section 8 of the Act the Crown acknowledges the historical claims and the breaches of the Treaty of Waitangi and its principles by the Crown in relation to Te Uri o Hau historical claims.

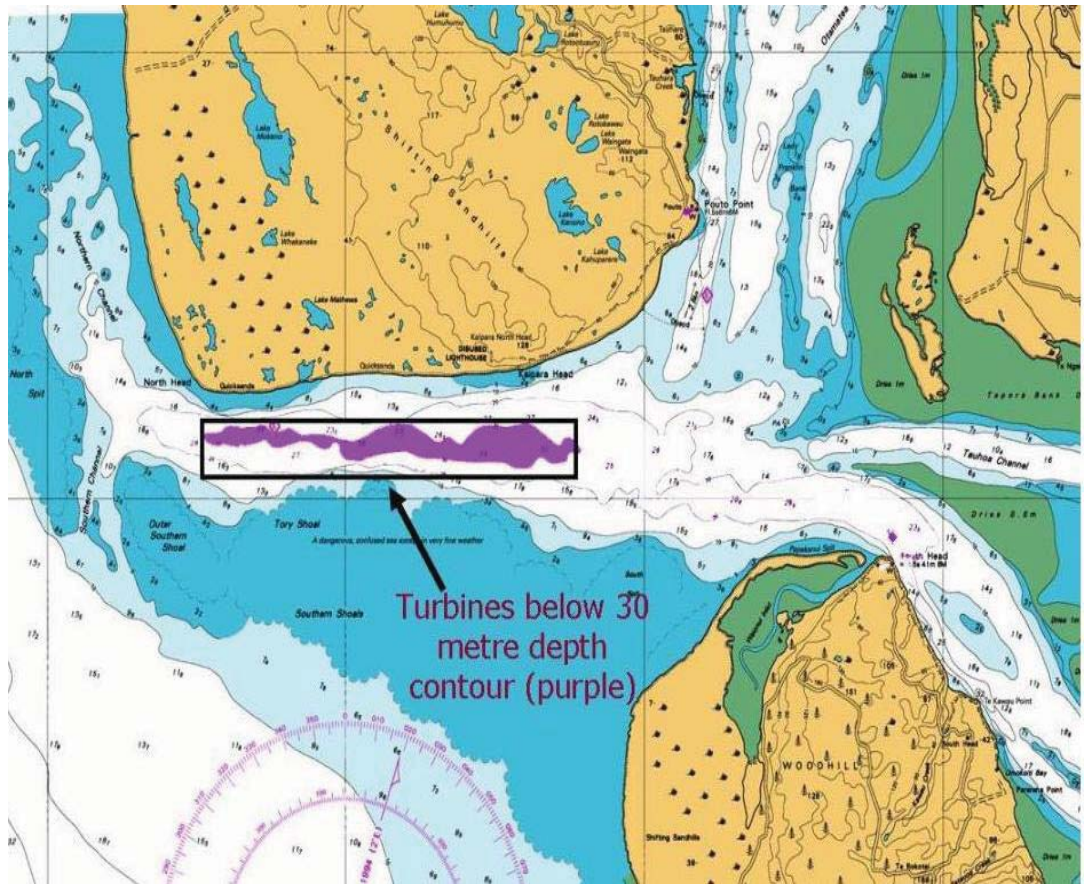
While there is no express interpretation of the principles of the Treaty of Waitangi in the settlement legislation. Crown protocols require their representative agencies to provide for the principles of the Treaty of Waitangi. For example, the Kaipara District Council acknowledges a Memoranda of Understanding as a living document. Enabling Te Uri o Hau to participate at a local level in governing and managing historical Treaty settlement lands and natural resources through district plans and policies (Kaipara District Council, 2002).

5.3.3 Statutory Acknowledgements

Under section 59 of the Te Uri o Hau Claims Settlement Act 2002 the Crown acknowledges the tribe's cultural, spiritual, historic and traditional association within recognised statutory areas of Te Uri o Hau. Under the Act, Te Uri o Hau have six statutory acknowledgements key to natural resource management including the Kaipara and Mangawhai Harbour coastal areas as outlined in Plate 5.3. A recent issue concerning a tidal electricity generation project at the Kaipara heads has compromised Te Uri o Hau's tino rangatiratanga. Te Uri o Hau as kaitiaki in collaboration with the wider community will place a cultural ban or aukati,⁵⁷ over an area of seabed at Kaipara Heads in protest of Crest Energy's tidal turbine proposal. The aukati will not ban the general public from using the area. However, as a legal right Crest Energy will continue to install the first three turbines (Phillips, 2011). The Northland Regional Council approved a resource consent for Crest Energy's tidal turbine proposal for a period of 35 years (Rodney Times, 2010). Plate 5.4 depicts the area in which Crest Energy propose to place the turbines.

⁵⁷ Recognised under Section 6(e) of the Resource Management Act 1991 which provides for the relationship of Māori and their culture and traditions with ancestral lands, water, sites, wahi tapu and other taonga should be recognised.

Plate 5.4 Crest Energy Turbines Placement



*Source: Crest Energy Resource Consent Application,
http://images.suite101.com/3270068_com_crest_map_for_kaipara_turbines.jpg.*

The Department of Conservation however are consistent in ensuring that protocols are developed to ensure Te Uri o Hau values in natural resource management are supported through policy development. This is achieved by implementing protocols under the Te Uri o Hau Deed of Settlement 2000, and by working in collaboration with Te Uri o Hau's environmental management team. The Northern Conservatory in June 2011 recently met with Te Uri o Hau members at Pouto marae on the northern Kaipara Peninsula, to consult on achievements to date under Te Uri o Hau protocols.

Under Section 60 of the Act a consent authority must have regard to Te Uri o Hau statutory acknowledgments within Te Uri o Hau statutory area of interest in accordance with Sections 93 – 94C of the Resource Management Act 1991. This

requires a consent authority to advise to Te Uri o Hau governance entity whether they are affected by a resource consent activity within their statutory area of interest. This is supported by Section 107 of the Resource Management Amendment Act 2003. The Environment Court under Section 61 of the Te Uri o Hau Claims Settlement Act 2002 must also have regard to a statutory acknowledgement under Section 274 of the Resource Management Act 1991. Consent authorities currently continue to consult with Te Uri o Hau governance entity. However, the role of kaitiakitanga by tangata whenua and their participation in natural resource management needs to be strengthened.

Under Section 62 of the Act, the Historic Places Trust and the Environment Court shall ensure that statutory acknowledgements are considered when forming an opinion in regards to a resource consent that Te Uri o Hau are an affected party in respect to any archaeological site within Te Uri o Hau statutory area of interest.

Section 63 of the Act requires that statutory acknowledgements are entered on consent authority plans where they have jurisdiction within Te Uri o Hau statutory area of interest. Statutory plans include a regional policy statement, regional coastal plan, district plan, regional plan, or proposed plan as defined by Section 2(1) of the Resource Management Act 1991. Statutory acknowledgements may be referenced or wholly submitted into a policy statement or plan.

In fostering Te Uri o Hau community outcomes and development plans the draft Kaipara District Council Plan (2009) made provisions for Māori Land and Treaty Settlement Land. The Plan clearly defines the statutory obligations of Te Uri o Hau in the cultural, social and economic development of their lands, and mandatory requirements associated to planning and development. The District Plan clearly recognises the need to protect the values of sites of significance to Te Uri o Hau on Māori Land. To achieve this key policy goals include consultation, involvement and taking into account provisions under the Te Uri o Hau Claims Settlement Act 2000.

The Kaipara District Council has made provision for Te Uri o Hau Treaty of Waitangi commercial redress lands in policy. Section 15B.1 of the Kaipara District Plan (2009) policy promotes development by stating that:

“Compensation in the form of Commercial Redress has also been provided aimed at providing iwi with resources to assist in development of their economic and social well being. The intent of the settlements is for Te Uri o Hau... to manage and develop (and sell if they deem necessary) these redress properties as an economic base... for this reason, in partnership with the cultural and historical value assigned to the land, Treaty Settlement land is considered sufficiently unique to warrant its own zone.” (Kaipara District Plan, 2009, p. 15B.1)

Section 64 of the Act requires consent authorities to distribute resource consent applications to Te Uri o Hau where they are adversely affected. A consent authority must provide Te Uri o Hau with the same information which applies under Section 93 to 94C of the Resource Management Act 1991. Te Uri o Hau and the consent authority may agree on a process which is appropriate in dealing with resource consent applications.

Under Section 65 of the Act a Te Uri o Hau may cite a statutory acknowledgement in proceedings before a consent authority, Environment Court or Historic Places Trust concerning resource consent activities impacting within or adjacent to Te Uri o Hau statutory area of interest. However, in February 2011 the Environment Court granted that the Minister of Conservation, Honourable Ms Wilkinson grant a resource consent to Crest Energy for 200⁵⁸ turbines to be placed at the entrance of the Kaipara Harbour without compensation for loss of land heritage entitlement under the Treaty of Waitangi and the Declaration on the Rights of Indigenous Peoples the Crown and their representative agencies are in breach of their fiduciary duties to Te Uri o Hau.

⁵⁸ Te Uri o Hau are concerned for the environmental effects to the snapper resource and the maui dolphin. Three turbines have been granted by the Environment Court initially as opposed to the 20 turbines as sought by Crest Energy. The Kaipara Harbour has been a breeding ground for snapper in Aotearoa New Zealand. (Northern Advocate, February 14, 2011, <http://www.northernadvocate.co.nz/local/news/refuse-kaipara-turbines-consent-hapu/3940289/>).

5.3.4 Minerals

A protocol with the Ministry of Economic Development provides for Te Uri o Hau participation in the decision making process of minerals including oil and gas within their statutory area of interest through consultation under Section 107 of the Act. The protocol area is defined as the waters (including foreshore and seabed) of the coastal areas adjacent to the coastal boundary of the Kaipara Harbour and the Mangawhai Harbour and extending to the outer limit of the Exclusive Economic Zone⁵⁹ (Te Uri o Hau Claims Settlement Act, 2000).

Consultation will include the preparation of any new minerals programmes, planning of any tender allocation of a permit block including the renewal of permits where land is extended within the permit block. This protocol acknowledges the Crown's pre-emptive rights to minerals within Te Uri o Hau statutory area including the foreshore and seabed.

5.4 Ngati Tama

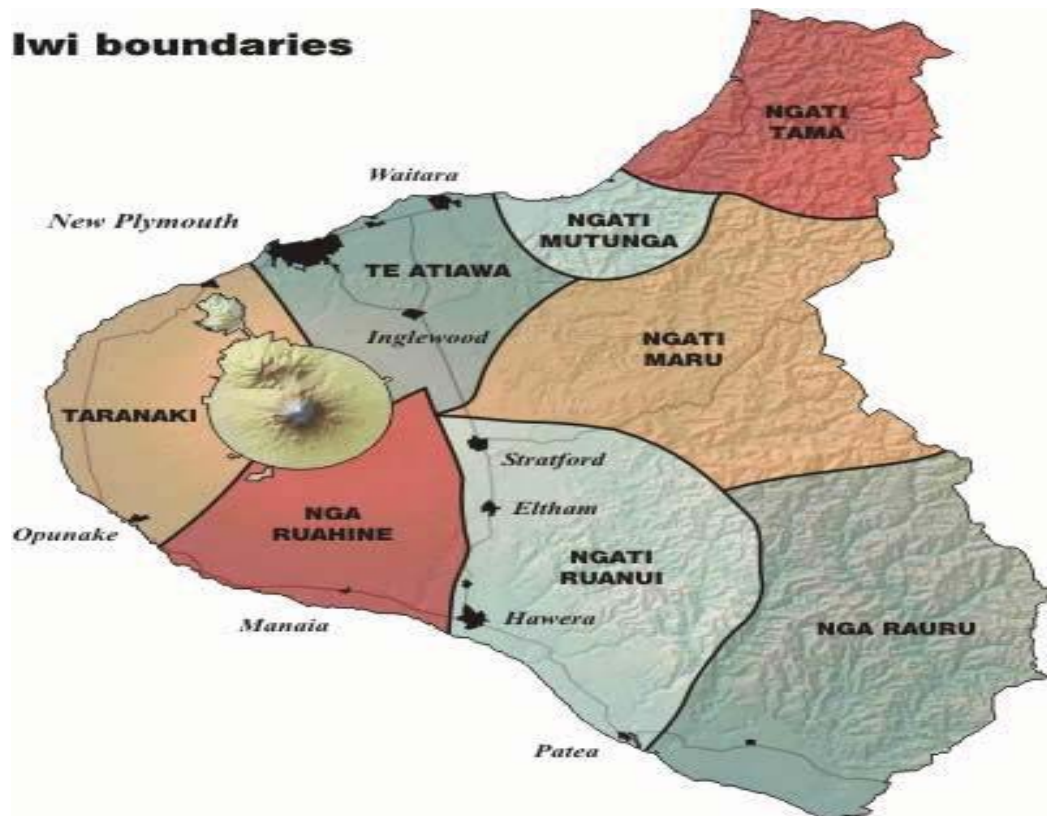
5.4.1 Introduction

Ngati Tama sought redress for Crown breaches of the Treaty of Waitangi in 1989. This action established a statutory body to progress claims to the Waitangi Tribunal and concluded a settlement with the Crown over historical grievances. As a result the Ngati Tama Iwi Development Trust was incorporated in 1992. To achieve comprehensive negotiations with the Crown of the northern Taranaki area - Ngati Tama, Ngati Mutunga, Atiawa and Ngati Maru (who later withdrew) formed an alliance

⁵⁹ As defined in the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

that established the Taranaki Claims Progression Team/Northern Alliance (Ngati Tama Iwi Development Trust, 1999). The Ngati Tama rohe within the Taranaki region is shown in Plate 5.5.

Plate 5.5 Ngati Tama rohe within the Taranaki region.



Source: Taranaki Regional Council, Iwi Boundary Map, www.trc.govt.nz.

Ngati Tama signed a deed of settlement with the Crown on the 20 December 2001. In the Ngati Tama Claims Settlement Act 2003, the Crown acknowledged that the wars in Taranaki constituted an injustice and were in breach of the Treaty of Waitangi and its principles. The Crown apologised to Ngati Tama [inter alia] for all breaches of the Treaty of Waitangi and its principles acknowledged by the Crown. At Section 7 of the Act the Crown apologised to Ngati Tama for causing landlessness, suffering and hardship. The Crown sought to redress this grievance through building relationships of mutual trust and co-operation with Ngati Tama.

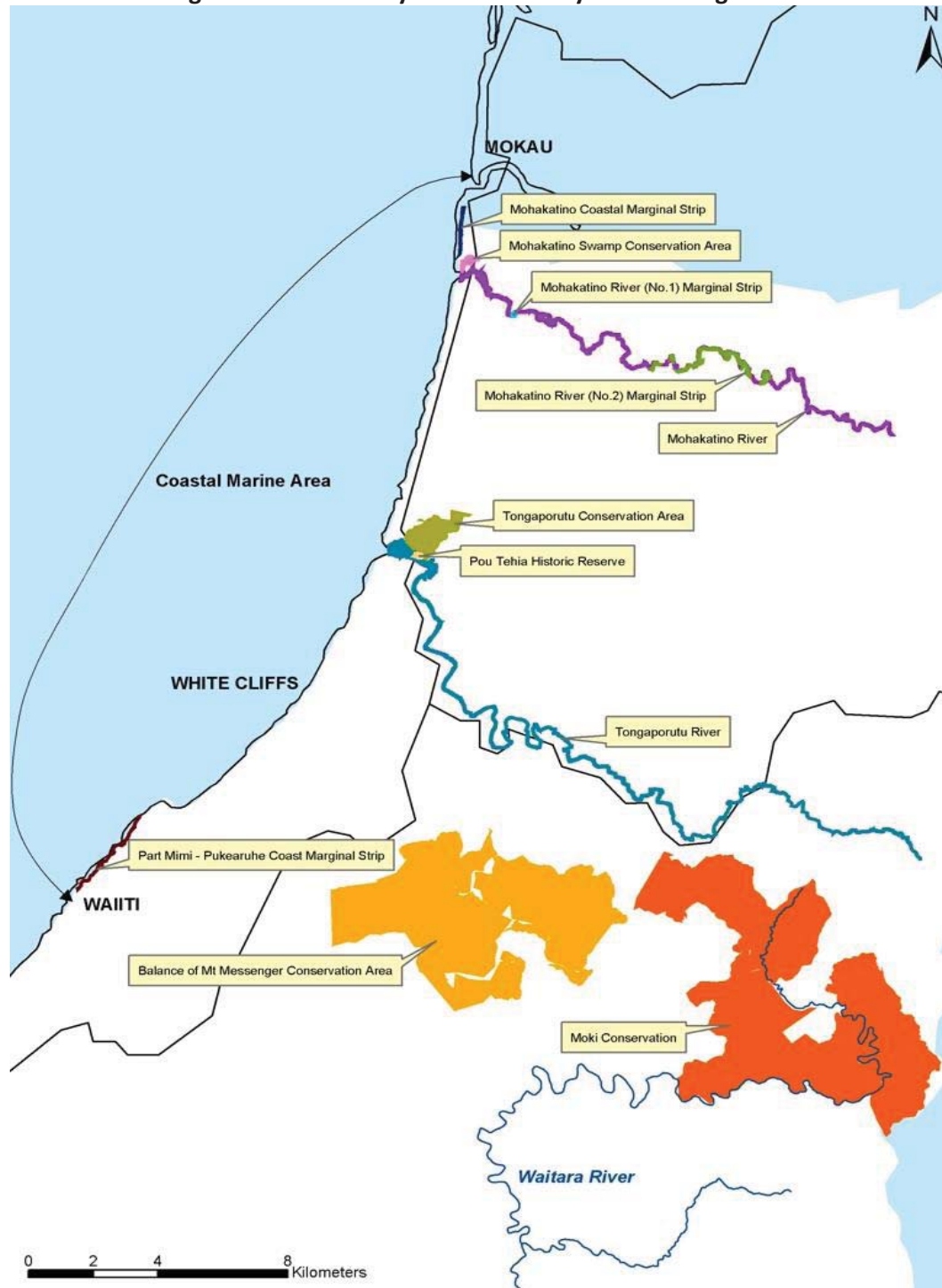
5.4.2 Treaty of Waitangi 1840 (Te Tiriti O Waitangi)

Section 6(1) of the Act the Crown acknowledged that the land and resources confiscations were wrongful and in breach of the Treaty of Waitangi and the principles of the Treaty of Waitangi. As part of historical redress the Crown acknowledged in 6(2) (e) of the Act that its treatment of the Ngati Tama people at Parihaka was highly unreasonable and unjust and that these actions constituted a breach of the Treaty of Waitangi and its principles. The Crown apology is acknowledged in 6(4) (c) in the Ngati Tama Claims Settlement Act 2003. Section 7 of the Act supports four key principles of the Treaty of Waitangi, including the principle of governance, redress, mutual trust and co-operation.

5.4.3 Statutory Acknowledgements

Under section 53 of the Ngati Tama Claims Settlement Act 2003 the Crown acknowledges Ngati Tama's cultural, spiritual, historic and traditional association within recognised statutory areas of Ngati Tama. Under the Act Ngati Tama have 12 statutory acknowledgements associated to key natural resources including the coastal marine area. The Taranaki Regional Council has included Ngati Tama statutory acknowledgements as part of their Regional Policy Statement for Taranaki (Taranaki Regional Council, 2009). This is depicted in Plate 5.6.

Plate 5.6 Ngati Tama Statutory Area: Statutory Acknowledgements



Source: Taranaki Regional Council (2009), <http://www.trc.govt.nz/assets/taranaki/images/rps-ngati-tama.jpg>.

Under Section 55 of the Ngati Tama Claims Settlement Act 2003 a consent authority must have regard to a statutory acknowledgement within Ngati Tama's statutory area of interest. This is also supported by Sections 93 to 94C of the Resource Management Act 1991 in identifying Ngati Tama as an affected party to the granting of a resource consent by a consent authority. The Taranaki Regional Council supports this in Part C of their Regional Policy Statement (2009) by providing a policy statement on natural resource management issues concerning Ngati Tama as an iwi. This policy guides both Ngati Tama and the Taranaki Regional Council in the management of the natural environment within Ngati Tama's statutory area of interest.

Under Section 56 of the Act the Environment Court under shall have regard to a statutory acknowledgement of Ngati Tama as also supported under Section 274 of the Resource Management Act 1991, where Ngati Tama may be adversely affected by a resource consent activity within or adjacent to their statutory area of interest.

Section 57 of the Act requires the Historic Places Trust and the Environment Court to have regard to a statutory acknowledgement while making a decision under Section 14(6) (a) or Section 20(1) of the Historic Places Act 1993. This determines whether or not Ngati Tama affected in respect of an archaeological site within Ngati Tama statutory area interest.

Under Section 58 of statutory acknowledgements must be entered on to local authorities' plans that have jurisdiction within Ngati Tama statutory area. Statutory plans include a regional policy statement, regional coastal plan, district plan, regional plan, or proposed plan as defined by Section 2(1) of the Resource Management Act 1991. A statutory acknowledgement may be partially or wholly acknowledged in policy statements or plans by reference or in full.

The New Plymouth District Council (2009) acknowledges the special relationship Ngati Tama has to key natural resources. The Council states in their consultation policy that *"the Council consults specifically with tangata whenua to make the district a community where the special relationship with tangata whenua is recognised,*

strengthened and valued.” (p. 1) The Taranaki District Council (2009) in accordance with Section 58 of the Ngati Tama Claims Settlement Act 2003, have cited statutory acknowledgements to the Regional Policy Statement for Taranaki, *“this includes relevant provisions of Subpart 4 of Part 5 of the Act in full, the description of the statutory area and the statement of association as recorded in the statutory acknowledgements.”* (The Taranaki District Council, 2009, p. 1)

Section 59 of the Act requires the receipt of resource consent application to Ngati Tama which is applicable for 20 years. Under Section 93 of the Resource Management Act 1991 Ngati Tama and a consent authority may determine an appropriate process for consultation.

Section 60 of the Act makes provision for the Ngati Tama governance entity or a member of Ngati Tama to cite statutory acknowledgements as evidence in submissions and proceedings before a consent authority, Environment Court and the Historic Places Trust concerning activities impacting on Ngati Tama within or adjacent to their statutory area of interest.

5.4.4 Minerals

The negotiation of minerals by Ngati Tama as natural resource management to oil and gas or compensation thereof was excluded from the Treaty settlement process. The Crown held the view that minerals are the property right of the Crown (Ngati Tama Iwi Development Trust, 1999). This is supported by Section 23 of the Ngati Tama Settlement Act 2003 in which Crown minerals are exempted from Ngati Tama interests under the Act. Ngati Tama Deed of Settlement (2001, p. 11) acknowledged that Mount Taranaki is of *“great traditional, cultural, historical, and spiritual importance to Iwi of Taranaki,”* and is therefore exempt from mineral extraction. The Ministry of Economic Development protocol however makes provision under Section 26 of the Ngati Tama’s Claims Settlement Act 2003 to be noted with the minerals programmes affecting the Ministry of Economic Development protocol area. The minerals programme has the same meaning to it in section 2(1) of the Crown Minerals Act 1991.

5.5 Chapter Summary

Historical grievances are being acknowledged by the Crown through Treaty of Waitangi settlement legislation. Today, Treaty of Waitangi settlement legislation provides a way forward to negotiate a settlement of historical grievances to Māori entitlement to natural resources.

Common themes continue to arise in Treaty of Waitangi settlement legislation regarding natural resource management, with the exception of minerals, fresh water and land beyond the common marine and coastal area. The Crown's inability to confirm to Māori natural resources may be a breach of the Treaty of Waitangi and the Declaration on the Rights of Indigenous People.

The Crown recognises cultural, spiritual, historical and traditional values in iwi settlement legislation, and is slowly being recognised by their representative agencies through regulations and policies. This includes the acknowledgement of the Treaty of Waitangi in legislation, statutory acknowledgements, protocols and memoranda of understanding concerning Māori natural resource management in Aotearoa New Zealand.

Māori need to ensure that the Crown and their representative agencies implement legislation, regulations, and policies which include Māori participation in developing policies for natural resource management in Aotearoa New Zealand. The role of kaitiakitanga, rangatiratanga, and tino rangatiratanga (mana) needs to be widely interpreted in Treaty of Waitangi Settlement legislation to ensure the sustainability of Māori natural resource management for future generations.

CHAPTER 6

NATURAL RESOURCE LEGISLATION

6.1 Introduction

This chapter introduces legislation aligned to significant Māori natural resource management priorities in Aotearoa New Zealand. The Conservation Act 1987 integrates natural resource management of indigenous forests, flora, fauna, foreshore and seabed, and freshwater species. Often natural resources including rivers, lakes, harbours, and minerals also form part of the conservation estate. The Resource Management Act 1991 is the largest statutory reform of natural resource management in Aotearoa New Zealand, covering land, air, soil and water.

Crown minerals are deemed to be a resource as defined by the Resource Management Act 1991. The Crown Minerals Act 1991 and the Crown Minerals Amendment Act 1997 are also discussed especially where Ngai Tahu have the only proprietary right to pounamu. The Historic Places Act 1993 provides for the protection of taonga and a Māori statutory board provides advice to the Historic Places Heritage Trust on matters pertaining to Māori. The Local Government Act 2002 and the Environment Act 1986 have regulatory management and administrative functions in respect of natural and physical resources. The Foreshore and Seabed Act 2004 now repealed and replaced by the Coastal Marine (Takutai Moana) Act 2011 provides for the Treaty of Waitangi but alienates Māori from land heritage entitlement to the foreshore and seabed. The Environment Protection Authority Act 2011 provides for a Māori advisory board, but ensures no regulatory measures for the retention of Māori natural resource management consents, and consenting in the Exclusive Economic Zone and Continental Shelf (Smith, 2011). The Authority also administers the Hazardous Substances and New Organisms Act 1996 (HSNO).⁶³

⁶³ The Hazardous Substances and New Organisms Act 1996 provided for a Māori statutory committee, whose role is to provide advice on issues concerning mātauranga Māori and Māori values to the Environmental Risk Management Authority. This role is now transferred under the Environment Protection Authority Act 2011.

6.2 The Resource Management Act 1991

More than any previous legislation enacted by the Crown, the Resource Management Act (RMA) 1991 enables wider participation and application of statutory legislation for Māori in natural resource management (Nutall & Ritchie, 1995). The Act became a tool for the statutory management of water, land, air and soil. These resources are statutorily managed by regional and district councils, territorial and unitary authorities (Gibbs *et al.*, 2007, p. 8). Resources which remain outside the Act include minerals, fish and shellfish, logging of native trees and the statutory management of marine pollution and offshore structures.

The RMA provides for a single natural resource management system, while its purpose consolidates legislation dealing with resource planning and use. Two key principles of the Act include the sustainable management of natural and physical resources, and its integrated management. Durie (1998, p. 28) identified four key classifications of the Act relevant to Māori “*the Treaty of Waitangi, cultural interests, iwi interests, and Māori language usage.*” The Act provides key words required to interpret in the statutory application of natural resource management. As acknowledged by Durie (1998) the use of Māori language in legislation needs to be widely interpreted to ensure and understanding of Māori terminology. The key provisions of the RMA of particular regard to Māori refer to building relationships with central and local government.⁶⁴

6.2.1 Kaitiakitanga: Section 7

In achieving the purpose of the RMA, Section 7(a) provides for kaitiakitanga. Kaitiakitanga has a wider meaning associated to the value of stewardship, as expressed in the RMA, Marsden & Henare (1992, p. 18) pointed out that “*stewardship is not an appropriate definition since the original English meaning as “to guard someone’s*

⁶⁴ Appendix 6: Resource Management Act 1991.

property.” Kaitiakitanga was later substituted through Section 2(4) of the Resource Management Amendment Act 1997 to mean the exercise of guardianship by the tangata whenua of an area, in accordance with tikanga Māori as it relates to natural and physical resources. This also includes the ethic of stewardship.

6.2.2 Treaty of Waitangi: Section 8

Under Section 8 of the RMA, all persons exercising functions and powers under it, in relation to managing, the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi. Ngarimu (2008, p. 4) states that *“Section 8 is the only reference to the Treaty principles in the Resource Management Act that has substantive effect...”* The Treaty of Waitangi reference in the Act provides for two duties. First it provides for Treaty status, and second it has a special relationship between Māori and the Crown as a matter of national importance (Ngarimu, 2008). However, statutory instruments in Treaty of Waitangi settlement legislation provide more substantive support of Māori participation in natural resource management under the Act.

6.2.3 Water Use: Section 14

Section 14 of the RMA provides for the integration of water use. Under Section 14(3) (c) of the Act Māori may use geothermal water, water, heat, or energy in accordance with tikanga Māori for the communal benefit of the tangata whenua of the area, and where there is no adverse effect on the environment. The reform to manage the allocation of water through the Sustainable Water Programme of Action was established in 2007 by the then Labour Government. This is superseded by the National Government’s policy – New Start for Freshwater strategy in 2009.

In a review of the regional management of water, Boffa Miskell Limited (2009) found that regional policy statements and plans are incorporating Māori values and issues of concern regarding freshwater management. However, this is more identifiable by those hapu and iwi who have concluded a Treaty of Waitangi settlement with the

Crown. This is also supported by iwi management plans in having *“a strong focus on freshwater resources, relationships with statutory agencies, education and recognition of cultural values.”* (Boffa Miskell Limited, 2009, p. 1) Today, Māori continue to seek natural resource management of freshwater. Māori land heritage entitlement to freshwater under the Treaty of Waitangi is yet to be determined by the Waitangi Tribunal and Courts. The Resource Management Act 1991 provides for Māori participation in the sustainable natural resource management of freshwater through hapu and iwi management plans, but does not provide for proprietary rights to freshwater. Water is the most pressing issue for many regions in Aotearoa New Zealand today.

6.2.4 Transfer of Powers: Section 33

Under Section 33 of RMA a local authority may transfer any one or more of its functions, powers, or duties under the Act to a public authority including an iwi authority. Ngarimu (2008, p. 7) acknowledged that *“the devolution of statutory management functions is agreed to Māori under section 33 of the Resource Management Act, this has not been exercised to date by any grouping of Māori in New Zealand.”* The lack of transfers of statutory management functions to Māori under Section 33 of the Act still exists today. Local government have not taken up the challenge of negotiating such transfers for the management of natural resources with iwi authorities (Rennie, et al., 2000: Te Matahauariki, 2002: Ngarimu, 2008)

6.2.5 Minerals

The RMA ensures the sustainability of natural and physical resources with the exception of minerals. Judge Jackson (1999) of the Environment Court considered that in defining the Act, minerals are within the natural and physical resources to be managed under Section 7 which gives regard to kaitiakitanga. In the case of *Gebbie v Banks Peninsula D.C.* [1999] 5 ELRNZ 362 (C117/99) Judge Jackson acknowledged the principles of statutory definition as *“the exercise of guardianship and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.”* This must meet the reasonable foreseeable needs of future generations and safeguard

the life-supporting capacity of air, water, soil, and ecosystem, while avoiding, remedying, or mitigating any adverse effects of activities on the environment (Resource Management Act 1991). The Crown minerals programme requires the Government to consult with Māori on the issues of development and use of minerals, however, minerals are dealt with separately because of national economic values.

6.2.6 Resource Management Amendment Act 1996

The Resource Management Amendment Act 1996 renamed the Planning Tribunal the Environment Court, an independent entity with 8 permanent and 7 alternate judges, 15 Commissioners and 5 Deputy Commissioners. The Courts work mainly involves hearing issues raised through the Resource Management Act 1991 relating to land, air, soil and water. This includes appeals regarding the content of regional and district statements, annual plans, and appeals arising through consent applications. The Environment Court has the same delegated authority as the District Courts in New Zealand.⁶⁶

6.2.7 Marine and Coastal Area (Takutai Moana) Act 2011

The Marine and Coastal Area (Takutai Moana) Act 2011 repealed Section 4(g) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 which provision included the protection of recognised customary activities carried out in accordance with any controls imposed by the Minister of Conservation. This was replaced with the protection of customary rights. Under Section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 a customary marine title group may produce a planning document in accordance with tikanga. However, a planning document may include matters regulated by the Conservation Act 1987, Historic Places Act 1993, Local Government Act 2002, and Resource Management Act 1991.

⁶⁶ Environment Court of New Zealand, 2011, <http://www.justice.govt.nz/courts/environment-court>).

6.2.8 Resource Management (Simplifying & Streamlining) Act 2009

The Resource Management (Simplifying & Streamlining) Act 2009 is an Act to improve the principal Act. Section 3 of the Act amends the Resource Management Act 1991. This is acknowledged by the Ministry for Environment (2009) as the single biggest review and reform since the enactment of the principal Act in 1991. The key aims and objectives of the Act are to reduce the costs and delay; to improve natural resource management implementation (including limited notification); to improve historic heritage provisions, and to better utilise the use of national environmental standards and national policy statements. Part 4A of the Act also establishes the Environmental Protection Authority whose role is to *“process applications for proposals of national significance in a timely and efficient manner.”* (Ministry for the Environment, 2009, p. 1) This is now streamlined under the Environmental Protection Authority Act 2011.

6.3 Conservation Act 1987

The Conservation Act 1987⁶⁷ promotes the conservation of Aotearoa New Zealand’s natural and historic resources, and for that purpose established the Department of Conservation. The purpose of the Department is to provide for the management and administration of all conservation land, and natural and historic resources. Māori land heritage entitlement to the conservation estate has been a long standing dispute between Māori and the Crown and their representative agencies, but provides for a cautious role of kaitiakitanga through statutory instruments found in Treaty of Waitangi settlements. The Minister of Conservation is bound by the Conservation Act 1987 and the Reserves Act 1977.

The Nga Whenua Rahui contestable fund was established under the Conservation Act 1987 and the Reserves Act 1977 to protect indigenous ecosystems on Māori land by way of a covenant or kawenata. A key principle of the fund is to assist Māori in retaining tino rangatiratanga under Section 77A of the Reserves Act by way of a

⁶⁷ Appendix 7: Conservation Act 1987.

covenant, and Section 29 of the Conservation Act 1987 by way of an agreement for management of Māori land. There are three key elements or tools for the protection of Māori land including covenanting, Māori reservations, and physical protection (Department of Conservation, 2011).

Indigenous ecosystems under Nga Whenua Rahui can be protected by a covenant which provide for Māori values associated with spirituality and tikanga. This is supported by the cultural use of the land, but also requires options for public access agreements while ensuring long-term protection of Māori land. Under Section 338 of Te Ture Whenua Act 1993 Māori may apply for protection or setting aside of Māori land as a Māori Reservation, agreements for public access remains with the owners. Physical protection provides for funding for fencing costs of indigenous farmed lands, which is a key policy within the protection package.

6.3.1 Conservation Authority & Board: Integrated Management

The Conservation Authority⁷⁰ was established by the Labour Government on 25 May 1990 as an independent body. The Conservation Authority oversees the management of Conservation Boards, whose jurisdiction is determined by the Minister of Conservation. A key role of the Conservation Authority is to approve conservation management strategies and national park management plans. Under the conservation management strategy the Minister has a consenting role in the granting of leases. The objective of this is to facilitate the transfer of management of reserve land to appropriate groups where the groups have the ability and resources to participate in

⁷⁰Appendix 8: Conservation Authority.

decision-making processes. Table 6.1 outlines the key objectives and integrated status in the management of the conservation estate.

Table 6.1 Integrated Management of the Conservation Estate

Objectives	Integrated Statutes
Management of natural and historic resources including species	<ul style="list-style-type: none"> - Wildlife Act 1953 - Marine Reserves Act 1971 - Reserves Act 1977 - Wild Animal Control Act 1977 - Marine Mammals Protection Act 1978 - National Parks Act 1980 - New Zealand Walkways Act 1990
Recreation, tourism and other conservation purposes	

6.3.2 Freshwater Fisheries

Preservation and protection of all indigenous freshwater fisheries, recreational freshwater fisheries, and freshwater fish habitats is also a statutory requirement under the Conservation Act 1997. The Fisheries (South Island Customary Fishing) Regulations 1988 provided for both the customary gathering of freshwater and marine resources. Customary gathering of freshwater resources were omitted from The Fisheries (Kaimoana Customary Fishing) Regulations 1998. However, the High Court confirmed in December 2000 that the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 applied fisheries resources under the Fisheries Act 1996 in the marine and freshwater environments. The regulations were amended on 20 November 2008 to give effect to customary fishing of the freshwater environment (McNee, 2008). Table 6.2 establishes the key objectives, application and authority under Section 17J of the Conservation Act 1987 in the management of freshwater fisheries.

Table 6.2 Freshwater Fisheries Management Plan 17

Objectives	Application	Authority
Implement general policies	Applies to one or more freshwater species	Prepared by Director-General for approval by Minister of Conservation; Director General to have regard to sports fish and game management plans
Establish detailed objectives within any area or areas		

6.4 Crown Minerals Act 1991

The Crown Minerals Act 1991 was an Act to restate and reform Crown owned minerals. The Act defines a number of natural resources in respect of minerals including coal, gold, industrial rocks and building stones, non-metallic and metallic minerals, sand, silver, fuel minerals, petroleum, and uranium.⁷² For the benefit of national interest the Crown retains the statutory management of nationalised minerals including petroleum gold, silver and uranium.

Under Section 4 of the Crown Minerals Act 1991 all persons exercising functions and powers shall “have regard to” the principles of the Treaty of Waitangi. Section 5 provides for the preparation of a minerals programme by the Minister of Energy who is responsible for the granting of minerals permits and the monitoring and effect and implementation the minerals programme. Under Section 10 of the Act the Crown has property rights to petroleum, gold, silver, and uranium. Section 11(1) provides for all

⁷² Geological Definitions: Coal: Anthracite, bituminous coal, sub-bituminous, coal, lignite, peat, and oil shale, and includes every other substance worked or normally worked with coal. Fuel Minerals: Coal and petroleum. Gold: Includes substance containing gold, or having gold mixed in it. Metallic: Asbestos, barite, bentonite, calcite, clays, dolomite, feldspar, fluorite, magnesite, mica, phosphate, potash, quartz, salt, silica, lump, silica sand, sulphur, talc, and wax. Metallic Minerals: Compounds of aluminium, chromium, copper, gold, iron, iron sand, lead, manganese, mercury, molybdenum, nickel, platinum, silver, tin, titanium, tungsten, uranium, vanadium, and zinc. Mineral: A naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals, precious stones, industrial rocks and building stones. Petroleum: Includes any naturally occurring hydrocarbon... whether in a gaseous, liquid, or solid state; any naturally occurring mixture of hydrocarbons... whether in a gaseous, liquid, or solid state; or any naturally occurring mixture of one or more hydrocarbons... whether in a gaseous, liquid, or solid state, and one or more of the following, namely hydrogen sulphide, nitrogen, helium, or carbon dioxide. Silver: Substance containing silver or having silver mixed in it. Stones: Aggregate, basalt, diatomite, dunite, granite, limestone, marble, purlite, pumice, sandstone, serpentine, slate, sand, and gravel. Uranium: Thorium, and all natural substances, chemical compounds, and physical combinations of uranium, or thorium.

land alienated from the Crown after the 22 July 1991 to be reserved in favour of the Crown minerals existing in its natural condition in the land, but provides for non-disclosure of wahi tapu to Māori.

6.4.1 Minerals Programme

Section 20 of the Act provides for the establishment of policies, procedures, and provisions to be applied in respect of the management of any Crown owned minerals with the exclusion of petroleum. The limitation of this legislation is defined by Section 10 of the Act which acknowledges the Crown as having a property right to minerals, and is encumbered by Section 11(1) in favour of the Crown of all land being subject to a reservation after the 22 July 1991. A key policy concerning Māori is *“to allow continuing investment in prospecting, exploration and mining in a way that has regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”* (Ministry of Economic Development, 2008, p. 8)

Currently unresolved Treaty of Waitangi settlements such as Ngati Porou and Te Whanau-a- Apanui of the eastern Bay of Plenty and East Cape region are concerned about the negative environmental impacts of mining in their area of interest in the Raukumara Basin. Current provisions in the Ngati Porou Deed of Settlement afford management of natural resources within the 12 nautical mile limit (Tahana, August 5, 2010, p. 1). This would then require the Crown and their representative agencies to take into account any provisions relating to the principles of the Treaty of Waitangi concerning interests within the 12 nautical mile limit.

6.4.2 Exclusion of Petroleum from Minerals Programme

The recent (2010) debate over the mining of the Exclusive Economic Zone⁷³ requires new dialogue between Māori and the Crown. The Green Party believe that any mining

⁷³ See Map at Appendix 9. The Exclusive Economic Zone is an area of sea beyond and adjacent to the territorial sea. The outer limit of the exclusive economic zone cannot exceed 200 nautical miles from the territorial sea baseline. Where the New Zealand EEZ abuts the maritime zone of another nation, a median line between the nations is agreed.

beyond the 12-nautical-mile limit could turn out to be the *“biggest Māori land grab in New Zealand history”*. (Northland Age, 2010, p. 2) A Government report has identified the northern seabed as having the potential to produce a trillion barrels of oil under 100,000sq km of the northern seabed (Northland Age, 2010). Under Section (3) of the Petroleum Act 1937 petroleum is deemed to be the property of the Crown. Preliminary provisions at Section 4 of the Act, permits the Minister of Energy with the consent of the Minister of Transport to authorise any person to carry out a regional reconnaissance survey within the territorial sea or continental shelf.

Māori Affairs spokesperson for the Green Party, David Clendon stated that *“a Crown Minerals official told a Waitangi Tribunal inquiry in April that the Petroleum Act 1937 only nationalised oil in the territorial sea which stops at 12 nautical miles from shore”*. (Northland Age, 2010, p. 2) This is consistent with the Territorial Sea and Exclusive Economic Zone Act 1977. The Continental Shelf Act 1964 at Section 2(a) provides a distance of 200 nautical miles from the baselines from which the width of the territorial sea is measured. By Section 4(2) of the Act the Governor General may veto the Crown Minerals Act 1991 in order to give full effect to exploration and exploitation of the Continental Shelf.

6.4.3 Crown Minerals Amendment Act 1997

The Crown Minerals Amendment Act 1997 provided redress by the Crown to Ngai Tahu for their longstanding grievance over who had ownership of pounamu. The Waitangi Tribunal (1998) provided recommendations for the return and ownership of nephrite and bowenite (pounamu) to the Ngai Tahu people. Durie (1998) explained that:

“The Waitangi Tribunal agreed. The Tribunal considered that the unique nature of pounamu and its deep spiritual significance in Māori life and culture is such that every effort should now be made to secure as much as possible to Ngai Tahu ownership and control... [Waitangi Tribunal] believe all such pounamu [on Crown land] and any other owned by the Crown should be returned by the Crown to Ngai Tahu.” (Durie, 1998 p. 37)

As a consequence of the Crown Minerals Amendment Act 1997, Section 11(1A) was inserted, providing for the provision of Ngai Tahu ownership to pounamu. Durie (1988, p. 37) explains that *“in respect to minerals, Ngai Tahu were more successful than most tribes in claiming back a natural resource, pounamu (jade or greenstone). They had argued before the Waitangi Tribunal that tribal ownership of pounamu had never been extinguished.”* This is the only significant application of statutory legislation to minerals as a natural resource in which Ngai Tahu have a secure property right. While having established a key precedent to minerals, pounamu is only found in the South Island of Aotearoa New Zealand. The fact that there were no cross-claims to pounamu enabled Ngai Tahu to conclude a settlement with the Crown.

6.4.4 Reviewing the Crown Minerals Act 1991

In August 2010 the Ministry for Economic Development released a discussion paper to review the Crown Minerals Act 1991. The review of the Crown Minerals Act 1991 is *“part of a broader review of the Crown minerals regime, encompassing also the minerals programmes, regulations and fiscal provisions.”* (Ministry for Economic Development, 2010, p. 6)

6.5 Historic Places Act 1993

This Historic Places Act 1993 established the Māori Heritage Council as a statutory committee whose role is to ensure the protection and promotion of sites of significance to Māori. The purpose of the Act is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand, and sites of significance to Māori. Key sites of significance are commonly acknowledged through Treaty of Waitangi settlement legislation.

A key provision of the Historic Places Act 1993 at Section 4(2) (c) requires the Historic Places Trust to take into account the relationship of Māori, culture and traditions with their ancestral lands, water, sites, wahi tapu and taonga. A Local Authority under Sections 14(3), 33 and 85(e) and (g) of the Act must refer a resource consent where

there is a site of Māori interest (archaeological sites) to the Māori Heritage Council who will make a recommendation to the Historic Places Trust.

In 2009 the Historic Places Trust Māori Heritage Council developed the Tapuwae (footprint on the landscape) Report, which focuses on the protection of cultural heritage, landscapes and knowledge of tangata whenua captivated on marae. The Historic Places Trust Māori Heritage Council (2009, p. 6) interpret Māori heritage as “*a living spirituality, a living mana that transcends generations. It comes to life through relationships between people, the material and the non-material.*” The following Table 6.3 identifies key heritage areas and examples.

Table 6.3 Identifying Key Heritage Areas & Examples

Identifying Key Heritage Areas	Heritage Examples
Wahi tapu Wahi tapu areas	Pa, ko nga kainga, ko etahi o te pa, towatawata – villages, raised and fortified Urupa – burial grounds Unga waka – canoe landing sites Puna – springs Kohatu – rocks Ana – caves Toka-tu-moana – rocks standing in waterways Maunga – mountains Wahi horoi tupapaku – places where corpses were cleaned Rakau tapu – sacred trees
Historic places and areas of Māori interest	Churches Māori school houses Buildings and structures Kainga and fishing villages Landscape features Mahinga kai – places where food is collected or prepared Stone quarries Rock art sites Archaeological sites

*Source: Adapted Māori Heritage Council, Tapuwae (2009),
<http://www.historic.org.nz/en/Publications/~media/Corporate/Files/Publications/Tapuwae%20Engl ish.ashx>.*

6.6 Hazardous Substances and New Organisms Act 1996

The Environmental Protection Authority⁷⁴ administers the Hazardous Substances and New Organisms Act 1996 (Environmental Risk Management Authority, 2010). A key function of the Hazardous Substances and New Organisms Act 1996 is to protect ecosystems and their constituent parts.⁷⁵ Under Section 6(d) of the Act all persons exercising powers shall take into account the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wahi tapu, valued flora and fauna, and other taonga.⁷⁶ Section 8 requires all persons exercising powers and functions under the Act to take into account the principles of the Treaty of Waitangi.

The Environmental Protection Authority is an independent Crown entity, and although not under the direct control of the Minister of Environment, it must have regard to government policy when directed by the Minister. The Authority replaces a small agency called ERMA New Zealand (Environmental Defence Society, 2009). Section 18 of the Environmental Protection Authority Act 2011 establishes a Māori Advisory Committee a statutory committee represented by up to eight Māori members and no less than six who elicit important issues of concern to Māori.⁷⁷

6.7 Marine and Coastal Area (Takutai Moana) Act 2011

On the 14 June 2010 the National Government in coalition with the Māori Party announced the repeal of the Foreshore & Seabed Act 2004 *“replacing it with a non-*

⁷⁴ The Environmental Protection Authority Board is represented by no less than six members and no more than eight members (Environmental Protection Authority Act 2011).

⁷⁵ Including people and communities; and all natural and physical resources; and amenity values; and the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters. Amenity values are defined by the Act as being those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

⁷⁶ The Treaty of Waitangi is also defined in the Act, as having the same definition as outlined by section 2 of the Treaty of Waitangi Act 1975.

⁷⁷ Section 19 (1) of the Environmental Protection Authority Act 2011 (EPA) requires the Māori Advisory Committee is to provide advice and assistance to the EPA on matters relating to policy, process, and decisions of the EPA under an environmental Act or this Act. Section 19 (2) provides for the Māori Advisory Committee advice and assistance must be given from the Māori perspective and come within the terms of reference of the committee as set by the EPA.

ownership model of the public, foreshore and seabed and restoring the right of iwi to seek customary title in Court...” (Finlayson, 2010, p. 1) On the 6 September 2010, the Honourable Chris Finlayson announced the Marine and Coastal Area (Takutai Moana) Bill which will replace the Foreshore and Seabed Act 2004. As a birth right New Zealander’s will continue to enjoy the privilege of free public access to the marine and coastal area. There are currently approximately 12,500 private titles in the marine coastal area. The marine and coastal area is defined in the previous legislation, and with the exception of existing private titles, is a common space – the Common Marine and Coastal Area (Finlayson, 2010). This ensures that this area cannot be sold. The regulatory regime does not allow new private title in the marine coastal area.

Table 6.4 represents natural resource legislation which needs to be considered by Māori that will affect further policy. Natural resources also include the subsoil, bedrock and other matters below foreshore and seabed.

Table 6.4 Intersects of Foreshore & Seabed

Dimensions	Intersects Substantial Legislation
Foreshore	Resource Management Act 1991 Marine Farming Act 1971
Seabed	Historic Places Act 1993 Maritime Transport Act 1994
Water Space	The Territorial Sea, Contiguous Zone and Exclusive Economic Act 1977 The Continental Shelf Act 1964
Air Space	The Crown Minerals Act 1991 Conservation Act 1987 Marine Reserves Act 1971 The Fisheries Act 1983 The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

The Marine and Coastal Area (Takutai Moana) Act 2011 carries the same obligations as the Foreshore and Seabed Act 2004, which will require Māori to provide substantial evidence of continuous occupation and customary use since 1840. In substantiating customary rights to the marine and coastal area the Crown recognises customary activities, uses and practices that are non-territorial such as waka launching and collecting stones for hangi. Māori mana moana over the marine and coastal area

stems from a concept which recognises property rights of indigenous people prior to the cession of Crown sovereignty to the present day. The right is inalienable, and therefore cannot be sold, and recognises the relationship of hapu and iwi (Finlayson, 2010). In achieving this, applicants will need to meet Crown tests and prove exclusive use and occupation of the areas; the exclusive use and occupation has been held from 1840 until the present without substantial interruption; and the area for which they are seeking title is held in accordance with tikanga (Finlayson, 2010).

6.7.2 Minerals

Customary marine title restores rights to Māori where the Crown has previously omitted to recognise their rights in legislation. The Crown will retain rights to nationalised minerals, while the new Act proposed by the National Government provides for entitlements to non-nationalised minerals. Non-nationalised minerals will be subject to current resource regimes.⁸⁰

6.8 Local Government Act 2002

The key purpose⁸¹ of the Local Government Act 2002 is to provide for democratic and effective local governance that recognises the diversity of New Zealand communities. The Act provides for Māori to be included in the decision making processes of natural resource management within defined jurisdictions of consent authorities. Parts 2 and 6 of the Act provides for principles and requirements of regional, territorial and unitary authorities to facilitate greater participation by Māori in local authority decision making processes.

⁸⁰ (Finlayson, 2010, <http://admin.behive.govt.nz./release/repeal+foreshore+and+seabed+act+announced>).

⁸¹ Appendix 10: Local Government Act 2002.

6.8.1 Local Government & Māori Participation

Sections 14 and 81 of the Local Government Act 2002 provide an opportunity for Māori to participate in the management of natural resources that have been transferred by Government. Boffa Miskell Limited (2010) state *“recent post-settlement governance and management structures that incorporate Māori representation appear to be working well and add to the body of best practice.”* In achieving this objective Chief Judge Joe Williams of the Māori Land Court and Chairperson of the Waitangi Tribunal, in respect to Māori engagement with Council’s, believed that it is at local government level that communities *“must resolve the real challenges of growing diversity, and they must do that not via media-driven sound-bites, but face to face. That is much harder. It is also far more likely to produce positive outcomes.”* (Williams, J., 2005, p. 1)

6.8.2 Local Government Obligations to Māori

Section 75(b) of the Local Government Act 2002 defines the obligation of local authorities to consider Māori involvement in the decision-making processes. This section is consistent with section 4 of Act in taking appropriate account of the principles of the Treaty of Waitangi. Environment Bay of Plenty (2010) is the only council in the country with specific Māori constituencies and representation. This was established as a result of the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001.⁸⁴

Section 77(1) (c) of the Local Government Act 2002 requires local government to take appropriate account of the relationship of Māori to natural resources in the course of a decision-making process. This section is subject to Section 79 which provides for

⁸⁴ Section 10 Electors of Māori Constituencies (1) The electors of any Māori constituency created in accordance with this Part are, in the case of any triennial general election, - (a) those residential electors of the region entitled to vote at the election of the Council who – (i) are registered as a parliamentary elector at an address within the constituency; and (ii) are registered as an elector of Māori electoral district; and (b) those ratepayer electors of the region entitled to vote at the election of the Council- (i) whose entitlement as an elector arises in respect of property in the constituency; and (ii) who are registered as an elector of Māori electoral roll.

compliance procedures allowing local government to use their own discretion or judgement. This confirms the requirement of local government to work with Māori to support the development of natural resource management plans, otherwise referred to as hapu and iwi environmental management plans.

6.9 Environment Act 1986

The Environment Act 1986 provides for the establishment of office of the Parliamentary Commissioner for the Environment and the Ministry for the Environment who administers the Act. The Parliamentary Commissioner is appointed on recommendation of the House of Representatives to the Governor General under Section 4(1) of the Act. The objective of the Act is to ensure that a full balanced account is taken of the principles of the Treaty of Waitangi.

The Parliamentary Commissioner⁹⁷ has the power to investigate, with the objective of maintaining and improving the quality of the environment, systems of agencies and processes established by government to manage the allocation, use and preservation of natural and physical resources. Duties of the Parliamentary Commissioner is to consider any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are a part of the heritage of the tangata whenua and which contribute to their wellbeing under Section 17 (c) of the Act.

The power to investigate the Crowns and their representative agencies role in the management of natural resources in Aotearoa New Zealand also provides a framework to address issues of concern which may affect the well-being of Māori. The Parliamentary Commissioner in performing his/her role must take a full balanced account of the principles of the Treaty of Waitangi. In doing so, the Parliamentary Commissioner for the Environment (1988) stated:

“The Waitangi Tribunal is an authoritative source of advice on interpretation of the principles of the Treaty of Waitangi. Matters which come before the

⁹⁷ Appendix 11: The Role of the Parliamentary Commissioner for the Environment.

Tribunal relate directly to the management of natural and physical resources, or, in the case of the Te Reo claim and the cultural aspects of other claims, relates to matters falling under the broad definition of “environment” used in the Environment Act.” (Parliamentary Commissioner for the Environment, 1988, p. 2)

6.10 Flora & Fauna

Māori intellectual property rights to flora and fauna have been subject to claim and inquiry by the Waitangi Tribunal, better known as WAI 262.⁹⁹ The Crown scoping of the claim is dissected into four categories *“Mātauranga Māori (traditional knowledge); Māori cultural property (tangible manifestation of mātauranga Māori); Māori intellectual and cultural property rights; and environmental, resources and conservation management.”* (Ministry of Economic Development, 2007, p. 1) On the 2 July 2011, the Waitangi Tribunal publicly released a report on the flora and fauna claim at Te Ohaki marae, Ahipara, Kaitiaki.

The Waitangi Tribunal recognised Māori tino rangatiratanga over their taonga katoa (all their treasure things) essential to Māori culture and identity. The Waitangi Tribunal (2011, p. 3) recommended *“amendments to laws covering Māori language, resource management, wildlife, conservation, cultural artifacts, environmental protection, patents and plant varieties, and more.”* The Waitangi Tribunal considered that reform of laws was necessary to ensure that Māori and the Crown and other New Zealanders interests are fairly balanced (Waitangi Tribunal, 2011).

Any reluctance of the Crown and their representative agencies to conclude a settlement of intellectual property rights to flora and fauna is a breach of Article 2 of the Treaty of Waitangi. The unwillingness of Crown to accord Māori intellectual property rights to flora and fauna raises the issue of limitations in the statutory application of the principles of the Treaty of Waitangi. Indigenous knowledge is inherent to Māori in the management of natural resources, and needs to be made

⁹⁹ Wai 262 was registered on the 9 October 1991 by six claimants on behalf of themselves and their iwi: Haana Murray (Ngati Kuri), Hema Nui a Tawhaki Witana (Te Rarawa), Te Witi McMath (Ngati Wai), Tama Poata (Ngati Porou), Kataraina Rimene (Ngati Kahungunu), and John Hippolite (Ngati Koata).

explicit within Treaty of Waitangi settlement legislation through statutory instruments and acknowledgements. There have been no further gains in establishing Māori intellectual property rights to indigenous traditional knowledge.

6.11 Chapter Summary

The Treaty of Waitangi today is a prominent provision to Māori natural resource management regulation in Aotearoa New Zealand. While there is no express interpretation of the principles of the Treaty of Waitangi within legislation the Resource Management Act 1991 for example provides for two key concepts in integrating Māori participation in natural resource management at a regional level, the transfer of authority to a public or iwi authority and the development of hapu and iwi management plans.

The Conservation Act 1987 provides for protective covenants under the Nga Whenua Rahui, while the Historic Places Act 1993 also protects Māori interests to land heritage entitlement from over development through the protection of sites of significance and a Māori Advisory Committee. The Local Government Act 2002 and the Environment Act 1986 also provide essential roles in Māori participation in authoritative roles of natural resource management in Aotearoa New Zealand.

The Marine and Coastal Area (Takutai Moana) Act 2011 makes provisions for the development of plans. The Crown Minerals Act 1991 and associated legislation requires only consultation with Māori within any Crown or their representative agencies national and regional planning. Ensuring a collaborative approach through proactive participation in respect of the natural resource management within Crown and their representative agencies regimes is essential in achieving positive gains for Māori. The Hazardous Substances and New Organisms Act 1996 through the Environmental Protection Authority provide for a Māori Advisory Committee providing advice on Māori perspectives.

CHAPTER 7

DISCUSSION

7.1 Introduction

The statutory application of natural resource management in Aotearoa New Zealand is a partnership. This is founded by the Declaration of Independence, the Treaty of Waitangi and supported by the recent ratification of the Declaration on the Rights of Indigenous People. In order to progress a greater Treaty partnership between Māori and the Crown and their representative agencies, all parties need to mutually agree to honour the full intent of the Treaty of Waitangi. This requires that Māori participate fully at all levels in the legislative and policy framework development and implementation processes both nationally and regionally. The Treaty of Waitangi Act 1975 and Amendment Act 1985 provided substantive weighting in the inquiry of statutory management of natural resources in Aotearoa New Zealand that supported Māori natural resource management as guaranteed by Article 2 of the Treaty of Waitangi. However, this can only be enforced by municipal law or through negotiations with the Crown and their representative agencies.

A forum for wider debate in the statutory management of resources in Aotearoa New Zealand is overdue. It was not until the 1980s when the Crown proposed the sale of State Owned Enterprises, that Māori land entitlement was identified by the Court of Appeal, successfully halting the sale of thousands of hectares of land throughout Aotearoa New Zealand. The alienation of the foreshore and seabed to the Crown in 2004 by the Labour Government also prompted Māori to unify to protest against bias legislation: the then Government again defeating Māori by the enactment of the Foreshore and Seabed Act 2004, but later repealed by the National Government and replacing this with the Marine and Coastal Area (Takutai Moana) Act 2011.

The reality of addressing the alienation of Māori natural resources through municipal law remains in sight of Māori, even though Māori are often faced with fiscal obstacles. Financial onus on hapu and iwi is an obstacle in the retention and management of

natural resources in Aotearoa New Zealand. On the other hand, the piecemeal approach by Crown and their representative agencies in dealing with natural resources continues to obscure Māori ambitions in achieving a proprietary right for definitive protection of natural resources for all Māori and future generations. Ultimately only unity and mutual agreement through upholding the principles of the Treaty of Waitangi between Māori and the Crown and their representative agencies will a Treaty partnership succeed.

7.2 Treaties

Although having no statutory or constitutional relevance in Aotearoa New Zealand legislation the Declaration of Independence remains contentiously on the agenda of Māori. While the Waitangi Tribunal through inquiries agreed that Māori did not cede sovereignty, the Crown and their representative agencies continue to deny Māori of their right to freely exercise tino rangatiratanga. A fuller inquiry having commenced in May 2010 by the Crown on the Declaration of Independence and the Treaty of Waitangi is yet to be determined by the Waitangi Tribunal. It is likely that the Crown and their representative agencies will determine that there is no fiduciary responsibility to recognise this Declaration of Independence unless this is enforced within municipal law. As declarations and treaties continue to be tested in the Aotearoa New Zealand, the Declaration will remain subject to inquiry by the Waitangi Tribunal, and in the future legal interpretation by municipal law.

A key issue for Māori is ensuring appropriate wording when interpreting the principles of the Treaty of Waitangi in resource legislation and policy. Table 7.1 represents the wording of the Treaty of Waitangi and the statutory application and processes applied within Māori natural resource management legislation.

Table 7.1 The Treaty of Waitangi in Natural Resource Legislation

Act & Section	Preceding Text	Key Language	Principles
Resource Management Act 1991, Section 8	<i>All persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources</i>	shall take into account	The principles of the Treaty of Waitangi
Resource Management (Simplifying & Streamlining) Act 2009	<i>The Act amends the Resource Management Act 1991: Refer to above text</i>		
Conservation Act 1987, Section 4	<i>This Act shall so be interpreted and administered as</i>	to give effect	To the principles of the Treaty of Waitangi
Crown Minerals Act 1991, Section 4	<i>All persons exercising functions and powers under this Act</i>	shall have regard to	The principles of the Treaty of Waitangi (Te Tiriti o Waitangi)
Historic Places Act 1993, Section 4(2)(c)	<i>In achieving the purpose of this Act, all persons exercising functions and powers under it</i>	shall recognise	The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga
Hazardous Substances & New Organisms Act 1996	<i>All persons exercising powers and functions under this Act</i>	shall take into account	The principles of the Treaty of Waitangi
Marine and Coastal Area (Takutai Moana) Act 2011	<i>In order to</i>	take account of	The Treaty of Waitangi (te Tiriti o Waitangi), this Act recognises, and promotes the exercise of, customary interests of Māori in the common marine and coastal area
Local Government Act 2002, Section 4	<i>In order to recognise and respect the Crown's</i>	to take appropriate account of	The principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori

	<i>responsibility</i>		to contribute to the local government decision making processes. Parts 2 and 6 provides principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision making processes
Environment Act 1986	<i>Objective of the Act is to ensure that a</i>	full balanced account	Is taken of the principles of the Treaty of Waitangi
Environment Protection Authority Act 2011 Part 1 Section 4	<i>In order to recognise the Crown's responsibility</i>	to take appropriate account	Of the principles of the Treaty of Waitangi

Source: Adapted.

Table 7.1 clearly shows the different context of statutory wording and the relationship of Māori to natural resource management under the Treaty of Waitangi. Section 9 of the State Owned Enterprise Act 1987 while not identified in Table 7.1 is one of the most profound provisions regarding the principles of the Treaty of Waitangi in statute. This states “*Nothing in this Act shall permit the Crown to act in a manner which is inconsistent with the Principles of the Treaty of Waitangi.*” This broadened the scope of how the principles of the Treaty of Waitangi might be applied in municipal law, and application by the Crown and their representative agencies in their actions in formulating and administering legislation in Aotearoa New Zealand concerning Māori.

The Crown has been acknowledged in the Local Government Act 2002 and the Environment Protection Authority Act 2011 as having to take appropriate account of the principles of the Treaty of Waitangi. While the balance of natural resource management legislation requires the Crowns representative agencies to take into account; to give effect; shall have regard; shall recognise; and full balanced account of the principles of the Treaty of Waitangi. This shows no clear statutory wording of the

Crowns obligations in regards to the Treaty of Waitangi, but makes provisions for their representative agencies to interpret and administer legislation according to the principles of the Treaty of Waitangi. However the Crowns representative agencies have not always been consistent with the principles of the Treaty of Waitangi and have not always accorded Māori of their rights often reflected by claims before the Waitangi Tribunal and the courts.

The Treaty of Waitangi is fundamental to the evolution of statutory management of resources in Aotearoa New Zealand. Article 1 of the Treaty of Waitangi provides for the Crown to make laws and to govern while firmly ensuring Māori tino rangatiratanga to natural resource management in accordance with Article 2. It was cited in the case of *Hoani Te Heuheu Tukino v Aotea District Māori Land Board* [1941] A.C. 308 that the Treaty of Waitangi could *“only be recognised if it is incorporated in municipal law.”* (Durie, 1998, p. 1 80)

It may be presumptuous to determine that since Aotearoa New Zealand’s ratification in April 2010 of the Declaration on the Rights of Indigenous People, that the Crown and their representative agencies will give regard to the Declaration. Indigenous Peoples human rights to resources are clearly defined in the articles of this Declaration. Article’s 24 -26 of the Declaration provides for indigenous rights to resources. This includes the right to traditional medicines for customary use, and the conservation of medicinal plants, animals and minerals under Article 24¹¹⁰ (Human Rights Commission, 2008). Article 25 expresses the right to customary lore of *“traditionally owned or otherwise occupied and used lands, territories, waters and costal seas and other resources.”* (Human Rights Commission, 2008, p. 8) Article 26 provides for indigenous rights to customary resources, including ownership, use and development (Human Rights Commission, 2008). The Declaration broadens the scope of Māori exercising tino rangatiratanga to natural resource management in Aotearoa New Zealand. It would be prudent that the Declaration on the Rights of Indigenous People is also endorsed in municipal law, and in legislation under a national Māori representative

¹¹⁰ Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals...

body such as Te Kaunihera Māori o Aotearoa or alternatively in a revamped constitution¹¹¹ for Aotearoa New Zealand.

An independent commission could support the Crown and their representative agencies in providing legislative guidance in the interpretation and application of the Treaty of Waitangi in municipal law. Alternatively, a national Māori body such as Te Kaunihera Māori o Aotearoa representing the hapu and iwi of Aotearoa New Zealand could provide a lead consulting role in the interpretation and the application of the principles of the Treaty of Waitangi in municipal law. Whichever, there must be a greater acknowledgement in municipal law to support Māori rights that can withstand any repeal, amendment or inconsistency in legislation such as incorporating treaties into a single constitution and a national Māori statutory body representing the hapu and iwi of Aotearoa New Zealand.

7.3 Māori Values & Natural Resources

Indigenous peoples have retained unique customs separate from those of a dominant society in which they live. Despite cultural differences, the indigenous people's world-view of spiritual, cultural, historical and traditional association and rights to natural resource management remains a common theme globally. The Declaration on the Rights of Indigenous People provides a platform to resolve local and international human rights. While the Declaration is not binding on the Crown and their representative agencies in municipal law, international human rights supports Māori human rights in Aotearoa New Zealand.

Māori continue to practice and promote cultural heritage values, and apply these values within legislation, regulations and policies in contemporary times. For example, 160 years after the signing of the Treaty of Waitangi, Māori continue to acknowledge

¹¹¹ A constitutional panel was established by the National Government in August 2011. Leading the constitutional panel is Emeritus Professor John Burrows and Sir Tipene O'Regan (Co-chairs). Members include Peter Chin, Deborah Coddington, Michael Cullen, John Luxton, Bernice Mene, Leonie Pihama, Hinurewa Poutu, Linda Smith, Peter Tennet and Dr. Ranginui Walker. (NZ Herald, Thursday August 4, 2011. Retrieved from <http://www.nzherald.co.nz/news/print.cfm?objectid=10742917>).

customary lore of lands, forests, estates, foreshore, seabed, minerals, flora and fauna and freshwater. Matunga (2002) supports this by acknowledging that Māori have exercised customs since arrival in Aotearoa New Zealand, and they have maintained kaitiakitanga of natural resources. Matunga (2002) agrees that:

“The world our ancestors inhabited may be quite different to the world we inhabit underlying challenge, through more complex, are basically the same. Those challenges revolve around how to manage change in the environment and our interactions with the environment while protecting the resource for future generations to use and enjoy – in other words, the practice and ethic of kaitiakitanga.” (Matunga, 2002, pg. 7)

However, there is no legal obligation for the Crown and their representative agencies to “take into account” Māori customary lore. While Māori customary lore has adapted over time, the philosophical intent is consistent to when Māori signed the Treaty of Waitangi, and the New Zealand Government was established in the 1850’s. For years after, Māori were deprived of their natural resource management through the Crown’s obligations under the Treaty of Waitangi – Article 1 the right to govern and to make laws. Human rights are fundamental to Māori customary lore but are distinct and separate as the indigenous people of Aotearoa New Zealand. The Māori world-view and knowledge of the creation of the universe is inseparable of Māori identity through whakapapa and tribal histories.

Kaitiakitanga is a guiding principle through the association of Māori to atua, humankind and the universe - Te Ao Māori. This is supported by the relationship of Māori to Papatūānuku and Ranginui, and in contemporary times provides for the sustainable use and development of all resources for future generations. Tikanga best practice regulates how Māori customary lore is adapted and changed overtime, in association with traditional values of whakapapa, taonga, tapu, noa, rahui and mauri.

Non-Māori perspectives of customary lore and values that relate to natural resources in Aotearoa New Zealand provide a potential, co-operative approach by Māori and the Crown and their representative agencies, and the wider community working together to sustain resources for future generations. The relationship of land and water are

self-supporting of all living things. Maintaining tikanga is best practice for Māori and their associations to land through whakapapa, karakia, waiata, whakatauki, stories and maunga. The dynamic of Māori associations to natural resources was and is still retold through pepeha, purakau, moteatea, Māori are attached to land with land rights by whakapapa descent; community rights; individual rights through community; incorporations; incorporation by land allocation; allocation by another hapu; and the Māori land tenure system. This was identified through land marks of maunga, streams, rivers, harbours and notable trees or landmarks. This dynamic is supported by Article 26¹¹³ of the Declaration on the Rights of Indigenous Peoples.

Today, customary lore is acknowledged within legislation, regulations, plans and policies through the Treaty of Waitangi settlement legislation. The value of sustaining resources is the developing common view amongst indigenous nations and western societies. This raises an issue of how Māori can better participate in incorporating Māori values in law, now and into the future. This was raised by Justice David Baragwanath in 2001 who accepted that Māori customs and values in Aotearoa New Zealand law would be valuable to the statutory obligation of judges. This belief is further supported by former Chief Justice Eddie Durie of the Waitangi Tribunal who in 1994 provided a comprehensive report on customary law in Aotearoa New Zealand.

The New Zealand Law Commission (2001) initiated a project to determine Māori customs and values in Aotearoa New Zealand law, the impact in law and to provide direction for reform in the future. This revealed a need to re-evaluate the Treaty partnership and the application of the principles of the Treaty of Waitangi, when considering Māori customary lore and values in legislation. In order to integrate and

¹¹³ Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the rights to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect of the customs, traditions and land tenure systems of the indigenous peoples concerned (Article 26, Declaration on the Rights of Indigenous People).

provide for recognition of Māori customary lore greater discussion and participation is required between Māori and the Crown and their representative agencies. Explicitly interpreting hapu and iwi understanding of customary lore and values in Treaty of Waitangi settlement legislation partially addresses the spiritual, cultural, historical and traditional relationship to resources.

The Declaration of Independence, Treaty of Waitangi, and the adoption of the Declaration on the Rights of Indigenous People provides a pathway forward. To date the Crown has not expressed an intent to establish a commission or separate Māori authority to address customary lore in legislation.

7.5 Treaty of Waitangi Settlement Legislation

It is evident that wider mutual consultation of Māori natural resource management needs to be undertaken throughout the Treaty of Waitangi settlement process and beyond. Building relationships between Māori and the Crown and their representative agencies as delegated by statute is also fundamental to improving the Treaty partnership. This requires actively taking into account the principle of the Treaty partnership, and that relationship between Māori and the Crown and their representative agencies in ensuring equitable measures are taken to achieve real gains through implementation processes. The necessity to ensure that Treaty of Waitangi settlement legislation aligns with the long term spiritual, cultural, social, environmental and economic aspirations of Māori is also essential.

Treaty of Waitangi settlement legislation requires skilled and tactful negotiations by Māori and the Crown and their representative agencies, ensuring that, among other things the wider issues of Māori concerning proprietary rights to natural resource management are considered. Interpretation of Māori customary lore and values within legislation also requires extensive discussion and understanding. While there is still much work to be accomplished to ensure parity, Māori continue to progress customary interests to resources through negotiating with the Crown and their representative agencies or challenge through the judicial system.

Reference to the principles of the Treaty of Waitangi in legislation poses a great challenge for both Māori and the Crown and their representative agencies in interpreting what these principles are. The Resource Management Act 1991 delegates' authority to regional and territorial authorities to take into account the principles of the Treaty of Waitangi in the management, use, development and protection of natural and physical resources. While not binding or defined, this is now partially being supported by Treaty of Waitangi settlement legislation and the application of the Declaration on the Rights of Indigenous Peoples. This however, provides for no guarantees how this is supported in regional policy statements, policies and plans.

In Article 2 of the Treaty of Waitangi Māori were guaranteed tino rangatiratanga over taonga. This has been met moderately by the Crown through various perspectives of laws. This can be over-ridden with legislation detrimental to Māori customary lore, and Māori association to natural resource management in Aotearoa New Zealand. The recognition of Article 2 also accords Māori of management, control and tribal self-regulation of resources in accordance with customary lore. The principal of partnership is therefore fundamental in carrying out the obligations of the Resource Management Act 1991 and requires meaningful co-operation, compromise, consultation and participation. Active protection is also a fundamental obligation of the Crown to ensure Māori interests to natural resources. Use and development of natural resources is provided for under Article 3 of the Treaty of Waitangi, as accorded to all New Zealanders; this also helps achieve the intent of the Resource Management Act 1991 relative to the Treaty of Waitangi.

Natural resource statutory acknowledgements provide a meaningful approach by the Crown in ensuring the application of Māori values and Māori participation to natural resource management in Aotearoa New Zealand. Co-management or collaborative management in natural resources as such provides for limited measures of representation. These concepts however, remain fundamental to the participation by Māori in the statutory management and sustainability of natural resource management for current and future generations.

Statutory acknowledgements in Treaty of Waitangi settlement legislation provide for Māori participation and representation to natural resource management in Aotearoa New Zealand. The Ngai Tahu, Te Uri o Hau and Ngati Tama iwi case studies all record comparative Treaty of Waitangi settlement legislation, founded on precedent laws such as the Ngai Tahu Settlement Claims Act 1998. All three case studies provide for consultation under the minerals programme, however pounamu is the only mineral that is protected and owned by Ngai Tahu of the South Island. Table 7.2 shows the continuity of statutory acknowledgements in Treaty of Waitangi settlement legislation.

Table 7.2 Statutory Acknowledgements in Treaty of Waitangi settlement legislation

STATUTE INTENT	NGAI TAHU SETTLEMENT CLAIMS ACT 1998	TE URI O HAU SETTLEMENT CLAIMS ACT 2002	NGATI TAMA SETTLEMENT CLAIMS ACT 2003
Treaty of Waitangi 1840, acknowledgement of Crown breaches	Section 6 & 10	Section 8	Section 6
Cultural, spiritual, historic and traditional association	Section 206	Section 59	Section 53
Resource Management Act 1991: Distribution of Consents Applications	Section 207	Section 64	Section 59
Resource Management Act 1991 Section 93 to 94C: Consent Authorities to have regard to statutory acknowledgements	Section 208	Section 60	Section 55
Environment Court to have regard to statutory acknowledgements under Section 274 of the Resource Management Act 1991	Section 209	Section 61	Section 56
Historic Places Trust and Environment Court regard to statutory acknowledgements pursuant to Section 14 & Section 20(1) of the Resource Management Act 1991	Section 210	Section 62	Section 57

Citation of statutory acknowledgements in submissions and proceedings before consent authorities	Section 211	Section 65	Section 60
Recording of statutory acknowledgements in regional coastal plan, district plan, regional plan or proposed plan defined by Section 2(1) of the Resource Management Act 1991	Section 211	Section 63	Section 58
Proprietary of mineral rights	Ngai Tahu (Pounamu) Vesting Act 1997	N/A	N/A
Consultation of Minerals Programme		Section 107	Section 26

Source: Adapted.

Under Section (10) 1(a) (1) of the Ngai Tahu Claims Settlement Act 1998 the Crown confirms to Ngai Tahu any claims by a Ngai Tahu claimant. This is founded on rights arising in or by the Treaty of Waitangi, the principles of the Treaty, statute, municipal law (including customary law and aboriginal title) fiduciary duty or otherwise. However for Te Uri o Hau and Ngati Tama there is no express interpretation or application of the Treaty of Waitangi or its principles. In contrast this may require Te Uri o Hau and Ngati Tama to lodge further claims to the Waitangi Tribunal for any Crown actions detrimental to natural resource management issues now and in the future.

All three case studies show comparative statutory association of their cultural, spiritual, historic, and traditional association to natural resource management. However, the processes applied by the Crown and their representative agencies have remained discretionary. For example, Ngai Tahu and Ngati Tama have had statutory legislation implemented into regional policy statements and plans, while Te Uri o Hau continue to endeavour to be recognised at a regional level. While supported by iwi legislation regional and district councils and territorial authorities are often faced with the challenges of how to meet their obligations under the Treaty of Waitangi. This is

often met by challenges from iwi. For example Ngai Tahu are now before the Environment Court as supported by Section 209 of the Ngai Tahu Settlement Claims Act 1998 in respect of Ngai Tahu's interests in the management, retention and control of water in the Waimate district, South Island. Ngai Tahu will now return to the Waitangi Tribunal to seek recommendations concerning proprietary rights and management of water. Under Section 10 of the Ngai Tahu Claims Settlement Act 1998 the Crown and their representative agencies are required to give regard to the principles of the Treaty of Waitangi, and any further fiduciary responsibilities under the Act.

Te Uri o Hau objections to Crest Energy's tidal electricity generation project at the Kaipara heads were dismissed by the Environment Court, even though the Crown had ensured Te Uri o Hau's recognition to their cultural, spiritual, historic and traditional association to the Kaipara Harbour and coastal areas under Section 59 of the Te Uri o Hau Claims Settlement Act 2002. This has been met by Te Uri o Hau placing an aukati or a cultural ban on the Kaipara Harbour heads. Te Uri o Hau are now faced with the challenge of lodging a claim before the Waitangi Tribunal and seeking recommendations in regards to the Kaipara Harbour for the Crowns' failure to acknowledge their role as kaitiaki when granting a resource consent and compensation thereof for loss of natural resource management.

Statutory acknowledgements to natural resources have been consistent but limited when determining proprietary rights. Could Māori have gained more in settling outstanding grievances of natural resources, if pan-tribal settlements had continued? Pan-tribal settlements such as the Sealord's deal required substantial participation by hapu, iwi and Māori national representation. The return of substantial tracts of lands known as Landcorp deal, were also settled with the support and lobbying of northern and southern tribes. While these large settlements of natural resources required, in some cases extensive litigation, their precedence has proved that Māori collectively can achieve proprietary rights and management rights over natural resources in Aotearoa New Zealand.

7.6 Natural Resource Legislation

Concern for the alienation of natural resource management has always been voiced by Māori. The statutory application of natural resource management legislation requires a critical analysis by Māori in understanding the legislative framework. Table 7.3 provides an analysis of Māori statutory representation in natural resource legislation.

Table 7.3 Māori Statutory Representation in Natural Resource Legislation

Statute	Statutory Representation	Yes/No
Resource Management Act 1991	Treaty of Waitangi Settlement Legislation - <i>Hapu & Iwi Management Plans</i>	Yes
Resource Management (Simplifying & Streamlining) Act 2009	To be Determined	No
Conservation Act 1987	Treaty Settlement Legislation - <i>Co-management</i> - <i>Appointment to Conservation Boards</i> - <i>Advisory Committees</i>	Yes
Crown Minerals Act 1991	Minerals Programme - <i>Consultation</i>	No Crown Veto
Historic Places Act 1995	Māori Heritage Council	Yes
Hazardous Substances & New Organisms Act 1996	Māori Advisory Committee - <i>Up to 8 Appointments</i>	Yes
Foreshore & Seabed Act 2004	No	No
Marine and Coastal (Takutai Moana) Act 2011	No	No
Local Government Act 2002	Māori Representation - <i>Local Government</i> - <i>Community Boards</i> - <i>Ad hoc Committees</i> - <i>Employment</i>	Yes
Environment Act 1986	Māori Representation in the Environment Court	No
Environment Protection Authority Act 2011	Māori Advisory Committee as per Hazardous Substances & New Organisms Act 1996	Yes

Māori Advisory Boards in providing advice to the Crown and their representative agencies are not new in Aotearoa New Zealand. The Historic Places Act 1995,¹¹⁴ Hazardous Substances and New Organisms Act 1996 and the Environment Protection Authority Act 2011¹¹⁵ make provision for Māori Advisory Boards. The Conservation Act 1987 through Treaty of Waitangi settlement legislation provides Māori with the opportunities of representation to Conservation Boards and Advisory Committees. The Local Government Act 2002 makes provision for Māori representation at a regional level but requires astute negotiations by Māori at a regional level, or requires Māori to meet local government statutory obligations through endorsement by a % of voters within a specific region.

The right of Māori to participate in the allocation and management of natural resources is clearly established by Article 2 of the Treaty of Waitangi. Unless the term *rangatiratanga* is articulated into statute the Crown continues to dominate control of natural resources (Tunks, 2002). Today, a lack of enthusiasm by regional and district councils and territorial authorities to share management and administrative roles with Māori distinctly exists. This is clearly inconsistent with Article 2 of the Treaty of Waitangi which guarantees Māori *rangatiratanga* of *taonga*, and is contrary to the Declaration on the Rights of Indigenous Peoples.

The Resource Management Act 1991 is a key tool in enabling Māori and statutory managers to develop a more meaningful relationship in the planning and development of Māori natural resource management in Aotearoa New Zealand. According to Stephenson (2002, p. 175) Section 33 of the Resource Management Act 1991 is *“potentially the most powerful tool... for recognising rangatiratanga.”* Transferring the administrative cultural and environmental responsibilities to Māori under Section 33 of the Act is one means of achieving this. Notwithstanding, Section 33 would require an iwi authority in the exercise or performance of the function, power, or duty, to ensure efficiency and technical, special capability or expertise. While transfer of powers to iwi authority by a local authority is a statutory provision, Stephenson (2002, p. 175)

¹¹⁴ Maori Heirtage Council.

¹¹⁵ Maori Advisory Committee.

concludes that *“the power to approve policy statements and plans remain with the local authority.”*

Section 33 however requires an integrated management approach in the regulation of the environment. Other approaches by the Crown and their representative agencies include developing national and regional policy statements involving a collaborative management approach, this is concurred by statutory acknowledgements in Treaty of Waitangi settlement legislation. A hapu or iwi environmental management plan provides another method for Māori to participate in planning and policy decisions at local government level.

The enactment of the Conservation Act 1987 is one of the largest confiscations by the Crown of Māori proprietary rights or land heritage entitlement. The loss of proprietary rights included not only indigenous forests, but also exempted Māori from customary use of flora and fauna. Some of the marine and coastal area is also currently regulated by the Conservation Act 1987 and remains in dispute by hapu and iwi across Aotearoa New Zealand. Co-management agreements and statutory instruments continue to be negotiated through the Treaty of Waitangi settlement process. But in reality, this is not enough to justify the Crown’s confiscation and exemption of proprietary rights of natural resources from Māori without compensation or equal management at a local, regional and national level such as mining of the conservation estate.

Crown Minerals were exempted from the singular natural resource management reform regime, and excluded from the statutory application of the Resource Management Act 1991. Ngai Tahu provides an example for the first exclusive property right to the foreshore and seabed and proprietary rights to pounamu as a natural resource through the Ngai Tahu (Pounamu) Vesting Act 1997, this includes the territorial sea. The natural resource management and proprietary rights to minerals will continue to be an issue for Māori as permitted licence holders and prospectors continue to drill, explore and exploit natural resources in Aotearoa New Zealand.

The Ministry of Fisheries (2010, p. 1) define the Exclusive Economic Zone as being *“a maritime zone over which the coastal state has sovereign rights over the exploration and use of marine resources. Usually, a state’s EEZ extends to a distance of 200 nautical miles (nm) (approx 370km) out from its coast...”* The contentious debate of the National Government’s intention to permit mining of nationalised minerals in Aotearoa New Zealand continues. The failure by the National Government to gain support by Māori in mining the Conservation Estate, has been met by a strategic move and the likelihood to nationalise further minerals for the purported benefit of the New Zealand economy. Further advances have included an increase in prospecting licences of nationalised minerals in the North Island, and prospecting of the Continental Shelf, in which consultation has been limited as agreed under the Minerals Programme. The Crown and their representative agencies interest is now supported by the Environmental Protection Authority Act 2011 in the regulation of national economic interests.

In July the Northland Age (2010) reported that the National Government is rejecting a claim by Māori to the seabed off Cape Reinga. The National Governments’ pre-emption of property rights extending beyond the 12 nautical mile limit into the exclusive economic zone concerning over 100,000sq km of northern seabed, remains to be tested in municipal law by Māori . The Northland Age (2010, p. 2) further reported that *“... the Petroleum Act 1937 only nationalised oil in the territorial sea, which stops 12 nautical miles from shore... Until then, the common view was that the Crown owned the minerals oil and gas and other resources on the seabed, as it does on dry land.”* It might be that Māori may argue that the Crown have not established a proprietary right to that further than the territorial sea.

The Historic Places Act 1993 provides for the protection of natural and physical resources. The Act supports Māori origins of Aotearoa New Zealand as being a distinct society. A key principle includes the identification, protection, preservation and conservation of Māori historical and cultural heritage, and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga. The Act provides another means of enabling Māori to protect key

natural resources of significant importance. This is sustained by the establishment of the Māori Heritage Council, who provides a key role in vetting the degradation of key natural resources or areas of cultural significance by development under the Resource Management Act 1991. Regulating Māori interests to natural resource management under the Act is a useful instrument if applied by hapu and iwi in regional, district and coastal plans.

Section 6(d) of the Hazardous Substances and New Organisms Act 1996 requires those persons exercising powers under the Act to take into account the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wahi tapu, valued flora and fauna, and other taonga. Māori statutory representation under the Act provides for meaningful participation in the planning, policy and advice related to natural resources concerning Māori through a Māori Advisory Committee (Nga Kaihautu Tikanga Taiao).¹¹⁷ Protection of natural resources and all living things is paramount to Māori. Statutory representation is one way of ensuring the protection of the natural and physical environment.

Māori having to prove exclusive occupation and use of the coastal and marine area since the signing of the Treaty of Waitangi is a key issue. Understanding marine and land tenure to Māori is fundamental when defining customary values in any relationship to foreshore and seabed. Te Puni Kokiri (1993, pg. 10) agreed that *“marine tenure to Māori is no different from land tenure.”* In most cases the ownership right as kaitiaki rests with those who live adjacent to fishing grounds, which are closely guarded by whanau and community (Te Puni Kokiri, 1993).

While it can be argued that aboriginal title cannot amount to a claim in municipal law to a fee simple right over traditional land it is contestable that aboriginal title is proprietary in character (McHugh, 1983). In the Marlborough Sounds case (2003),

¹¹⁷ Transferred to the Environment Protection Authority under the Environment Protection Authority Act 2011.

Chief Justice Sian Elias referred to this as customary property. The Oxford Dictionary (1996, p. 806) defines proprietary as “*of relating to a proprietor (proprietary rights)... held in private ownership.*” Property is defined as “*something owned; a possession... possessions collectively.*” It may be that any transfer of customary property to a third part without the express permission of Māori is an act of confiscation. Māori have not ceded to the Crown customary property or aboriginal title to the marine and coastal area. The Crown may therefore be required to compensate Māori for any adverse legislation that may extinguish customary property rights or aboriginal title. The Crown may need to prove that the policies and legislation proposed are necessary and unavoidable. Section 33 of the Resource Management Act 1991 is therefore a key instrument in the integrated management of the marine and coastal area for hapu and iwi. This may also include the involvement of the wider community in protecting resources for future generations.

The Local Government Act 2002 provides for four key measures to accommodate Māori representation in the statutory management of natural resources at a local level. This includes representation at local government level, community boards, ad-hoc committees and through engaging Māori in employment. Increasingly throughout New Zealand regional and territorial authorities are slowly meeting the needs of Māori representation. However, there is no set rule on formulating policies to determine how Māori representation will be achieved. A key issue for Māori is the spread of hapu and iwi groupings within a regional or territorial authority jurisdiction, and how best to cater for the interests of all Māori within that region. How each regional and territorial authority governs seems to remain outside of the Crown’s obligations under the Treaty of Waitangi.

The Parliamentary Commissioner for the Environment possibly provides for an option in establishing a framework to protect Māori interests under the Treaty of Waitangi. A key objective of the Environment Act 1986 is to ensure that a full balanced account is taken of the principles of the Treaty of Waitangi. This provides for the empowerment of the Parliamentary Commissioner in ensuring regional and territorial authorities provide for Treaty of Waitangi obligations in meeting the needs of Māori in the

statutory management of natural resources. Statutory monitoring/auditing of the application of the principles of the Treaty of Waitangi provides for one possible method of ensuring that delegated authority by the Crown to their representative agencies is consistent at a regional and community level, and the principles of the Treaty of Waitangi.

CHAPTER 8

CONCLUSION

Māori representation in natural resource management in Aotearoa New Zealand continues to develop and evolve. The relationship between Māori and the Crown and their representative agencies relative to natural resources needs to be re-examined in order to improve the Treaty partnership. The Treaty of Waitangi and subsequent principles are fundamental in achieving part of this purpose. Interpretation of the Māori language in legislation is also important for developing sound policies in statutory natural resource management. Evolving mechanisms when negotiating natural resources in Treaty of Waitangi settlement legislation needs to be refined to ensure greater provision and inclusion of a Māori world-view and customary lore into laws. The responsibility of acknowledgement of treaties in legislation and policy resides primarily with the Crown and municipal law. They must ensure that the statutory application in municipal law remains transparent between Māori and the Crown and their representative agencies. Currently, the Crown and their representative agencies interpret in an adhoc way how principles relating to treaties apply in the statutory application Māori in natural resource management, and are often met by challenges from Māori authorities through the Courts.

Globally evolving pressure on countries to protect natural resources of indigenous people has become a concern of all populations throughout the world. Subsequently the Human Rights division of the United Nations has assisted in a global natural resource management approach by having regard to these issues through the Declaration on the Rights of Indigenous Peoples. On a global perspective, the approach to sustainable natural resource management has seen Governments, non-government organisations and the United Nations work together to ensure greater participation in the environmental management of natural resources by indigenous people and western societies. The role of kaitiakitanga today in the western world-view requires Māori as the indigenous people of Aotearoa New Zealand to establish their values and relationships to their natural resources through legislation. For Māori

today, this requires building relationships with neighbouring hapu, iwi, Crown, Government and local authorities when defining principals in respect to sustainable management of natural resources in conjunction with the principals of the Treaty of Waitangi.

In Aotearoa New Zealand, the Treaty of Waitangi has become widely interpreted through municipal law, statute, inquiry, and Treaty of Waitangi settlement legislation. In delegating this authority within the frame work of legislation to statutory authorities, it is implicit that the Treaty of Waitangi fiduciary responsibility remains with the Crown. While Governments are administrators of Crown legislation, there is no permanent direction constitutionally to uphold the Treaty of Waitangi responsibilities unless outlined in municipal law. Regardless it is up to the Crown and their representative agencies to ensure that statutory administrators apply the principles of the Treaty of Waitangi when implementing legislation and policy in natural resource management in Aotearoa New Zealand.

The principle of how this concept has been approached by Māori and the Crown provides a way forward in developing a future model for dealing with treaties in Aotearoa New Zealand. The lack of recognition of the Declaration of Independence 1835 and the United Nations Declaration on the Rights of Indigenous Peoples in municipal law is likely to be contested by Māori. The United Nations Declaration on the Rights of Indigenous Peoples is a standard of international human rights which must influence the formation of domestic law. More commonly, the underlying principles of the Treaty of Waitangi are becoming a reflective view of Aotearoa New Zealand citizens, who are realising the intrinsic values of natural resources.

Constitutional change is inevitable in Aotearoa New Zealand. Discussions have commenced between Māori and the Crown and their representative agencies to pave a way forward in addressing Māori constitutional treaty rights in Aotearoa New Zealand. This includes the incorporation of the Declaration of Independence, Treaty of Waitangi and the Declaration on the Rights of Indigenous People in domestic law. This is likely to be reflected in the current inquiry by the Waitangi Tribunal. Whether the

Crown or their representative agencies are brave enough to tackle positive change is another matter. Rather though, the sooner this is addressed, the sooner we can move forward as New Zealanders for the cultural, social and economic benefit of the nation.

The challenge for the Crown and their representative agencies today is to determine how best they can build on Treaty relationships in providing new pathways for Māori in achieving self-reliance through cultural, social and economic development. This requires ensuring that Crown and their representative agencies meet fiscal obligations as equal but separate rights of all New Zealanders in achieving parity. Providing Māori with the necessary tools to achieve parity with all New Zealanders is an obligation that cannot be overlooked and as attested under Article 3 of the Treaty of Waitangi. This requires a collaborative approach between Māori and the Crown and their representative agencies to ensure Māori human rights dimensions conform with international law.

Determining Māori values in the application of natural resource management in Aotearoa New Zealand deserves appropriate representation by Māori and recognition by the Crown. Māori, like all New Zealanders, need to be afforded statutory representation to provide advice to the Crown and their representative agencies in the statutory application of natural resource management as accorded through the Treaty partnership. Empowering a Māori national representative body such as Te Kaunihera Māori o Aotearoa is one means of achieving this.

Years of endurance by those who have passed on and our current kaumatua, in finalising Treaty of Waitangi grievances, has provided a pathway forward for future generations to preserve and use of nga taonga tukuiho. Striking a balance between cultural and economic perspectives to provide social parity for all New Zealanders, requires a collaborative approach that identifies and acts on the issues concerning natural resources. The full settlement of historic Treaty of Waitangi grievances in Aotearoa New Zealand is only part of the formula for ensuring Māori participation in natural resource management and must be challenged to be completed in a tight timeframe. Māori collaboration in regional policy development of natural resources

also provides a mechanism in developing Māori tino rangatiratanga (mana) within their tribal regions.

Unless the Crown and their representative agencies maintain the Treaty relationship, and endeavour to uphold the principles of the Treaty of Waitangi, it remains to be seen whether Māori will endure the benefits of Treaty of Waitangi settlement legislation. The Crown and their representative agencies should consider appropriate means of settling Treaty issues, rather than through the current processes of the court systems, legislation and regulations which disregard the spirit and intent of the Treaty of Waitangi.

Astute Treaty of Waitangi negotiations of natural resources is required to ensure that Māori, as the indigenous people of Aotearoa New Zealand, maintain their responsibilities, not only to future generations, but for those that have preceded them. Comprehensive negotiations need to foresee the current and future needs of Māori through the Treaty of Waitangi settlement process. The Waikato people proved this through achieving a two tier Treaty of Waitangi settlement in respect of land and waters. There is a greater need to ensure that statutory provisions within the Treaty of Waitangi settlement legislation provides for all natural resources and intellectual proprietary rights. However, case studies of Ngai Tahu and Te Uri o Hau both have shown that the Crown and their representative agencies have not upheld Treaty of Waitangi settlement legislation or the Treaty of Waitangi.

The willingness by local government to work with Māori to overcome the inequities in the management of natural resources through Crown legislation, regulations and policies is a work in progress. The Resource Management Act 1991 in Aotearoa New Zealand has formed the basis for greater participation by Māori in the statutory management of natural resources, while the Local Government Act 2002 provides for Māori statutory authority. This ensures greater consultation and opportunities to mitigate environmental affects when administering statutory legislation for natural resources in Aotearoa New Zealand. Participation in the strategic management of natural resources is provided for by local government through natural resource

management plans. However, this does not ensure that management plans will inevitably become part of a wider community policy, unless this is supported by statutory acknowledgements through Treaty of Waitangi settlement legislation.

One can only confirm that Māori are continually challenged by the Crown and their representative agencies in establishing proprietary rights to natural resources and participation in the management of natural resources. The processes applied to Māori in natural resource management in Aotearoa New Zealand by the Crown and their representative agencies continues to fall short of Treaty of Waitangi obligations and human rights under the Declaration on the Rights of Indigenous People. There is no immediate answer or solution for Māori. This is a continued work in progress in addressing grievances that left Māori alienated from natural resources under Article 2 of the Treaty of Waitangi since 1840.

Māori are certain that there is a way forward to ensure that Māori values, customs and rights are incorporated easily and without prejudice in natural resource management. Honouring the Treaty of Waitangi and the role of Māori as kaitiaki in Aotearoa New Zealand as intended is the first step in achieving this aspiration.

E nga rangatira o Ngapuhi, whakarongo mai. Kaua e uhia te Tiriti o Waitangi ki te kara o Ingarangi, engari me uhi ano ki tou kara Māori, ki te kahu o tenei motu.¹¹⁸

Ngapuhi chiefs, listen to me. Don't cover the Treaty of Waitangi with the English flag, but cover it with your own flag, with the cloak of this island alone.

¹¹⁸ This was said by Aperahama Taonui to suggest that Ngapuhi should not adopt Pakeha customs and politics in favour of their own; many would say that it still has significance today. Department of Maori Affairs. (1987). He Pepeha, He Whakatauki no Tai Tokerau. Department of Maori Affairs, Whangarei, New Zealand. Government Printing Office, Auckland, New Zealand.

9. GLOSSARY OF TERMS

Aotearoa	New Zealand (Tregear, E. R., 1891)
Cosmology	The science of the origin and development of the universe; an account or theory of the origin of the universe (The Oxford Modern English Dictionary, 1996)
Epistemology	The theory of knowledge, especially with regards to its uses and validation (The Oxford Modern English Dictionary, 1996)
Hangi	Earth Oven (Williams, H.W., 1971)
Hapu <i>-Pu,</i> <i>-Uepu</i>	A sub-tribe; a section of a large tribe Tribe; A company; a party (Tregear, E.R., 1891)
Iwi	Tribe (Tregear, E.R., 1891) Nation of People (Williams, H.W., 1971)
Jurisprudence	The science or philosophy of law (The Oxford Modern English Dictionary, 1996)
Kai	Food (Tregear, E.R., 1891; Williams, H.W., 1971)
Kainga	A place of abode (Tregear, E.R., 1891)
Kai-tiaki: <i>-Kai</i> <i>-Tiaki</i>	Guardianship; restoration of balance; reduced risk to present generations; future generations A prefix to words used as transitive verbs, to denote the agent: e.g. Hoe, to paddle; kai-hoe, one who paddles To guard; to keep; a guardian; a keeper; watching (Tregear, E.R., 1891)
Kaitiakitanga	Exercise of guardianship; and in relation to a resource includes the ethic of stewardship based on the nature of resource itself (Resource Management Act, 1991)
Karakia	Invocation, recitation, prayer (Tregear, E.R., 1891)

Kaupapa	Topic, policy, matter for discussion, plan, scheme, proposal, agenda, subject, theme (Moorfield, J.C., 2010)
Kawa	Ceremony, marae protocol (Moorfield, J.C., 2010)
Kiripaka	Bark; Flint, Quartz (Williams, H.W., 1971)
Kopua	Deep (Tregear, E. R., 1891); Deep, of Water (Williams, H.W., 1971)
Lore	A body of traditions and knowledge on a subject or held by a particular group (The Oxford Modern English Dictionary, 1996)
Mahinga Maataitai	Plantations or Cultivations (Waitangi Tribunal, 1991) (refer to Maataitai)
Mana	Authority, Control (Williams, H.W., 1971)
Mana Whenua	Territorial rights, power from the land, - power associated with possession and occupation of tribal land (Moorfield, J.C., 2010)
Māori	Native, Indigenous (Tregear, E. R. 1891); Native, or belonging to New Zealand (Williams, H.W., 1971)
Maramataka	Almanac, Calendar (Moorfield, J.C., 2010)
Maataitai	Seafood, shellfish – fish and other food obtained from the sea (Moorfield, J.C., 2010)
Mātauranga	Education, knowledge, wisdom, understanding, skill (Moorfield, J.C., 2010)
Maunga	Mountain (Williams, H. W., 1971)
Mauri	Life Principle (Williams, H.W., 1971)
Muru	To wipe; to rub; to pluck leaves; to gather; to plunder (Tregear, E. R. 1891); Wipe, rub, rub off (Williams, H. W., 1971)

Nga taonga tuturu <i>-taonga tuturu</i>	Means 2 or more taonga tuturu Object that related to Māori culture, history, or society; and was, or appears to have been manufactured or modified in New Zealand by Māori ; brought into New Zealand by Māori ; or used by Māori ; and is more than 50 years old (Protected Objects Act, 1975, New Zealand Government)
Pakeha	A person of predominately of European descent (Williams, H.W., 1971)
Panui	To proclaim; to publish abroad (Tregear, E. R. 1891); Read or Speak aloud, Publish, Proclaim (Williams, H.W., 1971)
Papamoana	Seabed (Moorfield, J.C., 2010)
Papatipu Runanga	Marae Based Runanga (Environment Canterbury, 2010)
Papatūānuku	Earth mother (Moorfield, J.C., 2010)
Pepeha	A set form of words, charm, proverb, witticism (Tregear, E. R., 1891; Williams, H.W., 1971)
Pounamu	Greenstone, Jade, Nephrite (Tregear, E. R., 1891); Greenstone, Jade (Williams, H. W., 1971)
Rahui	To protect; to prohibit (Tregear, E. R., 1891); A mark to warn people against trespassing (Williams, H. W., 1971)
Rahuitia	v: To put in place a temporary ritual, prohibition, closed season, ban, reserve (Moorfield, J.C., 2010)
Rangatira	Chief (male or female) (Moorfield, J.C., 2010)
Rangatiratanga	Sovereignty, chieftainship, right to exercise authority, chiefly autonomy, self-determination, self-management, ownership (Moorfield, J.C., 2010)

Ranginui	Sky father (Toanui, R., 2010)
Raupatu	Conquer, overcome (Williams, H.W., 1971); conquest, confiscation (Moorfield, J.C., 2010)
Rohe	A Boundary (Tregear, E. R., 1891; Williams, H. W., 1971)
Roopu	Company of persons (Tregear, E. R., 1891, Williams, H. W., 1971)
Taiapure	Sea reserve (Māori Fisheries Act, 1989)
Takiwa	Area, zone, region, an interval of space or time (Tregear, E. R., 1891) District, space (Williams, H. W., 1971)
Taonga	Native animals, mahinga kai (traditional food sources), taonga raranga (flax, weaving material), valued treasures (Resource Management Act, 1991)
Tangata Whenua	People belonging to any particular place, natives (Williams, H. W., 1971)
Tapu	Under restriction, prohibited (Tregear, E. R., 1891); Under religious or superstitious restriction (Williams, H. W., 1971)
Tauranga Waka	Place to land, mooring (Moorfield, J.C., 2010)
Te Ao Māori	Māori world-view (Marsden, 1992)
Takutaimoana	Foreshore and seabed (Te Runanga o Ngati Porou, 2004)
Tikanga	Rule, plan, method; custom, habit; reason; control, authority (Tregear, E. R., 1891)
Tikanga Māori	Māori customary values and practices (Te Ture Whenua Māori Act, 1993)

Tino Rangatiratanga	Self-determination (Moorfield, J.C., 2010)
Wahitapu	
- Wahi	Place, locality (Williams, H. W., 1891)
- Tapu	Under restriction, prohibited (Tregear, E. R., 1891); Under religious or superstitious restriction (Williams, H. W., 1971)
Waiata	A Song, to sing (Tregear, E. R., 1891) Song (Williams, H. W., 1971)
Wairakau	Manure, fertiliser, compost (Moorfield, J.C., 2010)
Wairuatanga	Spirituality; a Tikanga Māori value concept that acknowledges the source of all taonga plus the duty to exercise perpetual guardianship (Hawkes Bay Regional Council, 2006)
Whakapapa	Genealogy, lineage, descent (Moorfield, J.C., 2010)
Whakatauki	Proverb (Moorfield, J.C., 2010)
Whakawerawera	Warmth (Latimer, 2010)
Whakawhanaungatanga	Process of establishing relationships, relating well to others (Moorfield, J.C., 2010)
Whanau	To be born (Tregear, E. R., 1891); Be born, Family (modern) (Williams, H. W., 1971)
Whenua	The Earth, the whole Earth (Tregear, E. R., 1891); Land, Country, Ground (Williams, H. W., 1891)
Whanui	Broad, Wide, Breadth, Width (Tregear, E. R., 1891); Broad, Wide (Williams, H. W., 1971)

10. REFERENCES

- Anderson, R. Dr. (1996). *Rangahaua Whanui National Theme N. Goldmining: Policy, Legislation, and Administration*. Rangahaua Whanui Series: Waitangi Tribunal. Wellington, New Zealand: Waitangi Tribunal.
- Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001. New Zealand Legislation: Acts. Retrieved June 5, 2011 from: <http://www.legislation.govt.nz/act/local/2001/0001/latest/DLM85702.html>.
- Baragwanath, D. (2007). The Evolution of Treaty Jurisprudence, p. 5. 2007 Harkness Henry lecture, University of Waikato, Hamilton, New Zealand.
- Baragwanath, D. (2007). New Zealand Māori Council v Attorney General [1987] 1 NZLR 687. A perspective of counsel: In Good Faith Symposium, pp. 1-3, 8. Otago, New Zealand: University of Otago.
- Bevan-Brown, J. (1998, July 7-9). By Māori , for Māori , about Māori -is that enough? *Address to Te Oru Rangahau Māori Research and Development Conference*, p. 231, 235. Palmerston North, New Zealand: Massey University.
- Bishop, R. (1996). *Collaborative research stories: whakawhanaungatanga*, p. 11. Palmerston North, New Zealand: The Dunmore Press.
- Boffa Miskell Limited. (2009). Exploration of Māori Participation in Freshwater Management. Retrieved 26 August, 2010, from <http://www.qualityplanning.org.nz/pubs/Māori-Participation-in-Freshwater-Management.pdf>.
- Conservation Act 1987. Wellington, New Zealand. New Zealand Government.
- Cooke, R. President (1987). New Zealand Māori Council v Attorney General, C.A. 1 NZLR 641, 29 June 1987.
- Continental Shelf Act 1964. Wellington, New Zealand: New Zealand Government
- Crown Forests Assets Act 1989. Wellington, New Zealand: New Zealand Government.
- Crown Minerals Act 1991. Wellington, New Zealand: New Zealand Government.
- Crown Minerals Amendment Act 1997. Wellington, New Zealand: New Zealand Government.

- Dansey, H. (1963). *The New Zealand Māori In Colour*. Wellington, New Zealand: Reed Publishing.
- De Wet, J. & Erasmus, Z. (2005). Towards rigour in qualitative analysis. *Qualitative Research Journal*, 5(1), p. 28.
- Durie, M. H. (1998). *Te Mana, Te Kawanatanga. The Politics of Māori Self-Determination*, pp. 24, 28, 29-30, 38-41, 115. Greenland, Auckland New Zealand: New York, Oxford University Press.
- Durie, M. (2005). *Nga Tai Matatu. Tides of Endurance*, p. 196. South Melbourne, Victoria 3205, Australia: Oxford University Press.
- Environment Act 1986. Wellington, New Zealand: New Zealand Government.
- Environment Canterbury. (2010). Draft Canterbury Regional Policy Statement. Chapter 1 -2, 4. Retrieved September 19, 2010 from <http://ecan.govt.nz/publications/Plans/draft-canterbury-regional-policy-statement-2010-chapter-02.pdf>.
- Environmental Council (1980), Review of Coastal Planning Policy - Report to the Minister for the Environment, Environmental Council, May 1980.
- Environmental Defence Society. (2009). Resource Management Act for the Community, pp. 1 Retrieved March 1, 2009 from <http://www.eds.org.nz>. Environmental Defence Society, Auckland, New Zealand.
- Environmental Defence Society. (2009). Improving Environmental Governance: The role of an environmental protection authority in New Zealand. Auckland, New Zealand. Author.
- Environmental Risk Management Authority. (2010, September). Information Sheet, No. 17. The HSNO Act and Māori. Wellington, New Zealand: Author.
- Environmental Risk Management Authority. (2010). *Ngai Kaihautu Tikanga Taiao. Environmental Risk Management Authority, Wellington, New Zealand*. Retrieved February 22, 2010, from <http://www.ermanz.govt.nz/tehautu/ngakaihautu/>.
- Finlayson, C. (2010). Repeal of Foreshore and Seabed Act announced. New Zealand Government. Retrieved 27 June 2010 June, 27 from <http://admin.behive.govt.nz/release/repeal+foreshore+and+seabed+act+announced>.

- Foreshore and Seabed Act 2004. Wellington, New Zealand: Government Print.
- Gibbs M., Waldron B.D., Bennett, A. (2007). *Māori claims to ownership of fresh Water*, pp. 2, 6, 8, 12, 18. Retrieved April 1, 2009, from http://www.rmla.org.nz/_downloads/Meredith%20Gibbs%20Māori%20claim%20to%20freshwater.pdf. Institute of Natural Resources, Massey University, Palmerston North, New Zealand.
- Gray, D. E. (2004). *Doing Research In The Real World*. London: Sage Publications.
- Greensill, A. (1999). Genetic Engineering – Māori Views and Values. *Pacific World*, pp. 25, 54.
- Harrison, N. (1998). *Review, New Zealand Māori Council 1962-1998*, pp. 2, 5, 7, 8, 10-15. Unpublished Book. Wellington, New Zealand: Author.
- Hayward, J. Dr. (2008). *Rangahaua Whanui National Overview. The Principles of the Treaty of Waitangi, Appendix*, pp. 477 -493. Waitangi Tribunal. Retrieved 16 September 2008 from: [http://www.waitangi-tribunal.govt.nz/doclibrary/public/Appendix\(99\).pdf](http://www.waitangi-tribunal.govt.nz/doclibrary/public/Appendix(99).pdf).
- Hawkes Bay Regional Council. (2006). Hawkes Bay Regional Resource Management Plan. Retrieved September 18, 2010 from <http://www.hbrc.govt.nz/LinkClick.aspx?fileticket=UjIG5GLv%2FJs%3D&tabid=270&mid=1293>.
- Hazardous Substances and New Organisms Act 1996. Wellington, New Zealand: New Zealand Government.
- Henare, M. (2010). Brief of Evidence of Manuka Arnold Henare: WAI 1040. Tumanako Law, Keri Keri, New Zealand.
- Historic Places Act 1993. Wellington, New Zealand. New Zealand Government.
- Hudson, M. L., Ahuriri-Driscoll, A.L.M. (2006) *A Māori ethical framework: the bridge between tikanga Māori and ethical review. In Proceedings of Mātauranga Taketake: Traditional Knowledge Conference. Indigenous Indicators of Well-being: Perspectives, Practices, Solutions.* (Ed) Dr. J. S. Te Rito. Convened by Nga Pae o te Maramatanga: The National Institute of Research Excellence for Māori Development and Advancement. The University of Auckland, Auckland, New Zealand: Printstop.
- Human Rights Amendment Act 2001. Wellington, New Zealand. New Zealand Government.

- Human Rights Commission. (2001). The Social Report on Human Rights, p. 6
Retrieved March 12, 2007, from
<http://www.socialrpeort.msd.govt.nz/2001/human-rights/human-rights.shtml>.
- Human Rights Commission. (2008). United Nations Declaration on the Rights of
Indigenous People. International Human Rights Series. Aotearoa New Zealand:
Author.
- Iwi Chairs Forum (n.d.) Background Paper: Iwi Chairs Forum. Retrieved
September, 6, 2010, from [http://iwichairs.Māori.nz/kaupapa/iwi-chairs-
forum.pdf](http://iwichairs.Māori.nz/kaupapa/iwi-chairs-forum.pdf).
- Jackson, J. (1999). *The Constitutions that Ratified the Treaty of Waitangi and
Qualified Tribal Government: Book II of Treaty Series*. Wellesley Street,
Auckland, New Zealand. Bracken Woods Project Limited.
- James, B. (1993) The Māori Relationship With The Environment. Publication
No. WRC/PP-G-93/29, March 1993, pp. 4, 6, 8. Regional Council Policy and
Planning Department, Wellington: Department of Conservation.
- Kaipara District Council. (2002). Management Implementation Of
Memorandum of Understanding Between Kaipara District Council, Te Uri o Hau,
Ngati Whatua.
- Kaipara District Council. (2009). Kaipara District Community Plan.
- Kenneth, K. Rt. Hon. Sir. (1990, updated 2001) Cabinet Manual. On the Constitution of
New Zealand: An Introduction to the Foundations of the Current Form of
Government, pp. 6. Wellington, New Zealand.
- Kemp, R. R. (2008). Affidavit of Russell Rata Kemp, October 2008. Chen
Palmer & Partners, Barristers And Solicitors, Public Law Specialists, Wellington,
New Zealand.
- King, M. (1983). *Whina*. Glenfield, Auckland, New Zealand: Hodder and
Stoughton Ltd.
- King, M. (1987). *Whina Cooper*. Te Kete Raukura, pp. 60, 65. School Publications
Branch, Department of Education, Wellington, 1987.
- Lange, D. (1989). Principles for Crown Action on the Treaty of Waitangi.
Parliament Buildings, Wellington pp. 8, 10. Wellington, New Zealand:
Department of Justice.
- Latimer, G. (2010) Personal Communication September 16, 2010.

- Local Government Act 2002. Wellington, New Zealand: New Zealand Government.
- Marsden, M. & Henare, T.A. (1992). *Kaitiakitanga: A Definitive Introduction to the Holistic World View on the Māori*, pp. 1, 18. Unpublished. New Zealand.
- Massey University Human Ethics Committee. (2006). Code of Ethical Conduct for Research, Teaching and Evaluations Involving Human Participants, pp. 1,4,5. Massey University, Palmerston North, New Zealand.
- Mead, H. M. (2003). *Rahui, aukati: ritual prohibitions*. In *Tikanga Māori living by Māori values*, pp. 194-201. Wellington: Huia Publishers.
- Matunga, H. (2002). *Whenua Managing our Resources*. Kawharau, M. (Ed). *Māori Perspective*. New Zealand: Reed Publishing.
- McHugh, P. (1983). *Māori Lands Laws of New Zealand*. University of Saskatchewan Native Law Centre, Saskatoon.
- McHugh, P., Ngata, H. (1984). *He Korero Mo Waitangi 1984: Māori Land Rights: An Historical Overview*. (Ed) Blank, A., Henare, M., Williams, H: *Te Runanga o Waitangi*.
- Ministry for Culture and Heritage. (2009). New Zealand history on line. Biographies. Matiu Rata. Retrieved February 15, 2010, from <http://www.nzhisotry.net.nz/people/matiu-rata>.
- Ministry for Culture and Heritage. (2009). Declaration of Independence – background to the Treaty. Retrieved 13 December 2009 from <http://www.nzhistory.net.nz/politics/treaty/backgroun-to-the-treaty/declaration-of-independence>. Updated 2 September 2009.
- Ministry of Economic Development (2007). Waitangi Claim Wai 262. Retrieved August 10, 2010 from http://www.med.govt.nz/templates/Page_____1207.aspx.
- Ministry of Economic Development. (2008). *Minerals Programme for Minerals (Excluding Petroleum)*. Wellington, New Zealand: Author.
- Ministry of Economic Development. (2010). *Reviewing the Crown Minerals Act 1991*. Discussion Paper, August 2010. Wellington, New Zealand: Author.
- Ministry for the Environment. (2001). *Review of the ambient air quality guidelines: Seeking comment from Māori*. Wellington, New Zealand: Author. Retrieved August 21, 2010 from <http://www.mfe.govt.nz/publications/air/ambient-air-Māori-comments-01.pdf>.

- Ministry for the Environment. (2007). *Environment New Zealand*, pp. 27, 35, 38, 39, 43, 261, 401, 402. Wellington, New Zealand: Author.
- Ministry for the Environment. (2008). The air we breathe. Retrieved August 24, 2010 from <http://www.mfe.govt.nz/issues/air/breath/>.
- Ministry for the Environment. (2008-2010). Publications. Map of New Zealand Exclusive Economic Zone (EEZ). Wellington, New Zealand: Author.
- Ministry for the Environment. (2009). Resource Management Amendment Act 2009. Fact Sheet 1: Overview. Retrieved August 26, 2010, from <http://www.mfe.govt.nz/publications/rma/rma-amendmnt-act-factsheets-2009/fact-sheet-1.pdf>.
- Ministry of Fisheries. (2010). Exclusive Economic Zone. Retrieved June 27, 2010 from <http://fs.fish.govt.nz/Page.aspx?pk=78&dk=1189>.
- Moorfield, J.C. (2010). Māori Dictionary. Te Aka Māori – English, English Māori Dictionary. Retrieved, September 17, 2010 from: <http://www.Māori.dictionary.co.nz/index.cfm>.
- New Plymouth District Council. (2009). Consultation Policy. Retrieved September 19, 2010 from <http://www.newplymouthnz.com/CouncilDocuments/Policies/ConsultationPolicy.htm>.
- New Zealand Herald (2001, March, 28 Wednesday) Adding Māori values would make Law stronger says Law Commission. Angela Gregory Reporter. Retrieved August 8, 2010 from http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=179724.
- New Zealand Law Commission. (2001). Māori Custom and Values in New Zealand Law, Study Paper 9. Wellington, New Zealand: Author.
- New Zealand Māori Council v Attorney General [1987] C.A. 54/87 per Cooke, P., pp. 3, 14, 27, 41, 44. Wellington, New Zealand: Court of Appeal.
- New Zealand Parliament. (2010). Ministerial Statements, UN Declaration on the Rights of Indigenous Peoples, Government Support [Volume: 662, Page 100229]. Parliamentary Debate (Hansard). Retrieved August, 11, 2010 from http://www.parliament.nz/en/NZ/PB/Debates/Debates/6/5/a/49HansD_20100420_00000071-Ministerial-Statements-UN-Declaration-on.htm.
- Ngarimu, K. (2008). Proposals to replace references to Treaty principles in the Resource Management Act 1991, pp. 4, 5, 7. Wellington, New Zealand: Te Puni Kokiri.

Ngata, H. (1984). *He Korero Mo Waitangi 1984: The Laws That Contravene The Treaty of Waitangi*. (Ed) Blank, A., Henare, M., Williams, H: Te Runanga o Waitangi.

Ngai Tahu Claims Settlement Act 1992. Wellington, New Zealand: New Zealand Government.

Ngai Tahu (Pounamu) Vesting Act 1997. Wellington, New Zealand: New Zealand Government.

Ngati Tama Iwi Development Trust. (1999). Ngati Tama, Heads of Agreement: Newsletter. Author.

Ngati Tama Deed of Settlement. (2001, December, 20). Ngati Tama and Her Majesty the Queen in right of New Zealand. Deed of Settlement of the Historical Claims of Ngati Tama. Wellington, New Zealand: New Zealand Government.

Ngati Tama Claims Settlement Act 2003. Wellington, New Zealand: New Zealand Government.

Ngati Turangitukua Claims Settlement Act 1999. Wellington, New Zealand: New Zealand Government.

Northland Age (2010, July 27). Oil deadline ignites ownership debate, p. 2. Office of Treaty Settlements. (2002). *Healing the Past, Building the Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, p. 100. Wellington, New Zealand: Author.

NZHerald. (Thursday, August 4, 2011). 'Good mix' in constitutional panel. Retrieved August 5, 2011 from: <http://www.nzherald.co.nz/print.cfm?objectid=10742917>. APN, NZ Holdings Limited: New Zealand.

Orange, C. (1987). *The Treaty of Waitangi*, pp. 32, 40-41. Lambton Quay, Wellington, New Zealand: Bridget Williams Books Limited.

Orbell, M., Moon, G. (1985). *The Natural World of Māori*. Epilogue, pp. 215. Glenfield, Auckland 10, New Zealand: William Collins in Association with David Bateman Ltd.

Otago Daily Times. (Wednesday, 20 July 2011). Environment Court to hear appeals. Retrieved July 24, 2011 from: <http://www.odt.co.nz/regions/north-otago/169868/environment-court-hear-appeals>. David Bruce: Author.

Parliamentary Commissioner for the Environment. (1999). *Setting course for a sustainable future; the management of New Zealand's marine environment* pp. 29, 31. Wellington, New Zealand: Author.

- Parliamentary Commissioner for the Environment. (2000). 1.2.6 Urban water systems and tikanga Māori . *Ageing pipes and murky waters: Urban water system issues for the 21st Century*, pp. 11-12. Wellington, New Zealand: Author.
- Paul, T. (1987). *Nga Taonga o te Ngahere*. Treasures of the Forest. Raukawa District, PO Box 5086, Wellington, New Zealand: Department of Conservation.
- Petroleum Act 1937. Wellington, New Zealand: New Zealand Government.
- Phillips, S. (June 4, 2011). Cultural Ban on Tidal Turbine Proposal. Retrieved June 18, 2011 from <http://www.suite101.com/content/cultural-ban-on-tidal-turbine-proposal-a374318>. Aus/NZ/Oceania Affairs: Author.
- Protected Objects Act 1975. Wellington, New Zealand: New Zealand Government.
- Rata, M. (1984). *He Korero Mo Waitangi 1984. The Treaty of Waitangi: A Political Overview*. (Ed) Blank, A., Henare, M., Williams, H: Te Runanga o Waitangi.
- Rennie, H., Thomson, J., & Tutua-Nathan, T. (2000). *Factors Facilitating and Inhibiting Section 33 Transfers to Iwi*, pg. 1. Hamilton, New Zealand: Department of Geography, University of Waikato & Hamilton & Electric Energy, Cambridge.
- Resource Management Act 1991. Wellington, New Zealand: New Zealand Government.
- Resource Management Amendment Act 1996. Wellington, New Zealand: New Zealand Government.
- Resource Management (Foreshore & Seabed) Amendment Act 2004. Wellington, New Zealand: New Zealand Government.
- Resource Management (Simplifying & Streamlining) Act 2009. Wellington, New Zealand: New Zealand Government.
- Richardson, J. (1987). In the Court of Appeal of New Zealand. New Zealand Māori Council v Attorney General. Judgement of Richardson J, 29 June 1987, pp. 4-5.
- Rickard, I. (1984). *He Korero Mo Waitangi*. Te Tiriti o Waitangi. (Ed) Blank, A., Henare, M., Williams, H. Te Runanga o Waitangi: Author.

- Rodney Times. (January 14, 2010). Power to the Kaipara. Retrieved June 20, 2011 from: <http://www.stuff.co.nz/auckland/local-news/rodney-times/3227242/Power-to-the-Kaipara>. Bishara, M. Rodney Times, Auckland, New Zealand: Author.
- Roskrige, N. (2007). *Hokia kit e whenua: a thesis presented in partial fulfilment of the requirement for the degree of Doctor of Philosophy in Social Science at Massey University*. Palmerston North, New Zealand. Author.
- Royal, T.A. C. (2009). *Te Ao Marama-the natural world-Mana, tapu and mauri*, In *Te Ara the – the Encyclopaedia of New Zealand*. Retrieved August 21, 2010 from <http://www.TeAra.govt.nz/en/te-ao-marama-the-natural-world/5>.
- Sanders, D. (1980). *World Council of Indigenous People. Background Information On The World Council of Indigenous Peoples, April 1980. The Formation of the World Council of Indigenous Peoples*. Retrieved February 15, 2010, from <http://cwis.org/fwdp/Interatnational/wcipinfo.txt>.
- Scoop Independent News. (Thursday, 26 May 2011). Environment Canterbury Natural Resources Regional Plan. Retrieved June 30, 2011 from <http://www.scoop.co.nz/stories/print.html?path=AK1105/S00680/enviornment-canterbury-natural-resources-regional-plan.htm>. New Zealand: Environment Canterbury.
- State-Owned Enterprises Act 1986. Wellington, New Zealand: New Zealand Government.
- Stephenson J. (2002) Planning. *The Management of a Māori -owned Resource*. In M. Kawharu. (Ed). *Whenua Managing our Resources* pp.175. Wellington, New Zealand: Reed Publishing.
- Tahana, Y. (Thursday, August 5, 2010). Seabed deals leave way open for tribes if company strikes oil. New Zealand Herald. Retrieved from <http://www.nzherald.co.nz/news/print.cfm?objectid=10663686>.
- Takino, N. M. (1998, July 7-9). *Academics And The Politics Of Reclamation. Address to Te Oru Rangahau Māori Research and Development Conference*, p. 288. Palmerston North, New Zealand: Massey University.
- Taranaki Regional Council (2009). Regional Policy Statement. Retrieved September 19, 2010 from <http://www.trc.co.nz>.
- Taylor, C.R.H. (1960). *Facsimiles of the Treaty of Waitangi. Facsimiles of the Declaration of Independence and the Treaty of Waitangi*. Wellington, New Zealand: R.E. Owen, Government Printer.

- Te Matahauariki, R. J. (2002). Māori Values and Tikanga Consultation under The Resource Management Act 1991 and the Local Government Bill – Possible Ways Forward, pg. 16, Inaugural Māori Legal Forum Conference, Te Papa Tongawera, Wellington, 9 – 10 October 2002, CONFRENZ. Institute School of Law, University of Waikato.
- Te Puni Kokiri. (1993). Draft Declaration on the Rights of Indigenous Peoples. Introduction and Background to Draft Declaration. Retrieved March 12, 2007, from <http://www.tpk.govt.nz/publications/docs/tangata/intro.htm>.
- Te Puni Kokiri. (1993). *Nga Kai o te moana: kaupapa tiakina: customary fisheries: philosophy and practices, legislation and change*, pp. 10-12. Wellington: Author.
- Te Puni Kokiri. (2001). *He Tirohanga o Kawa ki te Tiriti o Waitangi*. A Guide to The Principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal, pp. 93, 100. Wellington, New Zealand: Author.
- Te Runanga o Ngai Tahu. (1997). Crown Settlement Offer: Consultation Document from the Ngai Tahu Negotiating Group, pp. 8-9, 25, 27, 29-33, 35-37, 39, 41-43. Christchurch, New Zealand: Ngai Tahu Publications Ltd.
- Te Runanga o Ngati Porou. (2004). Submission to the Fisheries and Other Sea Related Legislation Select Committee on the Foreshore and Seabed. Retrieved September 16, 2010, from http://www.ngatiporou.com/myfiles/E2_TRONP_-_Submission_To_FOSLSC_-_19072004_v1.0-6a.pdf.
- Te Uri o Hau Claims Settlement Act 2002. Wellington, New Zealand: New Zealand Government.
- Te Uri o Hau. (2006). Te Uri o Hau Area of Interest. Retrieved August 11, 2010, from: <http://www.uriohau.com/>.
- Territorial Sea and Exclusive Economic Zone Act 1977. Wellington, New Zealand: New Zealand Government.
- The Fisheries Act 1966. Wellington, New Zealand: New Zealand Government.
- The Māori Community Development Act 1962. Wellington, New Zealand: New Zealand Government.
- The New Plymouth District Council. (2009). Consultation Policy. Retrieved September 20, 2010, from <http://www.newplymouthnz.com/CouncilDocuments/Policies/ConsultationPolicy.htm>. Author.

- The Northern Advocate. (February 14, 2011). Refuse Kaipara Turbines Consent: Hapu. Retrieved March 4, 2011 from:
<http://www.northernadvocate.co.nz/local/news/refuse-kaipara-turbines-consent-hapu/3940289/>. Imran, A. Author: Whangarei, New Zealand.
- The Oamaru Mail. (April 21, 2011). Waitaha – council partnership deal signed. Retrieved April 26, 2011 from:
<http://www.oamarumail.co.nz/local/news/waitaha-council-partnership-deal-signed/3949141/>. Webby, J. Author: Oamaru, New Zealand.
- The Oxford Modern English Dictionary. (1996). Second Edition. Thompson, D. (Ed). Walton Street, Oxford OX2 6DP, Oxford, New York: Oxford University Press.
- The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Wellington, New Zealand: New Zealand Government.
- The Treaty of Waitangi (State Enterprises) Act 1988. Wellington, New Zealand: New Zealand Government.
- Tipa, G., & Teirney, L. (2003). *A Cultural Health Index for streams and waterways: Indicators for recognising and expressing Māori values*, pp. 26-27, 38. Wellington, New Zealand: Ministry for the Environment.
- Tipa, G. & Nelson, K. (2008). Introducing Cultural Opportunities: a Framework For Incorporating Cultural Perspectives in Contemporary Resource Management. *Journal of Environmental Policy & Planning*, Volume 10, 4, 313.
- Toanui, R. (2009). 'Ranginui – the sky - Ranginui – the sky father', Te Ara - the Encyclopaedia of New Zealand. Retrieved September 20, 2010 from
<http://www.TeAra.govt.nz/en/ranginui-the-sky/1>
- Town & Country Planning Act 1977. Wellington, New Zealand: New Zealand Government.
- Tregear, E. R. (1891). *The Māori-Polynesian Comparative Dictionary*. Christchurch, Wellington & Dunedin, New Zealand: Whitcombe and Tombs Limited, New Zealand.
- Treaty of Waitangi Act 1975. Wellington, New Zealand: New Zealand Government.
- Treaty of Waitangi Amendment Act 1985. Wellington, New Zealand: New Zealand Government.

- Tukiri, B. (1984). He Korero Mo Waitangi 1984: Submission to the Treaty of Waitangi National Hui, Turangawaewae Marae, Ngaruwahia. (Ed) Blank, A., Henare, M., Williams, H: Taranaki Iwi Katoa Tribal Authority Trust.
- Tunks, A. (2002). *Whenua Managing our Resources*. Kawharau, M. (Ed). Rangatiratanga, Partnership and Protection, pp. 323-325. Birkenhead, Auckland, New Zealand: Read Publishing N. Z. Ltd.
- Waitangi Tribunal. (1983). Motunui – Waitara Report, Waitangi Tribunal 1983, WAI 6, p. 95. Wellington, New Zealand: Waitangi Tribunal, Department of Justice.
- Waitangi Tribunal. (1986). Report of the Waitangi Tribunal on the Muriwhenua fishing claim: WAI 22. Wellington, New Zealand. Author.
- Waitangi Tribunal. (1987). Report of the Waitangi Tribunal on the Waiheke Island claim (WAI 10). Wellington, New Zealand. Author.
- Waitangi Tribunal. (1987) Orakei Report: *Report of The Waitangi Tribunal on The Orakei Claim (Wai-9)*, p. 134. Wellington, New Zealand: The Waitangi Tribunal, Department of Justice.
- Waitangi Tribunal. (1988). Muriwhenua Fishing Report. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim, WAI 22*, pp. 8, 14, 31, 107, 108, 123,124, 257, 259, 260, 291. Wellington, New Zealand: Waitangi Tribunal, Department of Justice.
- Waitangi Tribunal. (1991). Ngai Tahu Land Report 1991. .0.8. Kemps Purchase. Retrieved September 19, 2010 from <http://www.waitangi-tribunal.govt.nz/reports/viewchapter.asp?reportID=D5D84302-EB22-4A52-BE78-16AF39F71D91&chapter=66>.
- Waitangi Tribunal. (1993). *Ngawha Geothermal Resource Report 1993*. Wai 304, Waitangi Tribunal Report: 7 WTR, pp. 136, 151. Brooker & Friend Ltd.
- Waitangi Tribunal. (1997). *Muriwhenua Land Report* pp. 21-25. Wellington, New Zealand: Government Print Publications.
- Waitangi Tribunal. (2004). *Report on the Crown's Foreshore & Seabed Policy*. Wellington New Zealand: Legislation Direct.
- Waitangi Tribunal. (2008). *Treaty of Waitangi. Principles of the Treaty of Waitangi*. Retrieved September 16, 2008, from: <http://www.waitangitribunal.govt.nz/treaty/principles.asp>.
- Waitangi Tribunal. (2011). Wai 262 Report. Retrieved July 4, 2011 from <http://www.waitangi-tribunal.govt.nz/news/media/wai262.asp>.

- Walker, H. (1992). *Kai te ao marama, kai ro pouri tonu rahei. How enlightend are we?* Wellington: Victoria University.
- Walker, R. (1990). *Ka Whawhai Tonu Matou. Struggle Without End*, pp. 87, 88. Penguin Books (NZ) Ltd, Auckland, New Zealand: Australian Print Group, Maryborough, Victoria, Australia.
- Walrond, C. (2007). *Natural environment*, In *Te Ara - the Encyclopedia of New Zealand*, p. 1. Retrieved August 22, 2008, from <http://www.TeAra.govt.nz/NewZealandInBrief/NaturalEnvironment/en>.
- Williams, H.W. (1985). *A Dictionary of the Māori Language*. Wellington, New Zealand: Government Printing Office.
- Williams, J. (2005). Chief Judge Joe Williams, Chief Judge of the Māori Land Court and Chairperson of the Waitangi Tribunal. Keynote address for Local Government New Zealand's annual conference, 2005, pp. 1. Retrieved March 1, 2009 from <http://www.lgnz.co.nz>.
- Yin, R.K. (2003). *Case Study Research: Design and Method*, p. 98. Third Edition. Thousand Oaks, California, United States: Sage Publications.

He Wakaputanga o te Rangatira o nu Tireni Declaration of Independence 1835 - Māori Version:

1. Ko matou ko nga Tino Rangatiratanga o nga iwi o Nu Tireni, I raro mai o Hauraki kua oti nei te huihui i Waitangi i Tokerau 28 o Oketopa 1835, ka wakaputa i te Rangatiratanga o to matu wenua a ka meatia ka wakaputaia e matou he wenua Rangatira kia huaina ko te wakaminenga o nga Hapu o Nu Tireni.
2. Ko te Kingitanga ko te mana i te wenua o te wakaminenga o Nu Tireni ka meatia nei kei nga Tino Rangatira anake i to matou huihuinga, a ka mea hoki e kore e tukua e matou te wakarite ture ki te tahi hunga ke atu, me te tahi Kawanatanga hoki kia meatia i te wenua o te wakameinenga o Nu Tireni, ko nga tangata anake e meatia nei e matou e wakarite ana ki te ritenga o o matou ture e meatia nei e matou i to matou huihuinga.
3. Ko matou ko nga tino Rangatira ka mea nei kia huihui ki te runanga ki Waitangi a te Ngahuru i tenei tau I tenei tau ki te wakarite ture kia tika ai te wakawakanga, kia mau pu te rongo kia mutu te he kia tika te hokohoko, a ka mea hoki ki nga tauwi o runga, kia wakarerea te wawai, kia mahara ai ki te wakaoranga o to matou wenua, a kia uru ratou ki te wakaminenga o Nu Tirena.
4. Ka mea matou kia tuhituhia he pukapuka ki te ritenga o tenei o to matou wakaputanga nei ki te Kingi o Ingarani hei kawatu i to matou aroha nana hoki i wakaae ki te Kaara mo matou. A no te mea ka atawai matou, ka tiaki i nga Pakeha e noho nei i uta e, rere mai ana ki te hokohoko, koia ka mea ai matou ki te Kingi kia waiho hei matua ki a matou i to matou Tamarikitanga kei wakakahoretia to matou Rangatiratanga.

Kua wakaaetia katoatia e matou i tenei ra i te 28 Oketopa, 1835 ki te aroaro o te Reireneti o te Kingi o Ingarani.

Source: Facsimiles of the Treaty of Waitangi, Taylor, C.R.H., 1960

DECLARATION OF INDEPENDENCE 1835

Translation:

1. We, the hereditary chiefs and heads of the tribes of the Northern parts of New Zealand, being assembled at Waitangi, in the Bay of Islands, on this 28th day of October, 1835, declare the Independence of our country, which is hereby constituted and declared to be an Independent State, under the designation of The United Tribes of New Zealand.
2. All sovereign power and authority within the territories of the United Tribes of New Zealand is hereby declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes in their collective capacity, who also declare that they will not permit any legislative authority separate from themselves in their collective capacity to exist, nor any function of Government to be exercised within the said territories, unless by persons appointed by them, and acting under the authority of laws regularly enacted by them in Congress assembled.
3. The hereditary chiefs and the heads of tribes agree to meet in Congress at Waitangi in the autumn of each year, for the purpose of framing laws for the dispensation of justice, the preservation of peace and good order, and the regulation of trade; and they cordially invite the Southern tribes to lay aside their private animosities and to consult the safety and welfare of our common country, by joining the Confederation of the United Tribes.
4. They also agree to send a copy of this Declaration to His Majesty the King of England, to thank him for his acknowledgement of their flag; and in return for the friendship and protection they have shown, and are prepared to show, to such of his subjects as have settled in their country, or resorted to its shores for the purposes of trade, they entreat that he will continue to be the parent of

their infant State, and that he will become its Protector from all attempts upon its independence.

5. Agreed to unanimously on this 28th day of October, 1835, in the presence of His Britannic Majesty's Resident.

[Here follow the signatures or marks of thirty-five Hereditary chiefs or Heads of tribes, which form a fair representation of the tribes of New Zealand from the North Cape to the latitude of the River Thames.]

Source: Facsimiles of the Treaty of Waitangi, Taylor, C.R.H., 1960

TE TIRITI O WAITANGI***Māori Version:***

Ko Wikitoria, te Kuini o Ingarani, I tana mahara atawai ki nga Rangatira me Nga Hapu o Nu Tirani, I tana hiahia hoki kia tohunga ki a ratou o ratou rangatiratanga, me to ratou me te ata noho hoki, kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga tangata Māori o Nu Tirani. Kia wakaaetia e nga Rangatira Māori te Kawanatanga o te Kuini, ki nga wahi katoa o te wenua nei me nga motu. Na te mea hoki he tokomaha ke nga tangata o tona iwi kua noho ki tenei wenua, a e hare mai nei.

Na, ko te Kuini e hiahia ana kia wakaritea te Kawanatanga, kia kaua ai nga kino e puta mai ki te tangata Māori ki te pakeha e noho ture kore ana.

Na, kua pia te Kuini kia tukua a hau, a Wiremu Hopihona, he Kapitana I te Roiara Nawa, hei Kawana mo nga wahi katoa o Nu Tirani, e tukua aiane amua atu ki te Kuini; e mea atu ana ia ki nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani me era Rangatira atu, enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki kihai I uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa

atu ka tuku ki te Kuini to hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hook e meatia nei e te Kuini he kai hoki mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata Māori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) William Hobson

Consul and Lieutenant-Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga Hapu o Nu Tirani, ka huihui nei ki Waitangi. Ko matou hoki ko nga Rangatira o Nu Tirani, ka kite nei I te ritenga o enei kupu, ka tangohia, ka wakaaetia katoatia e matou. Koia ka tohunga ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi, I te ono o nga ra o Pepuere, I te tau kotahi mano, e waru rau, e wa tekau, o to tatou Ariki.

Ko nga Rangatira o te wakaminenga

Source: Facsimiles of the Treaty of Waitangi, Taylor, C.R.H, 1960

TREATY OF WAITANGI 1840***English Version:***

Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland, regarding with Her Royal Favour of the Native Chiefs and Tribes of New Zealand, and anxious to protect their just Rights and Property, and to secure to them the enjoyment of Peace and Good Order, has deemed it necessary, in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand, and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands. Her Majesty, therefore, being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of Native population and to Her subjects, has been graciously pleased to empower and authorise me, WILLIAM HOBSON, a Captain in Her Majesty's Royal Navy, Consul, and Lieutenant-Governor of such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possessions; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British subjects.

W. Hobson

Lieutenant-Governor

Now therefore, We, the Chiefs of the Confederation of the United Tribes of New Zealand, being assemble in Congress at Victoria, in Waitangi, and We, the Separate and Independent Chiefs of New Zealand, claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which, we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi, this sixth day of February, in the year of Our Lord one thousand eight hundred and forty.

Source: Facsimiles of the Treaty of Waitangi, Taylor C.R.H, 1960

**UNITED NATIONS DECLARATION ON THE
RIGHTS OF INDIGENOUS PEOPLES**

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Further recognizing the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that the rights affirmed in treaties, agreements and constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Also considering that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect,

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements.
2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

Source: Human Rights Commission February 2008, Aotearoa New Zealand

Resource Management Act 1991. New Zealand Government. Wellington, New Zealand.

Section 5(2) Managing the use, development and protection of natural and physical resources in a way, or a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing... Section 6 (a-d) The preservation and protection of natural and physical resources from inappropriate subdivision, use and development... Section 6(e) Recognising as a matter of national importance the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga. Section 14 That no person may take, use, dam, or divert any open coastal water, or take or use any heat or energy from any open coastal water, in a manner that contravenes a national environmental standard or a regional rule unless the activity has a resource consent. Section 33 (1-2) Imparts the transfer of powers, duties and functions from local authorities to public authorities including an iwi authority. Section 58 The protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga in Coastal Policy Statements. Section 59 Regional overview of the resource management issues of a region and policies and methods to achieve integrated management of natural and physical resources of the whole region in Regional Policy Statements. Section 61 (iii) Regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Māori customary fishing. Section 61 (2) (a) Take into account any relevant planning document recognised by an iwi authority and relevant entry in the Historic Places Register; management issues of the region; recognise and provide for the management plan for a foreshore and seabed reserve located in whole or part within its region when preparing or changing Regional Plans and Policy Statements. Part V Taking into account the principles of the Treaty of Waitangi' and recognition of tangata whenua as kaitiaki of the coastal environment as guiding principles of the New Zealand Coastal Policy Statement. Section 62 (b) Provision for matters of resource management significance to iwi authorities within the contents of the New Zealand Coastal Policy Statement.

Conservation Act 1987. New Zealand Government. Wellington, New Zealand.

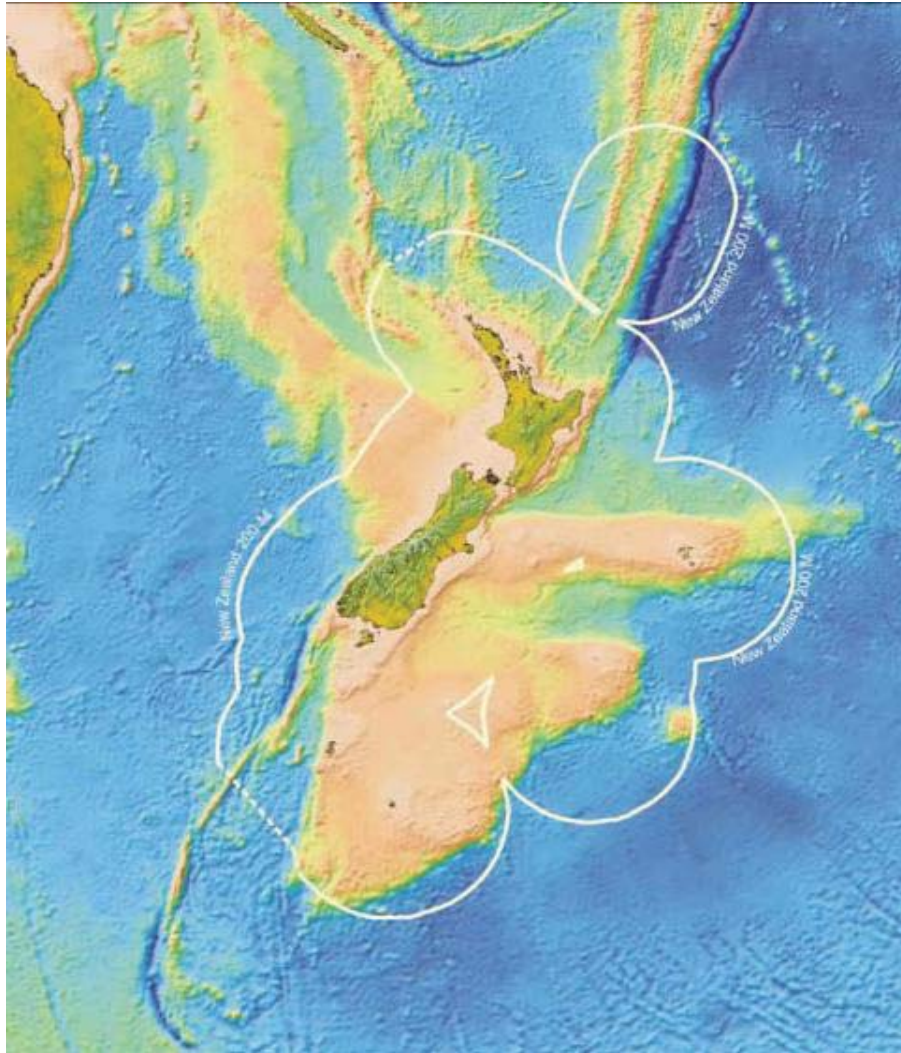
Section 4 of the Conservation Act 1987 gives effect to be interpreted and administered so as to give effect to the principles of the Treaty. Part IIA (6A) requires the New Zealand Conservation Authority to advise the Minister of general policy; to approve conservation management strategies, and conservation management plans. Part IIA (6L) establishes the New Zealand Conservation Board and 19 Conservation Boards which are duly gazetted. Part IIB (6X) provides for the appointment of suitable Guardians who shall include representatives of Māori of Lakes Manapouri, Monowai and Te Anau (Ngai Tahu). Part III provides for the Conservation Management Strategy which implements general policies and establishes objectives for the integrated management of natural and historic resources... Part III 7 provides for conservation areas which may be acquired and held for conservation purposes. Part III 7(1) provides for responsible Ministers who have control of any land or foreshore, may declare by notice of Gazette land or foreshore for conservation purposes. Part III 7(3) refers to Crown Forest Land that nothing in subsections (1) and (2) of this section applies in respect of land that is Crown forest land within the meaning of section 2 of the Crown Forest Assets Act 1989.

Conservation Authority. Conservation Act 1987. New Zealand Government.

Wellington, New Zealand.

The functions of the Conservation Authority under the Conservation Act 1987 include: Section 6B(1)(a)-(j): (a) Advise the Minister on statements of general policy; (b) To approve conservation management strategies and conservation management plans, and review and amend such strategies and plans, as required; (c) To review and report to the Minister or the Director General on the effectiveness of the Department's administration of general policies prepared; (d) To investigate any nature conservation or conservation matters the Authority considers are of national importance; (e) To consider and make proposals for the change of status or classification of areas of national and international importance; (f) Any matter relating to or affecting walkways; (g) To encourage and participate in educational and publicity activities for the purposes of bringing about a better understanding of nature conservation in New Zealand; (h) To advise...annually on priorities for the expenditure of money; (i) To liaise with the New Zealand Fish and Game Council; and (j) To exercise such powers and functions as may be delegated. Section (6M) (1)(a)-(g) (a) Recommend the approval by the Conservation Authority of conservation management strategies, and the review of amendment of such strategies, under the relevant enactments; (b) Approve conservation plans, and the review and amendment of such plans under relevant enactments; (c) Advise the Conservation Authority...on the implementation of conservation management strategies and conservation management plans for areas within the jurisdiction of the Board; (d) To advise the Conservation Authority...on any proposed change of status or classification of any area of national or international importance; and any other conservation matter relating to any area within the jurisdiction of the Board; (e) Advise the Conservation Authority...on proposals for new walkways in any area within the jurisdiction of the Board; (f) Liaise with any Fish and Game Council on matters within the jurisdiction of the Board; and (g) Exercise such powers and functions as may be delegated.

NEW ZEALAND EXCLUSIVE ECONOMIC ZONE (EEZ)



Source: Ministry for the Environment (1998-2010), Wellington, New Zealand. New Zealand Government.

Local Government Act 2002. New Zealand Government. Wellington, New Zealand.

3(d) Requires local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach. 4 To take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to the local government decision making processes. 5 Māori capacity to contribute to decision-making processes over the period covered by that plan... A long-term council community plan must set out any steps that the local authority intends to take, having considered ways in which it might foster the development of Māori. 6 Long Term Community Council Plan which must include the funding and financial policies of the local authority adopted under Section 102 of the Local Government Act 2002. 14(1) (d)(h)(i) Principles in performing its role a local authority must act in accordance with the following principles: a local authority should provide opportunities for Māori to contribute to its decision making processes. 40(1) Local government statements a local authority must prepare and make publicly available, following the triennial general election of members, a local governance statement that includes information on representation arrangements, including the option of establishing Māori wards or constituencies, and the opportunity to change them; consultation policies; policies for liaising with, and memoranda of agreements with Māori. 77(1)(c) Take into account the relationship of Māori their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga. 81(1) (a-b) A local authority must establish and maintain processes to provide opportunities for Māori to contribute to the decision making processes of the local authority; consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; provide relevant information to Māori for the purposes of paragraphs (a) and (b). 81(2)(1) (a-b) In exercising its responsibility to make judgements must have regard to the role of the local authority, such matters as the local authority considers on reasonable grounds to be relevant to those judgements. 82(2) A local authority must ensure it has in place processes for

consulting with Māori. Part 10 Section (1)(e)(i) Further community outcomes with Māori through monitoring plans reviewed not less than once every three years.

The Role of the Parliamentary Commissioner for the Environment. The Environment Act 1986. New Zealand Government. Wellington, New Zealand.

The Commissioner shall give regard to, but not exclusively to: (a) The maintenance and restoration of ecosystems of importance, especially those supporting habitats or rare, threatened, or endangered species of flora and fauna; (b) Areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic and scientific value; (c) Any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of the heritage of tangata whenua and which contribute to their wellbeing; (d) The effects on communities of people of... (i) Actual or proposed changes to natural and physical resources; (ii) The establishment or proposed establishment of new communities; (e) Whether any proposals, policies, or other matters, the consideration of which is within the Commissioner's functions, are likely to... (i) Result in or increase pollution; or Result in the occurrence, or increase the chances of occurrence, of natural hazards or hazardous substances; or (iii) Result in the introduction of species or genotypes not previously present within New Zealand (including the territorial sea); or (iv) Have features, the environmental effects of which are not certain, and the potential impact of which is such as to warrant further investigation in order to determine the environmental impact of the proposal, policy, or other matter; or (v) Result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources or will not enable an orderly transition to other materials; (f) All reasonably foreseeable effects of any such proposal, policy, or other matter on the environment, whether adverse or beneficial, short term or long term, direct or indirect, or cumulative; and (g) Alternative means or methods of implementing or providing for any such proposal, policy, or matter in all or any of its aspects, including the consideration, where appropriate, of alternative sites.