

Hon Andrew Little

Minister for Treaty of Waitangi Negotiations

Proactive release – Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order

Date of issue: 21 September 2020

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order <i>Cabinet paper</i> Minister for Treaty of Waitangi Negotiations 21 September 2020	Released in full.
2	Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order <i>Cabinet Minute of Decision</i> Cabinet Office Meeting date: 21 September 2020	Released in full.



Cabinet

Minute of Decision

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Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order

Portfolio **Treaty of Waitangi Negotiations**

On 21 September 2020, Cabinet:

- 1 **noted** that the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 enables:
 - 1.1 ngā hapū o Ngāti Porou to seek recognition of their customary interests in ngā rohe moana o ngā hapū o Ngāti Porou (ngā rohe moana) by making an application to the responsible Minister and/or to the High Court;
 - 1.2 the Minister for Treaty of Waitangi Negotiations to make determinations that one or more hapū of ngā hapū o Ngāti Porou have customary marine title in a specified area of ngā rohe moana if he is satisfied that certain criteria have been met;
- 2 **noted** that on 3 September 2020, the Minister for Treaty of Waitangi Negotiations made determinations of customary marine title under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 for which he must recommend an Order in Council be made to recognise that customary marine title;
- 3 **authorised** the submission to the Executive Council of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020 [PCO 23173/6.0];
- 4 **noted** that the Order will come into force on 1 February 2021.

Michael Webster
Secretary of the Cabinet

Office of the Minister for Treaty of Waitangi Negotiations

Chair, Cabinet

Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order

Proposal

- 1 I propose that Cabinet authorise the submission of an Order in Council to the Executive Council recognising customary marine title under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (the Act).

Background

- 2 The Act enables ngā hapū o Ngāti Porou to seek recognition of their customary interests in ngā rohe moana o ngā hapū o Ngāti Porou (ngā rohe moana) by making an application to the responsible Minister (Ministerial determination) and/or to the High Court.
- 3 The Act also enables me to make Ministerial determinations that one or more hapū of ngā hapū o Ngāti Porou have customary marine title in a specified area of ngā rohe moana if I am satisfied that the evidence establishes the applicant hapū:
 - 3.1 hold the area in accordance with tikanga; and
 - 3.2 have exclusively used and occupied it from 1840 to the present day without substantial interruption.
- 4 Under the Act, management arrangement kaitiaki trusts represent hapū and are required to exercise and perform any rights or responsibilities on their behalf. Collectively the management arrangement trusts have sought Ministerial determinations of customary marine title and they have provided evidence in support.
- 5 Deponents on behalf of ngā hapū have provided affidavit evidence of customary authority as applied by ngā hapū o Ngāti Porou, and the values and concepts underpinning Ngāti Porou tikanga, including ahi kā roa, manaakitanga, and kaitiekitanga/kaitiakitanga. The evidence sets out the connection of ngā hapū o Ngāti Porou to the coastal lands and to ngā rohe moana and the traditional and contemporary reliance by coastal hapū on ngā rohe moana.
- 6 Affidavits also include evidence of hapū boundaries, and within these boundaries of hapū members placing and enforcing rāhui and exercising other controls over access to and use of ngā rohe moana. Examples are given of place names and of landing and launching sites alongside evidence of names, locations, and use of customary fishing and kaimoana gathering grounds, the species that can be caught or gathered there and the tikanga that applies. This knowledge has been passed on from hapū ancestors to present day hapū members.

- 7 Evidence has also been collected from official records and historical research, and officials have conducted site visits and sought the views of third-party users of ngā rohe moana. This evidence includes information on historical and contemporary abutting land ownership and use, public access points, roadways and structures in or near ngā rohe moana, and recreational and commercial activities in ngā rohe moana.

Determinations of customary marine title

- 8 Based on the evidence provided by ngā hapū o Ngāti Porou and the evidence collected by officials, on 3 September 2020 I made the following determinations of customary marine title.
- 9 Te Whānau a Tapaeururangi has customary marine title in the part of ngā rohe moana:
- 9.1 Pōtikirua to Wharau from the line of mean high water springs to ½ nautical mile;
- 9.2 Ōroa to Midway Point from the line of mean high water springs to ½ nautical mile.
- 10 Te Whānau a Tuwhakairiora and Te Whānau a Te Aotaki have customary marine title in the part of ngā rohe moana:
- 10.1 Midway Point to Matakāoa Point from the line of mean high water springs to ½ nautical mile.
- 11 Te Whānau a Hunaara has customary marine title in the part of ngā rohe moana:
- 11.1 Awatere River to Waipapa Stream from the line of mean high water springs to 3 nautical miles;
- 11.2 Waipapa Stream to Te Wharenaonao Point from ¼ nautical miles to 3 nautical miles out from the line of mean high water springs;
- 11.3 Te Wharenaonao Point to Whangaokeno from the line of mean high water springs to 3 nautical miles.
- 12 Te Whānau a Takimoana, Te Whānau a Ngāi Tāne, Ngāti Nua, Te Whānau a Hinepare, Te Whānau a Karuai, Te Whānau a Tapuhi, Te Whānau a Rerewa, Ngāti Hokopu, Ngāti Putaanga, Te Whānau a Hinerupe ki Waiapu, Te Whānau a Rakaimataura, Te Whānau a Te Uruahi, and Te Whānau a Tinatoka (to the north of the Waiapu River) and Te Whānau a Pokai, Te Whānau a Hineauta, Ngāti Horowai, Te Whānau a Rakaihoea, Te Whānau a Mahaki, Te Whānau a Uruhonea, Te Whānau a Karuai and Te Whānau a Rakaimataura (to the south of the Waiapu River) have customary marine title in the part of ngā rohe moana:
- 12.1 Whangaokeno to Waiotautu Stream from the line of mean high water springs to 3 nautical miles.
- 13 Ngāti Rangi has customary marine title in the part of ngā rohe moana:
- 13.1 Ōnepoto to Koutuamoa Point from the line of mean high water springs to 3 nautical miles.

- 14 Te Whānau a Umuariki, Te Whānau a Ruataupare ki Tuparoa, and Ngāi Tangihaere have customary marine title in the part of ngā rohe moana:
- 14.1 Koutuamoa Point to Kaimoho Point from ½ nautical mile to 3 nautical miles from the line of mean high water springs; and
- 14.2 Kaimoho Point to Rāhuimānuka from the line of mean high water springs to 3 nautical miles.
- 15 Te Aitanga a Mate has customary marine title in the part of ngā rohe moana:
- 15.1 Rāhuimānuka to Mataahu from the line of mean high water springs to 3 nautical miles.
- 16 Te Whānau a Rakairoa, Te Whānau a Iritekura and Ngāi Taharora have customary marine title in the part of ngā rohe moana:
- 16.1 Mataahu to Pōkurakura Point from ½ nautical mile to 3 nautical miles from the line of mean high water springs; and
- 16.2 Pōkurakura Point to Koutunui Head from the line of mean high water springs to 3 nautical miles.
- 17 As required by section 112 of the Act, following my determination of customary marine title I must recommend an Order in Council be made, which must name the customary marine title hapū, describe the boundaries of the customary marine title area, and specify the management arrangement that represents the hapū.

Financial Implications

- 18 There are no financial implications. Financial implications were considered through the development and implementation of the Act.

Timing and the 28-day rule

- 19 The 28-day rule requires regulations to be notified in the *New Zealand Gazette* 28 days prior to their coming into effect. No waiver of the 28-day rule is proposed. The Order will come into force on 1 February 2021. This provides the appropriate time for ngā hapū and agencies to implement the mechanisms in the Act that affect customary marine title areas.

Compliance

- 20 The Order in Council complies with each of the following:
- 20.1 the principles of the Treaty of Waitangi;
- 20.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 20.3 the principles and guidelines set out in the Privacy Act 1993;
- 20.4 relevant international standards and guidelines;

20.5 the Legislation Guidelines (2018) edition, which are maintained by the Legislation Design Advisory Committee.

Regulations Review Committee

21 There are no grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House under Standing Order 319.

Consultation

22 Land Information New Zealand, the Department of Conservation, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry for the Environment, and the Ministry for Arts, Culture and Heritage have been advised. The Department of Prime Minister and Cabinet has been informed.

Certification by Parliamentary Counsel

23 Parliamentary Counsel has certified that the Order in Council is in order.

Impact analysis

24 The regulatory impact analysis requirements do not apply.

Publicity

25 As required by the Act, I will write to the management arrangement trusts to inform them of the determinations I have made.

Proactive Release

26 I intend to proactively release this paper within 30 business days, subject to the redaction of any materials as consistent with the Official Information Act 1982.

Recommendations

I recommend that Cabinet:

- 1 **note** that on 3 September 2020 I made determinations of customary marine title under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 for which I must recommend an Order in Council be made to recognise that customary marine title.
- 2 **authorise** the submission to the Executive Council of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020.

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations