

KERMADEC OCEAN SANCTUARY BILL

TE OHU KAIMOANA PRESENTATION TO THE PARLIAMENTARY LOCAL GOVERNMENT AND ENVIRONMENT
SELECT COMMITTEE, THURSDAY 2 JUNE 2016.

(PRESENTED BY JAMIE TUUTA, CHAIRMAN)

(INTRODUCTORY REMARKS)

MR CHAIRMAN, COMMITTEE MEMBERS, TĒNĀ KOUTOU.

MY NAME IS **JAMIE TUUTA** AND I AM THE CHAIRMAN OF TE OHU KAIMOANA, THE MĀORI FISHERIES TRUST.

WITH ME TODAY IS **SIR MARK SOLOMON**, OUR DEPUTY CHAIRMAN AND CHAIRMAN OF TE RŪNANGA O NGĀI TAHU; **MR KEN MAIR**, A DIRECTOR OF TE OHU KAIMOANA; AND **LAWS LAWSON** OUR PRINCIPAL ADVISOR.

MR RICK WITANA, THE CHAIRMAN OF NORTHLAND IWI TE AUPŌURI IS ALSO WITH US AND WE ARE JOINED BY **MR MARK NGATA**, FROM THE IWI COLLECTIVE PARTNERSHIP, WHO WILL FOLLOW ON FROM MR WITANA.

AS WE HAVE INDICATED IN OUR WRITTEN SUBMISSION, TE OHU KAIMOANA ACTS WITH THE FULL SUPPORT OF THE 58 IWI THAT HAVE FISHING RIGHTS IN THE KERMADEC REGION THROUGH THE 1992 FISHERIES SETTLEMENT BETWEEN MĀORI AND THE CROWN.

(SUBSTANTIVE COMMENTS)

MR CHAIRMAN, THE KERMADEC OCEAN SANCTUARY BILL IS IN BREACH OF THE DEED OF SETTLEMENT SIGNED IN 1992 BY MĀORI AND HER MAJESTY THE QUEEN.

THE BILL UNDERMINES THE FISHERIES SETTLEMENT, AND CONSEQUENTLY UNDERMINES THE INTEGRITY OF TREATY SETTLEMENTS IN GENERAL.

IT IS IN BREACH OF THE TREATY OF WAITANGI, ITS PRINCIPLES AND THE FIDUCIARY DUTIES AND DUTY OF GOOD FAITH OWED BY THE CROWN TO MĀORI.

THE BILL EXPROPRIATES MĀORI FISHING RIGHTS AND IN DOING SO UNDERMINES THE INTEGRITY OF NEW ZEALAND'S WORLD-CLASS QUOTA MANAGEMENT SYSTEM.

IT IS ALSO INCONSISTENT WITH OBLIGATIONS UNDER INTERNATIONAL LAW IN RESPECT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA AND THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES.

MR CHAIRMAN, THE BILL'S MEASURES ARE NOT NECESSARY SUSTAINABILITY MEASURES NOR ARE THEY NEEDED TO PROTECT THE KERMADEC BIODIVERSITY FROM FISHING.

THE MEASURES IN THE BILL ARE BASED ON A FLAWED ASSESSMENT OF FISHERIES AND FISHING RIGHTS AND FAILS TO RECOGNISE THE TRUE VALUE OF FISHERIES THERE.

FURTHERMORE, IT EXPROPRIATES PROPERTY RIGHTS AND MĀORI FISHING RIGHTS WITHOUT CONSENT.

THE BILL, THE MEASURES CONTAINED WITHIN IT, AND THE CABINET PAPER HAVE BEEN DRAFTED BY OFFICIALS WITH DISREGARD TO THE AGREEMENTS, OBLIGATIONS AND RESPONSIBILITIES OF THE CROWN.

WHILE THE FULL REASONS FOR OUR CRITICISM OF AND OPPOSITION TO THE BILL ARE EXPLAINED IN OUR WRITTEN SUBMISSION, I WANT TO **EMPHASISE THE MAIN POINTS** CONTAINED WITHIN IT.

(BREACH OF TREATY PRINCIPLES)

THE PRINCIPLES OF THE TREATY OF WAITANGI AS EXPRESSED BY THE COURT OF APPEAL AND THE WAITANGI TRIBUNAL INCLUDE THE **DUTY OF ACTIVE PROTECTION, PARTNERSHIP AND GOOD FAITH**.

THESE PRINCIPLES, IN A FISHERIES CONTEXT, REQUIRE THE GOVERNMENT TO CONSULT WITH IWI AT AN EARLY STAGE FOR PROPOSALS THAT AFFECT FISHERIES AND THE MARINE ENVIRONMENT. THAT PROCESS SHOULD, AT THE VERY LEAST, HAVE PARTICULAR REGARD TO VIEWS EXPRESSED BY IWI.

THE GOVERNMENT'S STANDARD OF CONSULTATION FELL WELL-SHORT OF THE REQUIRED TREATY PRINCIPLES. IT DID NOT CONSULT NOR ENGAGE WITH IWI OR TE OHU UNTIL AFTER THE DECISION HAD BEEN MADE BY CABINET.

(BIODIVERSITY)

WITH RESPECT TO ENVIRONMENTAL PROTECTION, MR CHAIRMAN, THERE ARE MEASURES ALREADY IN PLACE THAT **PROTECT THE MARINE BIODIVERSITY** OF THE KERMADEC REGION FROM FISHING ACTIVITY.

THERE ARE **MARINE RESERVES** OUT TO THE LIMIT OF THE TERRITORIAL SEAS AROUND EACH OF THE KERMADEC ISLANDS AND THESE PROHIBIT ALL FISHING IN THOSE AREAS. THESE MARINE RESERVES HAVE THE SUPPORT OF TE OHU KAIMOANA AND IWI.

IWI, OUR MĀORI FISHING COMPANIES AND THE WIDER INDUSTRY **VOLUNTARILY AGREED** IN 2006 TO APPLY A **BENTHIC PROTECTION AREA** ACROSS THE WHOLE OF THE KERMADEC EEZ.

THIS PROTECTION AREA PROHIBITS TRAWLING AND DREDGING THAT COULD DISRUPT THE BIODIVERSITY ON THE SEA FLOOR. AS YOU WERE TOLD FROM FISHERIES INSHORE NEW ZEALAND EARLIER, THIS IS A SIGNIFIANT PROTECTION MEASURE THAT IS RECOGNISED INTERNATIONALLY AND IS WALKING THE TALK ABOUT PROTECTING THE ENVIRONMENT.

ANY REMAINING FISHING ACTIVITY WOULD BE CARRIED OUT IN A MANNER THAT DOES NOT IMPACT THAT BIODIVERSITY.

(FISHERIES SETTLEMENT)

THE **FINAL** POINT I WISH TO MAKE IS THAT THE 1992 FISHERIES SETTLEMENT WAS FULL AND FINAL. MĀORI DID NOT ENTER INTO THE AGREEMENT LIGHTLY. AND THERE IS GOOD REASON FOR THAT: THE MĀORI NEGOTIATORS KNEW THEY WERE SIGNING AWAY ALL CLAIMS TO THEIR CUSTOMARY RIGHTS TO FISHERIES - BOTH COMMERCIAL AND NON-COMMERCIAL.

AFTER CAREFUL CONSIDERATION, MĀORI AGREED TO ENDORSE THE QUOTA MANAGEMENT SYSTEM BECAUSE ITS BASIC FEATURES MET WITH THE MĀORI PERSPECTIVE, THAT IS, THE RIGHTS ASSOCIATED WITH QUOTA ARE **PERPETUAL**, IN ACCORDANCE WITH ONGOING TREATY RIGHTS; THEY ARE **SECURE**, IN THAT THEY WERE DEPENDENT ONLY ON MEETING SUSTAINABILITY REQUIREMENTS, AND THE QMS WAS A SUITABLE REGIME FOR THE **SUSTAINABLE MANAGEMENT** OF COMMERCIAL FISHERIES, IN LINE WITH MĀORI PRINCIPLES OF KAITIAKITANGA TO MANAGE FISHERIES FOR THE LONG-TERM INTER-GENERATIONAL INTERESTS OF MĀORI.

IT WAS ON ACCEPTANCE OF THESE THAT MĀORI SIGNED THE 1992 DEED OF SETTLEMENT AS A **JUST AND HONOURABLE SOLUTION**.

BOTH CROWN AND MĀORI CONSIDERED THE COMPLETION AND PERFORMANCE OF THE SETTLEMENT DEED TO BE OF THE **UTMOST IMPORTANCE** AND EXPRESSED THEIR **MUTUAL AND SOLEMN ACKNOWLEDGMENT** THAT THE SETTLEMENT MARKED THE RESOLUTION OF **AN HISTORICAL GRIEVANCE**.

MĀORI AND THE CROWN ENTERED INTO THE AGREEMENT IN THE **SPIRIT OF CO-OPERATION AND GOOD FAITH**.

MR CHAIRMAN, TE OHU KAIMOANA, ON BEHALF OF 58 IWI ORGANISATIONS, IS AT LOSS TO ASCERTAIN WHERE, IN THE KERMADEC OCEAN SANCTUARY BILL, THESE FUNDAMENTAL TENETS OF THE TREATY OF WAITANGI AND THE 1992 MĀORI FISHERIES SETTLEMENT CAN BE FOUND.

THE MĀORI FISHERIES SETTLEMENT IS OF THE UTMOST IMPORTANCE TO IWI AND MĀORI AND WE EXPECT THE CROWN TO HONOUR ITS AGREEMENT.

MR CHAIRMAN, TE OHU KAIMOANA MAKES THESE CRITICISMS OF THE BILL AND FIGHTS TO PROTECT HARD-WON MĀORI FISHING RIGHTS NOT BECAUSE WE WANT TO OPPOSE THE GOVERNMENT, BUT BECAUSE IT IS THE RIGHT THING TO DO IF AS A SOCIETY WE ARE TO MAKE MEANINGFUL AGREEMENTS.

(SOLUTIONS)

IN LIGHT OF THESE FLAWS AND CONCERNS, TE OHU KAIMOANA CONSIDERS THAT A WORKABLE SOLUTION CAN BE FOUND – A SOLUTION THAT UPHOLDS THE INTEGRITY OF THE MĀORI FISHERIES SETTLEMENT AND PROVIDES FOR MARINE PROTECTION IN THE KERMADEC OCEAN REGION.

IWI AND TE OHU KAIMOANA ARE OPEN TO TALKING WITH THE GOVERNMENT ON THIS.

THE ALTERNATIVE IS THAT PARLIAMENT MOVES AHEAD AND LEGISLATES OVER THE TOP OF US, AND AT THE SAME TIME DAMAGES MĀORI-PAKEHA RELATIONS IN THIS COUNTRY.

MR CHAIRMAN, THIS COMMITTEE HAS THE POWER TO STRONGLY RECOMMEND THAT THE GOVERNMENT POSTPONES ACTION ON THIS PARTICULAR BILL UNTIL THE PRESSING ISSUES THAT WE HAVE RAISED ARE RESOLVED TO THE SATISFACTION OF ALL PARTIES.

I WILL NOW HAND OVER TO MR WITANA.