

NGATI POROU FORESHORE AND SEABED DEED OF AGREEMENT

**Matanuku Mahuika, Kahui Legal
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BACKGROUND

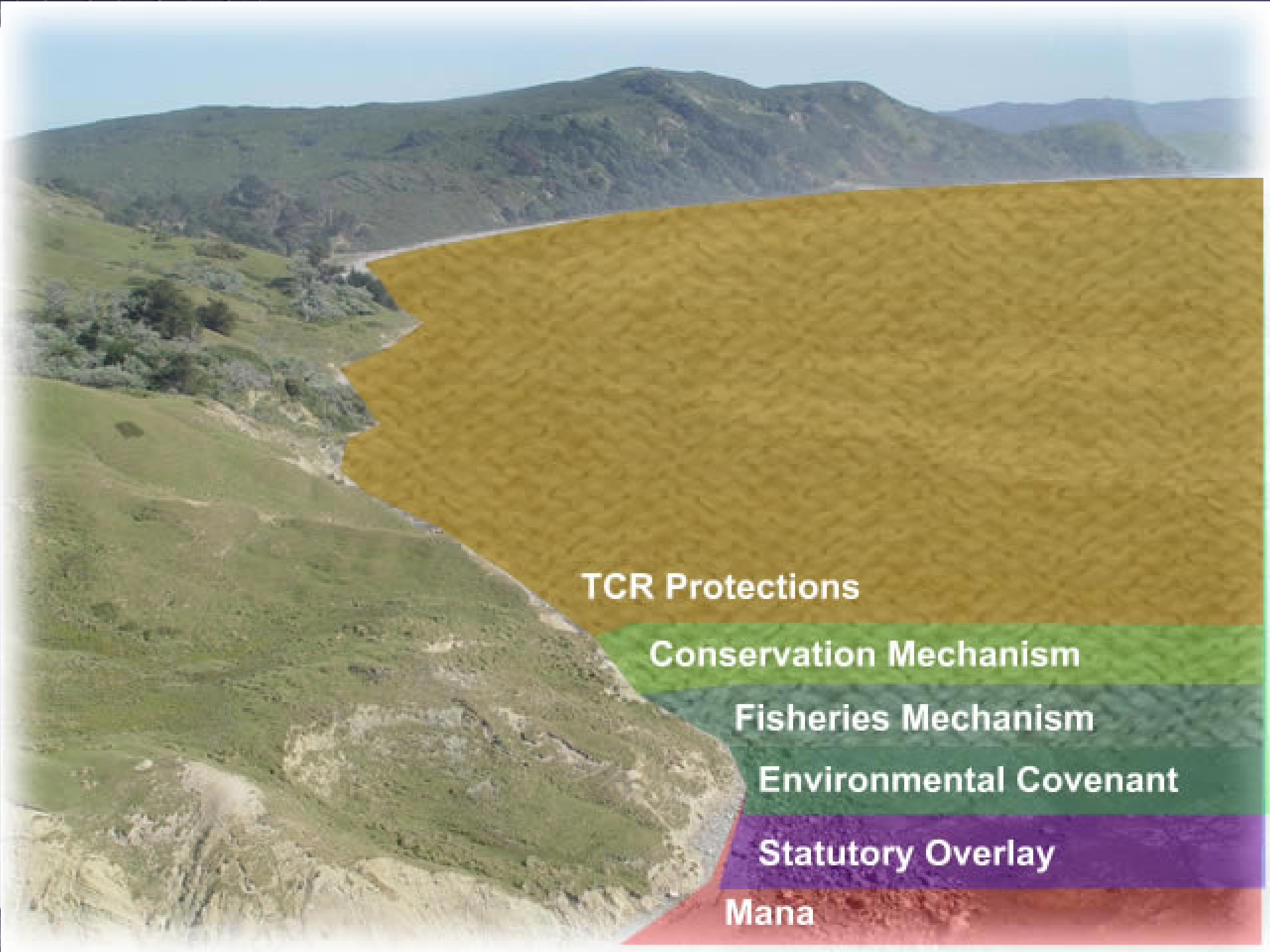
- 2003: *Ngati Apa* decision, discussions with Crown begin (August)
- 2004: Te Whanau a Apanui join discussions (mid-2004), Terms of Negotiation signed (1 November), Foreshore and Seabed Act passed (24 November)
- 2008: Heads of Agreement signed (February), Deed of Agreement signed (31 October)
- 2008: Legislation introduced but awaiting the outcome of the review of the FSSB Act by the Crown, although there is a continuing Crown commitment to honour the Deed

OVERVIEW OF DEED

- Crown recognition of the unbroken and enduring mana of the Hapu in relation to the FSSB
- Instruments and mechanisms that provide legal recognition and protection for the exercise of the mana of the Hapu in relation to the FSSB
- Agreement that Hapu that can show Territorial Customary Rights (TCRs) will receive further recognition and protection

SUMMARY OF MECHANISMS

- Statutory Designation
- Environmental Covenant
- Permission Right
- Fisheries & Conservation Mechanisms
- Relationship agreements and a meeting accord called the "Whakamana Accord"
- Protection of wahi tapu and customary rights
- Provision to change names and establish pouwhenua
- Specific TCR based protections



TCR Protections

Conservation Mechanism

Fisheries Mechanism

Environmental Covenant

Statutory Overlay

Mana

STATUTORY OVERLAY

- Focuses on the notification provisions in RMA
- Records in key public documents the special relationship of the Hapu to the FSSB
- Hapu must receive notice, with summaries, of all resource consents applications
- Hapu will be entitled, as of right, to be heard by and participate in proceedings of Consent Authorities, the Historic Places Trust & the Environment Court
- Will apply even where a TCR not proven

ENVIRONMENTAL COVENANT

- The Environmental Covenant is similar to iwi management plans
- It will set out the issues, objectives, policies, rules or other methods of the Hapu re the sustainable management of FSSB & protection of cultural & spiritual identity
- Consent Authority will be required to review plans to “take into account” the EC in non-TCR areas & “recognise and provide for” the EC in TCR areas
- Pending the review of its plans Council will be required to “take into account” the terms of the EC in non-TCR areas & “recognise and provide for” the EC in TCR areas

PERMISSION RIGHT

- Applies only where TCRs are proven
- Prior Hapu permission will be required for a coastal permit and to establish aquaculture management area
- Will apply where an activity has “significant adverse effect” on the Hapu relationship with the environment in a TCR area
- The permission right must be exercised within 40 working days of the Hapu receiving notice of coastal permit application or aquaculture management area proposal

DEEMED ADVERSE EFFECTS

- A number of activities are deemed to have a “significant adverse effect” for the purposes of permission right
- These activities are:
 - A new structure
 - An aquaculture activity
 - A reclamation
 - A discharge of industrial waste and sewage into the TCR area
 - Extraction of shingle
- The permission right will apply automatically to these activities and no “significant adverse effect” assessment will be required

WAHI TAPU & CUSTOMARY ACTIVITIES

- Hapu will be able to restrict or prohibit access to specified wahi tapu in the FSSB
- Hapu will be able to police these restrictions and there will be maximum penalty of \$5,000 if restrictions are intentionally breached
- Hapu will be able to continue customary activities (and determine who can carry them out) in FSSB, without a resource consent, even if a resource consent would otherwise be required
- Consent Authority will not be able to grant a resource consent for an activity, without Hapu consent, where that activity will have a significant adverse effect on a customary activities

ACCOMMODATED MATTERS

- The Deed provides that certain activities may continue in accordance with the longstanding practice of the Hapu
- These activities are access, navigation, existing fishing, access to formed roads and roads under construction, the rights of owners of fixtures and the rights of lessees and licensees
- It is also agreed that the protected customary activities instrument, permission right and conservation mechanism will not impact on other specified existing activities
- These activities are existing resource consents, existing infrastructure activities, emergency activities, scientific research by DoC and Crown research institutes

WHERE TO FROM HERE?

- Implementation of the Deed is currently underway
- The timetable for the implementation of the Deed depends in part on the timetable for the review of the FSSB Act
- There is currently no firm indication for when the review will be completed and any legislative changes enacted
- Despite the FSSB review there has been an ongoing Crown commitment to honour the Deed and the implementation work is proceeding on this basis