

**In the Environment Court of New Zealand  
Auckland Registry**

**I Te Kooti Taiao O Aotearoa  
Tāmaki Makaurau Rohe**

---

Under the Resource Management Act 1991 (the Act)

In the matter of appeals under clause 14(1), Schedule 1 of the Act

Between **Bay of Islands Maritime Park Incorporated**

ENV-2019-AKL-117

**The Royal Forest and Bird Protection Society of New  
Zealand Incorporated**

ENV-2019-AKL-127

Appellants

And **Northland Regional Council**  
Respondent

---

**Rebuttal statement of evidence of Hugh Te Kiri Rihari for Te  
Rūnanga-Ā-Iwi O Ngāpuhi**

Dated 22 June 2021

---

**大成 DENTONS KENSINGTON SWAN**

89 The Terrace  
PO Box 10246  
Wellington 6143

P +64 4 472 7877  
F +64 4 472 2291  
DX SP26517

Solicitor: N McIndoe/Ezekiel J Hudspith  
E [nicky.mcindoe@dentons.com](mailto:nicky.mcindoe@dentons.com)/[ezekiel.hudspith@dentons.com](mailto:ezekiel.hudspith@dentons.com)

## Rebuttal statement of evidence of Hugh Te Kiri Rihari

### 1 Qualifications and experience

- 1.1 My full name is Hugh Te Kiri Rihari. I am of Ngāti Torehina ki Matakā descent, which is my hapū and am a direct descendant of the Tupuna Te Reinga. My hapū is affiliated with Ngāpuhi iwi.
- 1.2 I am a kaitiaki of whenua on Mataroa Peninsula (commonly known as Purerua Peninsula, to the north-west of the Bay of Islands), and the awa and moana which lies around it. Our rohe is the gateway to Pēwhairangi.<sup>1</sup>
- 1.3 I am also the Chairperson of Te Komiti Kaitiaki Whakature i nga Taonga o Tangaroa (**Te Komiti Kaitiaki**). Te Komiti Kaitiaki is responsible for the customary management of the rohe moana in the Bay of Islands.
- 1.4 My qualifications and experience are set out in my Evidence in Chief (**EIC**) dated 17 May 2021.
- 1.5 In preparing this statement, I was provided with a copy of the code of conduct for expert witnesses as contained in the Environment Court's Consolidated Practice Note 2014. I have been a part of proceedings in the Environment Court as a section 274 party before, and am familiar with the code of conduct.<sup>2</sup>
- 1.6 I consider that I have an extensive understanding of Māori custom, including tikanga concepts, and its application with regard to the Fisheries (Kaimoana Customary Fishing) Regulations 1998. I will use my understanding and experience to assist the Court to the best of my ability.
- 1.7 However, I would not personally describe myself as an 'expert', and cannot distinguish between my knowledge of mātauranga Māori and roles I perform for my hapū and iwi. The code of conduct requires that expert witnesses not act as advocates, but I have an interest in the outcome of this proceeding, because of its consequences for iwi, hapū and future generations.

---

<sup>1</sup> The 'gateway to Pēwhairangi' refers to the area where the waters of Te Puna Inlet and Kerikeri Inlet move past Moturoa Island and into the Bay of Islands. Whichever way the water flows, Pēwhairangi is the transliteration of Bay of Islands. My parents and grandparents and those of their generation referred to the seas surrounding the Bay of Islands as Te Tai Tokerau or Te moana Nui a Kiwa / Pacific Ocean. These names are seldom used by today's generation.

<sup>2</sup> *Verstraete v Far North District Council* [2013] NZEnvC 108.

## 2 Scope of evidence

2.1 My evidence relates to the following proceedings:

- a *Bay of Islands Maritime Park Incorporated v Northland Regional Council* (ENV-2019-AKL-117); and
- b *The Royal Forest and Bird Protection Society of New Zealand Incorporated v Northland Regional Council* (ENV-2019-AKL-127).

2.2 Both proceedings concern the Regional Council's decision on the Proposed Regional Plan for Northland ('**Proposed Plan**'). Te Rūnanga-Ā-lwi O Ngāpuhi ('**TRAION**') is a section 274 party to both of the above proceedings ('the **Appeals**').

2.3 My rebuttal evidence addresses:

- a Fisheries Act regime;
- b Managing fisheries under the RMA; and
- c The role of Northland Regional Council.

## 3 Fisheries Act regime

3.1 Ms Chetham describes in detail the 'onerous' and 'fraught' process of customary management of kaimoana under the Fisheries Act regime at paragraphs 57 – 74 of her evidence.

3.2 Ms Chetham considers mātaihai reserves are difficult to get in place and describes the challenges Patuharakeke has faced in trying to establish one.<sup>3</sup>

3.3 My experience of applying for a mātaihai reserve differs to that described by Ms Chetham. I have found these applications reasonably straightforward. The only difficulty I have faced is how big the area should be. We applied for an area of 26km<sup>2</sup> for Te Puna Mātaihai Reserve in 2008. However, before it was granted in 2013 we were told we had to reduce to a more manageable area of 19km<sup>2</sup>. TRAION helped us with resourcing for this application.

3.4 As outlined in the evidence of Mr Torkington, New Zealand Sport Fishing Council ('**NZSFC**') supported Te Komiti Kaitiaki in establishing Te Puna Mātaihai Reserve

---

<sup>3</sup> Chetham EIC, 14 May 2021, paras 60-66.

in 2013.<sup>4</sup> NZSFC also contributed to several hui between 2018 and 2020 to help establish a bylaw prohibiting the harvest of kūtai which has now been approved.

- 3.5 As outlined in the evidence of Mr Johnson, Bay of Island Swordfish Club ('**BOISC**') supported and was involved with in the process to establish a bylaw to prohibit the take of kūtai from Te Puna Mātaitai Reserve.<sup>5</sup>

#### 4 **Managing fisheries under the RMA**

- 4.1 Ms Chetham outlines support for the Appellants in seeking MPA provisions in the Proposed Plan as it will allow for:<sup>6</sup>

A collective and holistic approach more aligned to a Te Ao Māori world view and a Te Tiriti based approach, to recognise and provide for the relationship of hapū and our culture and traditions with our ancestral lands, water, sites, waahi tapu and other taonga in accordance with section 6(e) RMA.

- 4.2 Ms Chetham also outlines these reasons for Patuharakeke's support of the proposed provisions:<sup>7</sup>

The Trust's interest in the proceedings is to support the exercise of hapū rangatiratanga in the protection and restoration of taonga species (including kaimoana, customary fisheries) and their habitat.

..

The Trust does not currently seek Marine Protected Areas ("MPA") in the Proposed Regional Plan for Northland ("Proposed Plan") in its own rohe. However, the Trust may in the future wish to explore the option of an holistic MPA approach.

- 4.3 I disagree with Ms Chetham that inserting these provisions through this RMA process is more aligned with Te Tiriti o Waitangi. In my view, the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (and the wider Fisheries Act regime), which resulted from the Fisheries Settlement, provides a reasonable level of support for the principles of Te Tiriti o Waitangi.
- 4.4 The RMA is less familiar to Māori, and deals with a complicated range of matters. The Fisheries Act regime only deals with fisheries which is in the blood of Māori.

<sup>4</sup> Torkington EIC, 14 May 2021, para 3.8.

<sup>5</sup> Johnson EIC, 17 May 2021, para 2.4(b).

<sup>6</sup> Chetham EIC, 14 May 2021, para 75.

<sup>7</sup> Chetham EIC, 14 May 2021, paras 14 and 17.

The Fisheries Act regime also has much stronger links to Te Tiriti and the Fisheries Settlement.

- 4.5 I also disagree that the process in this case is aligned with Te Tiriti o Waitangi. Procedurally, to act in accordance with Te Tiriti would involve consulting all iwi and hapū who have an interest. The proposals have only been introduced by one hapū in each occasion, with other hapū not being consulted. There are a number of hapū with interests who have not been involved in these proceedings.
- 4.6 It is entirely inconsistent with a Te Ao Māori perspective, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga and a Tiriti-based approach for Patuharakeke to support the imposition of controls in the rohe of other hapū. In fact it intrudes on the mana motuhake of those hapū, and their iwi.
- 4.7 Rather than supporting hapū rangatiratanga, Patuharakeke are undermining it by supporting a process that is outside their rohe, didn't involve all relevant hapū, makes decisions for hapū and puts control in the hands of the Regional Council for at least ten years.
- 4.8 Mr Munro, for Te Rūnanga o Ngāti Rēhia, considers the Proposed Plan process is not based on tikanga and has concerns about the impact of the Proposed Plan provisions on Ngāti Rēhia's ability to exercise kaitiakitanga in their way.<sup>8</sup> Mr Munro describes how kaitiaki of Ngāti Rēhia need to be able to exercise their tikanga, without barriers to actively monitor and manage how to replenish their fisheries.<sup>9</sup>
- 4.9 I agree with and support Mr Munro's comments. I describe the importance of kaitiakitanga, manaakitanga and whanaungatanga in my EIC.<sup>10</sup>

## 5 Northland Regional Council

- 5.1 One of the concerns I have with managing fisheries under the RMA is the role of Northland Regional Council.
- 5.2 In this regard, I agree with the following comments:
- a Mr Hore says that Bay of Plenty Regional Council, who is leading the implementation of Regional Plan fisheries controls, is likely to face significant

<sup>8</sup> Munro EIC, 24 May 2021, para 124.

<sup>9</sup> Munro EIC, 24 May 2021, para 130.

<sup>10</sup> Rihari EIC, 17 May 2021, paras 5.11 – 5.15.

additional costs, including the development of new staff capabilities, assets and processes;<sup>11</sup>

- b Mr Clark outlines his concern that the Regional Council does not have the specialised expertise to control fishing activities, including through monitoring and enforcement;<sup>12</sup>
- c Mr Bailey outlines his concern that Northland Regional Council don't have the resources or expertise to monitor, regulate and enforce commercial fishing operations.<sup>13</sup> Mr Bailey is also concerned about a potential 'double-up' as a government department that regulates, monitors and enforces fishing operations already exists.<sup>14</sup>
- d Mr Johnson describes that BOISC members do not consider that the Northland Regional Council has the experience and knowledge to manage fisheries;<sup>15</sup> and
- e Mr Johnson also outlines how BOISC members are concerned that NRC already has 'too much on its plate' and highlights its failures to control other management programmes which has caused a reduction in biodiversity.<sup>16</sup> Mr Johnson considers the Northland Regional Council's failures have caused increased sediment levels, poor water quality and increased levels of pollution, and the introduction of pest species.<sup>17</sup> BOISC members consider the NRC's resources are already "stretched thin" and do not need another programme to manage.<sup>18</sup>

5.3 I discuss my concerns around sedimentation in my EIC at paragraphs 6.3 – 6.5 .

5.4 I consider that the Regional Council will struggle to 'find their feet' in terms of managing these proposed fishing restrictions for at least 2-3 years.

Hugh Te Kiri Rihari

**22 June 2021**

---

<sup>11</sup> Hore EIC (Fisheries Management), 14 May 2021, para 93.

<sup>12</sup> Clark EIC, 14 May 2021, paras 154-155.

<sup>13</sup> Bailey EIC, 16 May 2021, para 35.

<sup>14</sup> Bailey EIC, 16 May 2021, para 35.

<sup>15</sup> Johnson EIC, 17 May 2021, para 2.6.

<sup>16</sup> Johnson EIC, 17 May 2021, para 3.2(e).

<sup>17</sup> Johnson EIC, 17 May 2021, para 3.2(e).

<sup>18</sup> Johnson EIC, 17 May 2021, para 3.2(e).

