

**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 Keir Volkerling on behalf of
Ngātiwai Trust Board**

Dated 22 June 2021

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Rebuttal statement of evidence of Keir Volkerling

1 Qualifications and experience

- 1.1 My full name is Keir Volkerling.
- 1.2 I am a consultant with over 30 years' experience advising on fisheries and resource management matters. My RMA experience is set out at **Appendix A** to my Evidence in Chief dated 14 May 2021 ('**EIC**'). However, I give this evidence on behalf of the Ngātiwai Trust Board ('**NTB**') in my role as a contractor. I confirm that I am authorised by NTB to give this evidence.
- 1.3 I am familiar with the matters to which these proceedings relate, being appeals against the Northland Regional Council's ('**Regional Council**') decision on the Proposed Regional Plan for Northland ('**Proposed Plan**'). NTB is a section 274 party to both of the above proceedings ('the **Appeals**').
- 1.4 My qualifications and experience are set out my EIC.
- 1.5 My rebuttal evidence addresses:
- a Ngātiwai Trust Board's benefits for hapū;
 - b The Fisheries Act regime;
 - c Managing Fisheries under the RMA;
 - d Northland Regional Council.

2 Ngātiwai Trust Board's benefits for hapū

- 2.1 Ms Chetham (Patuharakeke Te Iwi Trust Board) describes the purported benefits of fisheries settlement assets as having "rarely trickled down" to Patuharakeke from NTB.¹
- 2.2 Ngātiwai Trust Board provide a range of specific benefits to hapū and whānau, including annual marae grants and scholarships, which are directly funded by fisheries income.
- 2.3 There are also more general benefits from fisheries income by being able to maintain an iwi administration which implements a wide range of operations and

¹ Chetham EIC, 14 May 2021, para 44.

employs expert staff. For instance, the Ngātiwai Trust Board Resource Management Unit has, since the early 1990s, taken a leadership role regionally, and at times nationally, while benefiting Ngātiwai hapū and whanau. Other activities include, for instance, te reo and waiata classes, and social and education programmes.

- 2.4 These benefits outlined above are able to be provided through the Ngātiwai Trust Board administration which is significantly sustained by fisheries income.

3 Fisheries Act regime

- 3.1 Ms Chetham describes the process of customary management of kaimoana under the Fisheries Act regime as 'onerous' and 'fraught'.²
- 3.2 The Fisheries Act processes can be time consuming and frustrating, but many tangata whenua have implemented them successfully around the country.
- 3.3 If there are problems with the Fisheries Act regime or its implementation, these should be addressed directly by changing the legislation, rather than using the RMA.

4 Managing fisheries under the RMA

- 4.1 Ms Chetham supports the Appellants' proposed provisions and considers they will allow for:³

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 A 'collective and holistic approach' should enable effective tangata whenua participation in the implementation of the regulation. That is possible, to a degree, under the Fisheries Act regime. However, under the RMA that is much less available or achievable. There are certainly not options for effective tangata whenua participation in the current appeal.
- 4.3 In my experience, the RMA processes have a weaker regard for the Treaty compared to the Fisheries Act regime which flows from the Fisheries Settlement.

² Chetham EIC, 14 May 2021, para 74.

³ Chetham EIC, 14 May 2021, para 75.

- 4.4 From my experience, I am aware that the Fisheries Act regime is able to separately regulate commercial and non-commercial fishing in the same area. In contrast, the RMA cannot separately allocate fisheries resources among different sectors (i.e. non-commercial and commercial).
- 4.5 RMA plans need not be reviewed until 10 years after becoming operative. New planning provisions within that time, if not initiated by the council, can only be implemented through a costly private plan change. Councils only implement private plan changes if there is clear justification for the change. In my experience, it would be highly unusual that a plan change for matters of this kind (here a specific tangata whenua fisheries management issue) would be adopted as a council plan change.
- 4.6 Ms Chetham outlines the process under the RMA as being less costly compared to applying for Fisheries Act tools, using the example of a proposal by Patuharakeke to include provisions in the Regional Plan which were not appealed.⁴
- 4.7 While the current appeal may allow a relatively cheap process for Patuharakeke, i.e. as it has just joined the appeal, that is only possible because other parties in the case, i.e. the Appellants, are spending a lot. From my experience, I know that these high costs are a reality for RMA planning.
- 4.8 Based on my experience with both regimes, Fisheries Act processes are more flexible and appropriate than RMA processes for fisheries management. The Fisheries Act regime processes require ongoing monitoring and response to stock levels. It is likely that the plan change proposals at issue here would result in a static set of constraints for the ten-year period. The alternative would be to establish a regime in the plan equivalent to that under the Fisheries Act management processes. This would require a huge amount of work and would be unnecessary duplication.
- 4.9 In contrast, I agree with the views of Mr Ngata (Fishing Industry Parties) who says that:
- a the RMA is not equipped for fisheries management in the same way as the Fisheries Act regime;⁵

⁴ Chetham EIC, 14 May 2021, para 76.

⁵ Ngata EIC, 17 May 2021, para 34.

- b the Fisheries Act regime better upholds the Fisheries Settlement in relation to the Te Tiriti o Waitangi obligations of the Crown;⁶
- c the impacts on the environment and can instead be adequately managed through effective and responsible fishing activities based on the principles of tikanga and kaitiakitanga.⁷

5 Northland Regional Council

5.1 I am concerned about the Northland Regional Council managing fisheries resources, and in that regard, agree with the following witnesses:

- a Mr Clark (Fishing Industry Parties) who outlines his concern that the Northland Regional Council does not have the expertise of a specialised nature required to control fishing activities;⁸
- b Mr Bailey (Fishing Industry Parties) is also concerned about a potential 'double-up' as the Ministry of Primary Industries already regulates, monitors and enforces fishing operations;⁹ and
- c Mr Johnson (New Zealand Sport Fishing Council) discusses how Bay of Island Swordfish Club ('**BOISC**') members do not consider that the Northland Regional Council has the experience and expertise to manage fisheries.¹⁰ Mr Johnson also outlines how BOISC members are concerned that NRC already has 'too much on its plate'. Mr Johnson highlights the Regional Council's failures to control other management programmes which has caused a reduction in biodiversity.¹¹

5.2 I also agree with Mr Johnson when he considers the Northland Regional Council's failures have caused increased sediment levels, poor water quality and increased levels of pollution, as well as the introduction of pest species.¹² BOISC members consider the NRC's resources are already "stretched thin" and do not need another programme to manage.¹³

⁶ Ngata EIC, 17 May 2021, para 34.

⁷ Ngata EIC, 17 May 2021, para 37.

⁸ Clark EIC, 14 May 2021, para 154.

⁹ Bailey EIC, 16 May 2021, para 35.

¹⁰ Johnson EIC, 17 May 2021, para 2.6.

¹¹ Johnson EIC, 17 May 2021, para 3.2(e).

¹² Johnson EIC, 17 May 2021, para 3.2(e).

¹³ Johnson EIC, 17 May 2021, para 3.2(e).

- 5.3 Based on my experience working with the Regional Council over the years, as outlined at Appendix A to my EIC, I consider the Regional Council is not well-equipped to manage the proposed provisions for the following reasons:
- a Northland is not an affluent region and consequently, the Regional Council is often under-resourced. The Regional Council's standard of monitoring and enforcement of existing land-based consents and activities has been criticised, and there are real cost limitations to the Regional Council's capacity;
 - b Fisheries management by the Regional Council would require further staff positions and expertise than they have currently, with non-recoverable costs. Ratepayers would be unlikely to be willing to support extra costs when MPI is resourced to do the work;
 - c If the proposals at issue here for RMA fishing regulation out to 12 nautical miles were adopted, with the potential of this precedent leading to areas around the whole of the Northland region with similar regulation, the Regional Council would not only need further staff but would also need investment in boats and associated infrastructure; and
 - d Inshore monitoring and enforcement within Significant Ecological Areas would not require this scale of investment, and much may be able to be shore based. Some further expert staffing would still be required. For example, MPI has access to surveillance of commercial fishers. The Regional Council would not automatically have access to this data.

Keir Volkerling

22 June 2021