

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**IN THE MATTER** of the Resource Management Act  
1991(the **Act**)

**AND**

**IN THE MATTER** of appeals under clause 14 of the  
First Schedule to the Act

**BETWEEN** **BAY OF ISLAND MARITIME  
PARK INCORPORATED**  
(ENV-2019-AKL-000117)

**ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INCORPORATED**  
(ENV-2019-AKL-000127)

Appellants

**AND** **NORTHLAND REGIONAL COUNCIL**

Respondent

---

**STATEMENT OF EVIDENCE OF BARRY DAVID TORKINGTON  
ON BEHALF OF THE NEW ZEALAND SPORT FISHING COUNCIL INC  
Dated 14 May 2021**

---

---

**BROOKFIELDS  
LAWYERS**

A Green / R Ashton  
Telephone No. 09 979 2210  
Fax No. 09 379 3224  
P O Box 240  
DX CP24134  
**AUCKLAND**

## 1. INTRODUCTION AND EXPERIENCE

- 1.1 My full name is Barry David Torkington.
- 1.2 My evidence is given on behalf of the New Zealand Sport Fishing Council (**NZSFC**).
- 1.3 I began commercial fishing in 1972 and in 1979 I became President of the Leigh Commercial Fishermen's Association, a role I held for 15 years. During that time, I also served as an executive member of the Federation of Commercial Fishermen. I ceased fishing in 1985 and moved into marketing and product innovation, becoming a Director of Leigh Fisheries Ltd for 10 years.
- 1.4 As an advocate for small scale fishermen, I was involved in fisheries planning forums with numerous interactions with the Ministry of Fisheries and Ministers regarding fish stock management. Policy around the use of industrial fishing methods and their restrictions, yield per recruit, and benthic protection were routinely discussed.
- 1.5 I began an association with the NZSFC in 2005 as a policy advisor. I assisted with what became known as the Kahawai Proceedings. These judicial review proceedings challenged decisions of the Minister of Fisheries in setting Total Allowable Catch (**TAC**) and Total Allowable Commercial Catch (**TACC**) for Kahawai. These proceedings resulted in precedent setting judgments of the Court of Appeal<sup>1</sup> and the Supreme Court<sup>2</sup> which have influenced the way in which the Fisheries Act 1996 (**FA**) is applied.
- 1.6 Following those proceedings, I have continued to advise the NZSFC on matters of fisheries policy. The last 15 years have also seen an examination of why New Zealand's Quota Management System (**QMS**), that is touted as world leading by senior Officials and Ministers, has such a poor economic and environmental record in the inshore fisheries. During this time, I became familiar with the work of Dr Elinor Ostrom (managing common pool resources), Dr Daniel Bromley (resource economics), Dr Niels Einarrson (social science), Dr Daniel Pauly (marine biologist), Dr Thorvaldur Gylfason (economics professor), Dr Seth Macinko (fisheries economics), Dr Catherine

---

<sup>1</sup> *Sanford Ltd v New Zealand Recreational NZSFC Inc* [2008] NZCA 160.

<sup>2</sup> *New Zealand Recreational NZSFC Inc v Sanford Ltd* [2009] NZSC 54.

Chambers (social science), Dr Evelyn Pinkerton (social science), and others that I corresponded with and/or visited.

- 1.7 This collaboration led to a reform package that is known as Rescue Fish, a policy package adopted by the NZSFC to comprehensively address the institutional shortcomings of the FA with an overarching purpose of rebuilding abundance and biodiversity in the inshore fisheries.
- 1.8 This led to a detailed understanding on my part of why the QMS delivered such poor social, economic, and ecological outcomes, and a deeper understanding of the deficit in governance of NZ Fisheries. One outcome from this research was the production of a documentary aired on TV titled The Price of Fish<sup>3</sup> that examined the contradictions of the QMS and detailed many of the reform initiatives.

## 2. SCOPE OF EVIDENCE

- 2.1 In preparing this evidence, I have read the evidence in chief filed on behalf of Bay of Islands Maritime Park Incorporated (**BIOMP**), Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**) and the hapū of Ngāti Kuta ki Te Rawhiti (**Ngāti Kuta**), the hapū Te Uri o Hikihiki (**Te Uri o Hikihiki**) and the Northland Regional Council (**NRC**).
- 2.2 The evidence of both Ngāti Kuta and Te Uri o Hikihiki describes the loss of abundance and diversity of species within their rohe. NZSFC has been likewise saddened at the steady environmental losses along the North East Coast of Aotearoa.
- 2.3 My evidence addresses:
  - (a) NZSFC;
  - (b) The advent of industrial fishing and legislative responses;
  - (c) Response to the evidence of BIOMP, Forest and Bird, Ngāti Kuta and Te Uri o Hikihiki;
  - (d) Kina Barrens;
  - (e) Fishing effort displacement;

---

<sup>3</sup> <https://www.youtube.com/watch?v=dIQNDYoymMU>

- (f) Areas of outstanding and high natural character;
- (g) Benthic protection;
- (h) Providing for customary authority and utilisation; and
- (i) Effective and pragmatic fisheries wide intervention.

### **3. THE NEW ZEALAND SPORT FISHING COUNCIL**

- 3.1 The NZSFC is a recognised national sports organisation with over 37,000 affiliated members from 57 clubs nationwide. The NZSFC has a public outreach arm, LegaSea. The NZSFC participates in science working groups, management planning forums, and undertakes research on its own behalf. LegaSea generates widespread awareness and support for the need to restore abundance and diversity in our inshore marine environment. NZSFC and LegaSea along with their partners have established Fishcare<sup>4</sup>, a high welfare fishing education programme, and Kai Ika, a program to collect and utilise parts of fish usually discarded.
- 3.2 The NZSFC has invested heavily in research to understand policy options that are available to restore the mauri to the inshore fisheries. In short, we find exploitation rates of most species are far too high, unnecessary and damaging industrial methods are used in the inshore fishery. Commercial fishing rights holders are the greatest impediment to reform as they effectively lobby the Government to maintain high exploitation rates and damaging bottom contact methods.

#### **Hokianga Accord**

- 3.3 In 2005 the (then) Ministry of Fisheries initiated a programme to establish iwi customary fisheries forums around the country. Leaders from Ngapuhi and Ngāti Whatua agreed that their fishing interests extended beyond customary and that discussions needed to be broader, to include commercial and recreational interests.
- 3.4 In mid-2005 the Hokianga Accord was formed to include Ngapuhi, Ngāti Whatua, commercial, customary and amateur fishing interests. Since 2005 the NZSFC has been actively involved in the Hokianga Accord discussions,

---

<sup>4</sup> <https://fishcare.co.nz/>

hui and the development of submissions to the Ministry and Minister of Fisheries. Over the years the collective interests have met regularly to discuss ways to work together to rebuild important inshore fish stocks of mutual concern to both Māori and non-Māori.

- 3.5 Since 2007 the NZSFC has worked closely with the Hokianga Accord to develop more than 20 submissions in response to a range of fisheries management, policy and marine protection proposals.
- 3.6 In 2009 the NZSFC worked alongside the Hokianga Accord to develop a submission in support of the application by Te Kupenga o Ngāti Kuta me Patukeha ki te Rawhiti for a temporary closure of Maunganui Bay, Bay of Islands, under s186A of the FA. The NZSFC also worked with its local affiliate, the Bay of Islands Swordfish Club, to understand the importance of the s186A application and to submit in support of the same application by Ngāti Kuta and Patukeha ki te Rawhiti. Over the years the NZSFC continued to support the temporary closure to the harvest of all fisheries resources except kina.<sup>5</sup>
- 3.7 The NZSFC has also committed resources to education, to elevate public awareness about the sacred obligations that mana whenua have to protect and enhance the natural environment in their rohe, and the value of working with mana whenua to use the customary management tools available to better protect our kaimoana.
- 3.8 The NZSFC has actively supported Ngā Hapū o Taiāmai ki te Marangai in establishing the Te Puna Mātaitai reserve in the northern Bay of Islands in 2013. The Council contributed to several hui between 2018 and 2020 to support Ngā Hapū as they considered the local area management tools available to address kūtai (mussel) depletion and how to protect them for the benefit of future generations. Ministerial approval was achieved and a bylaw prohibiting the harvest of kūtai has applied since 23 March 2020.

### **Kai Ika Project**

- 3.9 On average, often only about 35% of the fish is consumed as skinned and boned fillets. The remaining 65% of the fish, i.e, the heads, frames and offal

---

<sup>5</sup> In 2014, 2016 and 2020 the NZSFC submitted again in support of subsequent applications for a temporary closure of Maunganui Bay under s186A of the FA.

are often discarded. Currently, this prized kai is entering various waste streams or is dumped.

- 3.10 In response, the Fishing Council, LegaSea, the Outboard Boating Club of Auckland (**OBC**), Westhaven and Papatūānuku Kōkiri Marae have teamed up to develop The Kai Ika Project. Since first established in September 2016 over 120,000 kg of previously discarded fish parts have been collected from the OBC and Westhaven by Papatūānuku Kōkiri Marae whanau and redistributed to needy families and community groups all over Auckland. The heads and frames are given to an appreciative local community. The offal is used as fertiliser in the marae gardens where kumara is also grown for distribution. Moana Fisheries has also stepped up to provide remnant fish parts.
- 3.11 The Kai Ika Project is a fantastic example of people working together to utilise and conserve natural resources.

#### **4. THE ADVENT OF INDUSTRIAL FISHING AND LEGISLATIVE RESPONSES**

- 4.1 The modern era of rapid loss can be seen as beginning more than 60 years ago when US flagged purse seine vessels were granted licences to target pelagic species in New Zealand's Territorial Sea. The once abundant schools of trevally and kahawai would quickly become relatively rare. The trevally have never recovered from the onslaught of industrial fishing. Local domiciled purse seine vessels operate in these inshore waters to this day and continue to deplete and disrupt the ecosystem.
- 4.2 The threat of over-fishing along Northland's eastern coast has been discussed by Northlanders since the 1950s. Each decade has brought renewed concerns over visible reductions in numbers of crayfish, snapper, trevally and hapuku from nearby coastal reefs. At Mimiwhangata, discussion documents from the 1970s describe heavy commercial fishing pressure on this part of the coast.
- 4.3 The 1970s ushered in a period of rapid expansion of industrial fishing vessels and onshore facilities that relied on industrial scale catches for processing. These vessels, trawl and Danish seine, were directed at inshore fish stocks and quickly depleted near shore fishing grounds.

- 4.4 The scale and rate of depletion resulted in a new natural predator/prey balance being established and species displacement continues to be seen in all of Fisheries Management Area 1 (**FMA1**).
- 4.5 Recent history has seen three legislative regimes enacted in the last 40 years to combat overfishing in the inshore fisheries:
- (a) The Fisheries Act 1983 which embraced licence limitation, where fisheries are managed by restricting inputs, such as vessel numbers or fishing gear used;
  - (b) The Fisheries Amendment Act 1986 which introduced Individual Transferable Quotas (**ITQs**) for catches of different species. The intention was to manage fish stocks at levels that ensured there would be future harvests by using output limits (catch); and
  - (c) Finally, a radical change in the specification of ITQs in the FA. Notionally the FA took a broader view than predecessor legislation and required the protection not only of fisheries, but also of dependent species, aquatic biodiversity and habitats.
- 4.6 Despite these attempts to combat overfishing, species have continued to decline with some becoming rare. With regard to Ngāti Kuta's evidence, Tarakihi and Hapuku are taonga that are no longer plentiful in their rohe. The NZSFC shares this view and also seeks interventions that will rebuild these stocks and see them again abundant and available.
- 4.7 There are many other species that have also suffered large declines in abundance and range. Trevally, Kahawai, Gurnard, John Dory, Flounder, Mullet, and many more have not recovered or thrived under any of the institutions designed to achieve this outcome.
- 4.8 There is a crisis in governance of fisheries assets in Aotearoa. The FA is failing to defend functioning ecosystems and this is obvious in the inshore fishery along the NE Coast. Whether inside or outside a marine protected area, whether estuarine or shelf dwelling, pelagic or demersal, targeted or bycatch, the general trend of decline continues. The NZSFC has a detailed

policy called Rescue Fish to reverse this trend that revolves around a new Fisheries Act.<sup>6</sup>

4.9 In my view, the issues raised in this proceeding must be considered in the context of this wider narrative of fisheries management.

## 5. CULTURAL EVIDENCE OF NGĀTI KUTA

5.1 The cultural evidence of Ngāti Kuta provides a description of past abundance and diversity that began to be lost during the 1970s and continues unabated through to the present.<sup>7</sup> The loss is a system wide loss that impacts across pelagic species, demersal species, seabirds, kelp forests, invertebrates and bivalves. The NZSFC supports and agrees with the general description given.

5.2 Ngāti Kuta notes the interconnectedness of nature and loss of mauri and wairua.<sup>8</sup> This resonates with western concepts of productivity of ecosystems, their resilience, and non-extractive value. The NZSFC shares these concerns and has active policies to re-establish abundance all along the north east coast of Aotearoa.

5.3 Ngāti Kuta notes the destructive nature of industrial fishing methods that use mobile bottom contact and bulk harvest methods, mainly trawling, danish seining, and purse seining.<sup>9</sup> The NZSFC shares these views and has active policy to prohibit all such methods from the territorial sea (12nM from land). This includes a complete ban on dredging for scallops.

5.4 The NZSFC disagrees with the value attributed to this Area A Buffer Zone.<sup>10</sup> Boundaries between closed and open fishing areas will always attract fishing pressure due to the expectation that fishing adjacent to a closed area will be more productive. The use of buffer zones along the boundaries of no fishing areas is a tactic to simply increase the size of the no fishing area, without explicitly saying so. There will always be a boundary and it is natural for fishing to occur there.

---

<sup>6</sup> <https://rescuefish.co.nz/>

<sup>7</sup> Statement of Evidence of Matutaera Te Nana Clendon, Robert Sydney Willoughby And George Frederick Riley on Behalf Of Themselves And The Hapū Of Ngāti Kuta Kī Te Rawhiti (Cultural) paragraph 103.

<sup>8</sup> Ibid at paragraph 107.

<sup>9</sup> Ibid at paragraph 109 and 129-133.

<sup>10</sup> Ibid at paragraph 123.



- 5.5 While the NZSFC agrees in general with the problem statement of Ngāti Kuta, and supports its desire to improve the abundance and diversity of marine life in its rohe moana, we differ in the proposed remedy. In my view a combined approach by the Appellants and the NZSFC (and potentially other parties to this proceeding) to the relevant Ministers would secure a more durable and effective regulatory intervention, including through the customary management tools available under the FA which are discussed later in my evidence. This view is buttressed by the fact that, while Ngāti Kuta's evidence strongly calls for protective measures to enhance the Mauri of the environment, the history of customary utilisation of marine resources is another central theme:

We are the fishers and we are the sea. We deeply feel the loss of our traditions and customs and way of connection with the moana.

- 5.6 One assumes therefore that the proposed Resource Management Act 1991 (**RMA**) closed areas are intended to enable, in time, a resumption of customary use of the moana. However, I have not seen any evidence on how or when this may occur. This is another reason that I consider that customary management tools available under the FA are better placed to respond to the issues raised by Ngāti Kuta.

## **6. CULTURAL EVIDENCE OF TE URI O HIKIHIKI**

- 6.1 Te Uri o Hikihiki seeks regulatory intervention for two main concerns:
- (a) a lack of abundance and diversity in waters close to Mimiwhangata; and
  - (b) benthic protection for a large reef system further offshore.
- 6.2 The NZSFC does not fundamentally contest this evidence. I note that the Mimiwhangata Marine Park was never meant to act as a marine reserve, it was always intended to be an attractive recreational boating and fishing area, and thereby attract fishing pressure. We would not therefore expect that fish numbers in the park would be noticeably different to adjacent waters.

- 6.3 Similarly, to Ngāti Kuta, the cultural evidence of Te Uri o Hikihiki notes the importance of the marine environment for utilisation as well as protection purposes:<sup>11</sup>

Te Uri o Hikihiki has always stressed the importance of seafood and marine life to the people of Ngāti wai, and it has distressed us greatly to see the decline in our food supply over this time period.

## **7. THE BAY OF ISLANDS MARITIME PARK INC**

- 7.1 The NZSFC notes the history of this groups' efforts to have a marine reserve created within the Bay of Islands. In my view this lobby promotes a Marine Protected Area (**MPA**) as a means of protecting a small area from the shortcomings of the FA. MPAs are promoted as an effective management tool to combat overfishing, and the apparent implication is that all that is required is more of them. While well intended, in my view such initiatives set back the cause of marine conservation by holding out hope that MPAs offer a full range of benefits, including to reverse depletion and disruption, and are a silver bullet to the public despair at the state of nature in the near shore environment.

## **8. KINA BARRENS**

- 8.1 The central biodiversity threat identified in the Appellants' evidence is the loss of kelp forests in the 2 to 10 meter depth range. This, it is contended, is due to an increase in the kina population due to a lack of predators, mostly large snapper and crayfish.<sup>12</sup>
- 8.2 The phenomenon known as kina barrens is not unexpected or restricted to the areas proposed to be closed to fishing. It has been estimated that within the area administered by the NRC approximately 5,500ha of kina barrens exist. Approximately 15% of the surveyed rocky reefs were classified as urchin barrens.<sup>13</sup>
- 8.3 The remedy sought by the Appellants is to prevent fishing in a small bay to allow for a relative increase in the numbers of large adult snapper and crayfish, and thereby restore a previous natural balance between snapper, crayfish, kelp, kina, and others. I acknowledge the expert evidence of Dr

---

<sup>11</sup> Evidence of Carmen Hetaraka on Behalf of Te Uri o Hikihiki Hapu at paragraph 88.

<sup>12</sup> Evidence of Dr Shears.

<sup>13</sup> Kerr and Grace 2017.

Shears in relation to these issues. However, in my view, the focus on protection of relatively small areas is too narrow and removes attention from the need to return to a more natural balance on a much broader scale. It also fails to account for the effect of displacement of fishing effort if MPAs are adopted as a broader scale solution (an issue I address below).

- 8.4 The FA provides for fishing within sustainable limits and provides wide discretionary powers to the Minister of Fisheries to set catch limits, size limits, area restrictions and method restrictions. Through these tools, the FA enables government to express policy when making decisions that reduce fish stock abundance, including snapper and crayfish. Current government policy is to fish stocks down to 20% of their natural unfished biomass. Managing stocks at these low levels requires that trade-offs be made between species and to a large extent selects winners and losers. Natural balances of predator and prey are disrupted and new ecosystem balances result. Reducing stocks to this level results in most of the large adults being removed and deliberately targets a stock structure of young fast growing fish.
- 8.5 As such, current government policy manages species abundance at levels that produce isolated kina barrens. For this state of affairs to change government policy needs to change.

## **9. FISHING EFFORT DISPLACEMENT**

- 9.1 The costs of concentrating fishing effort via displacement are not addressed in these proceedings. This issue should be of critical concern to a Regional Council contemplating closing areas to fishing in waters within its jurisdiction. Displaced fishing effort is the cost which is proportional to the benefit to closed areas.
- 9.2 If areas are closed to fishing effort, this will not result in a reduction of fishing effort. The same amount of fishing effort will be applied and catches sustained by increasing fishing pressure on adjacent waters. Therefore to the extent that the closed areas benefit from a reduction of fishing effort resulting in the reinstatement of a more natural predator prey balance, there is a commensurate disbenefit in areas without such restrictions where fishing effort will increase. In the same vein, the cost of prohibiting industrial methods such as purse seining from a relatively small designated part of the coast is

that it passes the problem to your neighbour. A more holistic solution is needed.

- 9.3 I understand that the Appellants are proposing that a policy be inserted into the Proposed Northland Regional Plan requiring the NRC to investigate and introduce further protection areas throughout the region. If this were to occur, the proportional effect of the displacement of fishing effort will concentrate fishing pressure on remaining areas.

## **10. AREAS OF OUTSTANDING AND HIGH NATURAL CHARACTER**

- 10.1 The NZSFC supports the protection of all areas of outstanding and high natural character from unnecessary modification by human activities. Examples are the ban on mobile fishing gear in Tom Bowling Bay to defend complex sponge gardens and objections to Regional Councils approving the dumping of dredging material in the Territorial Sea.
- 10.2 Much is made of the investigation and mapping of areas that could fall under the classification of outstanding or high natural character. The NZSFC does not *per se* dispute the areas identified, although I note that the mapping has been undertaken at a broad scale. More detailed investigation and classification would be required to determine the extent to which the values and attributes of these areas are threatened or uncommon. What is remarkable is that despite centuries of fishing, the diverse benthos in the areas of Cape Brett and down to Mimiwhangata remains largely intact and undisturbed. This raises the question, is a complete banning of fishing required to achieve the protection of areas of outstanding or high natural character, as seems to be suggested by the Appellants' evidence, or is a more nuanced approach available?

## **11. BENTHIC PROTECTION**

- 11.1 If the NRC attempts to regulate fishing to protect indigenous biodiversity and areas of outstanding character, then in my view a much finer grained problem definition and solution is required. In my view a part of this finer grained solution is the need for much wider benthic protection.
- 11.2 To an extent, the Appellants conflate fishing into a single activity and then contrast between areas fished and areas not fished. It is important to emphasise that not all fishing is equal in terms of its environmental effects. A

surface trolled lure and dragging a chain weighted trawl through rich benthos are both fishing, but have no similarities with respect to the effects on habitat, productivity, and biodiversity. Fishing with a lure for kahawai while trolling has no fisheries effect beyond any catch that is taken, the benthos and biodiversity remain unaffected.

- 11.3 Protecting benthic species assemblages requires excluding activities that damage them, whether it be by trawl gear or dumping of dredgings. There is no dispute that dragging chains or other heavy bottom contact equipment across the seafloor reduces biodiversity. Such activities have no place in the Territorial Sea.
- 11.4 The Area B identified as at risk from scallop dredging is small and retains seagrass beds similar to their natural state. Benthic protection is sought by banning scallop dredging through this area. However, the loss of shallow seagrass meadows has been more closely related to sedimentation than the effects of fishing<sup>14</sup>. In any event, the NZSFC supports the close to dredging and considers that a much wider ban on bottom contact methods within the territorial sea is warranted.

## **12. PROVIDING FOR CUSTOMARY AUTHORITY AND UTILISATION**

- 12.1 Providing for customary food gathering, customary authority, and customary conservation was anticipated and provided for by provisions in both the FA and the Fisheries (Kaimoana Customary Fishing) Regulations. Consent Authorities are bereft of these powers under the RMA. In my view, the issues raised in the evidence of Ngāti Kuta and Te Uri o Hīkīhīkī are therefore most appropriately addressed by a FA solution which provides for customary management and utilisation.
- 12.2 Part 9 of the FA provides for Taiāpure local fisheries and Customary fishing. The object of <https://www.legislation.govt.nz/act/public/1996/0088/latest/link.aspx?id=DLM397959 - DLM397959> this part is to make better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Te Tiriti o Waitangi in relation to areas of New Zealand

---

<sup>14</sup> Morrison.

fisheries waters that have customarily been of special significance to any iwi or hapu either:

- (a) as a source of food; or
- (b) for spiritual or cultural reasons.

12.3 Taiāpure can only be established in estuarine or coastal waters. Commercial, recreational and customary fishing are allowed in a taiāpure, unless its management committee recommends changes to the fishing rules and the Minister of Fisheries approves them. When a taiāpure is established, the local Māori community nominates people for the management committee. The committee is appointed by the Minister of Fisheries, after consultation with the Minister for Māori Development. The management committee can provide recommendations to the Minister of Fisheries for regulations to manage taiāpure fisheries, relating to:

- (a) species fished;
- (b) fishing seasons;
- (c) sizes and amounts of fish;
- (d) fishing areas; and
- (e) fishing methods.

12.4 Sections 186A and 186B of the FA provide for temporary closures and restrictions on fishing methods and recognition and provision for tangata whenua customary fishing rights and management practices. Temporary closures apply to everyone and may close a fishery for up to two years. To be approved, the Minister must consider the temporary closure will benefit tangata whenua.

12.5 As addressed above, a temporary closure of Maunganui Bay, Bay of Islands, is presently in place under s186A of the FA. There is no reason that an application could not be made to extend this closure to recognise and make provision for the use and management practices of tangata whenua in the exercise of non-commercial fishing rights.

12.6 The Fisheries (Kaimoana Customary Fishing) Regulations 1998 provide for Mātaitai Reserves. The tangata kaitiaki of a mātaitai reserve may recommend

bylaws that restrict or ban the taking of fisheries resources from all or part of that reserve. Bylaws must be for the sustainable management of the fisheries resources in that mātaihai and must be consistent with the purpose of the customary fishing regulations. Bylaws can cover:

- (a) species of fish, seaweed, or aquatic life that may be taken;
- (b) the quantity of each species that may be taken;
- (c) size limits for each species;
- (d) the method used to take species;
- (e) the area or areas that species may be taken from; and
- (f) anything else the tangata kaitiaki consider is needed for the sustainability of fisheries resources in the reserve.

12.7 As noted above, the NZSFC actively supported Ngā Hapū o Taiāmai ki te Marangai in establishing the Te Puna Mātaihai reserve in the northern Bay of Islands, in 2013. A bylaw prohibiting the harvest of kūtai has applied since 23 March 2020.

12.8 Under clause 33 of the customary fishing regulations the Minister must provide to any Tangata Kaitiaki such information and assistance as may be necessary for the proper administration of the regulations and do so in accordance with section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

12.9 In my view, these tools are much better suited to providing for the exercise of customary management by Ngāti Kuta and Te Uri o Hikihiki. The NZSFC has shown that it is willing and able to assist hapu with the utilisation of these tools.

### **13. EFFECTIVE AND PRAGMATIC FISHERIES WIDE INTERVENTION**

13.1 While the utilisation of customary management tools under the FA would address the anthropological problem of the interruption of the exercise of customary authority, the intervention needed properly to give effect to the ecological aspirations of Ngāti Kuta and Te Uri o Hikihiki is fishery wide. Efforts at restoration one bay at a time will only exacerbate the problem being addressed by directing fishing pressure to remaining areas. Using the RMA

in a way that pushes costs onto adjacent areas, and determines winners and losers, is inequitable.

- 13.2 The ecological problem to be solved is the disruption to the near shore ecosystem that has resulted from the removal of large snapper and crayfish, and to protect the benthos from mobile fishing gear.
- 13.3 The ecological remedy in respect of large snapper and crayfish has two parts.
- (a) **Set a maximum size limit for snapper and crayfish.** A simple regulation that requires all snapper and crayfish over a specified size to be immediately returned to the sea. This would be immediately effective in increasing relative abundance. This strategy of using size ranges is common in fisheries management to protect both small and large individuals, particularly when pursuing short term change in age structure. This is a simple matter under section 297 of the FA. It is unnecessary to exclude all hook and line fishing to protect two species of certain sizes. All large snapper hooked in these depths can be released alive by the simple act of removing the hook and allowing the fish to swim away. Neither large snapper nor crayfish are coveted by recreational or commercial fishers. The desire for trophy catches is rapidly declining for non commercial fishers and commercial value is maximised by avoiding these large specimens. It makes sense to offer some protection to the predators of kina.
- (b) **Immediately reduce catches to allow the populations of crayfish and snapper to increase to no less than 50% of their natural unfished state.** At this biomass level, older and larger fish make up a greater proportion of the population. This intervention is only available to the Minister of Oceans and Fisheries under section 13 of the FA.
- 13.4 The policy of the NZSFC is to restore stocks to between 50 and 60% of their natural state, thereby increasing the numbers of large individuals of most species throughout the inshore ecosystem. This policy aims to restore biodiversity throughout the Territorial Sea. The Council considers the state of SNA8 (west coast of north island) to be a more acceptable new natural state than that of the east coast. SNA8 is assessed at above 50% of its natural state and increasing. If FMA1 could also be restored to this state kina barrens would largely disappear.



- 13.5 These are the interventions that will provide an enduring solution to reduce kina barrens in the waters able to be regulated by the NRC. The Appellants would find widespread support from the community to advocate for this intervention. Both interventions depend upon the Minister of Fisheries using powers available under the FA.
- 13.6 It is only by reducing exploitation rates across the inshore fishery, and removing mobile bottom contact fishing methods from the inshore fishery securing benthic protection for all species, that the wellbeing of the marine environment will be restored.

**Barry David Torkington**

**14 May 2021**