

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND  
I MUA I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**UNDER** the Resource Management Act 1991  
**IN THE MATTER** of appeals under Clause 14 of Schedule 1 of the Act  
**BETWEEN** **BAY OF ISLANDS 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**

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**REBUTTAL EVIDENCE OF GEORGE RILEY FOR NGĀTI KUTA KI TE  
RAWHITI HAPŪ (CULTURAL)**

**TOPIC 14 – MARINE PROTECTED AREAS**

**22 JUNE 2021**

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**MAY IT PLEASE THE COURT**

1. My name is George Frederick Riley.
2. My qualifications and experience are set out in the primary statement of evidence dated 19 March 2021 that I produced together with Robert Willoughby and Matutaera Clendon. I confirm that in preparing this evidence I have complied with the Expert Witness Code of Conduct.

**KAITIAKITANGA UNDER THE FISHERIES ACT**

3. This evidence responds to the evidence of:
  - a. Tā Tīpene O'Regan
  - b. Kier Volkerling
  - c. Aperahama Edwards
  - d. Wane Wharehau
  - e. Mark Ngata
4. This rebuttal evidence responds to the evidence of Tā Tīpene O'Regan and others who speak of kaitiakitanga under the Fisheries Act.
5. I would like to endorse the work done by Tā Tīpene and recognise the injection of Kaitiakitanga into legislation at the time of the hard-fought battles to recognise Maori Fisheries interests.
6. I generally agree with the evidence of Mr Volkerling or Mr Edwards of the Ngāti Wai Trust Board, but given the significant changes impacting Māori interests and the limited capacity of our hapū to respond then we should be making the best use of whatever opportunities arise. This is the case here – in the absence of any process driven and resourced by Te Runanga ā Iwi o Ngāpuhi, Ngāti Kuta have been able to participate in this process with our partners in the Bay of Islands and Forest and Bird.
7. In May 2000 I was accepted, trained, and inducted into the Deed of Settlement Implementation Programme (DOSIP) of the Ministry of Fisheries as a Customary Fisheries Officer. This programme was funded by the Crown to meet their obligations under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. We were the second cohort of officers and liaison persons to be trained and inducted in that programme. The course comprised several elements including three months residential programme at the Royal Police College at Porirua.
8. We studied a MFISH course covering the 1986 Fisheries Act as well as many of the associated regulations and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 also in part, known as the 'Sealord's' Deal.
9. Later on in my career we also studied the replacement for the 1986 Act – the Fisheries Act 1996, the Maori Fisheries Act 2004/5 and the Māori Commercial Aquaculture Claims Settlement Act 2004 and importantly the Kaimoana Regulations 1992.

10. Establishment and implementation of the Kaimoana Regulations was the second part of the 'Sealords' deal where Māori had allowed their total 'bundle of fisheries rights and interests' to be split into Commercial, Customary, Recreational and Scientific sectors.
11. After five years in Compliance, I moved to the role of Pou Hononga as Relationship Manager for the Ministry of Fisheries in the Tai Tokerau region. My rebuttal evidence is based on those learnings and experience in these roles and others with the many aspects of Fisheries legislation in Tai Tokerau.
12. As above I state again that the work achieved by Tā Tīpene et al was significant and remains so. However, the scope of the roles, functions and powers of Tāngata Tiaki, Tāngata Kaitiaki or Kaitiaki pursuant to the Kaimoana Regulations are quite distant from the level of aspiration expressed by hapū and iwi across Tai Tokerau.
13. In respect of Customary Permits issued under Amateur Fishing Regulations referred to by Mr Wane Wharerau, the nominated persons are only empowered as 'Permit Issuers' and their permits are only a defence mechanism against charges of illegal possession and/or taking of fish and shellfish. If charged the persons still had to prove a 'genuine' Customary Purpose existed for access to the defence mechanism.
14. Tāngata Tiaki or Kaitiaki are actually empowered under the Kaimoana Regulations and these regulations can only be established after agreement to gazette a 'rohe moana'. In some areas – long, smooth, coast lines for example – that agreement can be rather straight forward. However, in a large bay areas with many resident hapū adjoining and/or accessing the seashore that agreement can be difficult to attain. This is the case in the Bay of Islands.
15. When I joined the Pou Hononga team in 2005 (this was the time of the Seabed and Foreshore Act) that 'agreement' for gazetting 'rohe moana' was one of my primary functions. A lot of time and effort went into establishing a rohe moana for the Hokianga.
16. I was lucky to have a rohe moana already established on the north western side of the Bay of Islands. That rohe was gazetted by Ngā Hapū o Taiamai ki te Marangai and managed by Te Rōpū Whakature I Ngā Taonga o Tangaroa of which Mr Rihari is a highly respected and active member.
17. Part of my work with that group was to assist colleagues with the fisheries management plan and establishment of an associated mātaimai. The mātaimai discussions were initiated in 1998, the rohe moana gazetted in 2000 and the mātaimai established by gazette notice in 2013. A bylaw was enacted in 2020.
18. The second part of my role was to support the establishment of two Tai Tokerau forums for Māori Customary Fisheries. Alongside Graeme Morrell there would be one in the mid-North, the Hokianga Accord and another in the Far North/Te Hiku.
19. Since inception August 2000, Te Rōpū Whakature had received little or no assistance from MFISH to advance their interests so they teamed up with non-

Maori recreational fishing groups, the Ngāpuhi Rūnanga and formed the Hokianga Accord. This action was not appreciated at all by MFISH in Wellington and funding and support became conditional on Māori interests only or were to be withdrawn. This is the case now. The Hokianga Accord put a lot of effort into the Kahawai Legal Challenge of 2008/9.

20. The Te Hiku Regional Fisheries Forum is still going. They look at TACC proposals and members make applications to the national contestable fund of \$300,000 per annum for scientific research into fisheries. Mostly the research applications centre on the depletion of species.
21. Also, in the Waikare Inlet in the Bay of Islands in 2005 was an established Taiāpure led by Te Kapotai hapū. Their whakaaro was to have as broad a group as was possible in the management team. So, they had opted to establish a Taiāpure which incorporated commercial fishing interests in the management regime. The Taiāpure management is mostly dormant.
22. On the eastern side of the Bay of Islands at least two collectives had declared an interest in establishing a rohe moana to come alongside the north western rohe and cover the whole of the BOI. These applications were part of the Ngāpuhi Rūnanga structural approach to representation of Takiwā. However, a series of objections – some by individuals and others by hapū led delegations, were unable to be reconciled and after a number of years the applications had fallen by the wayside.
23. I worked to resurrect the initial applications and eventually assisted the Ngati Kuta and Patu Keha hapū of Te Rawhiti to attempt gazetting a rohe moana. I left the Pou Hononga role in 2008, prior to the successful gazette and joined the staff at Te Rūnanga a Iwi o Ngāpuhi as a Hapū Development kaimahi.
24. In the new role at TRAION I was able to support the Hokianga Accord, establish the BayCare Sedimentation group (affiliated to the Bay of Islands Maritime Park) and Waiora Hokianga (a bi-Iwi and multi-hapū response to issues of *Escherichia coli* pollutants negatively impacting 'customary' harvesting of fisheries in the Hokianga harbour).
25. Prior to my departure from MFISH we had bought the Pou Takawaenga team to the Rawhiti Marae to complete the necessary elements of their Fishery plan. The plan was developed by the community with Robert Willoughby and Natasha Clarke making significant contribution. Eventually Natasha took over my vacated roles at MFISH and was soon after absorbed into MPI.
26. While the rohe moana application was in process the hapu opted for a section 186A closure of the fishery in Maunganui Bay. The s 186A is about sustaining a cultural fishery, and could not deliver all of the management tools that the hapū plan sought but it was the only option available at the time. A s 186A closure was designed to only ever be an interim measure while rohe moana negotiations were conducted and the rohe was gazetted.
27. The point of this history is to illustrate the difficulty of gazetting a rohe moana and the limitations of Customary Harvest Permits under Regulation 29 of the

Amateur Regulations, in response to those who say the Fisheries Act is “nimble” and enables us to exercise kaitiakitanga.

28. After a rohe moana has been successfully established Kaitiaki are nominated and their appointment confirmed by the Ministry. They operate an expanded definition of Customary Purpose which includes translocation. This contrasts with Reg 29 permits where possession may only be for consumption at a genuine event.
29. Neither of these ‘Kaitiaki’ are empowered to act for holistic or integrated ecological purpose. They cannot create bylaws or laws; they cannot restrict access or method for non-permit activities; they cannot act for any ‘kaupapa Māori’ beyond harvest or translocation. As Kaitiaki they are extremely limited in what they can do for their hapū or taiao.
30. In response to Mr Ngata, the effect of commercial fishing in the Bay of Islands is well illustrated by the case of piper. Piper – takeke - are a significant species for the hapū of Rawhiti. Some three decades ago a commercial operator was targeting piper (takeke) in the inner islands. After only two years of activity the resource was so depleted, they stopped operating and have not returned since.
31. This case illustrates the fact that commercial fishers move on when the catch per unit effort is uneconomic. More evidence on a wider scale is available in the recent history of the Scallop fisheries of Spirits Bay, Rangaunu Harbour, East Beach, Whangaroa Harbour, Doubtless Bay and Bream Bay. In the 1990s these were highly productive fisheries with regular harvests of 90 bins per boat per day. Now the fisheries are completely closed or boat limits are heavily reduced to only five bins per day.
32. In summary, if there is no alternative fishery available for access then commercial interests might seek reductions in TACC but the experience of the Scallop collapse and depletion of the inner BOI piper fisheries requires a highly cautionary approach when considering the impacts of commercial harvesting upon sustainability.
33. In response to the confusion spoken of by Mr Wharerau; Kaitiakitanga is about sustainable harvesting – in totality that exercise of Kaitiakitanga (really a hungatiaki) - requires a more holistic approach than can be garnered by rules and regulations under the Fisheries Acts.
34. This is the reason for supporting the current application: not to diminish the Kaitiakitanga available under Fisheries legislation in any way or relinquish the current gains pursuant to the Fisheries Acts but to strengthen them by widening the scope of influence as the existing Kaitiaki Regs and s 29 of the Amateur Regs are manifestly inadequate. This update will be welcome news to all coastal and inland hapū who have interests beyond monetary returns from their fisheries.
35. I reject the notion presented by Mr Drummond that establishment of a ‘pātaka kai’ depends upon the current status remaining. ‘Pātaka Kai’ receive fish during summer months for access across the winter. Typically, these stocks are frozen

fish fingers or frozen dory or hoki from Sealord's. They are caught commercially and recorded as customary catch.

36. In the region under discussion we would not be furnishing any hapuka to the pātaka as there are none. The waters are too deep for crayfishing except by commercial pot hauling boats with winches; stocks of kingfish are very limited. We would be restricted to kahawai and/or trevally as is the case now albeit in much reduced numbers of Biomass estimates.

**George Riley**

**22 June 2021**