

IN THE HIGH COURTS OF NEW ZEALAND  
AUCKLAND REGISTRY

CIV-2017-404-558

CIV-2017-

IN THE MATTER OF

the Marine and Coastal Area  
(Takutai Moana) Act 2011  
(the Act)

AND IN THE MATTER OF

an application by RIHARI  
DARGAVILLE for an order  
recognising Customary  
Marine Title and Protected  
Customary Rights.

**RIHARI DARGAVILLE APPLICATION  
FOR RECOGNITION ORDERS PURSUANT TO THE MARINE AND COASTAL  
AREA (TAKUTAI MOANA) ACT 2011**

Dated 27th March 2017



**RIGHTLAW**

Barristers and Solicitors  
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**To:** The Registrar of the High Court at Auckland;

**and to:** Local authorities (Regional and/or District Councils) with statutory functions in the application area) *Far North District Council, Northland regional Council*

**and to:** Local authorities (DOC, DIA, EPA, MBIE, NZPAM) with statutory functions relating to land adjacent to the application area) *Department of Conservation, Transit, Ministry of Defence*

**and to:** The Solicitor General on behalf of the Attorney-General.

***This document notifies you that:***

1. RIHARI DARGAVILLE will apply to the High Court for an order pursuant to s98 of the Marine and Coastal Area (Takutai Moana) Act 2011 ("the Act") to recognise the customary marine title and protected customary rights of Ngaitawake.

**Protected Customary Rights**

2. *Ngaitawake* ancestors utilised the common marine and coastal area for fishing, gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones;

**The Applicant Group:**

3. *The Ngaitawake whakapapa to and NGA TUPUNA* :, *Papatuanuku = Ranginui = Tangaroa, Pūhi Moana Ariki, Kupe - Kuramarotini, Nukutawhiti, Ruanui, Hauangiangi, Tahuhu Nui O Rangi, Punateahiahi, Ahuaiti = Rahiri, Uenuku ki te Marangai, Kaharau ki te Hauauru, Auha, Te Hotete, Kauteawha, Hongi Hika, Ururoa, Pomare I, II, Taurapoho, Mahia, Tupoto, Tamati Waka Nene, Patuone,*
4. *RIHARI DARGAVILLE* was appointed to make this application for and on behalf of the *Ngaitawake* on 27th March 2017.

**Area to which the application relates:**

5. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) generally referred to as Whangaroa, that is bounded:
  - a. on the landward side by the line of mean high-water springs;
  - b. on the seaward side by the outer limits of the territorial sea;
  - c. on the Northward side by a line that extends from the coast abutting Matauri bay including any islands] to the outer limits of the territorial sea; and
  - d. on the southward side by a line that extends from the coast abutting from Hihi including any islands to the outer limits of the territorial sea.
  
6. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) generally referred to as Mahurangi/Waitemata, that is bounded:
  - a. on the landward side by the line of mean high-water springs;
  - b. on the seaward side by the outer limits of the territorial sea;
  - c. on the Westward side by a line that extends from the coast abutting Henderson Creek including any islands] to the outer limits of the territorial sea; and
  - d. on the northward side by a line that extends from the coast abutting from Te Arai Point including any islands to the outer limits of the territorial sea which includes Waiheke, Rangatoto, Great and Little Barrier islands Kawau, and surrounding islands.
  
7. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) generally referred to as Hokianga, that is bounded:
  - a. on the landward side by the line of mean high-water springs;
  - b. on the seaward side by the outer limits of the territorial sea;
  - c. on the Northward side by a line that extends from the coast abutting Herekino, along the coast and into the Hokianga harbour and its creeks of the sea and esturine territories including any islands] to the outer

limits of the territorial sea; and

- d. on the southward side by a line that extends from the coast abutting from Kaihu including any islands to the outer limits of the territorial sea.

8. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) generally referred to as Kaipara, that is bounded:

- a. on the landward side by the line of mean high-water springs;
- b. on the seaward side by the outer limits of the territorial sea;
- c. on the Northward side by a line that extends from the coast abutting *Waimamaku River* including any islands] into the Kaipara harbour and its creeks of the sea and esturine territories to the outer limits of the territorial sea; and
- d. on the southward side by a line that extends from the coast abutting from Northern Manukau heads near Whatipu including any islands to the outer limits of the territorial sea.
- e.

9. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) generally referred to as Bay of Islands, that is bounded:

- a. on the landward side by the line of mean high-water springs;
- b. on the seaward side by the outer limits of the territorial sea;
- c. on the Northward side by a line that extends from the coast abutting cape Wikiwiki including any islands] into the Bay of Islands and its creeks of the sea and esturine territories to the outer limits of the territorial sea; and
- d. on the southward side by a line that extends from the coast abutting from Cape Brett including any islands to the outer limits of the territorial sea.

10. The area to which this application relates is the common marine and coastal area (as defined in s9 of the Act) generally referred to as Whangarei area, that is bounded:

- a. on the landward side by the line of mean high-water springs;
- b. on the seaward side by the outer limits of the territorial sea;
- c. on the Northward side by a line that extends from the coast abutting cape Brett including any islands] into the Whangaruru and Whangarei Harbours and its creeks of the sea and esturine territories to the outer limits of the territorial sea; and
- d. on the southward side by a line that extends from the coast abutting from Te Arai point including any islands to the outer limits of the territorial sea.

11. The area includes the common marine and coastal area surrounding the following islands: All islands and reefs lying off shore from the coastline to a distance of 12 nautical miles, a list of the major ones is attached as Island appendix.

12. The links are to many illustrious hapu

**NGA TUPUNA :**

Papatuanuku = Ranginui = Tangaroa

Puhi Moana Ariki

Kupe - Kuramarotini

Nukutawhiti

Ruanui

Hauangiangi

Tahuhu Nui O Rangī

Punateahiahi

Ahuaiti = Rahiri

Uenuku ki te Marangai, Kaharau ki te Hauauru

Auha, Te Hotete, Kauteawha, Hongi Hika, Ururoa, Pomare I, II

Taurapoho, Mahia, Tupoto, Tamati Waka Nene, Patuone

**Grounds on which the protected customary rights order is sought:**

13. The grounds on which this order is sought are that :

- a. Ngaitawake being a coastal group has relied heavily on Karati (baby snapper), kawhai, parore (black snapper), araara (trevally), kuparu

(john dory), tarakilhi, maroro (flying fish), tuere (blind eel), pakirikiri (butterfish), pia (lamprey), kokopu (esturine cockabully), paea (swordfish), kehe (marblefish), tuna (blue nose), kotare (kingfish), kohikohi (trumpeter), tohora (whale), hapuka (groper), tamure (snapper), takeketonga (marlin), mango (dogfish/shark), mango ururoa (white shark), mango taniwha (white pointer shark), patiki (flounder), tarore (sole), kanae (mullet), warahenga (stingray), porae, kumukumu (gurnard), tikati (gemfish), ngu (squid), wheke (octopus), inanga (esturine whiteba it), karawaka wai tote (esturine crayfish), aua (herring/sprat). Toheroa, tuatua, tipatipa, kutai, puruwha, tio, pipi, kokata, oi, titi, pauia, koura, papaka, tuatua, tuangi (clam), kina, pupu, karahu, rimurimu and wetland food stocks foraged by whanau in the estuaries and coastal margins; and

- b. Ngaitawake fishermen sought the deep water fish that were not available around the inner shoreline; and
- c. Ngaitawake also undertakes the following activities in the common marine and coastal area: fishing, gathering shellfish, seaweed, stones, pumice, semi precious stones, shells, drift wood, whale and whale bones.
- d. Ngaitawake has undertaken these activities since and before 1840 and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

14. Ngaitawake will deliver more information once funding for research and legal representation is secured.

**Grounds on which the customary marine title application is made:**

15. The grounds on which this order is sought are that :

- a. Ngaitawake has held the application area in accordance with tikanga since before 1840.
- b. Ngaitawake has exclusively used and occupied the application area from 1840 to the present day without substantial interruption.

16. Ngaitawake will deliver more information once funding for research and legal representation is secured.
17. The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rangatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
18. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, *inter alia*:
- a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
  - b. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by descendants of Ngaitawake;
19. The sustenance and physical, spiritual and cultural well-being of all The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rangatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
20. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, *inter alia*:
- a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
21. The sustenance and continued observance of customary and traditional practices, integral

to tikanga carried out by descendants of The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture - growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.

22. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:
  - a. The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
  - b. The sustenance and continued observance of customary and traditional practices, integral to tikanga carried out by descendants of Ngaitawake;
  - c. The sustenance and physical, spiritual and cultural well-being of all Ngaitawake whanau, hapu and iwi;
  - d. The economic development of Ngaitawake whanau, hapu and iwi; and
  - e. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
23. The applicants hold, in accordance with tikanga customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The tikanga integral to the descendants of Ngaitawake governing these activities, uses and practices will be provided in the evidence from the Ngaitawake descendants to be given at hearing.
24. The activities, uses and practices for which the descendants of Ngaitawake seek recognition as protected customary rights and/or providing the foundation for customary marine title:
  - a. Have been and continue to be carried on, exercised and followed in accordance with tikanga of the descendants of Ngaitawake in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore



- and seabed) specified herein;
- b. If interrupted since 1840 then only by unlawful interruption or interference;
  - c. Are not prohibited by any enactment or rule of law; and
  - d. Have not been extinguished as a matter of law.
25. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices *carried on, exercised and followed by the descendants of Ngaitawake are included in this application*. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.
- a. Ngaitawake;
  - b. The sustenance and physical, spiritual and cultural well-being of all Ngaitawake whanau, hapu and iwi;
  - c. The economic development of Ngaitawake whanau, hapu and Iwi; and
  - d. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
26. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the descendants of Ngaitawake governing these activities, uses and practices will be provided in the evidence from the Ngaitawake descendants to be given at hearing.
27. The activities, uses and practices for which the descendants of Ngaitawake seek recognition as protected customary rights and/or providing the foundation for customary marine title:
- a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the descendants of Ngaitawake in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;
  - b. If interrupted since 1840 then only by unlawful interruption or interference;

- c. Are not prohibited by any enactment or rule of law; and
  - d. Have not been extinguished as a matter of law.
28. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the descendants of Ngaitawake are referred to in this application. Whilst the particulars in this application are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.
- a. Ngaitawake whanau, hapu and iwi;
  - b. The economic development of Ngaitawake whanau, hapu and Iwi; and
  - c. The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
29. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised herein. The *tikanga* integral to the descendants of Ngaitawake governing these activities, uses and practices will be provided in the evidence from the Ngaitawake descendants to be given at hearing.
30. The activities, uses and practices for which the descendants of Ngaitawake seek recognition as protected customary rights and/or providing the foundation for customary marine title:
- a. Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the descendants of Ngaitawake in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;
  - b. If interrupted since 1840 then only by unlawful interruption or interference;
  - c. Are not prohibited by any enactment or rule of law; and
  - d. Have not been extinguished as a matter of law.
31. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices

carried on, exercised and followed by the descendants of Ngaitawake as mentioned in this application. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.

**Contact Details:**

6. The *RIHARI DARGAVILLE* for *Ngaitawake* is:  
C/o G Sharrock

Rightlaw Limited

11 Kaihu Street, Northcote Auckland

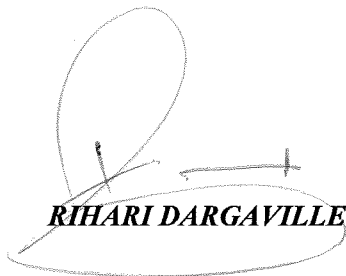
7. This application relies on s51(1), s58, s98-113 of the Act and the affidavit of Rihari Dargaville, kaumatua of Ngaitawake.

Dated at

*Auckland*

on the

*30/03/2017*

  
**RIHARI DARGAVILLE**

**TE KAUNIHERA MAORI O TE TAI TOKERAU**  
**Schedule of Particulars of Marine Title & Protected Customary Rights**

**R D Dangaville**  
**Applicant**

**NGA TUPUNA :**

Papatuanuku = Ranginui = Tangaroa  
 Puhi Moana Ariki  
 Kūipe - Kuramarotini  
 Nukutawhiti  
 Ruanui  
 Hauangiāngi  
 Tahuhu Nui O Rangī  
 Punateahiahi  
 Ahuaiti = Rahiri  
 Uenuku ki te Iwārangai, Kaharau ki te Hauauru  
 Auha, Te Hotete, Kautēawha, Hongi Hika, Ururoa, Pomare I, II  
 Taurapoho, Mahia, Tupoto, Tamati Waka Nene, Patuone

ROHE POTAE Maps & Boundaries	HOKIANGA  Map #1	WHANGAROA  Map #2	PEIWHAIRANGI  Map #3	TE RERENGA PARAOA WHANGAREI Map #4	MAHURANGI  Maps #5, 6	KAIPARA  Map #7
<b>PROOF of OWNERSHIP</b>	Whakapapa tuakana teina mana whenua mana moana – refer to <i>He Whakaputanga me te Tiriti – The Declaration and the Treaty</i> – Waitangi Tribunal Stage One Report Te Paparahi O Te Raki WAI 1040 Inquiry – November 2014.					
<b>ACTIVITIES</b> How it is Carried Out – How Often	<p>Shellfish hand-gathering, hand and rod fishing, netting, free diving, daily and seasonal based on te maramataka. Whale hunting was an annual activity.</p> <p>Karati (baby snapper), kawhai, parore (black snapper), araara (trevally), kuparu (john dory), tarakihi, maroro (flying fish), tuere (blind eel), pakirikiri (butterfish), pia (lamprey), kokopu (esturine cockabully), paea (swordfish), kehe (marblefish), tuna (blue nose), kotare (kingfish), kohikohi (trumpeter), tohoroa (whale), hapuka (groper), tamure (snapper), takeketonga (marlin), mango (dogfish/shark), mango ururoa (white shark), mango taniwha (white pointer shark), patiki (flounder), tarore (sole), kanae (mullet), warahenga (stingray), porae, kumukumu (gurnard), tikati (gemfish), ngu (squid), wheke (octopus), inanga (esturine whitebait), karawaka wai tote (esturine crayfish), aua (herring/sprat). Toheroa, tuatua, tipatipa, kutai, puruwaha, tio, pipi, kokata, oi, titi, paua, koura, papaka, tuatua, tuāngi (clam), kina, pupu, karahu, rimurimu.</p> <p>The general functions of Te Kaunihera Maori O Te Tai Tokerau under the Maori Community Development Act 1962 in respect to its constituents are :</p> <p>(a) to consider and discuss such matters as appear relevant to the social and economic advancement of the Maori race:</p> <p>(b) to consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Maori race and other members of the community:</p> <p>(c) to promote, encourage, and assist Maori—</p>					

	<ul style="list-style-type: none"> <li>(i) to conserve, improve, advance and maintain their physical, economic, industrial, educational, social,</li> <li>(ii) to assume and maintain self-reliance, thrift, pride of race, and such conduct as will be conducive to their general health and economic well-being;</li> <li>(iii) to accept, enjoy, and maintain the full rights, privileges, and responsibilities of New Zealand citizenship;</li> <li>(iv) to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and</li> <li>(v) to preserve, revive and maintain the teaching of Maori arts, crafts, language, genealogy, and history in order to perpetuate Maori culture:</li> </ul> <p>(d) to collaborate with and assist State departments and other organisations and agencies in—</p> <ul style="list-style-type: none"> <li>(i) the placement of Maoris in industry and other forms of employment;</li> <li>(ii) the education, vocational guidance, and training of Maori;</li> <li>(iii) the provision of housing and the improvement of the living conditions of Maori;</li> <li>(iv) the promotion of health and sanitation amongst the Maori people;</li> <li>(v) the fostering of respect for the law and law-observance amongst the Maori people;</li> <li>(vi) the prevention of excessive drinking and other undesirable forms of conduct amongst the Maori people; and</li> <li>(vii) the assistance of Maoris in the solution of difficulties or personal problems.</li> </ul> <p>He Whakaputanga 1835 and Te Tiriti O Waitangi 1840 underpin the legal obligations of the Act.</p> <p>The crown have disrupted and continue to disrupt the rangatiratanga rights and interests of the constituents of Te Kaunihera Maori O Te Tai Tokerau.</p>
<p><b>NGA TIKANGA</b> Governing the Activity(s)</p>	<p>Te Ao Maori, matariki ki te takaitaimoana, mana whenua mana moana, nga toka ki nga whanau hapu ki te moana, whaka whanaungatanga, mana tapu, mana muru, mana tikanga rahui</p>
<p><b>ROHE POTAE</b> Mahinga kai, mahinga mataitai, pure (Maps &amp; Boundaries)</p>	<p>As outlined in yellow on the maps attached.</p> <p>As listed on the Islands Appendix attached.</p>

## Island Appendix

- Aiguilles Island
- Aorangaia Island
- Araara Island
- Arakaninihi Island
- Arapaoa Island
- Aroha Island
- Awarua Rock
- Bay of Islands (ipipiri)
- Browns Island, Auckland
- Calliope Island, Whangarei Heads
- Cavalli Islands
  - Motukawanui, Motutapere, Panaki, Nukutaunga, Motuharakeke, Haraweka, and Motukawaiti Islands
- Chalky Island
- Dragon Island
- Frenchman Island, Whangarei Heads
- Goat Island, Auckland
- Great Barrier Island/Aotea
- Guano Island, Whangarei Heads
- Hen and Chicken Islands
- Herald Island, Waitemata Harbour
- Kawau Island
- King Billy Island
- Little Barrier Island (Hauturu)
- Mahurangi Island (Goat Island)
- Matakana Island
- Maud Island/Te Hoiere
- Mauitaha Island, Whangarei Heads
- Mokohinau Islands
- Motuhoa Island
- Motuihe Island
- Motukaroro Island
- Motukiore Island, Parua Bay
- Motunau Island
- Motuoroi Island
- Moturua Island
- Moturohia Island
- Moturaka Island
- Motutapu Island
- Noble Island
- Opahekeheke Island
- Pakatoa Island
- Pearl Island
- Piercy Island
- Ponui Island
- Poor Knights Islands
- Rakino Island
- Rangitoto Island
- Rotoroa Island
- 
- Takangaroa Island
- Tapu Te Ranga Motu
- Tarahiki Island

- Tarakanahi Island
- **Three Kings**
- *Tikitiki Island, (The Ninepin), Bay of Islands*
- Tiritiri Matangi Island
- Urupukapuka Island
- Waiheke Island
- Walker Island, New Zealand
- Watchman Island, Waitemata Harbour
- Waewaetoria