

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

CIV2005

Under Part I of the Judicature Amendment Act 1972

In the matter of an application for review

between

**The New Zealand Recreational Fishing Council Inc, and New Zealand Big
Game Fishing Council Inc**

Plaintiffs

and

Minister of Fisheries

First Respondent

and

The Chief Executive of the Ministry of Fisheries

Second Respondent

and

**Sanford Limited, Sealord Group Limited, and Pelagic & Tuna New Zealand
Limited**

Third Respondents

**Affidavit of Raniera TeiTinga (Sonny) Tau in Support of Application for
Review**

Sworn this *10th* day of August 2005



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SONNY AFFIDAVIT TO SIGN/s

I, Raniera TeiTinga ("Sonny") Tau of Kaikohe, swear:

1. I am the Chairman of Te Runānga-Ā-lwi-O-Ngāpuhi ("TRAION"), a body elected by tribal members to represent the interests of the Ngāpuhi nation.
2. I am authorised by TRAION¹ to make this affidavit in support of the challenge against the kahawai decisions of the Minister of Fisheries for the 2004/2005 fishing years.
3. I regularly fish in the waters around the Bay of Islands, Hokianga, Whangaroa, Mitimiti, Whangarei and many other areas in the North.
4. Before addressing the reasons why this case is supported, I set out some background about TRAION and Ngāpuhi.

Te Runānga-Ā-lwi-O-Ngāpuhi

5. Te Runānga-Ā-lwi-O-Ngāpuhi was established under the Charitable Trusts Act 1957 for the representation of Māori identifying as Ngāpuhi.
6. Te Runānga Ā lwi O Ngāpuhi has a simple vision – 'kia tu tika ai te whare tapu o Ngāpuhi' - 'that the sacred house of Ngāpuhi stands firm'. TRAION is the representative body that speaks and works for and on behalf of the Ngāpuhi nation – to ensure that collective Ngāpuhi interests and aspirations are looked after. TRAION is also the iwi authority tasked with interfacing with the Government of the day to ensure their rights and privileges, assured under Te Tiriti O Waitangi, are provided for.
7. The Governance board of Te Runānga-Ā-lwi-O-Ngāpuhi consists of representatives from seven Takiwā (area councils) within Te Whare Tapu O Ngāpuhi (tribal area) and two Taurahere (outposts) in Auckland. The Taurahere provide for Ngāpuhi who live outside of the traditional boundaries in South and West Auckland.
8. The Takiwā each represent a number of marae contained in a geographical area and are usually closely linked by whakapapa (genealogy). Marae elect representatives to respective Takiwā. Takiwā in turn elect one representative to the Governance board of TRAION who then become the board. TRAION currently employs a CEO and 10 staff.

¹ Resolution number 2005/05/05 of TRAION board dated 27th June 2005.
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9. The CEO has the added overall responsibility of overseeing the operations of two subsidiary companies, Ngāpuhi iwi Social Services Ltd and Ngāpuhi Fisheries Ltd (NFL).
10. All waka with Ngāpuhi whakapapa – that is to say genealogical lines – landed in Hokianga and spread out from there. So it is that we Ngāpuhi claim a foundation or traditional tribal area whose boundaries are described in this whakatauki or proverb:

*“Te Whare O Ngāpuhi, Tamaki Makaurau ki Te Rerenga Wairua.
Ko nga pātu ko Ngati Whātua, Te Rarawa, Te Aūpouri, Ngati
Kahu, Ngāpuhi ki roto. Ko nga rarangi Maunga nga
Poutokomanawa i hikia te Tahūhū o Te Whare O Ngāpuhi.”*

11. This is to say...

*The house of Ngāpuhi stretches from Tamaki Makaurau
[Auckland] in the south to Cape Rēinga in the north,*

*Its walls are the sub-tribes: Ngati Whātua in the south, Te
Rarawa in the west, Te Aūpouri in the north and Ngati Kahu
in the east,*

Ngāpuhi holds the centre of the House, and

*The mountains of significance within Ngāpuhi are the pillars
or poupou, which hold the ridgepole aloft.*

12. In contemporary society some hapu (sub tribes) as depicted in the above whakatauki, have evolved themselves into iwi in their own right. Because of this evolution, the Ngāpuhi iwi takiwā boundaries, which is TRAIION’s area of operation, has been reduced to cover the middle far north district from South Hokianga through to Mangakahia, across to the Bay of Islands to the south-western Whangarei district. This area is referred to as “Te Whare Tapu O Ngāpuhi” or the sacred house of Ngāpuhi, so named as the esoteric knowledge of the Ngāpuhi nation is protected therein.
13. While this area is the 'heart' of the Ngāpuhi nation, 78% of our affiliates live in other parts of the country, mainly around the Auckland, Waikato and the Bay of Plenty regions. 6% of the iwi live in Wellington, with 4% domiciled in Christchurch.



Profile of Ngāpuhi

14. At the 2004 census, Ngāpuhi was identified as the largest iwi in New Zealand. The number of Māori who gave Ngāpuhi as their iwi in 2004 increased to 107,000. This represented 19.8% of the total Māori population. Of these nearly two-thirds say that Ngāpuhi is their only iwi. As a comparison, the second largest iwi in Aotearoa is Ngati Kahungunu who recorded some 45,000 affiliates.
15. Ngāpuhi has a very young population base. With 79% of Ngāpuhi living outside of traditional iwi takiwā (tribal region), 60% of Ngāpuhi live in the Auckland region. With so many Ngāpuhi resident in Auckland, this means that the member Ngāpuhi affiliates also have an interest in the quality of fishing there, including the Hauraki Gulf, Whatipu, Piha, Muriwai, Orere, Orewa and many other nooks and crannies known to Ngāpuhi recreational fishers.
16. As at 2004, the annual median personal income for Ngāpuhi aged 15 and over was \$14,900.00, compared with \$15,600.00 for all Māori in the same age group. The median income for Ngāpuhi men was \$18,600.00, and for women \$13,600.00. Ngāpuhi living within the iwi takiwā had a lower medial annual income than those living outside the iwi takiwā².
17. Ngāpuhi have a great love for food from the sea. In addition to kai moana being a food preference, the socio-economic factors that I have referred to also means that many Ngāpuhi are reliant upon the ability to gather food for the table from traditional sources such as the sea. Fish, especially kahawai, is one of the main seafood targeted by our members, who often joke about the strength and sturdy growth of their children which they directly attribute to feeding them kahawai.

Ngāpuhi Interest in Fisheries

18. Ngāpuhi have a significant commercial fishing interest in shares within the new fishing company, Aotearoa Fisheries Limited (AFL). Ngāpuhi owns 19.8% shareholding in AFL as the shares to this asset was allocated on a population basis. We also own the quota holding company, Ngāpuhi Fisheries Limited. The Treaty of Waitangi Fisheries Commission, Te Ohu Kai Moana currently holds the bulk of Māori commercial fishing interests in trust until mandated iwi organisations comply with the Māori Fisheries Act 2004.

² Source: Statistics New Zealand, *Iwi Profiles: Ngāpuhi*
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19. Returns allocated to Ngāpuhi under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 have been invested in building an economic base for the Ngāpuhi nation as well as directly funding Marae development, scholarships, a discretionary fund for youth as well as running an annual Ngāpuhi festival.
20. Ngāpuhi Fisheries Ltd is also 50% owner of the joint venture company Northland Deepwater Ltd, which manages the deepwater portion of our quota allocated on an annual basis.
21. In addition to Ngāpuhi's commercial fishing interest, Ngāpuhi members also have an interest as "customary" fishers by permits issued through kaitiaki, appointed under the Fisheries (Kaimoana Customary Fishing) Regulations 1998.
22. Ngāpuhi also have an interest as iwi, hapu and individuals as "recreational" fishers. We are very uncomfortable with the word "recreational" when describing Ngāpuhi non-commercial fishing interests. To us "recreational" implies that people play with their food. We do not play with our food, which is disrespectful.
23. Kahawai is a staple diet for many Ngāpuhi families who live within the tribal area, this certainly applies to the Hokianga, which I am very familiar with.
24. Snapper is touted as the premiere of fishes however in my experience many Ngāpuhi will eat a kahawai in preference to snapper. As a matter of fact many Ngāpuhi actually give a snapper away for a kahawai.
25. The kahawai is not a fish that we treat as a delicacy, this fish is a main stay or staple of the Ngāpuhi diet. Traditionally it has been harvested from a seemingly endless resource, although now kahawai is much less plentiful. Clearly when a fishery has been allowed to have been fished low, as with the kahawai, then this jeopardises both our Māori commercial interests, and our ability to feed our families.
26. While not initially understood widely by Ngāpuhi, after the Deed Of Settlement for fisheries was signed in 1992, the bulk of fishing by individual Ngāpuhi became categorised by legislation as "non-commercial", either as "recreational", or as "customary".
27. Within the tribal region there are five approved Kaitiaki who issue permits under the Customary Fishing Regulations.



28. My enquiries with our Kaitiaki indicate that there were approximately 215³ customary permits issued in 2004 to Ngāpuhi customary fishers.
29. To me this suggests that the great majority of fishing by Ngāpuhi members is now by so-called "recreational" fishing means.
30. Fishing in our area as "non-commercial" fishers probably differs from the experience of many recreational boaties elsewhere in the country. There is a lot of rock fishing from favourite rocks; nets are set in sheltered waters, and many homes along the coast have a dingy for coastal fishing close to the shore. On the West coast a common fishing method is to physically drag nets through the surf, especially for mullet and flounder, but this method is also used on kahawai.
31. This is an inshore fishery, with people meeting their needs from local headlands, estuaries, and other local waters, and where people catch kahawai (and other fish such as mullet, terakihi, gumard and flounder) in order to put food on the table.
32. Ngāpuhi would measure the quality of the fishery by whether the fish are plentiful (how easily they can be caught), and also by the size of the fish.
33. Ngāpuhi also measure the quality of a fishery by our ability to provide fish in order to give fish away. This may be confusing at first but when one understands manākitanga the idea is profound. An idea of this is expressed in a German missionary's writings of his encounters with Māori (natives) when European missionaries first visited these shores. He made an entry in his diary of these experiences, and I quote: *"these natives are a peculiar people, they don't measure their wealth by what they own, but by what they give away. We must teach them to be mean."*
34. An example of this is when we catch decent size fish, one way to enhance mana is to give the biggest away. If a number of fish are caught and someone is visiting our marae, we will give away the small fish to the locals, so that we arrive at the marae with only the largest fish that are then gifted to the Marae to assist in feeding the Manuhiri (visitors).
35. This is referred to as manākitanga. Manākitanga has many meanings and I think Professor Whatarangi Winiata offered one of the most profound explanations of manākitanga I have ever read. Professor

³ These figures were taken from 5 Kai Tiaki within Ngāpuhi. Only MFish know how many Kai Tiaki hold permit books.
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- Winiata described Manākitanga as: *“behaviour that acknowledges the mana of others as having equal or greater importance than ones own, through the expression of aroha, hospitality, generosity and mutual respect. Displaying manākitanga elevated the status of all, building unity through the humility and the act of giving”*⁴ Professor Winiata went on to urge people to extend these values to manuhiri and migrants.
36. Professor Manuka Henare summarises manākitanga thus: *“manāki tanga relates to the finer qualities of people, rather than just to their material possessions. It is the principle of the quality of caring, kindness, hospitality and showing respect for others. To exhibit manākitanga is to raise ones mana (manaāki) through generosity.”*⁵ ⁶
37. Professor Cleve Barlow further explains manākitanga in this way: *manāki is derived from the power of the word as in mana-ā-ki, and means to express love and hospitality toward people. The most important attributes for the hosts are to provide an abundance of food, a place to rest, and to speak nicely to visitors so that peace prevails during the gathering. If these principles are implemented a hui will more likely be regarded as a memorable occasion.”*
38. Manākitanga then in this sense, is about our ability to feed our manuhiri with the best possible traditional food available. As previously stated kahawai plays a huge role in this tikanga. *Ika ota* (raw fish) on any Ngāpuhi Marae is usually made of kahawai as this fish is meatier than other fish and one uses less fish to ensure manuhiri are well fed.
39. When schools of kahawai are less plentiful this affects not only the ability to put food on the table, but also our ability to enhance the mana of our Marae. Individual mana enhancement is also drastically reduced.
40. TRAION has resolved to support this legal challenge by the Recreational Fishing Council and the Big Game Fishing Council, which aims to increase the amount of kahawai in the sea, and to increase the quality of the fishery for non-commercial fishers to enjoy. This includes the 99.99% of the time Māori go fishing non-commercially.
41. The Minister in his decision has cut, in equal proportion, the commercial and non-commercial take. This cuts right across our Tikanga or principles, developed and upheld since the beginning of our existence as Tangata Whenua in this land. This also drastically reduces our ability

⁴ NZ Herald; Saturday 31 May 2005

⁵ Standards and Foundations of Māori Society, pg 26

⁶ Tikanga Whakaāro; pg;63

to exercise our rights guaranteed in article two of Te Tiriti O Waitangi. The inability of the Ngapuhi nation to satisfy these Tikanga because of bad advice given to the Minister leading to his final decision is unacceptable to TRAION.

- 42. I am clear that our people require that when it comes to a reduction being required for a fish that is a staple food, that cut must come initially from the commercial sector.
- 43. Quite simply if there is to be a cut to a fishery, then our board wants to see food put on the tables of our people, ahead of it being sent to foreign tables or wasted as pet food or Australian Cray bait.

**SWORN BY THE SAID
RANIERA TEITINGA TAU**

at [*KAIKOHE*]
this *10th* day of August
2005 before me:

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A Solicitor of the High Court of New Zealand
 LUCIA LISA APREA
 SOLICITOR
 KAIKOHE