

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2019-485-752

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

UNDER the Judicial Review Procedures Act 2016 and Part 30
of the High Court Rules

IN THE MATTER OF an application for judicial review under sections 13
and 20 of the Fisheries Act 1996

BETWEEN **ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**
Applicant

AND **MINISTER OF FISHERIES**
Respondent

**AFFIDAVIT OF KIM LAWRENCE DRUMMOND ON BEHALF OF
TE OHU KAI MOANA TRUSTEE LIMITED IN SUPPORT OF
APPLICATION FOR JOINDER AS RESPONDENT**

5 March 2020

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LEGAL

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WELLINGTON

I, **KIM LAWRENCE DRUMMOND**, of Wellington, Fisheries and Aquaculture Policy Manager, affirm that:

Introduction

1. I am the Kūrae Moana (Fisheries and Aquaculture Policy Manager) at Te Ohu Kai Moana Trustee Limited (**Te Ohu**). I have been employed at Te Ohu since December 2017.
2. I hold a Master's Degree in Applied Science (Fisheries) from the Australian Maritime College and a Master's Degree in Public Administration (Executive) from Victoria University.
3. I previously worked for a period of 28 years at the Ministry of Fisheries and its predecessor, the Ministry of Agriculture and Fisheries and I was also employed on the Executive Team at Environment Canterbury for the period 2008 to 2016. Between 2013 and 2018 I was an elected officer of Our Fishing Future, an Incorporated Society established with the support of Te Ohu Kai Moana, the Ministry for Primary Industries and the Department of Conservation to improve the management of recreational fisheries.
4. I am familiar the decision by the Minister of Fisheries that is the subject of challenge by the Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**) the present proceeding (the **Proceeding**). I am authorised to give this affidavit on behalf of Te Ohu.

Te Ohu

5. Te Ohu is the trustee of Te Ohu Kai Moana, a trust established by a deed of trust under the Māori Fisheries Act 2004. The purpose of Te Ohu Kai Moana is to advance the interests of iwi individually and collectively, primarily in the development of fisheries, fishing, and fisheries-related activities, in order to:
 - (a) ultimately benefit the members of iwi and Māori generally; and
 - (b) further the agreements made in the Deed of Settlement between the Crown and Māori dated 23 September 1992 regarding Māori fisheries claims (**Fisheries Settlement**); and

- (c) assist the Crown to discharge its obligations under the Fisheries Settlement and the Treaty of Waitangi; and
 - (d) contribute to the achievement of an enduring settlement of the claims and grievances referred to in the Fisheries Settlement.
- 6. The functions of Te Ohu include, as a means of furthering its statutory purpose:
 - (a) fostering, promoting, commissioning, or funding research into the sustainable management of fisheries; and
 - (b) in relation to fisheries, fishing, and fisheries-related activities, acting to protect and enhance the interests of iwi and Māori in those activities.
- 7. In fulfilling its statutory and trustee roles on behalf of iwi and Māori, Te Ohu:
 - (a) works with 58 mandated iwi organisations (**MIOs**), who represent iwi throughout Aotearoa; and
 - (b) engages actively with the officials from the Ministry for Primary Industries, industry organisations, commercial seafood interests and representatives of iwi.
- 8. Te Ohu's Māori Fisheries Strategy and three-year strategic plan (both of which have been approved by MIOs) has as its goal that MIOs collectively lead the development of Aotearoa's marine and environmental policy affecting fisheries management through Te Ohu Kai Moana as their mandated agent. Te Ohu plays a key role to achieve this goal and protect the Fisheries Settlement by providing MIOs with policy advice and by making submissions to both Ministers and government agencies on fisheries-related issues.
- 9. In particular, Te Ohu:
 - (a) engages actively in the review of sustainability measures by Fisheries New Zealand (a business unit within the Ministry for Primary Industries) which forms part of the Minister of Fisheries' decision-making process in relation to setting the total allowable

catch (**TAC**) and total allowable commercial catch (**TACC**) for each fishstock every fishing year; and

- (b) makes submissions to the Minister of Fisheries on those matters.

The Proceeding

10. Te Ohu was informed of the Proceeding on 24 January 2020 when Crown Law, with the consent of the Forest and Bird, provided it with copies of the following documents:

- (a) statement of claim;
- (b) notice of proceeding;
- (c) notice of mention; and
- (d) initial disclosure documents.

11. In the Proceeding, Forest and Bird seeks to review the decision of the Minister of Fisheries in September 2019 to reduce the TAC and TACC for tarakihi in the following quota management areas (**QMAs**) on the East Coast of New Zealand for the fishing year commencing 1 October 2019:

- (a) TAR 1;
- (b) TAR 2;
- (c) TAR 3; and
- (d) TAR 7

(together, **East Coast Tarakihi**).

12. As part of the Minister's decision-making in relation to East Coast Tarakihi (and other fishstocks) for the 2019 fishing year, the Minister consulted with Te Ohu in view of its representative role in respect of the fisheries interests of Māori and the Fisheries Settlement. Te Ohu, in turn, made two submissions to the Minister as part of this process:

- (a) a joint submission with Fisheries Inshore New Zealand (**FINZ**) and Southern Inshore dated 26 July 2019; and

(b) a separate submission on behalf of Te Ohu only also dated 26 July 2019.

13. In addition, Te Ohu was involved (with iwi, FINZ and Southern Inshore Fisheries) in the development of the Eastern Tarakihi Management Strategy and Rebuild Plan that was considered by Fisheries New Zealand and the Minister in the course of the decision-making process relating to East Coast Tarakihi.
14. Forest and Bird also made a submission to the Minister which advocated for a greater reduction in the TAC and TACC for East Coast Tarakihi than that which the Minister ultimately determined. In his decision, the Minister recognised in part the submissions made by Te Ohu (and FINZ) regarding the impact that more significant TACC reductions for East Coast Tarakihi would have on quota holders, including Te Ohu and iwi.
15. In this latter regard, in addition to its representative role on behalf of Māori and iwi generally, Te Ohu has a direct proprietary interest in the East Coast Tarakihi quota that is the subject of the Minister's decision. In particular, Te Ohu presently holds the following quota shares in East Coast Tarakihi:

QMA	Quota Shares	Iwi on whose behalf quota is held by Te Ohu
TAR 1	514,600	<ul style="list-style-type: none"> • Ngāi Tai • Te Whānau a Apanui
TAR 2	3,342,342	<ul style="list-style-type: none"> • Te Whānau a Apanui • Ngāti Porou • Rongowhakaata • Te Aitanga a Mahaki • Te Atiawa (Wellington) • Ngāti Toa
TAR 7	1,808,081	<ul style="list-style-type: none"> • Ngāi Tahu • Rangitāne o Wairau • Ngāti Toa

16. The East Coast Tarakihi quota that is presently held by Te Ohu is part of the settlement assets received by the Treaty of Waitangi Fisheries Commission (the predecessor to Te Ohu Kai Moana) under the Fisheries Settlement. Those settlement assets included quota shares (**Settlement Quota**), shares in Aotearoa Fisheries Limited (which in turns owns 50% of

Sealords) and cash. Under the Māori Fisheries Act 2004, Te Ohu is required:

- (a) to allocate and transfer the Settlement Quota (and other settlement assets) to iwi; and
- (b) pending such allocation and transfer, to hold and manage those settlement assets.

17. In this regard, the Māori Fisheries Act requires the Settlement Quota for each inshore fishstock and 25% of the Settlement Quota for each deepwater fishstock to be allocated by Te Ohu to iwi on the basis of each iwi's relative coastline length. Iwi are required to reach agreements with neighbouring iwi regarding their respective coastlines and any disputes are able to be referred to the Māori Land Court for resolution.
18. In areas where iwi coastlines have yet to be determined, Te Ohu continues to hold relevant Settlement Quota on trust for the benefit of the iwi who claim coastline interests in those areas. In respect of East Coast Tarakihi, relevant coastline lengths remain to be determined for the iwi identified in the table in paragraph 15 above and therefore that Settlement Quota presently remains held by Te Ohu.

Conclusion

19. For the reasons outlined in this affidavit, Te Ohu has a particular and unique interest in the decision of the Minister of Fisheries that is under challenge in the Proceeding that is distinct from the other parties. Accordingly, Te Ohu wishes to be joined as a respondent in order that it may fully participate in the Proceeding. In my view, Te Ohu's interests are not able to be appropriately represented by any other party.

AFFIRMED at Wellington this)

5th day of March 2020)

before me:)



Kim Lawrence Drummond



A Solicitor of the High Court of New Zealand

KATE JANINE TARAWHITI
CHRISTCHURCH