

KEI RARO I

Te Declaratory Judgments Act 1908

KEI WAENGANUI I

**TE OHU KAI MOANA TRUSTEE LTD**, tētahi kamupene, ko tōna tari rēhita kei 7 Waterloo Quay, Pipitea, Te Whanganui-a-Tara me **TE OHU KAIMOANA TRUST**, tētahi tarahitī manatōpū i raro i w 33(2) o te Māori Fisheries Act 2004

Kaiwhakapae

ME

**Te Rōia-Matua mō Tōna Korōria mō te Kingi o Aotearoa**

Kaikaro

WHAKAPUAKITANGA WHAKAHOUNGIA O TE KERĒME  
29 Noema 2023

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**Ka mea te kaiwhakapae mā tōna rōia:**

***Ko ngā pāti***

1. Ko te kaiwhakapae ko Te Ohu Kai Moana Trustee Ltd, tētahi kamupene ko tōna tari rēhita kei te apa 12, 7 Waterloo Quay, Pipitea, Te Whanganui-a-Tara. Koia te piki tūranga mō te Treaty of Waitangi Fisheries Commission (i mua, ko Te Māori Fisheries Commission) mō te kaitarahitī rangatōpū o Te Ohu Kaimoana Trust, tētahi tarahitī manatōpū i raro i w 33(2) o te Māori Fisheries Act 2004 (arā, ko **Te Ohu Kaimoana**).
2. Ko te kaikaro ko te Rōia-Matua, e tapaina ana mō Tōna Korōria, mō te Kingi o Aotearoa (arā, ko **te Karauna**).

***Tāhaetanga***

3. Nā Te Tiriti o Waitangi<sup>1</sup> i whakaae, i whakapūmau hoki te Karauna ki ngā Rangatira, ki ngā hapū, ki ngā tāngata Māori katoa i te tino rangatiratanga o ō rātou mahinga hī ika.
4. I ngā tau i whai ake rā, i kerēme a Ngāi Māori kua takahia ō rātou mana hī ika e te Karauna, e āna tini mahi tae atu ki tāna whakatūranga i te tau 1986 o te Quota Management System (arā, ko **te QMS**) i whakakorengia ai te mana ā-ture o ngā mana Māori ā-tikanga ki te hī ika, ki te mahinga hī ika hoki.
5. I te tau 1988, i whakatau Te Rōpū Whakamana i Te Tiriti o Waitangi e tino hārakiraki ana te QMS o taua wā ki Te Tiriti nātemea i tuku atu te QMS ki ētahi atu hunga kē te tino rangatiratanga o te mana ā-rawa ki te hī ika i whakapūmautia ki a Ngāi Māori i raro i Te Tiriti, engari ehara i te mea me hārakiraki tonu rā te QMS ki Te Tiriti mehemea ka tutuki he whakaaetanga a te Karauna me Ngāi Māori.

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<sup>1</sup> Ko ngā tohutoro kei roto i tēnei whakapuakitanga o te kerēme ki “Te Tiriti o Waitangi”, ki “Te Tiriti” he tohutoro ki te tuhinga Māori, ki te tuhinga Ingarihi hoki o Te Tiriti o Waitangi/the Treaty of Waitangi e whakatakotohia ana kei te Treaty of Waitangi Act 1975, Āpitianga 1.

***Ko te Whakataunga Hī Ika***

6. He pāti te Karauna ki te Whakaaetanga Whakataunga i waenganui i te Karauna me Ngāi Māori o te rā 23 o Hepetema 1992, i whakaaetia e ngā pāti:
  - 6.1 ki te whakaū nā Te Tiriti o Waitangi i whakaae, i whakapūmau te Karauna ki ngā Rangatira, ki ngā hapū, ki ngā tāngata Māori katoa i te tino rangatiratanga o ō ratou mahinga hī ika;
  - 6.2 ki te whakatau i ā rātou tautohetanga, i ā rātou kerēme e toe ana, i ā rātou nawe i raro i Te Tiriti e pā ana ki ngā mana hī ika, ki ngā pānga hī ika, ki te QMS hoki mā tētahi rongoā tika, mā tētahi rongoā whaimana e ai ki ngā mātāpono o Te Tiriti o Waitangi;
  - 6.3 ki te whakaū ka whakaaro rāua tahi he mea tino whakahirahira rawa atu te whakaotinga me te whakatinanatanga o te Whakaaetanga Whakataunga hei whai i tētahi whakataunga tika o ngā kerēme Māori e pā ana ki te mahi hī ika;
  - 6.4 hei whakahua i tā rāua tahi whakaūnga taumaha ko te whakataunga i tutuki i te Whakaaetanga he tohu o te whakataunga o tētahi nawe i tuku iho.
7. I whai atu te Whakaaetanga Whakataunga i tētahi whakataunga hukihuki i te tau 1989 i whakaatatia i roto i te Māori Fisheries Act 1989, ka mutu i whakatinanatia i roto i te Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (kō ēnei katoa, ko **Te Whakataunga Hī Ika**).
8. I raro i te whakataunga hukihuki o te tau 1989 i whakaae te Karauna kia pai ake te whakarite o te whakaūnga i ngā mana Māori ki te hī ika i whakapūmautia e te Tiriti o Waitangi i roto i ētahi mea, i roto hoki i te oati kia riro mai ki a Ngāi Māori 10% o ngā rahinga hua katoa o ngā momo ika katoa i raro i te QMS i taua wā (engari, ki te kore te Karauna e āhei ana ki te kimi i te katoa o te 10% mō tētahi puringa hua, kātahi ka utua he kapeneihana ā-moni) (arā, ko **te whakataunga rahinga hua o te tau 1989**).

9. I muri mai ka hapahapai te Karauna i te whakaturetanga o te Māori Fisheries Act 1989, ā, kātahi ka tuku atu te Karauna i te 10% o ngā rahinga hua katoa o ngā puringa hua katoa i raro i te QMS i taua wā (hāunga ngā wā kāore e āhei ana te Karauna ki te kimi i te katoa o te 10% mō tētahi puringa hua, i aua wā ka utua he kapeneihana ā-moni), e whā ngā tukunga atu o te 2.5%. I tukuna atu te tukunga whakamutunga i te 1 Oketopa 1992.
10. Ka whakaū te Whakaaetanga Whakataunga o te tau 1992 i te oati o te whakataunga rahinga hua o te tau 1989, ka mutu ka whakarite hoki mō ēnei e whai ake nei e pā ana ki te mahi hī ika arumoni:
- 10.1 i unuhia e Ngāi Māori ā rātou wero ā-ture ki te whaimanatanga o te QMS, i keremutua ā rātou whakahaerenga ā-ture, ā, i whakaae rātou kua whakaūhia, kua ea ā rātou kerēme hī ika Māori *“nā runga i ngā painga i tukuna mai e te Karauna ki a Ngāi Māori i raro i te Māori Fisheries Act 1989, i tēnei Ture, i te Whakaaetanga Whakataunga hoki ...”* (wehenga 9 o te Ture Whakataunga, rārangi 4.3 o te Whakaaetanga);
- 10.2 i ohiatia e Ngāi Māori te QMS, ā, i whakaaetia he pūnaha tika ā-ture, he pūnaha arotau mō te whakahaerenga toitū o te mahinga hī ika arumoni i Aotearoa (rārangi 4.2 o te Whakaaetanga); ā
- 10.3 i riro i a Ngāi Māori, i tua atu i tērā i roro kē, arā te 10 ōrau o te rahinga mō ērā puringa hua i roto kē i te QMS, te 20 ōrau o te rahinga mō ērā puringa hua ka kuhuna ā muri ake rā ki roto i te QMS me te \$150 miriona kia āhei a Ngāi Māori ki te hoko i tētahi pānga 50 ōrau o Sealords Products Ltd (rārangi 3 o te Whakaaetanga) (kō ēnei katoa, ko **ngā painga o te whakataunga**).
11. Ko tētahi tino kaupapa o te Whakataunga Hī Ika ko te oati ka riro mai ki a Ngāi Māori he wāhi tūturu i roto i te ahumahi hī ika arumoni, i whakaritea (hukihukia) e te te ōwehenga mō ake tonu atu ki a Ngāi Māori o tētahi

ōwehenga mōkito, o tētahi ōwehenga toitū o te katoa o te rahinga i raro i te QMS.

12. He kupu tohu ō te Whakataunga Hī Ika mā te Karauna te hōnore o te Whakataunga Hī Ika e whakapūmau e ai ki ōna kawenga i raro i Te Tiriti.
13. He kupu tohu ō te Whakataunga Hī Ika mā te Karauna te hōnore o te Whakataunga Hī Ika e whakapūmau e ai ki ōna kawenga i raro i te tikanga.
14. He kupu tohu ō te Whakataunga Hī Ika e kore te Karauna e tango anō i ngā painga o te whakataunga, ina koa, e kore hoki e whakature a muri mai i tētahi ture, e whakamahi rānei i te QMS hei tango anō i te whakataunga rahinga hua o te tau 1989, hei whakaiti i te ōwehenga tūturu, i te ōwehenga mōkito o te whakataunga rahinga hua o te tau 1989.
15. I whakatūria Te Ohu Kaimoana i raro i te Māori Fisheries Act me tōna aronga ki te kōkiri i ngā pānga o ngā iwi takitahi, o ngā iwi ā-tōpū hei whakawhanake i ngā mahinga hī ika, mātua rā i te hī ika, i ngā mahi e pā ana hoki ki ngā mahinga hī ika, -
  - 15.1 hei painga rawa mō ngā mema o ngā iwi, mō te hunga Māori hoki; ā
  - 15.2 hei kōkiri i ngā whakaaetanga i whakaaetia i te Whakaaetanga Whakataunga; ā
  - 15.3 hei āwhina i te Karauna kia ea ōna kawenga i raro i te Whakaaetanga Whakataunga me Te Tiriti; ā
  - 15.4 hei tāpaetanga ki te whakatutukinga o tētahi whakataunga toitū o ngā kerēme, o ngā nawe e kōrerohia ana i roto i te Whakaaetanga Whakataunga.
16. Ka āhei ā-ture Te Ohu Kaimoana kia whakamauria te Karauna ki tōna ake haepapa ki te whakamahi i ōna kawenga i raro i Te Whakataunga Hī Ika, i raro hoki (i roto i taua horopaki) i Te Tiriti.

***Te tango anō a te Karauna i ngā whakataunga painga***

17. Nā ētahi whakahounga a te Pāremata i whakawhanake te Karauna i tētahi pūnaha ā-ture e āhei ana te Karauna ki te tango anō i te whakataunga rahinga hua o te tau 1989 mai i a Ngāi Māori ahakoa kāre he whakaaetanga, kārekau rānei he utu (arā, ko **ngā raupatu mana 28N**).

Ko ngā taipitopito

17.1 Nā ētahi whakahounga ki te Fisheries Act 1983 i te tau 1986 ka whaihanga ētahi mana tuatahi mō ētahi kaipupuri rahinga hua kia riro mā rātou ētahi anō rahinga hua mai i te Karauna i te wā ka hikitia ngā hao mōrahi e āheitia ana me te kore utu (arā, ko **ngā mana w 28N**).

17.2 I whakaritea ngā mana w 28N hei whakakapi i te kapeneihana i noho namatia e te Karauna, i whai i ngā whakatāraharaha hao mōrahi e āheitia ana i whakamahia e te Karauna ki te tango anō i ngā rahinga hua.

17.3 I piri kau ngā mana w 28N ki ētahi puringa hua i roto i te QMS i mua i te te Whakaaetanga Whakataunga o te tau 1992, nā reira, ka pāngia ētahi noa iho o te whakataunga rahinga hua o te tau 1989.

17.4 I te wā o te whakataunga hukihuki o te tau 1989, kāre ngā mana w 28N i whakamahi hei pāngia te whakataunga rahinga hua o te tau 1989.

17.5 I panonitia te QMS e te Karauna i ngā tau 1990 mai i tētahi pūnaha kokoraho ā-tana ki tētahi pūnaha kokoraho ōwehenga hea, ka mutu ko te rahinga hua i whakapūmautia ki te 100 miriona hea mō ia puringa hua. Nā reira, i takahurhia te whakataunga rahinga hua o te tau 1989 ki te 10 miriona rahinga hea (10%) mō ia puringa hua e noho kē ana i roto i te QMS,<sup>2</sup> ki te 20 miriona rahinga hea (20%) mō

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<sup>2</sup> Hāunga ngā wā kāre e āhei ana te Karauna ki te kimi i te katoa o te 10 ōrau mō tētahi puringa hua, i aua wā ka hoatu ētahi hea iti iho me ētahi kapeneihana ā-moni kia ea te noho nama.

te katoa o ngā puringa hua hou e kuhu mai ana ki te QMS i muri i te Whakataunga.

- 17.6 Ko te takune me te putanga o ngā panoni ki te QMS e whakaritea ana i roto i te Fisheries Act 1996 i taua wā, ko te tohatoha i ngā tūraru me ngā painga o ngā whakatāharahara me ngā whakapikinga ki te katoa o ngā hao mōrahi arumoni e āheitia ana (arā, ko te **TACC**), he tohatoha atu i te Karauna ki ngā kaipupuri rahinga ōwehenga. Ina ka tāharahara, ka piki rānei te TACC i raro i te Ture, ka heke, ka piki rānei te mana hao ā-tau utukore, kapeneihana-kore hoki.
- 17.7 Karekau he panoni i hua ake ki ngā mana w 28N, nā kōnā i puta ai ētahi mea pokerehū ki ērā atu kaipupurirahinga hua (arā, ko **te hēhē o ngā mana 28N**).
- 17.8 Arā, ka hikitia te TACC mō tētahi puringa hua e pā ana ki ngā mana 28N, ko te tukunga iho o ngā whakaritenga o te Fisheries Act, ka tangohia he rahinga hea i ērā atu kaipupuri rahinga, ā, i tukuna ki ngā kaipupuri mana 28N mō ake tonu atu.
- 17.9 Nā reira, kāre ngā kaipupuri mana 28N o mua o ngā e utua ana e te Karauna ina ka whakapikitia tētahi TACC, engari inaiānei ka utua kētia e ērā atu kaipupuri rahinga hua.
- 17.10 Kia whakatāharaharatia te TACC mō tētahi puringa hua, ka hē kē atu te mahi a te hēhē mana 28N, nātemea he āheinga tō ngā kaipupuri mana 28N kia whiwhi i tētahi ōwehenga nui atu anō o te rahinga hua, nui atu i ērā e pupuritia ana e ērā atu kaipupuri rahinga hua ina ka whakapikitia anōtia ngā apa TACC mō taua puringa hua.
- 17.11 Mehemea ka whakatāharaharatia tētahi puringa hua ki te kore mō tētahi wā taupua, ka pēnei te mahi a te hēhē mana 28N: ka hikitia anōtia te TACC, ka tohatohaina te katoa o ngā hea rahinga hua mō

taua puringa hua ki ngā kaipupuri mana 28N mō ake tonu atu, me te aha, ka kore katoa ngā hea mō taua puringa hua mō ērā atu kaipupuri rahinga hua.

- 17.12 Ka pēnei te mahi a te hēhē mana 28N: nā te mahi a ngā ture, ka tangohia anōtia ngā rahinga hea mai i a Ngāi Māori i tohatohaina ki a rātou e te Karauna i raro i te whakataunga hukihuki o te tau 1989, kia tutuki ai te haepapa ahumoni o mua atu ki ētahi atu kaipupuri rahinga hua.
18. Kāre te hēhē o ngā mana 28N i mōhiotia e te ahumahi i mua i te tau 2001, i mua i te wā ka mana ngā whakahounga ā-ture o te tau 1996, i te wā ka takahurihia ngā rahinga mai i ngā rahinga ā-tana ki ngā rahinga ā-hea. Mai i taua wā, kua nui kē atu te whakamahinga a ngā mana 28N (mai i taua wā kua riro kē atu he rahinga hea ki ētahi atu kaipupuri rahinga hea), ā, ka mōhiotia tonutia e ngā kaipupuri rahinga hea.
19. I te tau 2018 i whakatūria tētahi Rōpū Mahi Tahi, e 4 ngā mema nō Fisheries NZ (he wāhanga o te Manatu Ahu Matua), e 3 ngā mema nō te ahumahi kaimoana, nō te Ohu Kaimoana (arā, ko **te Rōpū Mahi Tahi**), ko tōna kaupapa ko te whakaaroaro i ētahi kōwhiringa kia whakatikahia te hēhē mana 28N.
20. I whakaae te Rōpū Mahi Tahi, ka pēnei te pānga a te hēhē mana 28N ki ngā hea ōwehenga o tētahi puringa hua: ka whakatāharaharatia mō ake tonu atu te rahinga hua i raro i raro i te Whakataunga Hī Ika mai i te wā i tuku tuatahitia, i tohatoha tuatahitia rānei ki a Ngāi Māori.
21. I tuhi te Rōpū Mahi Tahi i roto i tana ripoata hukihuki: kāre te putanga o ēnei panoni ki ngā mana 28N i whakaaroarohia, ā, ka tītohungia tēnei e te rangahau ki te whakawhanake ā-kaupapa me ngā whakaaroaro a te Rūnanga Kāwanatanga, a te Komiti Whiriwhiri hoki i te tau 1990 e pā ana ki te panoni ki te pūnaha rahinga ōwehenga, ā, “the distortionary effects of honouring the 28N rights under the new proportional system was lost in the complexity

of the transition” (kua ngaro katoa ngā putanga pohewa o te whakamana i ngā mana 28N i raro i te pūnaha ōwehenga hou, kua ngaro i roto i te pīroiroi a te panoni).

22. I whakaaetia e ngā āpiha e tohutohu ana i te Minita o te Mahi Hī Ika i te tau 2020, kāre te hēhē o ngā mana 28N i takune.
23. Kāre te Karauna i mahi kia whakatikahia te hēhē mana 28N.
24. Kua whakatāharahara tonu, kua whakapiki tonu te Karauna i te TACC e ai ki ngā whakaritenga o te Fisheries Act 1996 i runga i te mōhio mā aua whakataunga e whakaputa ētahi atu raupatu mana 28N.
25. He ngaronga tōtika, he ngaronga ahumoni ki a Ngāi Māori te tango anō i te whakataunga rahinga hua o te tau 1989 me te whakatōririki a ngā whakataunga rahinga hua. Ka pā tonu ētahi ngaronga anō.

Ko ngā taipitopito (hei tauira noa iho)

- 25.1 I te tau 2009 ka whakapiki te Karauna i te TACC mō LIN7, me te aha anō ka pau mō ake tonu atu te 4 ōrau o ngā rahinga hea i roto i taua puringa hua i tohatohaina ki a Ngāi Māori i raro i te Whakataunga;
- 25.2 I te tau 2016 ka whakapiki te Karauna i te TACC mō SNA7, me te aha anō ka pau mō ake tonu atu te 7.94 ōrau o ngā rahinga hea i roto i taua puringa hua i tohatohaina ki a Ngāi Māori i raro i te Whakataunga;
- 25.3 Hei te tau 2024, hei te takiwā rānei o taua tau, e takune ana te Karauna ki te whakapiki i te TACC mō SNA1 me SNA8: e ai ki te whakatau-tata ko te uara o te whakataunga rahinga ka tangohia pea e te Karauna mai i a Ngāi Māori kia ea ngā mana 28N arā, kei te takiwā o te \$10 miriona te rahi.

26. Ka whiwhi painga tonu te Karauna mai i te hēhē mana 28N, nā tāna whakamahi i taua hēhē kia ea ngā kaupupuri mana 28N utukore ki te Karauna. Ki te kore i pēnei, he kerēme tā rātou ki te Karauna.

***Te takahi***

27. Nā āna mahi me āna tautauā, e whakapaetia ana i ngā kōwae 17 me te 23 ki te 26 i runga nei, kua takahia te Whakataunga Hī Ika e te Karauna.
28. Nā tāna koretake kia tutuki te hōnore o te Whakataunga Hī Ika, kua takahi tikanga te Karauna.
29. Nā tāna koretake ki te mahi whai hua kia whakatikahia te hēhē mana 28N, ā, nā tāna mahi hei tango haere anō i ngā whakataunga painga mai i a Ngāi Māori, kua takahia hoki ōnā kawenga i raro i Te Tiriti e te Karauna.

**Inoi**

30. Ka whai te kaiwhakapae i ngā whakapuakitanga e whai ake nei i raro i te Declaratory Judgments Act 1908, i raro rānei i te mana tūturu o te Kōti:
- 30.1 Nā tāna mahi kia āheitia ngā raupatu mana 28N, kua takahi te Karauna i te Whakataunga Hī Ika;
- 30.2 E hārakiraki ana ngā whakaritenga o te Fisheries Act 1996 e whakamana ana i ngā raupatu mana 28N ki te Whakataunga Hī Ika;
- 30.3 Kia ea ōna kawenga i raro i te Whakaaetanga Whakataunga me Te Tiriti, me whakatika te Karauna i te hēhē mana 28N;
- 30.4 He kawenga tō te Karauna i raro i te Whakataunga Hī Ika kia whakahokia ngā rahinga hea a te whakataunga i ngaro, kia tuku kapeneihana hoki ki a Ngāi Māori mō ngā hinga i puta mai i ngā raupatu mana 28N; me
- 30.5 Tētahi, ētahi whakapuakitanga rānei ki tā te Kōti.
31. Ka whai utu te kaiwhakapae.