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# **A CUSTOMARY RIGHT OR WRONG?**

## ***A Study of the Effects of the Kaimoana Customary Fishing Regulations on Hapu of Ngati Kahungunu***

**A thesis presented in partial fulfilment of the requirements for the degree of  
Master of Philosophy  
at Massey University, Palmerston North, New Zealand.**

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**2008**

p. 48	“Opposing the interpretations that Prendergast adopted, are arguments in law”	Unnecessary comma.
p. 49	...Te Whiti, and Tohu...	Unnecessary comma.
p. 53, last line, 3 <sup>rd</sup> full para.	...clause two...	Inconsistent: Article Two
p. 58, 2 <sup>nd</sup> line from the top.	...if the going gets tough.”	Colloquialism, i.e., too informal.
p.63, 2 <sup>nd</sup> line last para.,	exclusive economic zones	Exclusive Economic Zones (EEZ) [The acronym should be used the first time the term appears].
p. 64	First para.	Lots of numerical data that needs to be referenced.
p. 65	Spoonley et al,	et al., [et alia is the full term, al. is an abbreviation].
p. 70	Davidson (1999)	Missing from reference list.
p. 74, first para.	Smith 1999 Ruwhiu 1999 etc.	Smith (1999), Ruwhiu (1999), ...
p. 74, first line, 2 <sup>nd</sup> para.	Durie (1996, p. 10) asserted, Maori...	Superfluous comma.
p. 76, last line, 2 <sup>nd</sup> para.	...Maori centred...	...Maori-centred...
p. 84, 1 <sup>st</sup> para.	...we’ve always had the conservation approach (Matai).	...we’ve always had the conservation approach.”
p. 84, 2 <sup>nd</sup> line, 2 <sup>nd</sup> para.	...stating;	...stating:
p. 92, 2 <sup>nd</sup> para.	Schroder 2003	Schroder (2003)
p. 92, last line 2 <sup>nd</sup> para.	He adds that -	He adds that: [consistency needed]
p.111, 3 <sup>rd</sup> para.	Para. too short.	Connect with next para.

## **ABSTRACT**

This thesis presents a critical analysis of customary fishing in the light of the rise of indigeneity in these post modern times. The cumulative effects of early colonial fisheries legislation and the exploitation of natural resources aligned with diminished tangata whenua traditional knowledge and practices have generally gone unnoticed. Given recent fisheries litigation and the subsequent legislation development, this study focuses specifically on the effects of the Kaimoana Customary Fishing Regulations (1998) for all the relevant shore based hapu of the iwi/tribal nation of Ngati Kahungunu.

The central research question for this thesis explores how these Ngati Kahungunu hapu have responded, adapted, challenged, or adjusted to Crown law and customary fisheries legislation. Of equal significance, is finding out whether or not such contemporary Westminster originating laws engendered difficulties for Maori traditional hapu lore especially when it came to managing their customary fisheries.

In order to examine these questions, tangata kaitiaki (Maori customary fisheries managers) were identified as the respondent pool to draw from, and four were selected to be interviewed based on their experience and understanding of the Kaimoana Customary Fishing Regulations and knowledge of their obligations to hapu.

As a qualitative piece of research, the interview questionnaire for these chosen tangata kaitiaki allowed for their thoughts and experiences to do the talking and, more importantly, be recorded. The korero of the respondents and results of the study are envisaged as guidelines for improving hapu customary fisheries management practices, traditional knowledge and increased awareness. In addition, the overview of historical and contemporary Maori fisheries provides an understanding and awareness of a complex and difficult subject.

The dual need to satisfy academic requirements of Massey University and remain focused on the well-being of Ngati Kahungunu hapu customary fisheries led my

preference toward a qualitative research approach principally because Te Ao Maori is immersed in oral traditions. The tangata kaitiaki shared their wisdom and understanding of the Kaimoana regulations based on the impact on their rohe, feedback from their hapu and philosophical values of maintaining and promoting rangatiratanga over their resources.

Key indicators from the study show that tangata whenua and particularly tangata kaitiaki are adjusting customary fishing practices and traditions to align with the contemporary reshaping of customary fishing rights into a regulatory regime. All the respondents understood there is no survival of the resource without sustainability, the fundamental aim of kaitiakitanga. And, despite all the administration and resources residing with the Crown, tangata whenua have continued to undertake their kaitiaki responsibilities with little or no resources.

After loss of land, chieftainship, language, resources and economic and political power, customary fishing is the last bastion of Maori control over a tangible asset.

The key findings of the study sign posts for me the following whakatauki.

**Ka pu te ruha ka hao te rangatahi ka awatea.**

**The old net is cast aside, the new net goes fishing, it is a new dawn.**

## **Acknowledgements**

I would like to thank my wife and family for their support and patience whilst I was pre-occupied with this study and not them. I also acknowledge hapu of Ngati Kahungunu and Ngati Kahungunu Iwi Incorporated for supporting in principle this thesis.

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I hope you enjoy reading this thesis that it can empower your fisheries management goals and assist the wellbeing of your hapu.

Ma te Atua, e manaaki, e tiaki i nga wa katoa.

Na, Wayne Tahiwi Ormsby

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## **INTRODUCTION**

I grew up at Kohupatiki Paa beside the old Ngaruroro river. The river was tidal and its mouth empties into Hawkes Bay about 2 kilometers further downstream. My ancestors settled this area because of the kapata kai that was provided by our awa. I still remember how we always dined on the flounder, eels, kahawai, mullet, herrings and whitebait that were once plentiful. The loss of our customary fisheries resource because of local government political and economic decisions shaped my desire to do something that would help protect traditional fisheries.

It is no accident that the focus of this thesis is customary fisheries. My role working for the Ministry of Fisheries has added to the realization of helping to protect customary fisheries. First as a Fisheries Officer for five years and more recently as Pou Hononga (Relationship Manager) working with tangata whenua of Ngati Kahungunu through the Crown's Fisheries Deed of Settlement obligations that support tangata whenua input and participation into fisheries management decision making.

Many fisheries issues facing iwi and hapu across the north island are similar. Internationally, indigenous fishing issues are also similar to tangata whenua of Aotearoa. The range of interview questions used in this study whilst relevant to regional and national New Zealand issues are also relevant to international indigenous issues. The questionnaire focused on four distinct themes within the Kaimoana Regulations; the cultural, economic, political and philosophical aspects. The questionnaires central themes of taonga, mauri, kaitiaki and tikanga provided insight on the epistemological leanings of each respondent and how that influenced their immediate or pressing fisheries management issues.

The research emphasis sought to gauge the effects of the Kaimoana Customary Fishing Regulations 1998 on hapu of Ngati Kahungunu and focused on 'legislative queries' concerning legal protection of traditional fisheries values to gauge political realities and contemporary application of rangatiratanga. The first part of the thesis

provides a foundation for kaitiakitanga by journeying through the spiritual beliefs of Maori and their creation stories.

Chapter one is an introduction to the customary foundation and philosophical base of Te Ao Maori. It provides a backdrop to spiritual concepts and Maori worldview for conservation of the environment. Four key themes - taonga, tikanga, mauri and kaitiaki - emanate from the creation story and embody the cultural traditions woven throughout this thesis.

Chapter two begins with an introduction to indigenous peoples and their historical exposure to industrial expansion, colonization, globalization and resource appropriation. It provides background to the modern plight of tribal societies worldwide from nation states and sets the fisheries rights context for hapu and iwi in Aotearoa, New Zealand. The chapter describes familiar patterns of global colonial exploitation of cultural systems. It does this by examining the proliferation of treaties worldwide as an extension of government control and eventual denial of treaty rights. Chapter two concludes by exploring the close comparisons of New Zealand Maori and North American Indian treaty rights, land issues, environment and customary fisheries and underpins those issues with the philosophical sacredness of the fisheries resources. It does this by investigating the Indian fishing rights movements from the 1960s, landmark United States Court decisions, and highlights some rare victories of self determination and settlement of treaty rights in North and South America. The significance of New Zealand's Treaty of Waitangi Fisheries Settlement Act 1992 is forged here.

Chapter three steps back in time to early settler establishment in Aotearoa, the Treaty of Waitangi, the 19<sup>th</sup> century constitutional development and Maori control of the fishery. It is about the relationship between Maori and the Crown and breaches of that relationship are illustrated through legislation. Maori responses to legislative neglect are discussed alongside their isolation from early political and economic development. The chapter also covers the legacy of Maori legal challenges against

treaty breaches, judicial interpretations and changes over time and contemporary Maori attempts to regain authority over their fisheries resource leading to the Deed of Settlement.

Whilst the first three chapters provide the historical background of colonization and customary fishing rights, chapter four is about Maori research methodology. The influence of 'kaupapa Maori' and 'matauranga Maori' research procedures, in regard to Maori wellbeing as a research goal, guide this research. My research journey describes the reasons for choosing this topic, the selection of research participants and whakawhanaungatanga as a strategy to legitimize Maori knowledge and empower Maori development for Maori by Maori.

Chapter five is about the content of the interviews and the research participants views on how they perceive the effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu. The participants express their experiences of kaitiakitanga from both a traditional and regulatory perspective. The analysis looks at the essence of what those experiences have endured with regard to maintaining traditional concepts in a contemporary regulatory regime administered by the Crown. Some participants raised issues of lack of resources, compliance, competition, consultation, commercial impacts and the pervasive influence of the Ministry of Fisheries. For tangata kaitiaki the influence of the ministry has been enormous.

Chapter six provides insight into three of the key themes of this thesis – tikanga, mauri and kaitiakitanga. Those themes are followed with an expression of rangatiratanga that contrasts the legislative intent to 'provide for rangatiratanga', with the reality for hapu and kaitiaki to validate that.

Chapter seven is the concluding chapter and presents the key learning's from the interviews and identifies my conclusions and recommendations for any future customary fishing research.

One aim of the thesis was to provide an easy to read inter-related history of customary fishing rights litigation in Aotearoa New Zealand and internationally. The chapters are intended to guide the reader through events in history from denial to reinstatement of rights and to explore the experiences of people affected by those events.