The Wai 420

Marine Issues Report

A Report to the Waitangi Tribunal for the Wairarapa Ki Tararua (Wai 863) Inquiry

The coast at Mataikona A2

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Introduction

The Claim

The Wai 420 claim asks the Tribunal to confirm the 'blue water title' of the Proprietors of Owahanga Station to the land known as Mataikona A2 block. The claim stated that the 'Amoco NZ Exploration Co Ltd application for exploratory oil and gas drilling off the Wairarapa14 Coast will prejudicially affect the mana of the hapu Te Hika a Paapauma'.[1] The claim was subsequently consolidated in the Wairarapa ki Tararua inquiry in 1994.[2]

Further details provided by counsel refine the claim issues as twofold.[3] First, that the Maori owners of the Mataikona A2 block have a 'title' that extends beyond the line of mean high water springs to include the foreshore, the sea and the seabed beyond. The basis of that title is both legal and customary. The second part of the claim is that the Crown has impinged on the rights associated with that title by its assumption of ownership and management of the 'coastal marine area', defined as the sea and seabed that extends from the high water mark to the limits of the territorial sea – some 12 miles off the coast of Aotearoa.[4]

The Commission

The Tribunal commissioned this report on 21 October 2002 to provide information on:[5]

- the nature of the legal title of the owners to the Mataikona A2 block and other relevant land titles;
- Maori traditional and post-contact occupation of the Mataikona coast, including use of foreshore and sea and any issues of access.

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[1] Wai 420 statement of claim, 22 Nov 1993
[2] Registration direction, Wai 863, doc # 2.15
[3] 'Memorandum of counsel for Wai 420 being a response to the memorandum – directions of the presiding officer, dated 13 August 2002', 5 September 2002, Wai 863, doc # 2.129
[4] Resource Management Act section 2(1) 'Interpretations'
[5] Wai 863, doc # 3.17

- Crown policies and legislation that relate to that have specifically affected that coastal block and its resources.

Methodology

Research for this report was carried out over four weeks in November and December 2002. Research focussed on local government archives at Masterton and Woodville, National Archives Wellington and Land Information New Zealand (LINZ), Wellington. A number of people have been consulted including Department of Conservation and Ministry of Fisheries staff, the claim manager Mr George Matthews, and regional and county council personnel. The author would like to thank those people who provided information for the production of this report. In the limited time available, oral interviews of claimants concerning traditional fishing rights were not completed. The report has instead relied on information in the Rangitane O Wairarapa report on Customary Fishing which contains such information from kaumatua and others who are members of the claimant group.[6] The claimants will also be able to provide the Tribunal with information on this topic during the hearing process.

This report does not examine in detail the Crown's legal ownership of the foreshore and seabed. Although the issue is perhaps central to the claim, information on this topic is readily available to the claimants through, for example, the Rangahaua Whanui 'Foreshore' report by Richard Boast.[7] In addition, foreshore, coast and marine issues have been researched in some detail for this inquiry by Cathy Marr in her Environmental Overview report for the Wairarapa region.[8] This report should be read in conjunction with the Marr report which contains much information that is directly relevant to the Wai 420 claim. This report also relies on research by Phillip Cleaver in his 'History of the

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[6] H Rimene, M Kawana, A Rimene, J Potangaroa, 'Nga Uri O Hamua, Keeping the Wolves from our Door: Customary Fishing Project July 2001-January 2002', Rangitane o Wairarapa, Masterton (hereafter Rimene et al)
[7] R Boast, 'The Foreshore' Rangahaua Whanui report, Waitangi Tribunal November 1996
[8] C Marr, 'Wairarapa Twentieth Century Environmental Overview Report: Lands, Forests and Coast', August 2001(not yet filed at time of writing)

Purchase and Reserves of the Castlepoint block', and Tony Walzl's 'Crown Administration of Wairarapa Maori Land in the 20th Century'.[9] The document bank compiled by Barbara Gawith and Eve Hartley for the Mataikona blocks has been of great assistance. Page numbers from the Mataikona volumes of the Gawith and Hartley document bank are referenced in the footnotes as 'GH p X'.

Location and Names

The coast, foreshore, sea and seabed referred to in this report is adjacent to approximately 17,000 acres of land located on the east coast of the lower North Island (referred to in this report as the Wairarapa east coast) between the Mataikona and Owahanga Rivers (refer figure 1). Originally, the Native Land Court and survey records refer to this land as the 'Mataikona block'.[10] The name derives from the river which forms the southern border of the block. The name 'Mataikona' comes from the Maori words *mataitai* (to collect food) and *kona* (there).[11] Thus the name is symbolic with the focus of the claim, the traditional right of Maori to gather resources from the area. Confusion can arise as the subdivision to the south of the Mataikona River is also called 'Mataikona'. As such, the words 'Mataikona block' are used to distinguish the land in question from the subdivision to the south.

In the twentieth century, the Mataikona block was developed as a sheep and cattle station under the stewardship of the Maori Trustee and then the Department of Maori Affairs. The farm was called 'Owahanga Station', after the river which defines the northern border of the block. Thus the 'Owahanga station' is on the 'Mataikona block'. The river on the northern border has numerous spellings – Owahanga, Owhanga, Oahanga, and Aohanga. This report uses 'Owahanga' for both the station and the river.

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[9] P Cleaver, 'A History of the Purchase and Reserves of the Castle Point Block', August 2000, Wai 863, A6, and T Walzl, 'Wairarapa Land Issues Overview, 1900-2000' November 2002 (not yet filed)
[10] See later in Title History section
[11] Meaning supplied by Mr George Matthews.

The Author

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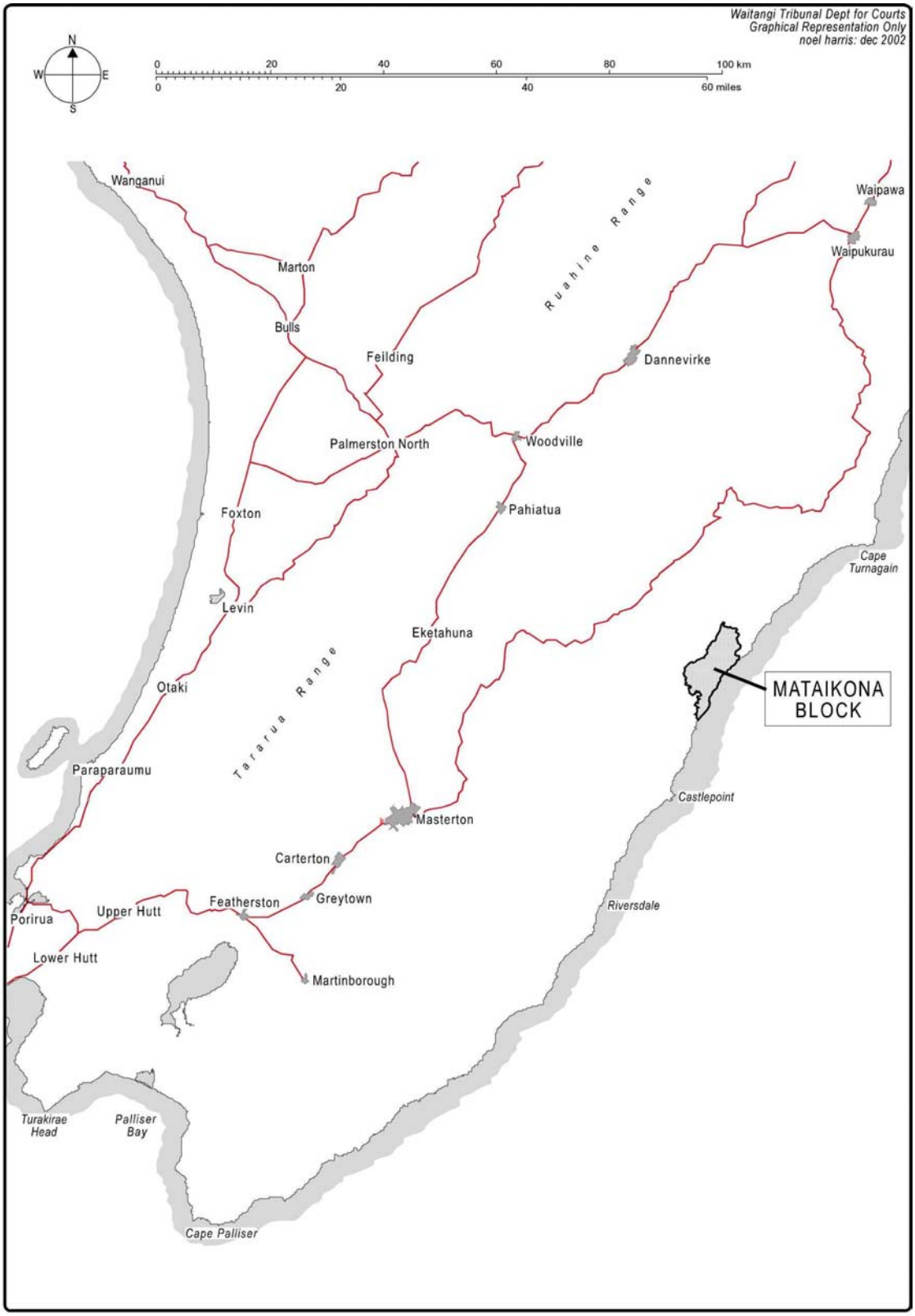
Figure 1: Location of the Mataikona blocks



Location of Mataikona block

The Legal Title of the Mataikona block

The Blue Water Title

In 1992 a member of the law firm of Johnson Lawrence Elder wrote to the chartered accountants for the Owahanga station. The letter stated:[12]

> The land comprised in Mataikona A2 has never been surveyed in accordance with the survey regulations. Accordingly, any natural boundaries such as rivers and the ocean, impliedly form part of the title ... This being the case the owners can regard themselves as having for all intents and purposes a title in respect of the ocean boundary which extends as far as the natural ebb and flow of the tide at any point in time ... This is an unusual situation and has arisen because a Crown Grant has never been issued for this land. [...] The extent of the Mataikona block was determined by the partition order of the Maori Land Court registered under Provisional Register 9/173 in the Land Transfer Office.'

The following documents were included in the letter:

1. Minutes Maori Land Court 23 March 1869 ordering titles to issue for Mataikona
2. Order vesting Mataikona A block in Maori Trustee in 1957 (Maori PR 9/173)
3. Order deleting the land known as Mataikona A1 from the above order

The belief that Mataikona and indeed other stations in the region have a 'blue water title' through lack of survey or an unsurveyed Crown Grant is present in historical records and popular conception.[13] Some officials concur in this view. A senior policy analyst at the Ministry of Fisheries considered that:[14]

> From Orongorongo around to Cape Turnagain, where stations have a title down to the sea, their title is to the low water mark – a blue water title.

A memorandum on coastal issues to the Dannevirke County Council circa 1983 noted:[15]

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[12] M J Switzer, of Johnston Lawrence Elder to J P Dodson, Chartered accountants, 17 March 1992 (letter supplied by counsel for Wai 420)

[13] The term 'blue water title' in this situation seems something of a misnomer, however, as blue water would seem logically to refer to that part of the ocean where the land is always covered by water – that is, beyond the foreshore.

[14] Discussion with Terry Lynch, Senior Policy Analyst, Ministry of Fisheries, 1 October 2002

[15] 'Dannevirke County Foreshore Reserve' unnamed and undated memorandum in file 'Foreshore Control 1983' Dannevirke County Council 1.9/2/5 Box 16 Woodville Archive

> Nevertheless, tact will be required when liaising with land owners. Many of their forebears were granted "Victorian Titles" to much of the land in question giving possession right down to the low water mark.

The Horizons.mw (the trading name of the Manawatu-Wanganui Regional Council) Coastal Plan of January 2002 states under 'land tenure':[16]

> Most of the Region's coastal marine area is in Crown ownership. There are few exceptions to this. The mouth of the Hokio stream down to the open sea is owned by the tangata whenua and managed by the Horowhenua Lake Trustess. On the east coast a blue water title is claimed by the Maori owners of Moawhango [sic] station for the stretch of foreshore between Owahanga River mouth south to Mataikona River mouth, although this has yet to be settled.

Current government policy is that the Crown owns the foreshore and seabed through legislation – the most recent example being the Foreshore and Seabed Endowment Revesting Act of 1991.[17] The idea of the Crown owning the foreshore really dates back to the importation of English statute and common law following the assumption of sovereignty by the British Crown in 1840. The application of English laws to Aotearoa was further entrenched through such legislation as the 'English Laws Act' of 1858. As part of the importation of the English laws, New Zealand government law makers have argued that the rights of the Crown in England to 'own' such things as gold, the foreshore, seabed, navigable rivers, wild animals and birds also apply in New Zealand.[18] English law at the time distinguished between the coastal land, the foreshore (the area between high and low water marks) and the sea and seabed. The Crown was held to own, by presumptive right, the foreshore, the beds of tidal rivers, the seabed and coastal waters. The Crown was not required to demonstrate how it owned those places, and the burden of proof of ownership by express or presumed Crown grant was on the private subject.[19]

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[16] Horizons.mw Regional Coastal Plan: Change 1 & 2, Jan 2002, p 18
[17] For a full summary of the Crown's legal position see Crown law closing submissions, Hauraki Inquiry, Wai 686 AA1, November 2002. Also Boast, Marr
[18] Ben White in C Marr, Dr R Hodge and B White, 'Crown Laws, Policies and Practices in relation to Flora and Fauna, 1840 – 1912', Wai 262, K5
[19] Boast pp 25-26

Through legislation such as the Harbours Acts of the nineteenth and twentieth centuries and most recently the Resource Management Act 1991, the Crown, which retains the underlying or 'radical' title to the foreshore and seabed, can vest temporary ownership and/or control of the same to others – Harbour Boards, territorial local authorities and regional councils for example. Such vestings or 'grants of control' allowed those organisations to construct wharves or pass regulations controlling public access and use.

Similarly the Public Reserves Act of 1854 enabled the governor in council to: [20]

> grant and dispose of any land reclaimed from the sea, and of any land below high-water mark in any harbour, arm or creek of the sea, or in any navigable river or on the sea coast within the said Colony ...

but contained the important proviso that:

> nothing herein contained shall prejudice the rights of persons claiming water frontage.

As such, the Act recognised that 'water frontage' was an important and valuable right and that the legislation should be careful to not divest people of such rights.

Government policy in the early colonial period was more accepting not only of private rights to water frontage, but also of the idea that private citizens could have rights over the foreshore and seabed itself. For example, the Crown granted titles to the foreshore in fee simple to individual private citizens. This appears generally to have occurred in the early days of the colony when survey plans perhaps took in a tidal mudflat or river, or where minerals occurred in the seabed (copper off Kawau Island is one such example). Private individuals with such personal property rights to the foreshore and seabed are listed in the Appendices to the Journals of the House of Representatives of 1868.[21]

At that time (1868) the Native Land Court also had the ability to investigate title to the foreshore:[22]

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[20] Cited in P Hughes, Acting Chief Surveyor, 'Reserves Along Water Boundaries', Department of Survey and Land Information, Wellington, 1994, p 8

[21] 'Return Of Land Lying Between High and Low water marks on the coast of the colony' AJHR 1868, C3, pp 2-6

[22] NZ Institute of Surveyors, 'The Surveyor and the Law' Feb 1993 ('reformatted') p 20

> The jurisdiction of the Maori Land Court over the foreshore was briefly suspended in the Auckland province whilst a proclamation of 18 May 1872 remained in force and finally taken away over the whole country by the Harbours Act 1878 s 147, which was the forerunner of the Harbours Act 1950 s 150. After 1878 it was no longer competent for the Maori Land Court to investigate the title to, or issue any freehold order in respect of the foreshore.

As such, it has been argued that the foreshore is simply 'uninvestigated' customary Maori land.[23] At the time of the Castlepoint transaction in 1853, ownership of the foreshore and seabed was not an issue between Maori and the Crown. The Castlepoint deed does not refer to the foreshore or coastal waters. It notes that the Maori owners ceded the land:[24]

> … me ona rakau, me ona wai me ona kohatu o raro ranei o te whenua o runga ranei o te whenua me nga aha noa iho aha noa iho o aua whenua ki a Wikitoria te Kuini o Ingrini
>
> … with its trees, its waters its minerals whether underneath or on the earth and everything pertaining to that land to Victoria Queen of England

The owners reserved certain places to themselves within the wider Castlepoint transaction. The boundaries of the Mataikona reserve were recorded in the deed as:

> … ki waenganui o te awa o Oahanga o Mataikona kei kei Waiohakura te tapahanga o uta haere tika tonu ki Arawata ko te Moana tonu te rohe o tetahi taha.
>
> … between the Oahanga River and Mataikona the inland boundary is at Waihokura thence in a direct line to Arawata the sea is the other boundary.

There is no evidence that Maori drew a distinction between coastal land and foreshore land, or the seabed. The assumption could be made that for Maori it was simply a matter of fact that with respect to the reserves, they retained everything 'pertaining to that land' including fishing rights and foreshore and seabed ownership.

This was not an unreasonable assumption, not only in Maori terms, but also in European. There is evidence in both Native Land Court jurisprudence[25], the 1858 Reserves Act, and the specific Crown Grants recorded in the AJHR of 1868 that individuals or groups could have rights to the foreshore and that those rights can be recognised in New Zealand law.

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[23] Boast p 68

[24] Castlepoint deed, 22 June 1853, 'Maori deeds of land purchase in the North Island of New Zealand' (Turtons deeds), Vol 2, No.85, p 261

These rights can attach to individuals (AJHR), or groups (Native Land Court awards). Furthermore, if a person or persons had rights such as water frontage, those rights were important and deserved protection from the perhaps unintended consequence of government legislation.

Does Mataikona A2 have a Blue Water title?

This research has not been able to confirm a legal Blue Water title associated with the Mataikona block. The Native Land Court did not specifically award a title to the foreshore or seabed, there was no Crown grant issued for the same to the owners and the block would appear to have been surveyed a number of times to the high water mark.

As noted above, the Mataikona reserve was created from the Castlepoint transaction in 1853. Maori did not transfer the land to the Crown which then granted it back. The land was simply excepted from the transfer. As such, its legal status until 1869 was 'customary Maori land'. In 1869, the Native Land Court investigated and awarded title to the owners of the Mataikona block under section 17 of the Native Land Act of 1867. This title by survey, pertained only to the land up to the high water mark. In 1959, when the various subdivisions were re-amalgamated in preparation for development farming, the title was registered for the first time under the Torrens system when it received a Provisional Register number and then a certificate of title. The owners and their successors have retained the Mataikona reserve land, practically complete, down to the present, where it is classified as Maori freehold land.[26]

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[25] Chief Judge Fenton awarded Maori fishing rights in the *Kauwaeranga* 1870 foreshore in 1872. See Boast p 49

[26] The title history will be discussed in greater detail in following sections.

Surveys and the Court's Intention

At the title investigation in the Native Land Court in 1869 the surveyor Wilkinson gave the following testimony:[27]

> I am a licensed surveyor. I made the survey of the land shown on the map before the court. The survey has been made in accordance with the rules. ... The boundaries are nearly all natural ... On the north by the Oahanga stream – on the west by the Waingongoro and Mataikona creeks, on the s.w. by the Mataikona river, on the east by the ocean. The boundaries were pointed out by Karaitiana, Taraipine and Wiremu te Whare. There was no opposition to this survey.

The survey plan produced in the court and later signed by Judge Monro is Maori Land plan 3025 and is available from landonline or from LINZ Wellington. The survey plan contains the following declaration signed by Wilkinson and dated 'Dec 1868':[28]

> This is to certify that the rules for the guidance of 'Native Land Surveyors' have been adhered to upon this survey.

Wilkinson appears to have surveyed the Mataikona block to the high water mark. ML 3025 shows a double line along the coast. On the outer (seaward) line is written 'low water mark'. The coastal boundary pegs (shown at the ends of the later partitions), lines and bearings all seem to refer to the inner line, which one would assume is the high water mark.

At the title investigation in 1869, the owners requested the block be divided into three portions to allow all names of those with an interest to be on the title.[29] Judge Henry Monro delayed the issue of the certificate until the partitions requested were surveyed and mapped.[30] The lines are shown on ML 3025 and appear to extend to the inner (high water mark?) line where 'peg and trench' is shown on the plan.

Once the additional survey was completed, and the mortgage attached to the block for survey removed, the certificates could issue. This occurred in October 1869 but the title was antevested to the date of the title investigation when the owners had apparently

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[27] Wairarapa Native Land Court minute book 1 H, Tuesday 23 March 1869, fol 56
[28] ML 3025, LINZ Wellington
[29] Wairarapa Native Land Court minute book 1 H, Tuesday 23 March 1869, fol 57

leased the bulk of the land to a European - Sutherland. A sketch of each subdivision was attached to the certificates when they issued. These sketches do not distinguish high from low water mark. The three certificates, which are all identical other than the land area and partition and owners' names, state the land is:[31]

> [B]ounded ... towards the east by the sea on the plan drawn hereon or hereunto annexed. ... be made to vest in the grantee on the 27 day of March 1869.

The certificates do not specifically state that the title includes the foreshore, as occurred in Hauraki when Judge Fenton issued 'rights' to Maori to the foreshore at Kauaeranga.[32] Nor does the survey plan indicate that the boundary includes the foreshore, nor any part of the sea. It seems, on the contrary, to mark the high water line as the boundary of the land to which the title refers.

The demarcation of low or high water mark continues in subsequent plans. In 1895, after a long court case, the Mataikona blocks were further partitioned. The compiled plans attached to the 1895 partitions show a double line at the coast marked high water mark and low water mark. Between the two is written the word 'shingle'. The internal subdivision lines appear to extend to the inner high water mark line, perhaps indicating that is the boundary of the land which has been subdivided.[33]

In 1898 the Akitio Road Board commissioned a road from the coast at Mataikona to Pongaroa township, some miles inland. This road is shown on plan SO 14136 and includes some coastal detail.[34] The plan records the waka tauranga (canoe landing site) as 'Aohanga Bay' and notes the position of the 'boat entrance' between the reef and the coast. At the beach, the 'landing place', and 'landing shed' are shown. Specifically, there is a single line at the seaward boundary of the land named 'high water mark'.

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[30] Order of the Native Land Court, Mataikona 3 block, 27 March 1869, (GH doc bank p 628-629) Note Order for certificate of title says requires survey within 6 months.
[31] Native Land Court certificate of title 13 Oct 1869, 'Entered in book 15 Wairarapa No 43 page 43 (GH pp 529, 624)
[32] Boast p 50
[33] Native Land Court partition order 19 July 1895, Mataikona 2 block order file, Maori Land Court Hastings, (GH p 574)
[34] LINZ Wellington

Mataikona 3 block was divided into Mataikona 3A and 3B in 1895. The survey was not completed however until 1920 and is shown on DOSLI plan WD 3463.[35] The coast is shown as a thick line with the inner border marked 'H.W.M.' Again, boundary pegs are shown as positioned on the inner line and the partition line with Mataikona 2 block ends at the inner line.

Surveys conducted in 1959 and 1968 on the Mataikona blocks do not show the seaward boundary as either high or low water mark.[36] They are plans compiled in the survey office from earlier plans. An explanation for the lack of detail on the coastal boundary is perhaps offered by S R Kinnear, Registered Surveyor, who states:[37]

> In NZ, where a person's land abuts onto tidal waters, the boundary is generally the mean high water mark by virtue of s 35 of the Crown Grants Act 1908.
>
> The line is dynamic in nature and subject to constant change [due to accretion or erosion]. If the boundary of a property was a fixed boundary and not subject to accretion and/or erosion the boundary would be represented on the deposited plan and the title by a series of measured straight lines or 'right lines'. The boundary would then not move with the action of the sea.

The surveys of 1959 and 1968 show the coast of the Mataikona blocks as a 'wavy line' and not a series of straight lines. The lack of demarcation between high and low water marks in the later plans may thus be due to the provisions of the above legislation and consequent survey practice.

Thus the survey documents appear to show a clear intention to demarcate the legal boundary of the Mataikona blocks as the high water mark. There was likely a divergence of understanding, however, between official practice and Maori belief. The survey regulations and title followed English legal assumptions and there is no evidence that the Maori owners were aware of those assumptions. On the contrary, the natural boundaries referred to 'the ocean' and the owners would have assumed they held rights to the adjacent ocean according to Maori custom. The later surveys compiled in the survey office would have done little to change this Maori view and no evidence has been found

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[35] Surveyed by W A Hutton, Feb 1920. Certified correct 16 July 1920. LINZ Wellington.
[36] ML 4729, 'Plan of Mataikona A', April 1959 and ML 5181, June 1968 LINZ Wellington
[37] *The Surveyor and the Law* New Zealand Institute of Surveyors, March 1996

that the Crown communicated the implications of its ‘legal’ ownership and control of the same.

Customary Rights: Ownership, Occupation, Use

Despite the lack of evidence for a title to the foreshore based on survey or an award of the court, a strong argument can be made that the claimants have a customary title to the foreshore and sea adjacent to their lands and that they have never willingly or knowingly relinquished this. For the claimants to demonstrate a case for customary ownership rights to the foreshore and sea off the Mataikona block the following are useful:[38]

1. Continuous and exclusive ownership and occupation of the area
2. Continuous and exclusive use of the resources
3. Restriction or denial to others of access to those resources.

The following section will examine the historical evidence for each of those subject areas in turn.

Continuous and Exclusive Ownership

The claimants can demonstrate a record of continuous ownership of the Mataikona block adjacent to the foreshore and sea under discussion. The ownership of the adjacent land, in the absence of the facility in New Zealand law for Maori to 'own' their customary foreshore and seas, serves to assist the case for rights to the same. The claimants' legal ownership of the Mataikona block has already been documented by Cleaver in his report to the Tribunal 'History of the Purchase and Reserves of the Castlepoint block'.[39] Some salient points in the story of that record ownership are recorded below.

The owners of the Mataikona block reserved the land from the 1853 Castlepoint transaction where the Crown gained rights to some 250,000 acres of east coast Wairarapa land. Unlike other transactions at that time, the boundaries of both the land transferred to the Crown (the wider Castlepoint purchase) and the Mataikona Native Reserve, were

[38] See for example Boast p 60
[39] Op Cit

clearly defined by sketch plan and natural boundaries. A large group of owners of the Mataikona block signed the subsequent Castlepoint deed.[40]

It appears that about 1868 a government survey encroached on the Mataikona Reserve. Te Whakarato wrote to Chief Judge Fenton in 1868 claiming:[41]

> the land I retained as a dwelling place for myself since 1852 has been taken by the government.

Possibly as a consequence of the survey dispute with the Crown, (discussed in Cleaver[42]) Te Whakarato on behalf of the owners applied to the Native Land Court to have the title to the Mataikona Reserve determined.[43] Judge Monro presided over the investigation of title on 23 March 1869. Te Whakarato appeared as the principle witness for the claimants: He testified:[44]

> I belong to the Ikaopapauma tribe and reside at Mataikona. ...This land belongs to me and some others of my tribe. We derive our right from our ancestor Te Matau…This land belonged to him in former times. His descendents have been in possession ever since and we are in possession now ... our title is not disputed that I am aware of. There are more than 10 owners on the land so we wish for 3 grants in order that all may be in the grants. One line to run .... There are more than 30 owners. We have arranged among ourselves who are to be in the grants and who is to be "hei [sic] hapu" (Registered under cl 17/67). The grantees of North Mataikona are: [10 names] No.2 ... [etc]

No one appeared as counter claimants and the Judge subsequently ordered three certificates of title to issue under section 17 of the 1869 Native Land Act to three blocks of land named Mataikona 1, 2 and 3, upon completion of survey.[45] The initial survey had only delineated the outer boundary of the block. The judges orders awaited completion of the partition surveys and subsequently issued in October 1869, with the title antevested to 29 March 1896, the day the owners reportedly signed a lease with Sutherland.[46]

Two points arise from the above. First, the owners appear to have been obliged by a boundary dispute, to establish a 'legal' title to their land. Second, clearly the owners were

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[40] Cleaver pp 31-33
[41] GH p 482
[42] Cleaver p 115
[43] Whakarato to Native Land Court, 13 November 1868 (GH p 479)
[44] Wairarapa Native Land Court, minute Book 1 H, Tuesday 23 March 1869, fol 56
[45] Order of Native Land Court for certificate of title Mataikona 3, 27 March 1896 (GH p 629)

familiar with Native Land Court legislation and opted for section 17 titles as they allowed more people to be on the title, either as 'official' owners on the front of the certificate or by having their interests registered in the court. Such a title was as close as the then Native Land legislation approached to 'communal ownership.' Te Whakarato's reference to the 'hapu' is perhaps how the owners interpreted clause 17, as a kind of hapu title. It was not, of course, as those on the title were 'tenants in common' – a group of people having undetermined *individual* interests in the land.[47] The Native land legislation of the time was incapable of delivering a true customary title, based on a collective right to the land.

In 1892 some owners felt they were not receiving a fair proportion of the lease income.[48] One decided to run sheep on part of the block. The lessees (Sheath and Hume at that time) were unable to prevent this as they could not fence off the part of the block which was legally theirs (relative interests being undetermined).[49] The disaffected owner applied to the court for a determination of relative interests. Te Whakarato wrote to the court asking that only the interest of the one owner be determined:[50]

> Let the restrictions remain on the other shares. Let his [her] share alone be heard because he causes trouble over the shares of the others [translation].

Under the legislation of the time, a partition would have meant subdividing the land into parcels with no more than 20 names in each. Aporo Hare, one of the owners explained, however, that following a meeting of owners outside the court:[51]

> so far as he could understand the matter it was not proposed to subdivide the land but only to enter into a written arrangement to place all the persons on the same footing and to impose conditions that no application should be made to the Native Land Court to subdivide the land except with the consent of a majority of the owners and that no one should sell their share.

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[46] Cleaver p 115. See also (?) to Fenton, 21 October 1869, Mataikona block file (GH p ?)
[47] Order of Native Land Court re Mataikona 1 & 3 blocks, 27 March 1869, states that names on back be 'tenants in common' (GH pp 527, 628)
[48] Reta Potangaroa to Chief Judge Native Land Court 14 February 1887, (GH pp 517-518, translation p 520)
[49] Sheath & Hume to CJ Native Land Court, 9 April 1897, (GH p 641-642) This letter refers to the earlier events.
[50] Whakarato to Chief Judge, Native Land Court, 30 March 1893, (GH p 407)
[51] Wairarapa Native Land Court, minute book 18A, 13 Oct 1892, fols 226-227

Clearly Te Whakarato and Hare wanted to retain the land and were concerned the restrictions would be lifted if the land was partitioned. The minute books record that Te Hika A Papauma decided to withdraw the application to subdivide:[52]

> because it meant dividing the land into too many blocks owing to the law requiring that not more than 20 persons should be placed in a title.
>
> Applicant Ihipera Patumoai (sp?) abandoned attempt to have interest defined and resolved to make up quarrel with relatives concerning the sheep she had placed on the land and was now willing to place those sheep in the custody of Karaitiana Wakarato.

Karaitiana Korou objected as he did not believe the proposal on how to divide the rent was fair. He pointed out that:[53]

> Say take the case of one of the original owners who had died and say 10 persons had been appointed to succeed. Under the terms of the lease the ten persons were each entitled to a full share in the annual rent in place of only being entitled to receive a tenth share of one interest.

The other owners, it seemed, had arranged a form of communal title – where the community, as it existed at the time, owned the land and distributed the rent equally among themselves. Whether this was a 'customary' arrangement or not, it was a decision arrived at by the collective owners. The Court, however, was bound by the laws of the land and pointed out:[54]

> that if this was the mode of apportioning the rent it was a mistake... It was very evident from the statement of Karaitiana that the relative interests of the land should be determined ... it was a mistake to suppose that the land would be allowed to remain in its present position as the law had now placed all the persons both on the title as well as the registered owners on the same footing [clause 97 and 98 of the Act of 1873] and the same rights and privileges had been conferred on the successors ... so that any one person might apply to the court to have his share determined . If [this was done] it would be the means of setting aside the present title which they appeared to consider now operated as a safeguard against all innovations but they were under a mistake in supposing this as the very persons named in the body of the certificate no longer had paramount control ... Any one person could apply to the court to make partition thereof. It would be seen therefore that it was quite impossible to prevent the land from being subdivided and the best plan was ... to have it done as speedily as possible.

The determination of relative interests and partition did not proceed until 1895. The court, presumably at the request of the owners reimposed the restrictions on alienation

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[52] Wairarapa Native Land Court min bk 18A, Tuesday 14 October 1892, fol 230
[53] Wairarapa Native Land Court min bk 18A, Tuesday 14 October 1892, fol 239

except by lease for no longer than 21 years.[55] Again, the evidence in the court records show Te Hika a Papauma trying to effect a communal approach to land ownership and a strong will to retain the land as a single piece.

In 1917 the Crown considered acquiring the Mataikona blocks for the resettlement of returned soldiers. The government required the Native Land Purchasing Board to place restrictions on alienation of the land to any party other than the Crown for a period of one year.[56] However, a solicitor for the principal owners wrote to the Native Land Purchase Board saying:[57]

> As a matter of fact our clients inform us that they have not the least intention of selling the land to someone else; nor, they inform us, do they intend to sell to the government. It is their desire to keep the lands for themselves, and when Mr. Hume's leases fall in, to farm that land on their own account. They feel that the sale of the lands either to the Government or to anyone else would be contrary to their own best interests.
>
> It is believed that none of the Native owners would be prepared to sell their interests to the Government; but, whether this be so or not, we are instructed by the principal owners to say that, so far as they are concerned, they are not prepared to sell and are not prepared to enter into any negotiations. ... They desire therefore not to be approached in any way with regard to a sale, as they do not want to sell and do not want to negotiate.

Again, the owners show a strong collective will to retain their lands. The successors to the original owners down to the present have similarly continued to retain possession of their ancestral lands. The Mataikona blocks are currently owned by a Maori Incorporation called 'The Proprietors of Owahanga Station.' It is classified as Maori freehold land.[58]

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[54] Wairarapa Native Land Court min bk 18A, Tuesday 14 October 1892, fol 240
[55] See Partition Orders for Mataikona blocks, 4 June 1895, 'inanlienable except by lease not exceeding 21 years'. (GH p 589, 590, 599)
[56] Walzl, p 60
[57] Walzl, pp 62-63
[58] Cleaver pp 147-148

Occupation

The owners' continuous occupation of the Mataikona blocks is clear in the documentary record. The Native and Maori Land Court records, survey plans, and government files all show a continuous occupation by at least some of the owners sufficient to keep the 'fires alive', since before the time of the Treaty until the present.

Beginning with the pre-historical period, current archaeological information records:[59]

- nine archaeological sites of Maori origin for the Castlepoint region including two urupa, middens and ovens;[60]
- fourteen archaeological sites of Maori origin in the Whakataki to Mataikona River area including three pa, an urupa, terraces, middens, ovens, a karaka grove and a monument. 'Waipori's mark' is a stone cairn monument at Whakataki erected in 1842 to commemorate a treaty between Ngati Awa and local Maori in 1839;[61]
- three archaeological sites of Maori origin for the Owahanga area – two pa and a midden;[62] and
- one Maori cemetery reserve at Akitio River mouth.[63]

The Native Land Court minute books contain numerous references to the owners' occupation of the block. At the title investigation Karaitiana Te Whakarato described a total of 11 settlements on Mataikona:[64]

> We are now living on the land ... we have houses and cultivations on it now, we have never been disturbed. We have now a settlement at Te Ika Puru, at Te Kapa, Whakarunia Te Waka, Waimaunu, Makirikiri, Mangatawara, Te Korekai, Otahumatarua, Potaka, Karaka a Paka, Tokitoki.

Wilkinson's survey supports Te Whakarato's evidence of extensive occupation and use of the land. Surveyors were instructed to record the 'Native names of all rivers, hills, cultivations and pieces of land'.[65] On ML plan 3025 Wilkinson recorded the names of numerous villages and cultivations as well as other features, both natural and human

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[59] The Historic Places Trust is currently updating its site register for the east Wairarapa coast.
[60] T Atkinson, 'The Wairarapa Coast – A literature Review' (Draft report) not dated. Department of Conservation, Masterton, p 24
[61] Atkinson, p 20
[62] Atkinson, p 18
[63] B Dix, H Robertson, G McAlpine et al, *Coastal Resource Inventory First Order Survey: Wellington Conservancy*, DOC Wellington, October 1990, p 103
[64] Wairarapa Native Land Court, minute book 1 H, Tuesday 23 March 1869, fol 56
[65] *New Zealand Gazette 1867*, 5 April 1867, p 137

made. Along the north bank of the Mataikona river (the southern border of the block), starting from the coast and going inland to Makatote creek at the western end of the property Wilkinson recorded the following places: at the mouth was 'Teikapuru Village'; about one kilometre inland was 'Otaane' where 'Sutherland's Homestead' (the lessee) was situated; another kilometre inland was 'Otahumatarua Village'; further up at the junction of the Mataikona and Waipaua Rivers was 'Potaka' where Wilkinson recorded huts and cultivations; several more kilometres up river he noted a grass flat named Karaka a Paka and not far on from there, at Tarataho creek, 'old cultivations'; now perhaps five or six kilometres inland was Toki Toki where again 'huts and cultivations' are noted. Going north along the coast starting again at Teikapuru village, Wilkinson recorded: at Te Kapa 'cultivations'; at 'Whakarunia Te Waka' there were 'cultivations and huts'; further north 'Ngapuke' was the site of an 'old pah' and at 'Rua Tupapako' on the mouth of the Owahanga River Wilkinson observed a 'pile of stones', most likely a memorial cairn. Heading inland again from the mouth of the Owahanga river, on the south bank he noted: at 'Makirikiri Creek' an 'old cultivation' and 'hut'; at Mangatarawa another 'old pah' and just north were 'huts'; at Te Kore Kai where stood the 'Ferry house' there appear to be cultivations marked, but not named as such; further inland at Kopiro were 'old cultivations' and beyond that point places are named only – Kapakapanui, Mangatorehe, Te Umuarunga Te Rangi, Te Rereahowhatu until finally we reach Te Ateahunuku, a 'grassy flat' at the rear of the block.[66]

The various successions orders to the Mataikona block after 1869 usually include the residence of the successor, often 'Mataikona' or 'Owahanga'.[67] In 1890 Whakarato said he would convene a meeting of owners at Mataikona to discuss various questions at issue. [68] Presumably the meeting was at Mataikona because that was where most owners lived.

[66] ML 3025. Wilkinson was accompanied by Karaitiana Te Whakarato and other owners on his survey – see title investigation above.
[67] For example Wairarapa Native Land Court minute book 6 fols 121, 247, 307
[68] Wairarapa Native Land Court minute book 16, 22 September 1890, fol 319

Other evidence from the minute books in the 1890s pointing to occupation by the owners includes:

- By October 1892 Ihipera Patuwai was running sheep on part of the land causing a quarrel with other owners.[69]
- In 1894 Karaitiana Te Whakarato as a witness in the court named twelve different hapu having rights to the land.[70] Later in the same case he said: 'the descendants of the hapu I named yesterday have occupied this land continuously since time of gift to Te Matau. They were living on it when I put the land through the court and no one disputed their right.'[71]
- In 1895, Wirihana Te Oioi stated: 'I live at Mataikona. I am a member of Te Hika O Papauma hapu.' At the same hearing Te Manihera stated: 'Te Hika O Papauma were once a numerous tribe and have held the mana over this land down to the present time – the remnant of the tribe still residing there.' Karaitiana Te Whakarato also gave evidence saying at one point: 'Managtawiri [a former pa of Te Matau's] – that is where we are now living'.[72]
- Other chiefs also lived in the block, Hami Te Potangaroa for example, in 1895.[73]

Further proof that the owners continued to occupy the block is also evident in the lands excepted from the various leasing agreements with Europeans. In 1892 the court recorded the sublease of two reserves from the lessee of the blocks, A Sheath, to the owners (at peppercorn rentals). The court located the blocks thus:[74]

> 200 acres on the Oahanga River to the northeast of and abutting the Mangatawai stream and 200 acres on the sea coast at the place called Whakarunia Te Waka and extending to the boundary line between Mataikona 1 and 2 blocks.

[69] Wairarapa Native Land Court minute book 18A, 14 October 1892, fol 230
[70] Wairarapa Native Land Court minute book 21, 20 November 1894, fol 51
[71] Wairarapa Native Land Court minute book 21, 28 November 1894, fol 84
[72] Wairarapa Native Land Court minute book 22, various dates, fols 248, 255, 274
[73] Wairarapa Native Land Court minute book 22, 3 May 1895, fol 305
[74] Wairarapa Native Land Court minute book 23, 17 April 1896, fol 34

Renata Iriwhare later informed the court that some of the owners were dissatisfied with the Owahanga River reserve as 'quarrels as to the rights of the people to cultivate there frequently took place.' The court recommended moving part of one of the reserves 'as a means of relieving the congested state of the other reserve.'[75] The reference to a congested reserve shows that significant numbers of owners resided on the land.

In 1897 the lessees of the Mataikona blocks sought confirmation of alienation orders from the court under section 118 of the 1894 Native Land Act. Under the legislation the court had to inquire if the owners had sufficient other lands for their support. During the case the court noted that lands reserved from the leases for the various owners support thus: 350 acres reserved from Mataikona 1, 350 acres reserved from Mataikona 2, and 250 acres reserved from Mataikona 3.[76] Compared to the two two-hundred acre reserves of 1892, these larger reserves of 1897 were perhaps an attempt by the owners to deal with the 'congestion'.

The Akitio Road Board commissioned a road to the 'Mataikona Native Reserve' in 1897. Plan SO 14136 of the road also shows that the station homestead had shifted to near the mouth of the Owahanga River.[77] North of the ferry crossing 'Old cultivations' are shown on the plan and north of that 'cultivations'. The presence of these cultivations would confirms that owners were living on and cultivating the land reserved for their use from the leases to Sheath and Hume.

Into the 20th century the record of occupation persists. When finally subdividing Mataikona 1 block many years following the order of the court from 1895,[78] the surveyor was instructed that Mataikona 1E was to be 400 acres, and:[79]

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[75] Wairarapa Native Land Court minute book 23, 17 April 1896, fol 32-34
[76] Wellington Native Land Court minute book 6, 21 October 1897, fol 299-300
[77] Aohanga survey district plan (SO?) 14136, LINZ, Wellington.
[78] The task of defining relative interests proved almost impossible owing to the large number of owners, successions and 'cross successions' see Buckle to Sheath and Hume, 11 September 1896, (GH p 663). Judge Butler who originally ordered the subdivisions in 1895 passed on and Chief Judge Jones finally signed the orders about 1920. The surveys were conducted between 1920 and 1932. See GH pp 587, 592, 599, 603, 604.
[79] Instructions to surveyor, n.d., in Lands and Survey file 20/177, LINZ, Wellington.

> This [1E] is for a papakainga and the persons who take interests in it suffer a reduction of 5 to 4 in the other divisions. ... As to the woolshed and buildings and yards on No.1C the owners of the other subdns are to have the right to bring their sheep there and shear them on the payment of a sum of not more than 10/- per day ... such money to be paid to Te Ohonga Paraone.

The survey order infers that owners were living on and farming parts of the block. When Crown Land ranger Sutherland was sent to report on the possible Crown purchase of the Mataikona property in 1917. He noted that at Mataikona 1 (the northern part):[80]

> There is also a Native Pah. Several families of natives reside at the Pah and have small areas cultivated...The homestead is situated on this block as well as the Old Hotel and several native dwellings around the flats near the station.

Of Mataikona 3, the south section, Sutherland wrote:

> There is also several native houses on the flats at the mouth of the river, and some small areas of cultivation.

The records of the Department of Maori Affairs management of the Oahanga station from the 1950s also contain numerous oblique references to owners occupying and using the land – either as labourers, farmers or seaweed gatherers. For example, several owners continued to occupy and farm the block in 1951.[81] Some owners requested houses and a papakainga site at the annual meeting of owners in 1952.[82] Other evidence of occupation includes the presence of a Native school from 1940 to 1966, and a marae.[83]

As ample information is available to the Tribunal on the record of ownership and occupation in the 20th century in the report of Tony Walzl on the Crown's administration of Maori land in the 20th century and it is not repeated here. Mr Walzl's research demonstrates not only occupation and ownership but a close and involved relationship between the owners and the Maori Trustee and the Department of Maori Affairs over the management of their land. This continuous relationship, in the latter half of the 20th

[80] Ranger Sutherland to Commissioner Crown Lands, 1917, Land & Survey file 20/177, LINZ Wellington.
[81] Walzl p 281
[82] Walzl, p 287
[83] Lands and Survey file CL 2/13, LINZ Wellington.

century, is a subject upon which the claimants could also provide oral and other evidence.

Resources from the Sea

> This small village of only a few huts, called Waiorango [about 2 km north of castlepoint cove] serves merely as a resort for fishing for the Natives of Mataikona ... At the village we got a good meal of potatoes and crayfish (of which latter some hundreds were hung up on poles to dry)...
>
> Colenso 1843[84]

> This cove presents perhaps the finest view of seaside rocks I have yet seen...The Natives...are the most civil people I have yet met with in this country they had given us pork potatoes & crawfish refrained from begging accepted our proffered payment for the pig.
>
> Weld, n.d.[85]

The two former sections demonstrate a continuous and uninterrupted ownership and occupation of the lands adjacent to the foreshore and sea claimed by the Wai 420 claimants. The following seeks to show a continual use of the resources from the adjacent sea, including fish, shellfish, and seaweed.

The lands reserved from the Castlepoint purchase in 1853 were mostly coastal. Many of the blocks Maori reserved from later transactions to Europeans in Wairarapa and Tamaki Nui a Rua were coastal. There are several obvious reasons for the Maori preference to reserve coastal land – transport, rain and food. Transport by canoe or walking the coast was one way of getting around the district. Early Europeans also preferred the coastal route between Wellington and Napier before the inland forests were felled and roads and railways built.[86] The coastal lands were of better quality (possibly receiving a higher rainfall) than those slightly inland so proved more fertile area for cultivation.[87] Thirdly,

[84] Castle Point Historical Committee 1965:41. Quoted in Atkinson, p 20
[85] Quoted in Atkinson, p 20
[86] Marr, p 104
[87] Ranger Sutherland report, Walzl para 1.112 and 1.113

and most importantly, the coast was a valuable source of food – particularly paua, kuku (mussels) and koura (crayfish), but also finfish such as hapuku, kahawai and whitebait.[88]

References to fishing in the Native Land Court minutes for Mataikona block are few and scattered. It is mundane to observe that the Native Land Court was concerned with rights to land and maintained a hierarchy of take (rights) of which resource use was only one factor. The claim to title of Mataikona by Te Whakarato on behalf of Te Hika a Papauma was unopposed so little information about rights, including fishing rights, was recorded. The events in Hauraki which led to the Crown first suspending and then cancelling the Native Land Court's jurisdiction below high water mark did not occur until the 1870s. Those claiming Mataikona in 1869 were not alerted, perhaps, to the Crown's yet to be asserted prerogative over the foreshore and seabed and thus may not have felt the need to assert their own rights to the same.

During the Mataikona partition case in 1894, Wirihana Te Oioi said his ancestor 'Te Matau and his children collected food on the land – caught rats and pidgeons at Kapurangi, wekas and rats at Onengarara ...[and] crawfish [sic] at Whakaoma.'[89] Karaitiana Te Whakarato affirmed the right of Te Matau to fish at Rangiwhakaoma.[90] Karaitiana Korou stated that at the mouth of the Rangiwhakaoma stream: 'Everyone in the locality had a right to fish there.'[91]

Korou's reference to everyone having rights to fish at the Rangiwhakaoma stream mouth indicates that for Maori fishing was not an open access public right, as it is now.[92] Some Maori had rights to fish at one place, others at another.[93] In some places, all the local Maori had a right to fish. The claimants to Mataikona in 1869 and even down to the turn of the century probably believed they retained their 'legal' right to gather fish and also to

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[88] Rimemne et al, Customary Fishing Project, and T Chrisp, Rangitane customary interests in the Wairarapa, draft report, p 51
[89] Wairarapa Native Land Court minute book 22, 22 April 1895, fol 249
[90] Wairarapa Native Land Court minute book 22, 29 April 1895, fol 282
[91] Wairarapa Native Land Court minute book 22, 2 May 1895, fol 294
[92] In the sense that in an area where recreational fishing is allowed, any member of the public may fish there.
[93] Rimemne et al, 'Customary Fishing Project', Setting the Scene, final page

exclude others from doing the same as they had always done. The Treaty guaranteed their right to fisheries, and the government had done nothing yet to disturb those rights.

The incursion of Europeans and the consequent pressure on sea resources was reduced in the Mataikona region by inaccessibility, to the coast in general and the station coastline in particular. As such, friction between the exclusive and possessory Maori fishing right and the developing Pakeha idea of common access was likely greatly reduced. In more recent times however, the issue has come to the fore.

The story of Waimimiha a fishing reserve noted in the Castlepoint sale but not surveyed, and the struggle of Maori to get the area defined in the early part of this century is covered in reports to the Tribunal by Cleaver and Walzl. The main petitioner on the subject, Taiawhio Te Tau wrote to the Crown in 1905:[94]

> E mohio ana koe kaore te Maori e haere ana ki te mahi kai moana kotahi tonu te tangata a tae ana ki te 20 heke atu kia tara ai hoki te hoe nga waka me te mahi kai.

Which was translated as:

> You know that the Maoris do not go (generally) to procure the produce of the sea that one person up to 20 go, so that there may be paddlers for the canoe and to procure food.

The settlements on Mataikona were more permanent than summer fishing camps. The concurrence of sea food, rivers and rain meant the location could support a permanent population of some size. Undoubtedly Te Hika a Papauma did catch food in the summer to preserve for winter, but this did not necessarily mean that Mataikona settlements were abandoned in the winter. It is likely however, that members of Te Hika a Papauma also collected food, traded with other hapu and maintained cultivations and residences inland. This would have been a reciprocal relationship based on mutual benefit.[95]

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[94] Petition of Taiawhio Te Tau to Carroll, Native Minister, 9 October 1905 in 'Waimimiha Fishing reserve', MA 1/149 15/13/257 National Archives, Wellington

[95] Rimene et al, Customary Fishing project

Agar Seaweed

> Between Cape Palliser and Cape Kidnappers agar is only collected in any great quantity in two isolated places, the Aohanga and Mangakuri-Kairakau districts. There are two full time collectors at Aohanga and some half dozen families, mostly station employees who make collecting a very profitable part time occupation.
>
> K Karaitiana, Maori Welfare Officer Hastings, 1948[96]

In 1942 the Marketing Department of the Department Scientific and Industrial Research began buying agar seaweed for urgent use in hospitals. The department paid 1/- per pound of dried seaweed. By 1949 most of the agar was exported. [97]

Agar seaweed beds were located in Northland, Bay of Plenty, the East Coast and the Wairarapa coast. As the beds were often located in areas of high Maori population, Maori were targeted as collectors. The Department of Maori Affairs published a booklet in the Maori language explaining what the seaweed looked like and how to harvest it.[98] Collecting did not commence on any significant scale in the Hawkes Bay district until 1947 though a year later it made up over half the national total. Set out below are the totals collected from the different areas for the period 1942-1948.

Table of Collection of Agar 1943-1948 (tons)

To June...	Bay of Plenty	North Auckland	Hawkes Bay	Total (tons)
1943	38	12	1	55
1944	25	48	1	89
1945	32	57	-	100

[96] K Karaitiana, to Head Office, 21 August 1948, 'Collection of agar seaweed', MA 1 370 19/1/335, National Archives, Wellington
[97] L B Moore, Senior Botanist, DSIR, internal memo, 19 May 1949, MA 1 370 19/1/335, National Archives, Wellington
[98] The booklet is on the file MA 1 370 19/1/335, National Archives, Wellington

1946	50	50	-	122
1947	28	42	25	107
1948	10	41	77	140

Collectors in Northland and the Bay of Plenty lobbied the Department of Maori Affairs in the late 1940s to raise the price paid for agar. The Department with the DSIR investigated the possibility. District Maori Welfare officers were asked to investigate the state of the industry and comment on the advisability of licensing collectors and the potential of resource depletion should prices be raised. The main collection area for the Cape Palliser to Cape Kidnappers was at the Owahanga station. K Karaitiana, the officer for the Owahanga district replied:[99]

> Licensing would of course protect the full time collectors who have invested several hundreds of pounds in jeeps, trucks, storerooms, and living quarters. But it would be difficult to allot the licenses in a satisfactory way. Whole families – men, women and children – undertake collecting. In this district, agar is collected by picking it up off the beach after heavy seas.

Officers were also asked to comment of the sustainability of the industry as DSIR officials were concerned that rasing the price would lead to a depletion of the resource. With respect to Owahanga, Karaitiana did not recommend licensing for the following reasons:[100]

> There is a very small chance of the Aohanga district becoming over-crowded with collectors as it is protected by its very isolation, and the only practicable access to the seaweed areas is through the Aohanga station property. It is necessary to pack the seaweed out on horses or use a jeep. No more than the present number of collectors are likely to be allowed on the station property and to collect more than a few pounds of weed it would be necessary for collectors to live on or near the beach for some time.

The information on the agar seaweed file at National Archives ends in 1948, with no price increase and a seemingly self-regulating and sustainable industry. Evidence suggests that agar collecting at Owahanga station and other places along the Wairarapa

[99] K Karaitiana, to Head Office, 21 June 1948, 'Collection of agar seaweed', MA 1 370 19/1/335, NA, Wellington
[100] K Karaitiana, to Head Office, 21 June 1948, 'Collection of agar seaweed', MA 1 370 19/1/335, NA, Wellington

coast continues into the present. The station files from the 1950s contain isolated references to seaweed collection. On 18 and 19 January 1954, the Director of Maori Land Settlement inspected Owahanga and noted:[101]

> Mr Moon, the new manager, is showing that he is quickly getting a grip of Owahanga matters pertaining to the management, and his stock handling and management to date are sound. He has many difficulties to contend with on a station of this size, pertaining to staff, resident owners, and agar seaweed collectors, but he is handling the position firmly and with tact.

In 1968 the Marine Department received a letter from a collector who had been ordered off the beach at Mataikona while collecting on the grounds that the 'Aohanga Trust' owns all the land, including the beach down to the water.[102] Toni Atkinsons, 'Coastal Literature Review' circa 2001 lists a number of eastern Wairarapa coast sites as agar seaweed collecting areas.[103] Current regional council coastal plans show commercial seaweed collecting is prohibited within a half nautical mile of the Castlepoint basin and within two nautical miles of the Owahanga River mouth estuary.[104] Mr Matthews, the Wai 420 claim manager has indicated he wishes to bring oral evidence on agar collection by the claimant community to the Tribunal.

Access and Exclusion

Any argument for customary rights or a presumed Crown Grant over the foreshore and sea of the Owahanga station would need to demonstrate that the use rights were not general public rights but pertained exclusively to those owning the adjacent land. Obviously the owners had fairly unfettered access to the marine area off the station by virtue of land ownership. The question is whether the public could similarly access the marine area.

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[101] Quoted in Walzl, p 290
[102] D Elmsley to Marine Department, n.d. MA 1 370 19/1/335, NA, Wellington
[103] Atkinson, pp 18, 19, 21, 25
[104] Atkinson pp 95, 101

As noted in various sources quoted above, the Owahanga station itself has been isolated by distance and poor roads. The coast even more so, with no public road access at all to the beach between the Mataikona and Owahanga Rivers. In fact, there is no public access road to the coast between Mataikona and Akitio - a distance of nearly 20 kilometres. The public can, of course, gain access to the Owahanga marine resources both deep water and foreshore by boat, and the foreshore can be legally traversed by land at low tide from either the Mataikona River or Akitio. The following section considers the various methods of access to the area in question in order to determine whether the owners have managed to keep their marine resources exclusively for their own use.

The Early Period of European Settlement

The first Europeans to the Wairarapa valley travelled by boat or ship along the coast. Landing was restricted by the lack of harbours or even safe landing places. Coastal foot travel was, however, a necessity for early European lease holders driving their flocks from Wellington or the Hawkes Bay. Until roads and rails were built, this was the best way to access the coastal pasture country. It is unlikely however that the numbers of Europeans in the early colonial period posed a threat to the marine resources of the Maori. European settlements did not develop significantly on the coast until the second half of the twentieth century. The European presence on the coast was principally as owners of large lease hold sheep stations – big areas with relatively small numbers. The main European population centres were inland in the wide Wairarapa valley.

To aid access for settlement was one reason the Crown reserved the coasts of Crown land as it did in Ordinance No. 7602, sec 6 of the Legislative Council (1851-53) which states that:

> no grant of land shall be recommended to the said Commissioner ... which shall comprehend any headland ... which may be required for any purpose of public utility, nor any land situated on the seashore within one hundred of high water mark.

This was one source for the ‘Queen’s chain’ concept in New Zealand. In line with the Ordinace No.7602, lands along the Wairarapa coast from the Castlepoint and other

transactions were offered for selection to new settlers in the New Zealand Gazette on 7 Feb 1854 with the following proviso:

> Excepting always certain Native Reserves along the coast to be hereafter particularly defined and a travel reserve along the coast throughout the distance from ten to twenty chains wide [approximately 200-400 metres] as the same may be determined.

This travel reserve is not mentioned in any of the Mataikona titles or plans. According to Lands and Surveys, no coastal land was subsequently Crown granted to settlers with the reserve excepted.[105] Creating the Queen's chain on the Wairarapa east coast would have alerted Maori to the fact that the Crown had assumed legal ownership and control over the foreshore and thus divested them of their valuable rights to the sea.

The Deeds office at LINZ contains one reference to the travel reserve at Mataikona. A succession order to the Mataikona 1 block was registered in the Deeds office in 1903 (the only succession order that was) and a sketch plan of the block on the order in the Deeds registry book shows a wide yellow strip from the ferry and along the river bank to the coast and then to the landing shed. It is marked 'road reserve' with no other information attched.[106] There was a road then in existence, however, which went over the hill to the ferry from the landing shed on the coast – that is along a completely different route. As such, the yellow 'road reserve' appears as something of a 'lone oddity' and raises more questions than it answers: why for example, was only one of dozens of successions orders registered in the Deeds office?

Roads

Maori Land plan 3025 of 1868, the first survey of the Mataikona block, shows no drawn road or landing place on the Mataikona blocks, but the presence of a road is indicated in writing. This 'road' seems to go from the coast at Whakarunia te Waka, over the hills to

[105] G Turner, W Carlin and W Kimbers, Coastal Reserves Investigation: Dannevirke County, Department Lands & Survey, Oct 1983 in file 'Foreshore Control 1983', Dannevirke County Council 1.9/2/5 Box 16, Woodville Archives

the junction of the Waimaunu creek and the Owahanga River, then to the ferry crossing at Te Kore Kai and then inland via the Owahanga River valley.

In 1898 the Akitio Road Board commisioned a public road to be constructed upon the route of the road mentioned in ML 3025. This road is shown in Survey Office plan 14136 and is known as the 'Aohanga Valley Road'.[107] The plan names the beach at Whakarunia te Waka as 'Aohanga Bay' and shows a 'boat entrance' to the north between a reef and a coastal point, a landing place and a 'landing shed'. The formed road follows that mentioned above. The plan is signed by the chairman of the Akitio Road Board and annotated:

> I hereby certify that the road shown on this plan ... is in use by the public and has been formed or improved out of the public funds of the Akitio Road District.

The taking of land for this road is discussed in the Public Works report to the Tribunal by Phillip Cleaver.[108] The main point for the purpose of this report is to note that there was public access to Mataikona block coast in 1898.

Local settlers of Pongaroa (the nearest town to Owahanga station) began lobbying the government in the early part of this century to improve local 'ports' to facilitate the growth of the district. The Marine Department made several inspections of the coastal area at Akitio and Owahanga station to determine the feasibility of building a wharf or landing facility. The marine department engineer considered the Owahanga landing road too difficult and the landing too exposed for development. A local timber company had built a wharf at Akitio beach some years earlier and although it was rotten, due to poor construction materials being used, it was still standing, and held out some hope that a more substantial wharf or landing arrangement was possible.[109]

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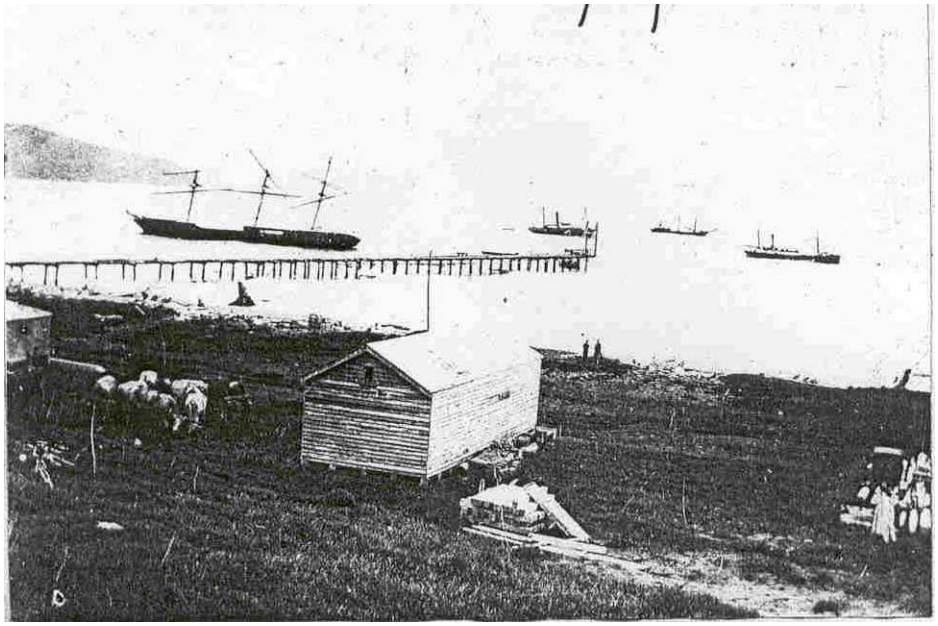
[106] See Deeds Index No. 28 fol 357 and Deeds file 147 fol 247, LINZ, Wellington
[107] LINZ, Wellington
[108] C Marr, P Cleaver and L Schuster,'The Taking of Maori Land for Public Works in the Wairarapa ki Tararua District: 1880 – 2000', draft report, December 2002, pp 93-94
[109] District Engineer to Engineer in Chief, 21 November 1910, M 4/16, National Archives, Wellington

In 1914, after significant settler pressure, the Minister of Marine, Mr Fisher, eventually agreed to spend £15,000 on upgrading the wharf at Akitio, on the proviso that the settlers build a freezing works to justify the cost.[110] The Marine Department initially advanced £1,000 towards improving the existing wharf, and then inquired as to progress of fundraising for the freezing works. The Akitio County Clerk responded that the war had interfered with the fundraising. [111]



The wharf and shed at Akitio at 1910[112]

In October 1919 the 'Pongaroa correspondent' in the Wairarapa Age newspaper praised the:

> sterling settlers who have been fighting for years against the greatest disabilities so far as communication with the markets is concerned... The Hon F M B Fisher promised to improve the port facilities but the promise was never redeemed. As such, smaller settlers are now slowly but surely abandoning their farms to larger holders...

[110] Dominion, 24 March 1914 in 'Oahanga and Akitio', M 4/16, National Archives, Wellington
[111] H River Robinson County Clerk, Akitio to F M B Fisher, 13 Nov 1914, M 4/16 'Oahanga and Akitio', National Archives, Wellington
[112] Photos attached to report from District Engineer to Engineer in Chief, 21 November 1910, M 4/16, National Archives, Wellington

> If the government has a soul at all it will do something to assist the men who have braved the vicissitudes of the back blocks in order to bring the wilderness into subjection.

The file records no further action taken and it seems the wharf was not built.

Ranger Sutherland, in his report to the Commissioner of Crown Lands in 1917 also discussed the problems of access. Sutherland noted:[113]

> The land is distant some sixty miles form the Wellington-Napier railway line The access by road is by way of Masterton-Waimata road on the south to Whakataki, thence along the sea coast to the Mataikona river (mostly private road from Whakataki to river). From Pongaroa the access is by the Aohanga valley road which is partly metalled dray road with streams all bridged. The Aohanga valley road is a dray road to land-shed on the coast, but it is bad in winter. There is also access from the Akitio landing by formed dray road, river bridged. The Akitio road leads out to Dannevirke. Coastal steamers call weekly at Akitio or when weather suits, also occasionally at the Aohanga landing bringing stores etc and taking wool, and other produce away.

Despite the existence of the road, it seems unlikely that the public used it to get to the coast – Akitio would have been the more likely option having both a wharf and a better road.[114] The steamer most likely only called at the Owahanga landing for station business, and the ranger's report shows that access to the station from Pongaroa was difficult in winter.

ML Plan 4729 titled 'Plan of Mataikona A' was compiled in the survey office in April 1959 for the re-amalgamation of the Mataikona blocks. The road from the landing place to the ferry is shown on the plan and above are written the word 'not public'. The same annotation occurs slightly north on part of the Aohanga Valley road going inland from the ferry crossing. The plan says 'see report on file 11/362. This file, although listed in the index, could not be located by LINZ staff. It is likely the station owners applied to have the road closed. In any respects, the track from the station to the coast does not follow the old legal road which is reportedly now unusable.[115]

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[113] Sutherland report, 1917, Lands & Survey file 20/177, LINZ Wellington
[114] District Engineer to Engineer in Chief, 21 November 1910, M 4/16, National Archives, Wellington
[115] K Karaitiana, to Head Office, 21 June 1948, 'Collection of agar seaweed', MA 1 370 19/1/335, NA, Wellington

In summary, although technically the public had access to the coast through paper roads, such access was practically very difficult. As such, the Maori owners would have been been assured in their belief that they effectively owned and controlled 'the coast' – including the foreshore and sea adjacent.

Other Forms of Access

Access along the foreshore itself has been 'legally' possible for many years. As discussed above, the beach was the main transport route to and from markets until inland roads and railways were constructed. The small European population was unlikely to have threatened Maori coastal resources in that early period. Evidence located by this research concerning people using the coast to access the Owahanga marine resources is minimal.

About 1968, however, one D Elmsley wrote to the Marine Department in Wellington saying:[116]

> Having been ordered off the beach situated between the Matai Kona river and the Aohanga River, whilst collecting agar seaweed, on the grounds the Aohanga Trust owns all the land, including the beach to the water. ... I am unable to obtain coherent facts concerning these claims I crave your indulgence in supplying this information ...

The Marine Department referred the matter to Maori Affairs commenting:[117]

> Normally the foreshore is Crown land and this department allows the collection of seaweed and drift wood without control unless it is a commercial venture

The secretary of Maori Affairs referred the question to an official who commented:[118]

> To the best of my knowledge there is no Crown land between the Owahanga station and high water mark. In any case there is no access to the beach at any part of Owahanga except over station property and the manager would be

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[116] D Elmsley to 'Chief Surveyor', Marine Department, Wellington, n.d., 'Collection of agar seaweed', MA 1 370 19/1/335, National Archives, Wellington

[117] Secretary Marine to Secretary Maori Affairs, 8 March 1968, 'Collection of agar seaweed', MA 1 370 19/1/335, National Archives, Wellington

[118] Note on letter Secretary Marine to Secretary Maori Affairs, 8 March 1968, 'Collection of agar seaweed', MA 1 370 19/1/335. The gates being left open may explain why the road to the station was made 'not public'.

> prefectly justified in ordering anybody to leave – I would encourage him to do so as we have numerous cases of gates being left open.

Maori Affairs referred the question to the District Officer in Palmerston North who replied:[119]

> As far as I know no claim has ever been made by the Maori Trustee or the station staff that the foreshore is station property
>
> ...Generally, authority to cross the beach is limited to owners, mainly in search of sea- food, and, of course, station staff.
>
> There is however a legal road going down to the sea coast. It is formed to the station homestead only. From there on the track on the ground follows a quite different course, and we would say that the legal road as delineated on the enclosed plan would be impossible to follow. No one would therefore have a legal right to use the track once the formed road ends.
>
> We could not, of course, stop anyone from getting on to the foreshore by boat, but they could not go beyond the high water mark as they would then be on the station property. The station title would apparently go down to the mean high water mark as we know of no foreshore reserve.

The district officer's comments are enlightening in several ways. First he confirms that only owners and station staff have access to the beach, through the station. Second, he notes that it would actually be very difficult to pick seaweed (or fish) without stepping onto the dry land of the beach, which was private land. Finally, he confirms that the legal road to the coast from the station house is actually unformed and unusable. In practice therefore, although people could legally traverse the foreshore at Owahanga station to fish or collect seaweed, it was extremely impracticable considering the problem of access and removal of the harvest. The owners could and did enforce their 'exclusive rights' to the beach on those who came to harvest marine resources.

[119] Palmerston Nth Dist Officer to Head Office, 27 March 1968, 'Collection of agar seaweed', MA 1 370 19/1/335, National Archives, Wellington

The present road from the station to the coast

A road now goes from Whakataki to the Mataikona river, where a swing bridge crosses the river to the Owahanga station. The road continues up the south bank of the Mataikona River. According to Peter Himona, fisheries compliance officer for the Wairarapa region, the public can access the Owahanga station foreshore quite easily by fording the Mataikona River near the mouth (it is not deep and sometimes blocks in rough seas). He comments that people regularly walk, take quad bikes and even 4WD vehicles across the river and along the coast, particularly at low tides. A three wire fence runs down to the water from the station lands but according to Himona, 'people just push it over'.[120]

[120] Discussion with Peter Himona, Ministry of Fisheries Compliance Officer, Masterton, 6 December 2002

The best way to get to the marine area off Owahanga station, of course, is by boat. Commercial cray and paua and recreational fishers fish off the Mataikona coast by boat or use boats to access the foreshore.[121] The Wai 420 claim manager George Matthews believes that the off shore commercial fishing is desecrating the coastline.[122] There is little official information available specifically about the prevalence of private or commercial marine craft and the impact of fishing in the waters off the station or on the coast. Marr has included general information about commercial and other fishing in the region. Commercial and recreational fishers (and poachers) currently have legal access to the foreshore and off-shore marine area in question by boat.

Undoubtedly technology – quad bike, four wheel drive vehicle, aluminium boats and better bigger and safer fishing technology is threatening the station owners long held exclusive access privileges over their marine area.[123] The growth in numbers of recreational fishers and poachers is also a threat. The steady improvement of coastal access roads and most significantly, the growth of coastal communities magnify this threat. The growth of coastal communities is considered in the next section.

Coastal Communities, the Council and Foreshore Control

Marr has looked at the development of bach subdivisions in the area from Castlepoint south to Matakitaki, and in Palliser Bay at Ocean Beach. To avoid unnecessarily repeating information, similar subdivisions developed in the Dannevirke county, particularly at Akitio. Marr also looked at the policies and provision of foreshore and esplanade reserves for the Wairarapa region.[124] This report will consider the growth of the Akitio beach community and the stimulus this provided for foreshore control by the local council. It will also consider Crown reserves policy and its implementation by the Dannevirke County Council whose district includes the entirety of the Mataikona block.

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[121] Peter Himona 6 December 2002
[122] George Matthews, 17 September 2002
[123] Peter Himona, 6 December 2002

The Akitio Coastal Community

Much of the land around Akitio beach and river mouth was transferred to the Crown as part of the Castlepoint deal in 1853. An area of 105 acres south of the Akitio River mouth was Crown granted back to the owners on 4 July 1877, antevested to 25 February 1858. The owners appear to have purchased this land with the Crown providing some if the money. Why or how this happened is not known but it may have been for a reserve agreed by the Crown but never actioned.[125] In 1930, about two acres of the block were taken for a road. The road effectively separated the land from the foreshore, and also, according to plans, separated the bulk of the land from the cemetery reserve, which is shown as between the road and the sea.[126] The whole of the original area of Akitio 28, apart from the land taken for a road, is still in Maori ownership today.[127] As such, given the size of the land available, Maori are still, and always have been, significant landholders at Akitio beach.

The Akitio coastal community began as informal baches some on public reserve land or on land subdivided from the local station.[128] Foreshore control by the Council developed out of public pressure from Akitio residents. On 13 January 1937 the Akitio Couty Clerk wrote to the Secretary of the Marine Department saying that the council had received complaints about cars speeding on the beach and asking that the council have authority to restrict such actions.[129]

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[124] Marr, p 115
[125] Cleaver, pp 105-106
[126] Plan (MD 7547?) contained in file 'Akitio beach', 1.2/2/3 Box 1, Woodville Archives
[127] Cleaver, pp 109, 111
[128] P Davis, County Clerk to Rt Hon Sir Keith Holyoake, 24 Nov 1976, in file 'Property, Akitio Beach Camp 1975-1977', 1.9/2/5 Box 30, Woodville Archives
[129] County clerk to Secretary Marine, 11 Jan 1937, 'Akitio Beach' file, 1.2/2/3 Box 1, Woodville Archives

Under the Harbours Act 1923, the Marine Department had responsibility for administering the foreshore. The Secretary Marine responded asking for a plan showing the area over which the council wished to have control. The clerk obliged and on 11 February 1937 an Order in Council vesting a small part of the Akitio foreshore in the Akitio County Council was published in the New Zealand Gazette. The area vested was from the mouth of the river south to the end of the then subdivision and for a period of 21 years.[130] This foreshore area included the 'Maori cemetery' reserve noted above. On 3 September 1958, under section 165 of the Harbours Act 1950, another order vesting the foreshore at Akitio in the Akitio County Council for a further 21 years was published in the gazette.[131]

The Marine Department advised the county it would need to pass suitable by-laws under section 158 of the Harbours Act 1923.[132] Whether such by-laws were passed or not, they appear to have been ineffective or perhaps forgotten as in November 1954, Akitio beach resident Ross Herbert wrote to the council complaining about a number of issues including the need for by-laws to prevent speeding and that baches were encroaching on the road. Most of the letter however, concerned opposition to shore based commercial crayfishing which Herbert opposed because:[133]

1. Only the tail was used so it was very wasteful
2. It reduced the inshore recreational catch
3. Locals had taken crayfish for a long time
4. It may lead to commercial whitebaiting in rivers

Herbert ended his letter with an appeal that the council should preserve area because it was 'isolated and attractive'.

The small amount of land available on the coastal strip and the very limited road access to the coast throughout the area meant that land at Akitio was in demand. By 1969 Akitio

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[130] New Zealand Gazette, 1937, p 387
[131] New Zealand Gazette 1958 No.56, p 1205
[132] Secretary Marine to Dannevirke County clerk, 16 March 1937, 'Akitio Beach' file, 1.2/2/3 Box 1, Woodville Archive

had 52 house sites.[134] As the settlement grew, the Commissioner of Works required the council to provide services such as water, and to control sewerage disposal under the Town and Country Planning Act 1953.[135] The provision of services in turn made Akitio a more attractive site for residential sites.

In 1975 the county applied for a variation in the district scheme to allow additional subdivision at the south end of the beach. Initially the Minister of Works objected on the grounds that there was no foreshore reserve provision and inadequate controls for sewerage disposal. The Wairarapa Catchment Board also objected on those grounds and also because of the likelihood of marine erosion due to the land being unstable. The Board also noted there was no provision for water supply and drainage. [136] The plan was altered to provide a 30 metre esplanade reserve and also a recreation reserve, part of which was a camping ground. This varied plan was accepted and became operational in February 1976.[137]

The Dannevirke County Council absorbed the Akitio County Council in 1979 after which the Akitio County Council ceased to exist. The Dannevirke County encompassed the entirety of the Owahanga station lands. The Dannevirke County Council also took over the foreshore control vested in the Akitio County Council in 1958. The vesting was repeated in 1979 but to the Dannevirke County Council, and with the area extended further to the south to cover the additional subdivision.[138] The Minister of Transport approved the County's foreshore control by-laws in 1979.[139]

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[133] Ross Herbert to Chairman Akitio County Council, 6 Nov 1954, 'Akitio Beach' file, 1.2/2/3 Box 1, Woodville Archive
[134] Akitio District Scheme, 1969, file 'Town and Country Planning', Akitio County Council, 1.2/2/3 Box 17, Woodville Archive
[135] F R Askin, Commissioner of Works, to Akitio County Clerk, 7 May 1970, file 'Town and Country Planning', Akitio County Council, 1.2/2/3 Box 17, Woodville Archive
[136] 'Town and Country Planning', Akitio County Council, 1.2/2/3 Box 17, Woodville Archive
[137] Akitio County Approved District Scheme map 2A, Feb 1976, file 'Property Domains and Reserves', Dannevirke County Council 1.9/2/5 Box 32, Woodville Archive
[138] New Zealand gazette, 21 June 1979, No. 55 p 1888
[139] New Zealand gazette, 8 November 1979, No. 102 p 3246

The need for by-laws was due to pressures on the coast from increasing populations. In the early 1980s the Dannevirke County Council receive a number of complaints from residents at Akitio beach concerning:[140]

- commercial fishing operations, particularly the smell, the refuse generated, damage to the foreshore (by launching and retrieving boats), the road space used by parked boats and trailers, and the fact that commercial fishers were operating in a residential zone;
- the water supply (insufficient quantity);
- motorcycles and other vehicles speeding or just driving on the beach;
- people lighting fires; and
- the overcrowded camping ground.

Similar public complaint to councils also occurred at Castlepoint and the Mataikona subdivision, which developed just south of Owahanga station lands in the late 1970s. Again, the focus of complaint was often commercial fishers.[141] The councils however, accepted the presence of the commercial fishers and did not move to restrict their activities in any significant way. At Akitio, for example, the council solved the parking congestion caused by commercial fishing trailers and vehicles by allowing boats and trailers to be parked on the recreation reserve.[142]

The Growth of Council control

In November 1982, E Breese for the Regional Secretary of Transport wrote to the Dannevirke County Clerk, stating:

> The Dannevirke County Council currently has a grant of control over the area on the south bank of the Akitio river. The ministry prefers local authorities to have control over large stretches of coast as opposed to small pockets. The Ministry is interested in knowing if the Council would be interested in extending its grant of control over all the areas of the County bounding the coast. ... Your neighbour the Waipukara [sic] District Council has had a grant of control for all of its coastal area since 1976, and it has worked very successfully.

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[140] See various letters from residents in file 'Property Domains and Reserves', Dannevirke County Council 1.9/2/5 Box 32, Woodville Archive

[141] See for example A Foreman to County clerk, 10 October 1975, in 'Castlepoint Reserves and Mataikona County Properties and Reserves 1969-1977, Masterton Archives.

[142] M Lingard to Services and Assets Manager, 3 September 1992, Tararua District Council 'Akitio Community Board' , 0/2/1, series 2 Box 6, Woodville Archives

The county accepted this suggestion and on 24 November, 1983 an order in council granting control over the entire area of the county foreshore to the Dannevirke County Council was published in the gazette.[143]

Council Reserve Initiatives

The second schedule of the Town and Country Planning Act in operation at the time made provision for district planning schemes to 'have regard to the relationship between land use and water use'. This allowed councils to include in its district scheme policies for the management of the part of the foreshore which was below mean high water level and was technically outside the district.[144] The Department of Lands and Surveys commissioned a National Coastal Reserves Investigation in October 1983 and provided the Dannevirke County Council with a specific report on coastal reserves in its region.[145] This 'Coastal Reserves Investigation: Dannevirke County' report looked at land use, water use, archaeological and historical issues, contemporary legislation and animal and plant species and protection. Other than archaeological records, it did not refer to Maori at all. The report recommended a series of coastal reserves in Dannevirke county to:

- Provide public access to and along the coast;
- Preserve the quality of the coast for future generations;
- Provide public recreation;
- Preserve natural, historical, scenic, scientific or other special features; and
- Preserve habitats for species of waterfowl, wildlife and marine life.[146]

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[143] New Zealand gazette No. 196 p 4059, 24 November 1983
[144] T Law for Secretary of Transport to Dannevirke County Clerk, 18 Dec 1978, file 'Foreshore Control 1983' Dannevirke County Council 1.9/2/5 Box 16, Woodville Archives
[145] G Turner, W Carlin and W Kimbers, Coastal Reserves Investigation: Dannevirke County, Department Lands & Survey, Oct 1983 in file 'Foreshore Control 1983', Dannevirke County Council 1.9/2/5 Box 16, Woodville Archives, (hereafter 'Coastal Reserves report')
[146] Coastal Reserves report, 'Preface'

The report contained a number of detailed and specific reserve recommendations. Most importantly for the owners of Owahanga station, it recommended the county 'acquire':

- a two hectare reserve on the north bank of the Mataikona River from the mouth to 700 metres inland;[147]
- a reserve in the middle of the Mataikona block coast at the kainga of Whakarunia Te Waka which was described as the 'old homestead' site;[148] and
- a six hectare reserve at the Owahanga River mouth to allow access from the road to the station to the estuary and the coast.[149]

All these specific recommendations involved acquiring land from the Mataikona block. Furthermore, along the entire length of the county coast, the report recommended a twenty metre 'easement' to provide a strip of land to allow for free public access. The proposed easement would therefore include another '28 hectares of part Mataikona A2 block (being 14 km x 20 m).'[150]

The report made much of historical precedents for allowing public access to the entire coast. It cited the intention to except a travel reserve from the lands offered for selection in the gazette in 1853 and ordinances of the legislative council (the 'queens chain' principle).[151] Although none of these reserves had actually been implemented, the authors felt:

> It can be seen that the public rights have been frittered away considerably over the years and that the public's historic right to access on the coast predates that of even the current owners' ancestors

A later document (a type of memorandum) to the Dannevirke County Council (not signed nor dated) entitled 'Dannevirke County Foreshore Reserve' contains further information

[147] Coastal Reserves report, pp 22-23
[148] Coastal Reserves report, pp 24-25
[149] Coastal Reserves report, pp 26-27
[150] Coastal Reserves report, pp 32-33
[151] Coastal Reserves report, pp 9-10

on the reserves proposal.[152] The document notes that the county foreshore had been classified as a recreation reserve and that the county had been granted control of the reserve under the provisions of the Harbours Act for a period of 21 years.

The memorandum also recorded that the 'Coastal Reserves Investigation' report was:[153]

> adopted in its entirety by the Dannevirke County Council and its reserves and easements proposals, to the extent that they pertain to the foreshore, and its immediate vicinity, thus figure among council's management objectives with regard to the Foreshore Reserve.

As for justification for the reserve proposals the council was advised:

> The proposed provision of coastal easements and reserves to permit public access along the length of the Reserve is a long term management objective. Ample time is thus available to negotiate mutually satisfactory arrangements with land owners. There is considerable historical precedent for public access right along the coast, predating even the rights of the present owners' ancestors. [Although] the establishment of reserves and public access along the County coast amounts to more than the restoration of former public rights neglected or ignored for 130 years.

And to implement the reserves proposals the memorandum noted that:

> Sympathetic liaison with landowners will be an initial necessity in the implementation of management policies

It can only be assumed, from the absence of any reference to it in the file, that the writers of both the Roastal Reserves Investigation report and the later Dannevirke County Foreshore Reserve document were unaware that the owners of the Owahanga station were Maori and descendents of the original Maori owners of the county lands. Free public access to the foreshore was unlikely to have been a customary right in the time before the Pakeha and this highlights how invisible the Maori viewpoint was in the whole process. It is indeed ironic that the traditional lands of Te Hika A Papauma constituted over a third of the county's coastal land, and that the land had been retained from the first 'historic' European land purchase in the district in 1853, and yet ignored in the consideration of 'historic rights' in 1983.

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[152] In file 'Foreshore Control 1983', Dannevirke County Council 1.9/2/5 Box 16, Woodville Archives

The Coastal Reserves Investigation report also discussed the possible impact on the marine biota of commercial fishers operating in the proposed reserves. The commercial and recreational fish species sought at that time were crayfish, paua, and fin species. In terms of commercial fishing, the cray fishery totalled 95 percent and the remaining 5 percent was fin. The report concluded that the 'presence of fishers does not preclude reservation', but noted there was a risk of depletion of marine biota from reserved areas – particularly shell fish.[154]

There is an inherent contradiction in the reserves proposal which sought to:

- Preserve habitats for wildlife; and
- Provide recreational access to the public along the entire length of the foreshore,

It was common knowledge at the time that an increase in public access would lead to the depletion of the marine resources, particularly shellfish. As noted in the Coastal Reserve Investigation report:[155]

> It would be inconsistent if reserve areas were to become zones of marine destruction relative to adjacent areas.

Such consequences were inevitable, especially in a area where the council had limited ability to enforce its by-laws. A report to the Masterton County Council on 'The Effects of a Proposed Resort Development at Riversdale Beach on the Natural Coastal Environment' in 1978 noted that:[156]

> Increased human population in the area will inevitable lead to ecological changes in the shore and shallow sublittoral areas as a result of increased exploitation of popular edible invertebrates, and fish [and]
>
> Education of the general public would help reduce adverse effects such as those *that are being caused at present* by a general failure to return overturned boulders to their original position and by the taking of undersized paua and crayfish [emphasis added]

Yet the reserves recommended by the Lands and Survey report, recommendations adopted in their entirety by the Dannevirke County Council, did not allow for any

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[153] Dannevirke County Foreshore Reserves, 1.9/2/5 Box 16, Woodville Archives
[154] Coastal Reserves Report pp 16-17
[155] Coastal Reserves report p 17

'adjacent' areas which might be protected from such effects. The entire coast was to be opened up for public access and recreational use.

The reserve proposals affecting Owahanga station were accorded a low priority in the report. According to county officials, there is no current intention to implement such reserves. A recreation reserve at Akitio was afforded a higher priority and this has subsequently been acquired. In terms of other actions, the Minister of Transport approved of the Dannevirke County Council's foreshore control by-laws in February 1986.[157]

Foreshore Control By-laws

The by-laws adopted by the Dannevirke County Council in 1983 covered such things as:

- Appointing officers as wardens to enforce by-laws;
- Controlling rubbish on the foreshore, including the cleaning of fish;
- Controlling boat speed and access; and
- Prohibiting the obstruction of or impeding of traffic on the foreshore.

The by-laws also included charges for landing fish/crayfish and beaching commercial vessels.[158]

Again, the county files contain no information as to the impact of the by-laws on the owners of the Owahanga station (or anyone for that matter) but they certainly applied to that area of the foreshore. For example, the by-laws made it illegal for the owners to prevent vehicles or people moving along the Mataikona block foreshore as the wire fence mentioned above was designed to do. Similarly, the by-laws meant the council could have charged the owners for landing fish and launching or retrieving boats from their land. The regulations would also allow the county to prohibit the owners taking sand or seaweed from their foreshore. Although there is no evidence that such by-laws have been

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[156] R Grace and M Larcombe, January 1978, Riversdale Beach 1977-1978, file ref 8/13, Masterton Archives paras 10, 11
[157] New Zealand Gazette No. 17/460, 13 February 1986
[158] 'Foreshore Control By-laws 1983', in file 'Foreshore Control 1983' Dannevirke County Council 1.9/2/5 Box 16, Woodville Archives

or are enforced on the Owahanga station owners, they represent a significant encroachment by the Crown on the traditional rights of the owners.

Regional Councils and the Current Foreshore Regime

Management and control of the coastal environment changed considerably in the 1989-1991 period with the introduction of three pieces of legislation: the 1989 Fisheries Act, the 1991 Foreshore and Seabed Endowment Revesting Act and the 1991 Resource Management Act. Under the Foreshore Revesting Act, ownership of the foreshore is in the Crown and administered by the Department of Conservation. Section 4(1) of the Act revoked the vesting of the coast in the Dannevirke County Council (the grant of control) of 1983.

The Resource Management Act (RMA) is the key legislation that regulates the management of the foreshore and coastal marine area – defined as the seabed and seawater from mean high water springs to the 12 mile limit of the territorial seas. The Ministry of Fisheries retains responsibility over most marine animals. The Department of Conservation controls marine mammals and all species within marine reserves and other special areas. It also has general responsibility for the coastal marine area. In practice, this responsibility is delegated to regional councils which have 'on the ground' control. The Minister of Conservation retains a supervisory role. Regional councils must produce regional coastal plans which comply with the New Zealand Coastal Policy Statement. The county councils' responsibility ends at the high water mark.

Most of the Mataikona A2 block is now within the Manawatu-Wanganui Regional council ('Horizons.mw'). A small portion of the block, from the ridge just north of the Mataikona River down to the river itself is in the Wellington Regional Council. All of the land is included in the Tararua District Council, and under that body, the Dannevirke County Council is the territorial local authority.

Under the Resource Management Act administering bodies are obliged to:

'...recognise and provide for...The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.' [Section 6(e)]

'...have particular regard to ...Kaitiakitanga.' [Section7(a)]

'...take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).' [Section 8]

Furthermore, the First schedule of the Act (Part I Clause 3(1)(d)) requires Councils, when preparing policy statements and Plans, to consult tangata whenua through iwi authorities and tribal runanga.

Horizons.mw for example, plans to:[159]

Recognise nga hapu and nga iwi as Treaty partners in the management of coastal resources by:

where appropriate, transferring certain functions, powers or duties to an iwi authority for the management of specific coastal resources which are of special value to nga hapu and nga iwi

where appropriate, delegating functions powers or duties to a committee of Council (representing and comprised of the relevant tangata whenua) for the management of specific coastal resources...

providing processes of meaningful consultation...

having regard to hapu and iwi management Plans, recognised by iwi authorities, when considering resource consent applications in the coastal marine area

The Wellington Regional Coastal plan states:[160]

[2.1.7] The management of the coastal marine area needs to take into account the principles of the Treaty of Waitangi, including the active protection of Maori rights and interests and the involvement of the tangata whenua in decision making processes.

[2.1.8] Tangata whenua are concerned that their role as kaitiaki in the coastal marine area is not adequately recognised.

[2.1.9] Tangata whenua are concerned that activities in the coastal marine area are monitored and controlled so that the following are not lost or degraded:

[159] Horizons.mw, Regional Coastal Plan, Change 1 and 2, 9 March 2002, p 59
[160] Wellington Regional Council, 'Regional Coastal Plan for the Wellington Region', May 2000, p 4

> • characteristics of special spiritual, historical or cultural significance to tangata whenua, including waahi tapu, mahinga maataitai, tauranga waka and areas of taonga raranga; and
>
> • values which are important to tangata whenua, including the maintenance and enhancement of mauri, the mana of iwi or hapu, and the ability of tangata whenua to provide manaakitanga (hospitality).

> [2.1.10] Tangata whenua wish to have access to and use of traditional coastal resources, such as mahinga maataitai and taonga raranga, and wish to undertake environmental enhancement.

> [2.1.11] Tangata whenua wish to initiate development projects in the coastal marine area.

> [2.1.12] Tangata whenua are concerned that people carrying out activities in the coastal marine area are often not aware of the impacts of those activities on characteristics of significance to tangata whenua Activities could threaten spiritual values and the health of mahinga maataitai.

Both regional councils would thus appear to have adopted policies to implement the requirements of the Resource Management Act with respect to Maori and the Treaty. Furthermore, the Wellington Regional council acknowledges Maori involvement may extend beyond conservationists to development. Horizons.mw recognises Maori ownership of the mouth of the Hokio stream down to the sea.[161]

However, both the Horizons.mw and Wellington Regional coastal plans also endorse the 'free public access to the foreshore' philosophy noted earlier in the Lands and Survey Coastal Reserves Investigation report of 1983. The authority for this policy is section 6 of the Resource Management Act which states;

> In achieving the purpose of this Act, all persons exercising functions and powers under it...shall recognise and provide for the following matters of national importance
>
> (d) the maintenance and *enhancement* of public access to and along the coastal marine area lakes and rivers. [emphasis added]

Thus, the Wellington Regional Coastal plan notes at section 2.1.4 that:[162]

> There is a strong desire by people and communities to:

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[161] Horizons.mw Coastal Plan change 1 and 2, Jan 2002, p 18
[162] Wellington Regional Council 'Regional Coastal Plan for the Wellington Region', May 2000, p 3

> • maintain or enhance public access along and within the coastal marine area; [and]
>
> • use and preserve coastal resources for social, economic and cultural purposes

Similarly the Horizons.mw plan provides at section 21.1 that:

> Most of the land adjacent to the coastal marine area of this region is in private ownership. ... The primary mechanism for enhancing access to the coastal marine area is through esplanade reserves and esplanade strip provisions of the Act associated with subdivisions. The powers to take these apply to territorial authorities and not the Regional Council. There is a need for local authorities to adopt a co-ordinated and co-operative approach to managing access.

As such, a tension between access to and along the coast by the public and the protection of the coastal environment from depletion of sought-after sea foods is apparent. In truth, it is the restricted public access afforded by private ownership of the land up to the high water mark which most likely has preserved the coastal environment in areas such as thre Mataikona block. That the Crown should now be advocating increased public access at the expense of private ownership is, perhaps, ironic. It is doubly so when the owners are iwi who preserved their lands and associated marine resources from the advancing Crown in 1853 and have continued to guard those resources since.

The question of the public access rights being of national importance is not borne out by developing regional council policy. Regional councils in Auckland, Northland, Waikato and Bay of Plenty are considering options for levying 'coastal occupancy charges' under the RMA to the owners of marinas, wharves and other exclusive foreshore and seabed users. The chairman of the Auckland Regional Council's environment committee, in defending the proposed charges, noted that:[163]

> The people affected will probably say … it's a terrible thing and it will add to the cost of occupying the coast, but it's accepted that if you have exclusive use on land, you have to pay

The RMA 1991 is technically about 'management' rather than 'ownership'. However, this sidelines some very fundamental issues over ownership of areas such as waterways and the foreshore. As the Tribunal's Whanganui report notes, the RMA is not:[164]

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[163] A Beston, 'Councils Getting Hooks into Sea Pursuits', NZ Herald, 1 November, 2002, p 1
[164] Wanganui River Report, Waitangi Tribunal, 1999, p xvi

> neutral on property rights, though it may claim to be, for in large measure the effect of the Act is to subsume them. Though on its face it is a management Act, where questions of ownership do not arise, in effect the Atihaunui right of ownership and control is vested in statutory authorities.

A Test Case

In 2000, 'The Proprietors of Mataikona Station' (the owners) applied to the Wellington Regional Council for a resource consent to construct a marine farm on the Mataikona A2 coast. The application referred to 'Toheroa and clam culture. Aquaculture. As a commercial activity as a continuation of customary stewardship.' The application envisaged depositing clams or toheroa into numerous 30 metre wide sand filled craters which predominate along the up to 600 metre wide shore platform of the Owahanga station lands. The shellfish would be held in place using mesh attached to the rock bottom by glue or drilling.[165]

The owners' claim to possess a 'Blue Water title' was elaborated in some detail in the application. If the owners could demonstrate that they owned the land below high water mark they would not have to apply for an exclusive occupation permit. The owners' stated their title was founded on:

> undisturbed use, occupation, and possession since (Maori) time immemorial. The title in possession has not been disturbed by Crown exercise of sovereignty through prerogative or statutory instruments or (prescriptive) adverse use and occupation by third parties.

As the marine farm proposal would involve structures on the foreshore it was classed as a restricted coastal activity under the Resource Management Act. The initial fee for processing such an application was $810.00 which the owners provided. However, the Wellington Regional Council subsequently raised the fee to $10,125.00, saying the application required three 'restricted coastal activity' permits and was thus very expensive to process.[166] The owners protested contending an 'unduly prescriptive and

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[165] D Riddiford to G Kneebone, 4 September 2000, Wellington Regional Council, Masterton
[166] G Kneebone, to G Matthews, 26 July 2001, Wellington Regional Council, Masterton

expensive approach has been adopted in the processing unnecessarily adding to the costs.'[167] Due to the high charges, and now the moratorium on granting marine farm licences, the owners are no longer proceeding with the application.

Upon receipt of the initial application, the Department of Conservation advised that the proposed marine farm area was adjacent to an area of Outstanding Conservation Value – being the Whakataki-Mataikona forshore (recognised by the Wellington Regional Coastal Plan). Furthermore the Mataikona River mouth was a breeding area for Banded dotterel. As the proposed marine farm was in a high wave energy environment the risk of structures coming loose and damaging either the Outstanding Conservation area or the birds. The department believed the station's ownership rights 'go only to mean high water mark' and that 'an occupation right under the Resource Management Act will therefore be need to be applied for.' In conclusion the Department of Conservation considered that:[168]

> Public rights of access to this area of foreshore and seabed should not be prejudiced. It is therefore unlikely the Department would support an application for exclusive occupation on such a grand scale.

Thus, the public right to access the foreshore was considered more important than Maori rights to preserve and develop areas of significance to them. The regional council also seemed not to consider that the application was from Maori, and as such, stated goals in their regional coastal plan could be referred to.

The Owners and the Ministry of Fisheries

As well as government policy and regulation of the fishing industry, especially paua and crayfish, Marr has also dealt with the general government policy towards customary

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[167] D Riddiford to G Kneebone, 19 December 2000, Wellington Regional Council, Masterton
[168] B Carrick Department of Conservation Wellington to D Riddiford, 30 November 2000, Wellington Regional Council, Masterton

Maori fishing rights. Salient points are that there is a historical record of Wairarapa ki Tararua Maori protest concerning the depletion of fishing resources and agitation for the protection of customary fishing rights. Most notably the two petitions of 1950 containing over 100 signatures of Maori from Owahanga River to Cape Turikirae. These peteitions protested the commercial fishing industry's effect on customary fishing. Marr also discussed the Crown's poor performance in making provision for customary fishing rights.[169]

Recent developments stemming from the 1996 Fishing Act and have led to the creation of two taiapure customary fishing areas in Palliser Bay and one at Porangahau.[170] There are no similar reserves in Te Hika a Papauma's district, although three kaitiaki have been nominated which is the initial step in forming such reserves.[171]

Ministry of Fisheries and Department of Conservation officials are currently working actively in the Wairarapa ki Tararua region. DOC staff are interested in promoting a network of marine protection areas as part of the government's biodiversity strategy. A ranga of options are available from full marine reserves through mataitai and taiapure reserves to variations in Total Allowable Catch and Total Allowable Commercial Catch for a particular area.[172] Ministry of Fisheries officers as noted above are working with iwi to establish customary fishing areas under the 1996 Fisheries Act. Neither mataitai nor taiapure reserves are intended as fishing areas for Maori only. They are areas that are managed by Maori, for the public. Maori management operates in association with either a local authority or the Minister of Fisheries.

The decreasing levels of marine stocks is a key concern for iwi generally and the Wai 420 claimants in particular. Oral tradition records that 100 years ago or more, marine species, especially finfish, paua and crayfish were much more plentiful on the Wairarapa east coast.[173] Marr has noted that the Quota Management System is still 'on trial' for many

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[169] Marr p 144-149, 151-155
[170] Marr, pp 153-154, New Zealand Gazette 5 December 1996
[171] Discussion with Andrew Luke, Customary Fisheries Co-ordinator, Ministry of Fisheries, 1 October 2002
[172] Interview with Department of Conservation staff, Masterton, 2 Oct 2002
[173] Rimene et al 'Customary Fishing Project'

fish species. Similarly it is not known if the current Total Allowable Catch for the crayfish and paua fisheries is sustainable, due in part to the prevalence of poaching.[174]

The National Institute of Water and Air (NIWA) attempted a paua growth and stock levels study several years ago at Owahanga. Approximately 600 paua were tagged in 1999 but so far NIWA have only had about 30-40 returned, which is insufficient to draw any meaningful conclusions.[175] The Department of Conservation has commissioned a diving survey of the entire eastern Wairarapa coastline but so far have not been able to dive off Owahanga due to unsuitable conditions.[176]

Evidence of poaching in the Wairarapa region is common. The media regularly reports Fisheries officers breaking 'poaching rings'. Fisheries officers estimate the amount being taken illegally on top of the commercial, recreational and customary catch is likely to be severely depeleting the various fisheries.[177] Masterton based Fisheries Compliance Officer Peter Himona estimates he currently receives from three to four complaints a day in summer concerning possible poaching. He stated he regularly received complaints about poachers from the Owahanga station owners.[178]

Conclusion

This report has been unable to demonstrate that the owners of the Mataikona A2 block have a clear blue water title based on a lack of survey or a survey that included part of the sea or the mention of the foreshore or sea in a Crown Grant, certificate of title or judges order. There is little record of what was actually discussed at the time the reserve was created in 1853, and the implication is that the owners retained the land with its associated water rights as they understood it, not under common law presumptions. The

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[174] Marr p 151
[175] Discussion with Ren Naylor, National Institute of Water and Air, Wellington, 20 September 2002
[176] Interview with DOC staff, Masterton, 2 Oct 2002
[177] See for example Wairarapa Times Age 9 July 2002, Eco News, 14 March, 2002 (http://www.cdnn.info/eco), Ministry of Fisheries press release 5 Aug 1999.
[178] Peter Himona, 6 December 2002.

block appears to have been surveyed to the high water mark in 1868 and subsequent surveys have reflected this. Neither the claimants nor the court make specific mention of including the foreshore or seabed in the title during its investigation in March 1869, although Maori claimants noted ancestral fishing rights in the hearing to determine relative interests (to land) in 1895.

This report has, however, provided historical evidence for a strong customary title to the foreshore and seabed of the Mataikona A2 block based on continuous ownership and occupation of the adjacent lands. There was no evidence of the Maori owners willingly or knowingly relinquishing those rights. The historical record shows that the original owners, as much as was legally possible in New Zealand law, sought a communal title to their lands which were defined as belonging to the hapu Te Hika a Papauma. The leaders of that community sought to prevent the individualisation, partition and alienation of the land but this proved impossible under the legislative regime and the block was partitioned in 1895, (although not completed until 1922). The will to retain the lands persisted however, with the result that today the block is nearly as complete as when reserved from the Castlepoint sale 150 years ago. This is a remarkable achievement and demonstrates the strength of the community will to retain their ancestral lands.

Ownership and occupation of the block, in Maori terms, came with a bundle of rights to utilise the adjacent marine resources including fish, shellfish and seaweed. The fishing resource was undoubtedly one reason why the owners chose to reserve the Mataikona block from the Castlepoint transaction. Evidence given for the Mataikona block in the Native Land Court in 1895 show that fishing rights were not a general ‘public’ right of all Maori, but attached to certain people at certain places. This accords with the general understanding of Maori fishing rights in other parts of the country. The archival records show the owners collected agar seaweed for commercial gain, investing time and money in equipment, with the Crown’s knowledge and acquiescence in the late 1940s and through to at least the late 1960s.

This report has also examined the case for exclusive ownership, occupation, and use of the marine resources. In the early colonial period Europeans used the coast for access to

the inland Wairarapa from Napier or Wellington. It is unlikely however, that the number of Europeans involved posed a threat to Maori marine resources. European coastal settlements did not develop until the middle of the twentieth century. By that time, distance and poor quality roads restricted land access to the Owahanga coast. Sometime before 1959 the 'public' status of the road to the Owahanga station and from the station building to the coast was revoked. The 'legal' road from the station buildings to the landing shed on the coast, due to deterioration, is now effectively a paper road only and unusable since the late 1960s. The public road from Whakataki to the Mataikona River at the south of the block now enables the public to access the foreshore quite easily by fording the river and passing along the foreshore. The owners have built a fence to try and prevent people crossing to the station above high water mark but have no legal means of preventing people travelling along the forshore.

Access to the foreshore and sea off Mataikona block by boat has been restricted historically by the lack of safe landing facilities or anchorage. This was typical along the entire coast and served to limit the number of fishers. More recently however, with developments in marine craft technology, better access roads and the growth of local subdivisions, the threat to the traditional marine resources of Te Hika a Papauma has increased. Commercial, recreational and even customary fishers (not connected to the owners) have legal access rights to take fish and shellfish from the foreshore and sea of the Mataikona block. Poachers are also stripping large amounts of crayfish and paua from the Wairarapa coast. Claimants and fisheries officers believe that the numbers of fishers of all types are steadily increasing.

Crown control of the foreshore in the area in question has devolved to local councils. Council foreshore control evolved through the growth of local seaside communities but was localised to those communities. A shift in government policy in the early 1980s meant the Dannevirke County Council became controlling authority for the whole of the county coastline, including the Owahanga station's. The council then proceeded to develop a foreshore reserves policy which emphasised public access to and along the entire coast without reference to the fact that nearly half the coastline was owned by Maori who had significant rights under the Treaty of Waitangi to have their fishing rights

protected. The dual focus of public access and wildlife and habitat protection were also quite contradictory. In truth, the private and exclusive Maori control of the station foreshore in this century was one reason marine resources have survived in that location. It is mundane to observe that increased recreational use by the public has led to drastic depletion of marine resources, especially in the foreshore.

The Resource Management Act now regulates all aspects of the coastal marine area. Under the Act, the Wellington and Manawatu-Wanganui regional councils are the administrators, under the supervision of the Department of Conservation. The Act obliges Regional councils to consider the rights of Maori under the Treaty of Waitangi when forming regional coastal plans. Significantly, however, the Resource Management Act sets Maori customary fishing rights, which are often private and exclusive, against a public 'right of free access' to and along the foreshore. Maori custom, can be seen to have protected the coastal marine area at Owahanga through excluding as much as possible, public access and associated resource depletion. This is consistent with the Maori role of *kaitiaki* or guardian. The customary rights of Te Hika a Papauma to the foreshore and marine area associated with their traditional lands – the Mataikona block, are now under considerable threat from the open public access policies of the Crown.

Throughout much of the last 150 years, the impact of the Crown on the coast off Mataikona block has been in the form of fishing regulations and policies. Marr has discussed the legislation and policies that most concerned Wairarapa iwi, particularly the commercial fishing industry. What is evident at this point is that paua, crayfish and finfish stock levels are considerably reduced and under increasing pressure from all types of fishing – commercial, recreational and poaching.

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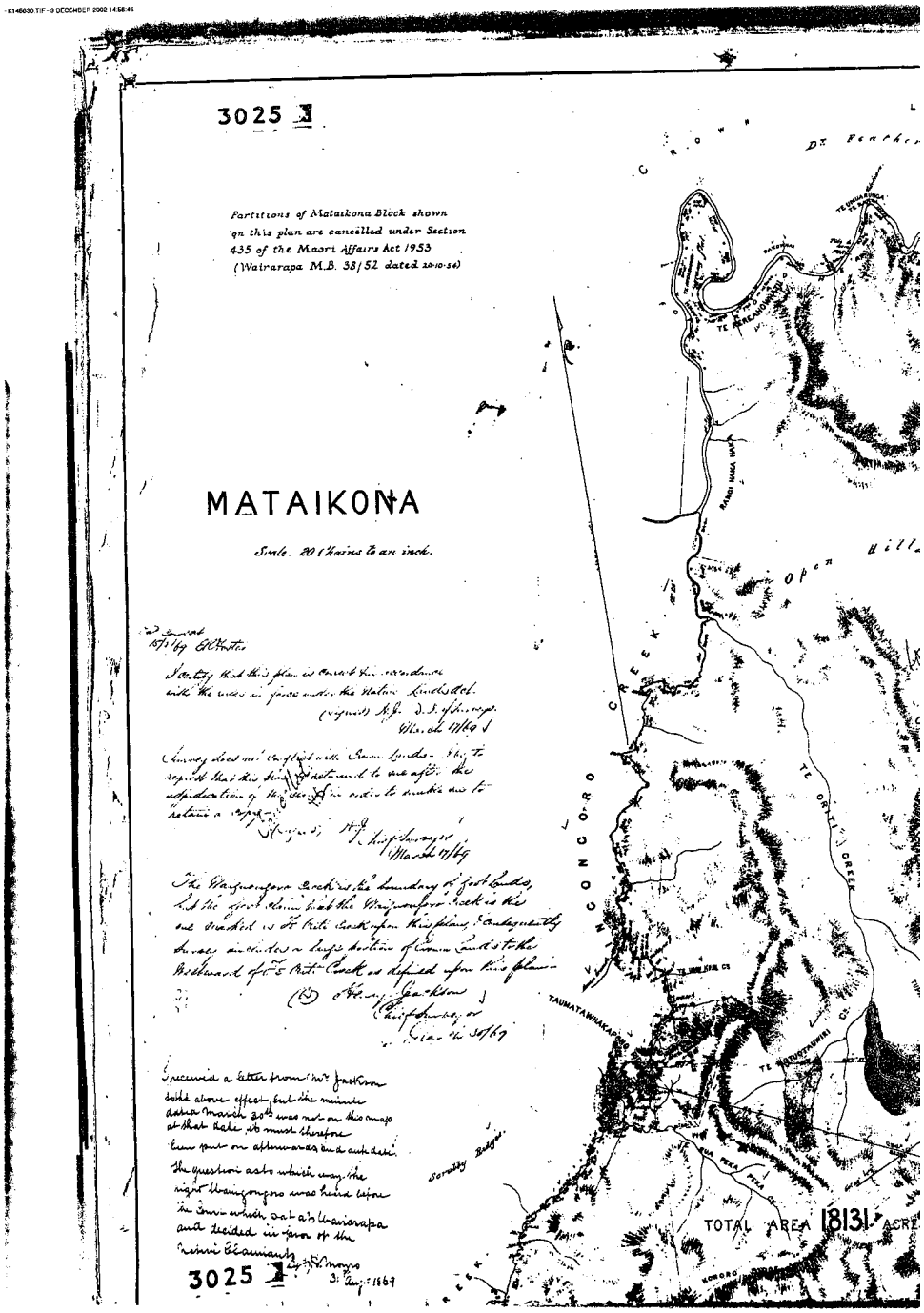
Appendix

ML3025 pt 1



ML 3025 pt 2


3025
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Dr Featherston's
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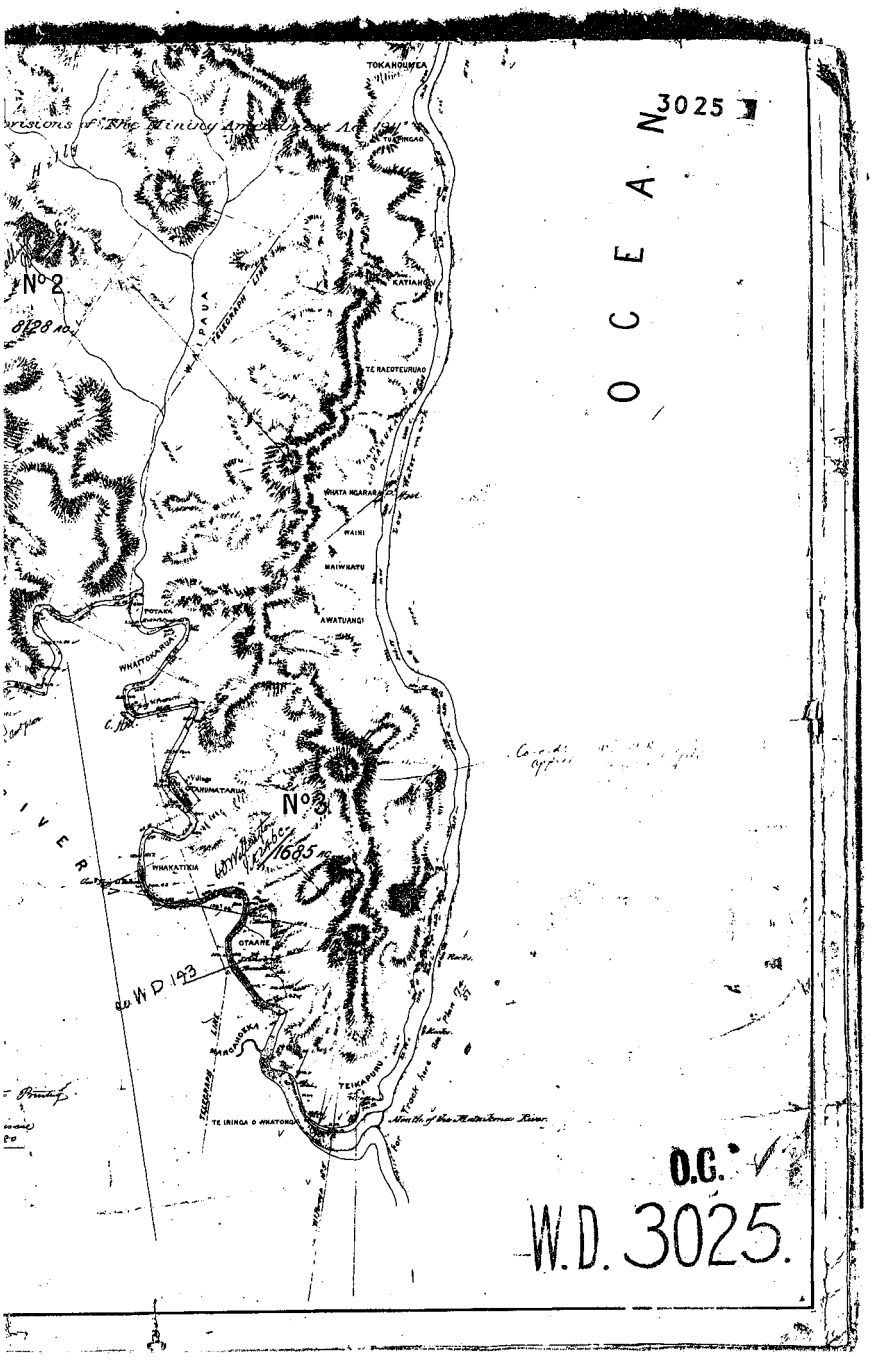
TELEGRAPH LINE TO NAPIER
OTAKI
RIVER
Open Hilly Country
No 1.
8318 ac.
OWAHANGA
TE ORITI CREEK
MAUREA
TE KIRI WAHAROA
TOTAL AREA 18131 ACRES
3025

ML 3025 pt 3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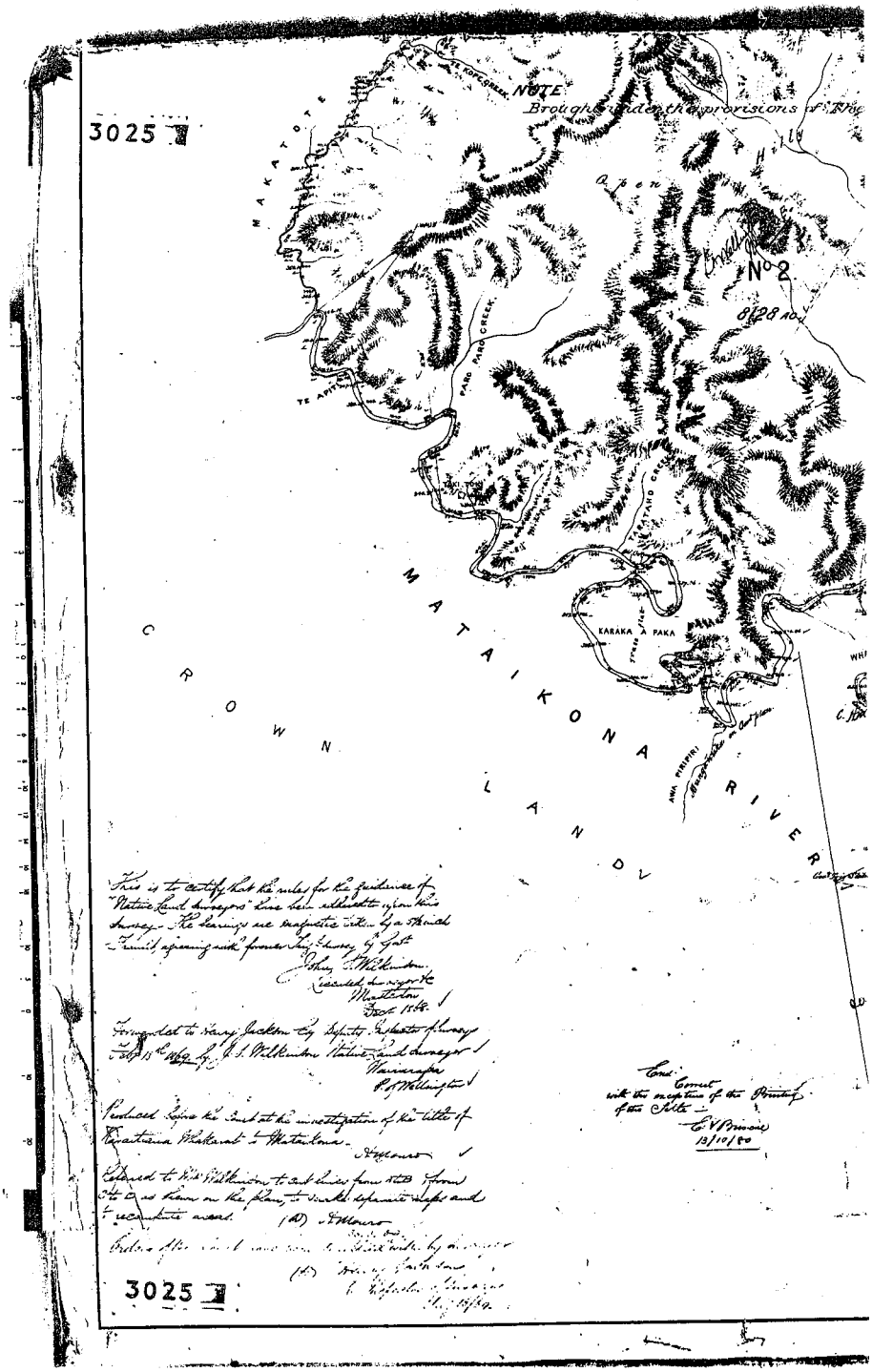
ML 3025 pt 4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NOTE
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