

In the High Court of New Zealand  
Wellington Registry

CIV-2017-485-253

**In the matter of**

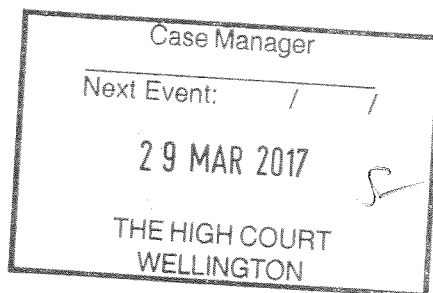
the Marine and Coastal Area (Takutai  
Moana) Act 2011

**And in the matter of**

an application by John Hata on behalf of  
Ngāti Patumoana, a hapū of  
Whakatōhea, for orders that recognise  
their customary marine title and  
protected customary rights under that  
Act

**APPLICATION FOR RECOGNITION ORDERS**

Dated 29 March 2017



**Counsel: Tom Bennion / Emma Whiley**

Bennion Law

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**To:** The Registrar of the High Court at Wellington

**And to:** the Whakatane District Council

**And to:** the Ōpōtiki District Council

**And to:** the Bay of Plenty Regional Council

**And to:** the Solicitor-General on behalf of the Attorney-General

**THIS DOCUMENT NOTIFIES YOU THAT:**

1. Mr John Hata (the applicant), on behalf of Ngāti Patumoana (the applicant group), will on 29 March 2017, apply to the High Court for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) relating to a particular area of the common marine and coastal area (as defined in s 9 of the Act) that is between the western side of the Maraetotara Stream outlet and stretching east to the western side of the Ngawaikui Stream outlet and including the Ohiwa Harbour and the common marine and coastal area surrounding the following islands within the Ohiwa Harbour: Ohakana Island, Uretara Island, Whangakopikopiko Island, Motuotu Island, Hokianga Island and Pataua Island (the “Ngāti Patumoana Rohe Moana”). The Maraetotara Stream outlet and the Ngawaikui Stream outlet are marked on a map in the attached **Appendix A**.
2. The Ngāti Patumoana Rohe Moana is bounded on the landward side by the line of the mean high-water springs and on the seaward side by the outer limits of the territorial sea.
3. The orders sought in relation to the Ngāti Patumoana Rohe Moana arise from:
  - 3.1. Permanent pre-1840 occupation of the land abutting the Ngāti Patumoana Rohe Moana by Ngāti Patumoana and the use of the adjoining foreshore, seabed and seas up until today without substantial interruption;
  - 3.2. The ongoing taking of kaimoana in the Ngāti Patumoana Rohe Moana by Ngāti Patumoana;
  - 3.3. The ongoing taking of aquatic plants and sea birds in the Ngāti Patumoana Rohe Moana by Ngāti Patumoana;

- 3.4. The ongoing navigation and passage over the Ngāti Patumoana Rohe Moana in waka, and the landing of waka by Ngāti Patumoana;
  - 3.5. The ongoing recreational use of the Ngāti Patumoana Rohe Moana by Ngāti Patumoana;
  - 3.6. The ongoing collection of sand, stones, shingle and detritus in the Ngāti Patumoana Rohe Moana by Ngāti Patumoana;
  - 3.7. The designation of wāhi tapu in the Ngāti Patumoana Rohe Moana by Ngāti Patumoana;
  - 3.8. The imposition of rāhui in the Ngāti Patumoana Rohe Moana by Ngāti Patumoana;
  - 3.9. Ngāti Patumoana allowing others to undertake activities within the Ngāti Patumoana Rohe Moana;
  - 3.10. All ways of life and cultural practices associated with the above takings and uses including cultural practices founded in spiritual beliefs including the saying of karakia tawhito, karanga, imposition of rahui, exercise of kaitiakitanga and mana, naming of places in the sea and foreshore to specify fishing areas, reefs and people who had authority over them by Ngāti Patumoana; and
  - 3.11. All other related Ngāti Patumoana customary uses of the Ngāti Patumoana Rohe Moana.
4. Ngāti Patumoana have undertaken the activities listed in paragraph 3, prior to 1840 and continue to undertake these activities in the Ngāti Patumoana Rohe Moana in accordance with tikanga.

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#### **DESCRIPTION OF APPLICANT GROUP**

5. Ngāti Patumoana are a hapū of Whakatōhea that descend from Ruamoko.
6. The Ngāti Patumoana marae is Waiaua marae.
7. The original settlements of Ngāti Patumoana were at Paerātā, Ahirau, Waiōtahe, Onekawa and Ōpōtiki.
8. The applicant, Mr John Hata, is the chairperson of the Ngāti Patumoana marae trustees (Waiaua marae).

#### **GROUND ON WHICH THE PROTECTED CUSTOMARY RIGHTS RECOGNITION ORDER IS SOUGHT**

9. Ngāti Patumoana, through the applicant Mr John Hata, seek a protected customary rights recognition order on the grounds that their protected customary rights relating to the Ngāti Patumoana Rohe Moana may be recognised by an order of the Court made on an application under section 100 of the Act.
10. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for protected customary rights meets the requirements of s 51(1) of the Act.
11. The Applicant Group meets the requirements in s 51(1) of the Act because Ngāti Patumoana:
  - 11.1. have exercised protected customary rights before and since 1840 within the Ngāti Patumoana Rohe Moana;
  - 11.2. continues to exercise those rights in the Ngāti Patumoana Rohe Moana in accordance with tikanga in either exactly the same or a similar way, or in a way that has evolved over time; and
  - 11.3. is applying for rights that have not been extinguished as a matter of law.

**GROUND ON WHICH THE CUSTOMARY MARINE TITLE RECOGNITION ORDER IS SOUGHT**

12. Ngāti Patumoana, through the applicant Mr John Hata, seek a customary marine title recognition order on the grounds that its customary marine title relating to the Ngāti Patumoana Rohe Moana may be recognised by an order of the Court made on an application under s 100 of the Act.
13. Pursuant to s 98 of the Act, the Court may make a recognition order if it is satisfied that the application for customary marine title meets the requirements of s 58 of the Act.
14. Ngāti Patumoana meets the requirements in s 58 of the Act because it:
  - 14.1. holds the Ngāti Patumoana Rohe Moana in accordance with tikanga;
  - 14.2. has, in relation to the Ngāti Patumoana Rohe Moana, exclusively used and occupied it from 1840 to the present without substantial interruption to its exclusive use and occupation; and
  - 14.3. has customary marine title that has not been extinguished as a matter of law.

15. In terms of matters that may be taken into account in determining whether the customary marine title of Ngāti Patumoana exists in the Ngāti Patumoana Rohe Moana:

15.1. Ngāti Patumoana have owned land abutting the Ngāti Patumoana Rohe Moana and have done so, without substantial interruption, from prior to 1840 to the present day; and

15.2. Ngāti Patumoana have exercised non-commercial customary fishing rights in the Ngāti Patumoana Rohe Moana and have done so from prior to 1840 to the present day.

#### **PERSON TO HOLD THE ORDERS**

16. Ngāti Patumoana, via the applicant Mr John Hata, will be the holder of the orders.

#### **APPLICATION MADE IN RELIANCE**

17. This application is made in reliance on sections 51(1), 58, 59, 94, 98, 100, and 101 of the Marine and Coastal Area (Takutai Moana) Act 2011 and the affidavit of Mr John Hata which sets out the basis on which Ngāti Patumoana are entitled to the orders sought.

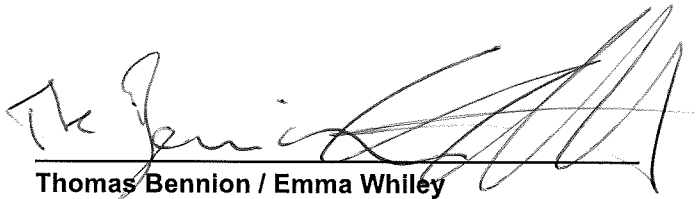
#### **CONTACT DETAILS OF THE APPLICANT AND PERSON NAMED TO HOLD THE ORDER**

18. The contact address of the applicant and person named to hold the order is:

John Hata  
Chairperson Ngāti Patumoana marae trustees  
PO Box 110  
Ōpōtiki 3162

19. The contract telephone number is: 020 4014 7756

**Dated** at Wellington this 29th day of March 2017

A handwritten signature in black ink, appearing to read 'The Bennion / Emma Whiley', written over a horizontal line.

**Thomas Bennion / Emma Whiley**

Counsel for the applicant John Hata

This document is filed by Thomas Bennion, Solicitor for the applicant.

The address for service of Ngāti Patumoana is at the offices of Bennion Law, First Floor, 181 Cuba Street, Wellington.

Documents for service on the above-named applicant may be left at that address for service or may be:

Posted to the solicitor at PO Box 25-433, Featherston Street, Wellington 6146; or

Transmitted to the solicitor by email to [tom@bennion.co.nz](mailto:tom@bennion.co.nz).



5. includes the Ohiwa Harbour and the common marine and coastal area surrounding the following islands within the Ohiwa Harbour: Ohakana Island, Uretara Island, Whangakopikopiko Island, Motuotu Island, Hokianga Island and Pataua Island.