

DUPLICATE

**SEVENTH HEARING  
COPTHORNE SOLWAY PARK  
26 OCTOBER 2004**

**WAIRARAPA KI TARARUA INQUIRY**

**Tribunal:** Judge Wainwright  
Dame Margaret Bazley  
Wharehuia Milroy  
Ranginui Walker

**Historian:** Robyn Anderson

**Tribunal Staff:** Juanita Pearce-Thomson  
Greer Kaio (Training)  
Claire Mason  
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Stephen Kerr

**Claimant Counsel:** Grant Powell  
Angela Hansen  
Kathy Ertel  
Liz Cleary  
Leonard Hemi  
Yashveen Singh  
Gina Rangi  
Tracey Whare

David Ambler (from 27 Oct)  
Prue Kapua (from 27 Oct)  
Paul Harman (from 27 Oct)  
Stephen Clark  
Charl Hirschfeld (from 27 Oct)

**Crown Counsel:** Helen Carrad  
David Laird  
Hone Hurihanganui (Kaumatua)  
Fergus Sinclair (from 27 Oct)

**David Ambler cross-examines Terry Lynch**

Ambler We've met – we've actually eaten fish over lunch together. I'm David Ambler and I represent the Ngati Hinewaka claimants and associated hapu.

Lynch Kia ora.

Ambler And it's my clients who have put this issue of customary fisheries before the Tribunal to a large degree. Your summary has been helpful and has knocked out some of the points that I wanted to raise with you. So I'm going to endeavour to be as focused as I can. Paragraph 6, you talk about sustainable – the system being designed to ensure sustainable use and then paragraph 8, you talk about the concept of maximum sustainable yield.

Now, as I understand it, in terms of the QMS system, it's not designed to allow the rebuilding of the fishery to, say, its status pre the 1950s.

- Lynch            It's designed to rebuild a stock to its maximum sustainable yield. That inevitably, with any fishery that is developed in a commercial way, will not be the relatively virgin state that you would have found, particularly in this area in the 1940s and '50s that the claimant evidence alludes to. It will be a, certainly sustainable, but at a lower level of harvest that can be perpetuated into the foreseeable future.
- Ambler            I assume, though, that in terms of defining what is sustainable you – there must have been a decision as to what time you're looking at. So, can you help us? Is that as at the 1980s, 1970s, what?
- Lynch            The concept of MSY works out of finding out as close as possible and it's very difficult when you start something in 1980 that's been fished since, you know, 1860, what the virgin biomass looked like. You know, what was the fishery without people, in any real sense of penetration into the harvest of that fishery. What that looks like and then what can be sustained. Take the maximum economic yield out of that fishery and that looks at how fast does the fishery replicate itself, what's its breeding success and how much can it replace itself? It draws a line through that replacement and works out how much you can take down to that level that will replicate itself in perpetuity. The writings say that that's about 20% of the virgin biomass. So, it's a substantially lower level than what an unfished fishery would look like. It tends to focus on four or five, what we call year classes – groups that have been hatched into the fishery and it doesn't have the characteristics of a virgin fishery. Virgin fisheries are say for something like Hapuka would have fish from 60 years old to eggs. A well-managed, sustainable Hapuka fishery operating at MSY has probably got fish between 0 and 10 and not many above that age and those big fish are the ones that come close to shore and are really the prizes for a customary fishery.
- Ambler            So, you – taking that, that example of Hapuka – one of the complaints of the Ngati Hinewaka people is that the substantial Hapuka fishery that was there prior to the 1950s is no longer there and do I understand from what you're saying is that the fisheries regime is not going to bring that back?
- Lynch            Not, not alone. With a quota management system, the management of the commercial fishery for a long-term, sustainable yield will not bring that fishery back to that state. That is why mataitai reserves, taipure – other closure – area closure mechanisms have been included in the mix of fisheries resources. What I'd hazard is even if you had a mataitai reserve, even a reasonably substantial one, that you could rebuild the fishery in that area to replicate that but the fishing level you would have to, yourself, manage at would be so low as to be virtually one or two fish a year.
- Ambler            Are you talking about the exclusion – one or two or fish, you mean even at a recreational level?
- Lynch            Yes.

- Ambler Because that's where I want to get to, in terms of the overall picture. In terms of restoring the fishery, the customary fishery that the Ngati Hinewaka and other people have, you've explained that it would be very difficult to get back to the pre-1950s level.
- Lynch For some fisheries.
- Ambler For some fisheries?
- Lynch Yeah.
- Ambler All right. But, even if we're going to look at improving the situation it's a combined effort in terms of the management of the QMS and the fishery specific mataitai taiapure regime? That's correct?
- Lynch That – and I'd add to that what I was alluding to in the last part of my evidence that the input and participation of Maori into the general decision making process on fisheries, at the moment, there's a relatively, you know, monocultural set of values being approached in the fishery, largely because of ignorance of any other values.
- Ambler Hmm.
- Lynch And the requirement that was put into the 1996 Fisheries Act for the Minister to recognise and provide for the use and management practices of Maori and to make regulations for those purposes and for the – to provide for the input and participation of tangata whenua, the customary interest into the sustainability of decision-making processes is to my mind the kind of critical component of the regime as a whole.
- Ambler Hmm.
- Lynch It's designed to bring another world view into the decision-making process so that these other attributes of sustainable utilisation, the social and Maori economic world are able to be brought in there. It's not just the dollar that's driving the economics, it's that, that – I won't call it subsistence but, you know, different economic values are being brought into play.
- Ambler All right. So, I take it that the Ministry, well in terms of your personal view, is quite anxious to get tangata whenua directly involved in that ...?
- Lynch Yes, that's the Ministry's position and certainly the policy that's set out in our statement of intent and processes.
- Ambler Yep. Just, just following up on this QMS and mataitai taiapure regime, it seems to me that in an area like we're dealing with here, in this fishing region, even if you halved the QMS for a particular species, if the commercial fishers are still competing with the customary fishers in terms of the actual specific fishery, lowering the QMS is unlikely to advantage Maori in terms of their customary fishery?

- Lynch I'd find that extremely doubtful and it would place the Government and the Ministry in another Treaty conundrum in that we've also got an obligation to provide 20% of the commercial quotas through the new Te Ohu Kaimoana Trustee Limited to be distributed to iwi. Iwi are owners of about 40% of commercial quotas in New Zealand and probably control about 60% and there needs to be a balance between those things. That is something we'd very much value from iwi views on how they'd see that balance being, you know, being the majority of the commercial fishing industry, how that balance should work. But at the moment, we're still in transition. You know, the iwi penetration as commercial fishers has not really started. It starts some time next year, when Te Ohu Kaimoana starts distributing real quota permanently into iwi hands.
- Ambler All right. I'll move on. I do have quite a bit to get through, but some of it, Ma'am, I may need to, Your Honour, I may need to follow up with questions in writing, Ma'am, on some matters? If that's okay? So, if I can – I'd like to carry on, but there are some matters that I would like to follow up with questions in writing because of the time constraints. Now, paragraph 17, you deal with this Paua 2 region and the total allowable catch in 1986 was 121 tonnes and then the total allowable commercial catch was the same figure and that seemed to suggest to me that, in terms of that quota, there was no accounting – taking of customary Maori fisheries.
- Lynch It kind of looks like that on the surface but no, what, the way paua fishery and some of those early fisheries that brought onto quota management system, no biomass assessment was made on those fisheries. The assumptions that were worked into setting the TAC and TACC was to look at the range of other signals, the catch effort, the size of the fish, the ease of harvest, aging samples – when you use those mechanisms, you don't actually need to do the other stuff. The assumption is there is a customary fishery out there, as yet unquantified, and there's some estimates of recreational fishing. If you were to do a – to a set a TACC, you'd add them all together – that would be the TACC, then you'd subdivide them again, commercial, the TACC, the commercial quota would stay the same, there'd be two other figures – we just haven't got what the quantity of the two other figures are at this stage. But when you look at the health of the paua fishery in this area at a sustainable level, not necessarily a customary, desirable level, it's maintained itself pretty well since 1986. It's one of the few – it is the only, in fact, paua fishery that's maintained itself. It's at a constant level during that time.
- Ambler And that, as I understand it, has been assessed without a biomass survey?
- Lynch That's right.
- Ambler From other data?
- Lynch Yes, and the reason we haven't gone and looked for a biomass survey, although there will be one in the near future, because the 96 Act requires biomass surveys, the 1983 Act did not do so. Because the stability of that

fishery indicates it is not under severe stress or even moderate stress at this stage.

Ambler Because I noted from Dr Leach's report, and this is at page 71 for the Tribunal's benefit, there were biomass estimates done in some other areas, puaa 6 5B, 5D and 7. Was that because they were under greater stress?

Lynch That's right, the catch levels and the age and size indicated that they were, had been significant cuts and/or decreases in the quota management areas, in those areas.

Ambler Okay. Now, in your summary, you explained about the QMS and how the customary fishery is taken into account, the recreational fishery and then the commercial fishery quota is stipulated, is that priority, is that actually in regulation?

Lynch It's not in regulation, section 21 in the Fisheries Act sets out that process. As I said in my summary, the Minister is not required, he's required to make an allowance, he's not required to make the allowance exactly the same as what customary harvests reports are, but if the Minister was not to do that, then there's a significant risk of breaching the sustainability rules of the Fisheries Act, so that practices tend to try to set customary allowances higher than recorded catches. But certainly customary fishing is the first preference.

Ambler It is the first preference, but is that actually defined in statute or is that just the policy that has been ...

Lynch It's the legal advice that we have as to the meaning of the Fisheries Act, associated with the requirements of the Minister as a decision-maker under the Settlement Act.

Ambler Alright.

Lynch And there is that kind of circular argument of Minister must make regulations that have a specific outcome as to a quantum of fish that can be taken, can't change the rules because iwi are the decision-makers there, must add those things into the system.

Ambler Alright, now in terms of your comments at page 19, that's where you're dealing with the puaa. At page 80 of Dr Leach's report, he refers to a report by Glassey in 2001 in relation to an ecological survey from Cape Palliser up to the East Coast and, just by way of summary, there was concern as to the actual status of the fishery there. Are you aware of that report?

Lynch No, I couldn't, I'm aware of it, but not of the full detail of it.

Ambler Okay. Now, paragraph 23 if we can just move onto the proper QMS. You've said that the 266 tonne quota has remained stable since 1989. Do you mean that that hasn't changed at all?

- Lynch No, it hasn't changed. And, as (inaudible) said, it hasn't had a biomass survey, it's fishing below the quota at the moment and the Ministry's observation is provided fishing actually doesn't come up to what the TACC is, it's in a stable state. When the next round of sustainability assessments come into place for that fishery, there will have to be a biomass survey done on it.
- Ambler And so the data to date for, as I understand it, for paua, kina and groper is not reliant on biomass survey but on other sources which largely rely on the commercial fisher's returns?
- Lynch No, not largely. There's a range of assessments that go on and are conducted via the NIWA, the Cawthorne Institute or other researchers contracted to the Ministry. They aren't just biomass surveys. But there is a lot of data that does come in through the commercial fishers that is pretty critically important to that whole assessment process. And certainly the catch effort and the size clarifications of the catches are pretty important indicators of health.
- Ambler Alright. Paragraph 28, you're dealing with rock lobster crayfish and I'm assuming that the quota has changed since 1989. Has that increased or decreased?
- Lynch It's been regularly reviewed. It has, to my recollection, increased in that time, slightly.
- Ambler Increased?
- Lynch Yeah. The rock lobster fishery is one that is probably more studied than any fishery in New Zealand. A lot of that work is actually done by the industry and in this area the last assessments provided by them as primary advisors and research contracted to our standards, to Ministry standards by them indicated that the fishery is stable, it looked a couple of years ago that that was not going to be the case if fishing continued as it was and more recent data suggests that it's stable, at least until 2006, when the next biomass survey is required. It's a very heavy sampling and diary programme goes on where each fisher records exactly where they catch stuff, size, sex, everything.
- Ambler That is a well-studied fishery?
- Lynch Yes.
- Ambler Paragraph 29, you talk about the national rock lobster management group. What representation is there on that group for customary Maori fishery interests?
- Lynch There's nothing as such as customary Maori interest. There are two representatives who are Maori but largely that group is made up of industry players. Certainly, they do take into account the customary issues in the development of their suggestions on the fishery. But their work is largely focused on what is the health of the fish, not who gets allocated the catch rights. So the allocation of what fish is there, that is

strictly the business of the Ministry and the Government. So, the National Rock Lobster Advisory Group will provide the Minister with very detailed advice on the health of the fishery in any one area. The Minister decides how it's cut up.

Ambler But you would appreciate that there is, I guess, a tension within Maoridom as to the commercial interests and the customary interests?

Lynch Oh, absolutely.

Ambler Is there some effort to include, now to look at including some representation of Maori customary interests?

Lunch As I said, that group is one that is industry based and industry funded. It is difficult for the Crown to require someone who's funding their own activities to take that into account, although the fact that Maori are a significant owner of quota resources brings some balance to that situation. The ownership of that moving into iwi hands may bring a better balance, but none of that removes from the Crown's duty to ensure that customary fishing is provided for.

Ambler Now, I will follow up with some more specific questions on the kina issue, but at paragraph 37, that caught my eye the last comment, "I consider that the Crown has taken all reasonable steps in this fishery [that's the kina fishery] to provide for Maori customary recreational and commercial interests" and I guess what struck me was that, conversely you don't seem to think that those same efforts have been made in relation to those other fisheries.

Lynch Not necessarily, but we're in a space now where we are dealing with a regime that does recognise far better the needs and requirements of the Maori community and is able to reflect those and the more up to date decisions that have been taken, some of those historical decisions pre-'89, quite clearly have not made, as you alluded in the paua fishery, there is no customary assessment there at all. With the kina fishery there was an opportunity and an opportunity taken to ensure that there was a proper balance amongst the sector groups.

Ambler Right, can we move on? Obviously you've been very candid and it's very helpful to talk about the problems. There are substantial problems with the taiapure mataitai regime to meet the interests of Maori. Paragraph 64, you identify that there are at present only 7 taiapure in the whole of the country, of which two are the ones that are Te Kopi and Te Humenga and we know that there haven't been any regulations come out of those two taiapure. Of the other five, have any of those produced any regulations?

Lynch Pirongahau is working towards recommending regulations now for set-netting restrictions.

Ambler Yes.

Lynch But none of the others have taken steps of recommending other management regulations.

- Ambler So this is a widespread problem of ...
- Lynch Well, as I say, it's not necessarily a problem, it's Crown bonking people with regulations, probably the last way to get communities to work together and in our own policy setting we would prefer people to work towards voluntary agreements or internal arrangements that mitigate the need for the Crown to step in as the lawmaker and up until now at Pirongahau, it's not the commercial fishers that they're trying to probe but it's actually recreational set-netting that's the problem up there. Once Maori were actually in a position of being, not even a decision-maker, but a recommendatory body to the Minister, that changed their status and role in those communities from invisibility to someone you needed to get on with. The commercial fishers recognised that, and I clarify local commercial fishers who live in those communities or use the resources frequently, looked at the new manager on the block and made some accommodations that addressed the issues that the Maori community had, without the need for the Crown to step in with rules and, you know, to me that's a better way than - communities working together.
- Ambler That does sound good, but if we come to the situation of the Ngati Hinewaka people at Cape Palliser, you have a substantial commercial fishing presence there.
- Lynch Yep.
- Ambler And they have a considerable vested interest. It would be quite an arduous process to end up with regulations which restrict those commercial fishers from that fishery, don't you think?
- Lynch It may be a testing process, but it's not a process that the taiapure committee should be engaged in. Their role is to recommend regulations to the Minister, it's not incumbent on them to make the regulations or do the work and I think that's part of the fault of the lack of education and training that the Ministry has put out as people, both in the commercial industry, iwi, and to some extent even in the Ministry are not clear on whose duty it is to do what, it is the Government's duty to make regulations. And it's the Minister's duty to make regulations that recognise and provide for customary use. So while there may be misinformation put out by a number of sources, possibly including the Ministry, but there's a duty on the Management Committee to do more, the legal position is their role is recommendatory, you should consult with your neighbours, but it's not statutory and it's the duty of the Minister to make those regulations.
- Ambler Right. But from what I understand you to have said, that process, at the Ministerial level, has yet to be tested because the first regulations are still only being suggested by the Pirongahau people.
- Lynch Yep.
- Ambler The mataitai, how many mataitai have been created around the country?
- Lynch All in the South Island, three.



- Ambler Three? And they're all in the South Island?
- Lynch In Hawke Bay there's one more application and there's two more applications in the South Island that are progressing.
- Ambler Now, moving on to paragraph 109 of your brief, you talk about the discussions at iwi level and then you talk about involving tangata whenua at a local level. Is the Ministry now quite cognisant then of the fact that if you're dealing with a local level, it does need to be at the hapu level, rather than the iwi level, to get the direct feedback?
- Lynch We are cognisant of that fact, but there's also some practicalities of, both in the fisheries management sense and the constraints on the Ministry, to be able to carry out that level. We tried to work at both levels, iwi and hapu level, that's the legal requirements on the Ministry. The effect of that was that our ability to consult and involve people became no more than a paper exercise which was entirely unsatisfactory and negligent, to some extent. In consulting with iwi, the forum concept flowed up out of that about how to actually get people to a table so that at very regular intervals the responsible decision-makers can be there face to face with the people, hear their concerns and bring those into the decision-making process. There is an expectation that, at an iwi level, there's going to be some governance around that to ensure that hapu views are incorporated. If not, then we've still got a legal obligation to discuss or to consult with hapu and try to involve them, but once again, there's a strong likelihood that we're not going to be able to physically or financially achieve that. So, we're trying to work at a level that operates where the fishery work and enable people to bring their, be gunned up and bring those views to the table. What is, and I would say this fairly, honestly, inadvertently happens, is if we try to operate at a hapu level or a whanau level or an area level, you hear a diversity of views about the same subject. It leaves our staff confused and the response is likely to be, there might be, you know, there's likely to be no response because of the competing concerns being brought by hapu and iwi. What we would prefer to do would encourage iwi to work together to form a common position, we have been working with the Bay of Plenty iwi on this for a little while and it has been reasonably successful although it's not formalised, to bring their positions to the table is a position of strength rather than discord.
- Ambler Alright. Thank you, I will follow up with some questions in writing. Thank you.
- J Wainwright We're going to have to do a little stocktake here. We've got a half an hour remaining in this hearing. Would it be possible for counsel to submit their questions to Mr Lynch in writing?
- Male I have no questions for this witness Ma'am.
- J Wainwright Thank you Mr (inaudible).
- Clark I sought leave to cross-examine Mr Lynch on the specific matters which were raised by Rangitane o Wairarapa about the tangata kaitiaki

- appointment process. I don't think that question will take more than 10 minutes.
- J Wainwright Well, Ms Carrad, what is your proposal with respect to the other two witnesses?
- Carrad Well, we could, I mean, one option perhaps would be to take their evidence as read and then deal with the questions in writing. I don't know whether that would meet the needs of claimant counsel.
- J Wainwright Well, I think that is where we're at, isn't it?
- Powell Well no Ma'am with respect I would object strongly to having to make questions in writing to the DOC witnesses. It is a specific claim in this inquiry, the response of DOC in this area and this is our opportunity to put various serious issues to the DOC witnesses. Having said that, my cross-examination of both DOC witnesses won't be very long, probably about 20 to 25 minutes each.
- J Wainwright Well, we're not able to do that today?
- Powell Not able to do that today, I would just simply submit that the DOC witnesses should be recalled for December. I'm quite happy that their evidence be taken as read and we just go straight into cross-examination at that point, but I certainly don't think that we could deal with it by way of written questions.
- J Wainwright Well, I think we will need to do an assessment of the commitments that we've already made for December, because I'm not sure that we are going to be in a different position in December than we are now, unless we make some decisions about evidence not being presented in December and simply being cross-examined. My understanding is that the schedule for December is now pretty full. However, we can reassess that and perhaps there is some rationalisation that we can canvass by way of memorandum. Are there any other Counsel who need to question Mr Lynch orally rather than in writing?
- Female(?) Ma'am, we've sought leave but I am quite happy to do that in writing, most of our questions have been addressed already. But, with your leave we could file written questions.
- J Wainwright Alright, well I think what we'll do then is give you as little time as you can manage, Mr Clark, with a view to dealing only with Mr Lynch today, and reserving the question of how we will take the evidence of the witnesses and more particularly, the questioning of them and we will get back to you on that.
- Male(?) Ma'am with the leave of the Tribunal if I could be excused I have a 6.00pm flight to catch.
- J Wainwright Yes.
- Male(?) Kia ora.

Wainwright Go, Mr Clark! Five minutes would be good.

**Stephen Clark cross-examines Terry Lynch**

Clark Mr Lynch, I'm just going to direct my questions with respect to the fisheries, Kaimoana Customary Fishing Regulations 1998, in particular the tangata kaitiaki appointment process. Just to recap just very briefly, I understand the process is, first step is tangata whenua need to notify the Minister of a proposed appointee, that's regulation 5, isn't it?

Lynch That's right, yes.

Clark And, following that, the Minister gives public notice, doesn't he, under regulation 6, or she?

Lynch That's correct.

Clark And then submissions are called for pursuant to regulation 7, aren't they?

Lynch That's correct.

J Wainwright (Inaudible).

Lynch It's probably me not speaking loudly enough.

Clark Now, Mr Lynch, at paragraph 80.3 of your brief, you set out there, don't you, a category of persons who may make a submission, once that has been notified? A proposed appointee, is that?

Lynch That's correct.

Clark The regulation actually includes the wording "and any other whanau", doesn't it? Before the word hapu.

Lynch Yes, it does.

Clark Alright. And, another prerequisite, if you're going to make a submission, is you have to be an authorised representative of ...

Lynch Of one of those groups, yes.

Clark Yes.

Lynch We, I'll just allude to the issue of whanau. Recently legal views are that whanau, as in the concept of family, as opposed to the interpretations of some groups that whanau are iwi, in effect, is that whanau is *ultra vires* the Fisheries Act. And that regulations can't be made to bring the family meaning of whanau into the Kaimoana Regulations or any other regulations. That they must be made in that context. Some applications have been made by, or submissions have been made by whanau, they remain *vires* in that they've been supported by hapu or iwi.

Clark Right. Notwithstanding that, whanau still appears in the regulation doesn't it?

- Lynch That's correct.
- Clark Now, the reference to the phrase "authorised representatives of those groups", that requires a degree of self-policing from those groups that make submissions, doesn't it?
- Lynch Or at least the clarification and mandate for those individuals or groups to speak on behalf of that people, yes.
- Clark Well, who determines or polices who is the authorised representatives? Does the Ministry do that or do you leave that up to the submitters themselves?
- Lynch To an extent, it has been left up to the submitters. That's a matter that has caused some problems in some applications and at a policy sense we would, and are, looking to ensure that the Ministry clarifies that situation. It's one of the reasons why we've appointed relationship managers that have got a role and to look at the administration and particularly the kaitiaki appointment process.
- Clark How effectively does the Ministry sift out submissions that are effectively without merit?
- Lynch Up until now, the Ministry hasn't taken a position on that and it's been Government policy that that part of the process is an internal matter amongst iwi or hapu, whanau. Once again, it's observed in the disputes process that that's, that stand-back option really has not been a useful contribution. That the law's pretty clear who can and can't do stuff, but it does need to be a referee and it's incumbent on the Ministry to take that position as the auditor of the process.
- Clark Now, there is a dispute resolution process within the regulations, it's regulation 8 isn't it?
- Lynch Yep.
- Clark Effectively, the Ministry suggests to groups that are in dispute that they should effectively try and sort it out themselves, or adopt the process to sort it out, the dispute out themselves, don't they?
- Lynch The Minister notifies the applicant that there is a dispute, the regulations set out quite clearly what is the process to resolve that dispute, as you're aware and has been probably brought to your attention by the claimants. There is no sanction if people don't obey the law.
- Clark That was my next question.
- Lynch That's the problematic part, that the development of these regulations required people to actually behave well amongst themselves and act according to tikanga Maori. That hasn't happened in some circumstances. We do not intend to, at this stage, put the Crown, in its many imperfect faces, as an arbiter of tikanga Maori. What we intend to do is to place people from the Ministry in the process to give advice to the Minister

whether those processes are being carried out properly or not, and we've done that in the case of the *Karaka Lands Trusts* application for kaitiaki, there was a longstanding dispute process there where the disputant party never turned up to hui, no matter what the applicant did to seek a remedy, there was no response. The position the Minister took there was to recommend to firstly advise on behalf of the applicant a series of opportunities to be heard and advise them that if they did not participate, we would take it and recommend to the Minister that there was no case to be heard. And we did that in that circumstance. That poses a risk, of course, of ongoing litigation over those matters and it is a risk to the Crown and it takes some thought before you do it.

Clark But there's no regulation or ability on the part of the Ministry to compel a group that doesn't want to, to resolve the dispute, is there?

Lynch There is no sanction that will force them, other than, yeah, moral persuasion.

Clark You've talked about, in your brief, 200 tangata kaitiaki appointments. Is there a backlog of disputed cases, that you're aware of?

Lynch Yep. Most of, you know, contrary to what people think, most of New Zealand is actually under application for kaitiaki appointments. There's very little that isn't. And this has been brought to the notice of the Tribunal on a number of occasions and to the Ministry on numerous occasions, is that this dispute process is the problematic part of the process. When we look at most of those applications, they are, I wouldn't say easily remedied, but with some work, they are able to be brought forward and that's what we intend to do with the appointment of a reasonably large number of new staff whose first job is to concentrate on that field or plane.

Clark Is that over and above the mediators that you're proposing to appoint?

Lynch Well, we will provide a contract, what we intend to do is look at providing a contract mediation service so that the costs of mediation aren't going to be borne by the litigants to, at least to a great degree.

Clark Those contracted mediators, I read your brief as that their role would be to mediate in disputes which arise out of the legislation forthcoming in respect of the seabed and foreshore.

Lynch Ah, we put the submission through there and it got some legs with Government and is actually being funded in the last round of the budget bids.

Clark So, those mediators would have a role to play in respect of breaking disputes under the tangata kaitiaki regulations and any disputes to come with respect to seabed and foreshore applications? Is that right?

Lynch The concept of mediation in the foreshore is not the business of the Ministry of Fisheries. The Government might take up the advice of that, but that's another field of play. I'm not in that field of play.

- Clark            Alright. So, there is still, at the end of the day, there's no body or organisation that can break the deadlock, is there, if two groups decide they're not going to resolve their dispute?
- Lynch            No. Other than the Minister making a decision.
- Clark            Have you been aware of a proposal that the Maori Land Court take on that role?
- Lynch            The Government proposed in the development of the regulations that the Maori Land Court did take on that role. It was something that iwi found to be an unfortunate proposal from the Crown and was rejected fairly widely for the very reasons I've said earlier that we're looking for accommodation between people, not winners and losers. That we're dealing with people's relationships as hapu and iwi, whanau, together. Within the Maori community there's a capability to manage fisheries that, it's been there for hundreds of generations. The Maori community knows who those people are. It's a matter of returning to some of the values we've had in the past.
- Clark            The tangata kaitiaki that are appointed, effectively, they carry out their role on a voluntary capacity, don't they?
- Lynch            Yes, they do.
- Clark            I'll need leave, Ma'am, to ask, because the client's specific questions which were raised, I haven't been able to get to. Oh, perhaps, if I ask Mr Lynch one more question, because that'll then help me in, with framing the ...
- J Wainwright   (Inaudible).
- Clark            Mr Lynch, have you read the evidence of Joseph Potangaroa filed on behalf of Rangitane o Wairarapa with respect to tangata kaitiaki matters?
- Lynch            Yeah, I couldn't say I can recall it with immediacy, but I understand (inaudible).
- Clark            So, are you familiar with the state of the play re tangata kaitiaki appointments on the Wairarapa coastline?
- Lynch            Not intimately and it's no longer part of my role, but I've read Joe's brief of evidence.
- Clark            Okay. Thank you Mr Lynch.
- J Wainwright   Thank you Mr Clark.

**Ranginui Walker questions Terry Lynch**

- Walker           Kia ora Mr Lynch. Now, paragraph 46, regulation to provide for representatives of tangata whenua to authorise customary fishing. Now,

what quality assurance mechanisms do you have in place for those authorisations? Are they required to make returns of quantities?

- Lynch In the first instance, under regulation 27, they're not required to do that. That's what's commonly called the hui and tangi permit. That's the default mechanism. Under the Kaimoana Regulations, the actual permit is available to a fisheries officer at any time. Most iwi members give the Ministry the actual permit on a regular basis. For management purposes, the consolidated returns from those actual permits need to be provided to the Ministry every three months. Only to the extent of how much fish ... [change of digital file] ... only two were actually submitted to the Crown and we don't really have knowledge of why only those two, although I'd suspect that what the claimant says, if it's true, that pressure from commercial fishers is a big factor in that. Te Humenga is, I understand, and I've fished there a few times myself, not a bad place for crayfish and paua. Te Kopi, is an environmental disaster. And ... but as to why it was picked, it's in, I've no knowledge of that.
- Walker Maori have always taken comfort in the fact that Pakehas don't like kina and they were assured that there'd always be some there for customary take at whatever level they wanted to take it. But suddenly it takes on a commercial value and now it's put on a quota management system.
- Lynch Absolutely, and, you know, not that long ago, paua was in that same state and a few ...
- Walker Yeah, of course.
- Lynch ... of the other treasures were as well.
- Walker Now, why don't you put some of these Maori-preferred species on a quota management system, because we have whole lots of immigrants who have a taste for these things and I refer to such things as titiko(?).
- Lynch Yep.
- Walker Kaihuru(?), I think they call them up north, that's the mud snail.
- Lynch Yep.
- Walker Pupū, cat's eyes. Karengo, seaweed. Has the Ministry taken those Maori cultural preferences into consideration?
- Lynch The Ministry, where a fishery exists, actually has great difficulty in not allowing commercial fishing. The premise of fisheries law is, where there is a sustainable harvest allowed, then there should be fishing allowed. Bringing it into the quota management system actually cuts that down. There was, and is, a commercial kina fishery in this area, although commercial fishing hasn't actually taken place in the Wairarapa for decades now. The fishery itself ranges from Potaka up your way, down to Wellington, and it was managed by permits and each permit fisher is able to take a certain quantity of kina. So there is, and has been for a long time, an existing commercial fishery for that. We've brought it into the

quota management system and slashed the commercial cut, quota, which was 350 tonnes and allocated two-thirds of that to recreational or customary fishing. So I think, in that context, it's actually preserved the ability of Maori to take those fish for customary purposes.

Walker Yeah, some of these Maori cultural preferences for such species as titiko, bubu, karengo, they are now having increased competition from new immigrants and we are in danger of replicating what happened in places like Hawaii and some of the other Pacific islands, of stripping our reefs bare of any of those preferred shellfish species.

Lynch And I think there's, with the quota management system, there's a premise or understanding that there will always be a significant commercial fishery if it's under quota. There's some of the fisheries that we have, it's certainly under quota, but the quota's one tonne and that quota is not allocated out to people and some other fisheries, for instance, toheroa, where there is no sufficiency to allow recreational or commercial fishing, all of the fishery is customary. And certainly in some of those ones you've mentioned, if we did a biomass assessment and looked at the extent of a customary fishery, we'd probably be getting pretty close to a zero non-customary fishery in some of them as well.

Walker One last question. What is the rationale for paua of 120 mm. I have never seen such a creature in my part of the country, in the Bay of Plenty or in Northland.

Lynch You're absolutely right. It's a compliance tool, rather than a biological tool. It has the benefit of meaning that, for the majority of the country, it is only a customary fishery. Recreational lists who don't have a permit from a kaitiaki or a hui/tangi permit aren't legally allowed to take it. We get the situation in the vast majority of the country where only Maori should be taking it.

Walker Thank you.

#### **Judge Wainwright questions Terry Lynch**

J Wainwright Kia ora, Mr Lynch. I had a number of questions, but I'm just going to concentrate on one area, which is the taiapure. I'm, I was a bit concerned when you talked about taiapure, that you seem resigned to the fact that taiapure are not going to operate as a valuable tool for customary fishing access for Maori, and it seems to me that a premise of the thesis that you've put forward, which is that when you define a fishery as a sustainable fishery, that it's going to be 20% of its original biomass, it means that accessing the customary fishery in any way that is similar to the way in which it was accessed in the past, is going to be impossible in most areas and for most fisheries. And I had thought that the taiapure was a tool for creating areas of remnant fishery where Maori could control the fishery, to some extent, by management committees and create an environment, over time, where the customary fishing effort would be more successful.



- Lynch I'm sorry if I gave the impression (inaudible) of taiapure or indeed mataitai, by that means. For a number of customarily important fisheries, particular the sedentary ones like kina and paua, crayfish, some of the reef fish, managing a taiapure or mataitai is likely to be able to have that effect. But if you want to maintain a fishery that looks like something in 1840 or even 1940, I severely doubt that you'd be able to take any quantity of fish out of that, even a taiapure.
- J Wainwright But, the reality is that taiapure are not working ...
- Lynch ... that would maintain it.
- J Wainwright ... are they?
- Lynch I, no, I wouldn't say that. I'd say that they're very difficult, the process is very difficult to achieve a taiapure.
- J Wainwright And, that's right, but even when you've got one, ...
- Lynch You have to apply rules and you have to apply the rules that you need to take – and as I've said, with Waikare and Pirongahau, they've actually achieved some of the outcomes they've wanted, particularly with crayfish in Pirongahau's case, without having rules. They've reached a community consensus that's assisted them with their management objectives.
- J Wainwright But these examples that you're talking about, of management committees achieving a modest success, are very few in number, aren't they?
- Lynch Well, there are very taiapure.
- J Wainwright Well, exactly.
- Lynch Yep. And that, I think, yeah, that to ...
- J Wainwright And it's not because of a lack of interest by Maori in the customary fishery.
- Lynch No, no. Absolutely not. And I'd never imply that. It's ...
- J Wainwright So, why isn't the fishing management think-tank trying to work out ways to make the taiapure concept work?
- Lynch Taiapure, when it was developed, looked, it was in, it was in a, it was a creature of its time and it looked to provide a recommendatory role to the Minister of Fisheries. That same outcome, and to be able to set rules to protect customarily important fishing grounds and, as you say, enhance and rehabilitate them to the best extent that you can, on a single fishing ground or group of fishing grounds. Mataitai has these same outcomes. It has less imposition from the Minister, in that having established a mataitai reserve, the committee makes the bylaws. The Minister must approve the bylaws unless they're contrary to the Fisheries Act. So, to that extent, the role that taiapure were designed to carry out, can be achieved by, in a

mataitai reserve, but with more direction by the Maori community over those decisions.

J Wainwright So you think mataitai reserves are a better tool for Maori?

Lynch I think they fail in one aspect that taiapure has, that they are solely for the management of non-commercial fisheries. The taiapure really has a role and communities still encourage that. It's, if you look at recent, you know, news articles, there's a whole range of communities, Maori and non-Maori, who're looking for both taiapure and mataitai as a local management mechanism.

J Wainwright Because the local community wants more control.

Lynch Yeah, and I think that's the very important aspect of it. In bringing those communities together, both Maori and Pakeha, at the beach level, with commonsense and goals and aspirations need to be encouraged. But, mataitai is also fulfilling that role in some circumstances.

J Wainwright But there are even fewer of them.

Lynch Only ...

J Wainwright And none in the North Island, where most Maori are.

Lynch The reason for that is that in the North Island, because of the disputes problems, there are not many kaitiaki appointed. Where they are appointed, only two have wanted to go to the mataitai route. They're working in other mechanisms, other arrangements. So, I wouldn't see that the lack of mataitai as being a symbol of failure. There are a range of mechanisms and opportunities in fisheries legislation for people to actually work and rehabilitate the fishery. What was put to the Government in the development of the Kaimoana Regs was that iwi wanted rahui. They really did not want to be involved in a bureaucratic administration system that trapped them into being, you know, quasi-government agents. We have, in the Fisheries Act, provisions that support rahui. Section 186A and B of the Fisheries Act do that. We have a, you know, lot of interest for a shorter term rahuais. That's another mechanism that's been used to achieve some of the community outcomes.

J Wainwright But the rahui benefit everybody, not just the customary fishers.

Lynch That's right. And it's everybody out of the water as well.

J Wainwright Yep.

Lynch It's not, it's customary fishers included.

J Wainwright It's a very blunt instrument isn't it?

Lynch They are, but it's something that, in a lot of communities, that's the history.

- J Wainwright Well, but maybe for want of other options.
- Lynch Perhaps.
- J Wainwright At the moment, there's no funding of taiapure management committees. Notwithstanding that, in my perception, in order to be effective, there's an enormous amount of time and effort involved and the need for expertise for people to be able to be persuasive in what they want. Is there any plan for there to be funding available for taiapure?
- Lynch That's, in part, what the new funding that I've alluded to in the new initiatives is there, kaitiaki, both in the sense of authorising people and the kaitiaki of the management committees of taiapure, well not so much taiapure, but effectively mataitai and taiapure. Wouldn't call the management committee ...
- J Wainwright So, there will be money available for people to get those initiatives up and running and then to manage themselves?
- Lynch Training, assistance, the extension officers that I've mentioned earlier can provide the policy grunt from the Maori and to look at rule sets, those are all designed to assist in those things. Certainly not payment as a wage, no.
- J Wainwright No, no. Alright. Thank you for that.

**End of evidence**

