Chapter 3

Kauri and the Whale: Oceanic Matter and Meaning in New Zealand

Katherine G. Sammler

Forthcoming in I. Braverman and E. Johnson (eds.), <u>Blue Legalities: The Law and Life of the Sea</u>, Durham, NC: Duke University Press.

Introduction

Geopolitically, demarcating the borders of ocean jurisdictions granted under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) has stabilized many international disputes over ocean resources and boundaries. Offshore jurisdictions conceived by UNCLOS are delineated as distances from coastal baselines, marking a fixed land/sea line of reference. Yet, Aotearoa New Zealand has struggled with translating and implementing UNCLOS, as many in the country question the very division of territory and property along a land/sea binary. New Zealand legislation written to determine rights and responsibilities offshore have sparked fierce debates and protests, demonstrating not only the ambiguity within the multiple understandings of ocean space written into UNCLOS, but that this treaty is categorically incompatible with other ways of knowing and practicing ocean spaces. Specifically, the coastline bisection and subsequent nationalization of submerged lands is in direct conflict with indigenous Māori cosmologies and tribal land rights that interpret landscapes and seascapes as an interrelated whole. Environmental politics stemming from this worldview call into question dominant western and colonial epistemology and ontology, and are informing radically new frameworks for deriving sovereignty and practicing environmental management.

Interpreting and implementing the jurisdictions drawn up in UNCLOS have been an

experiment in offshore governance through conflicting performances of territory and sovereignty in the ocean. Grappling with the ocean's materiality and dynamism, as a chaotic and flowing field, enacting the territorial logic of baselines has created social and political divisions in New Zealand, leading to the ongoing controversies surrounding the division of offshore space and management. Focusing on disputed uses of offshore spaces necessarily confronts the inherent ambiguity of the social and political process of partitioning watery space (Baldacchino 2010). The geophysical, hydrological, and biological materiality and mobility of oceans partially influence the logic of UNCLOS and national enactments of the international treaty, even as attempts are made to legislate around these intrinsic ocean features. Regulators must contend with the agency of the living and nonliving natures as they enact static borders among mobile bodies. Ships on the surface, whales and human bodies, whether on deck or partially submerged, engender relational social and legal meanings, which have been enrolled in multiple and conflicting territorializations of the ocean. Categorical distinctions between landscapes and seascapes, static and mobile structures and bodies, human and non-human actors, have resulted in a complex matrix of offshore rights and responsibilities (Sammler 2016).

Enacting these ontological and ethical divisions are in contradiction to the UNCLOS declaration that, "the problems of ocean space are closely interrelated and need to be considered as a whole" (Preamble). As scholars are calling for attendance to multiple geopolitical, biopolitical, and ontological dimensions (DeLoughrey 2015) toward a rigorous oceanic studies, this work applies an onto-epistemological framework to incorporate how discursive practices are causally related to material phenomena, to be explicit about how the practices of knowing and being are entangled, to include the "understanding of the roles of human *and* nonhuman, material *and* discursive, and natural *and* cultural factors in scientific and other social-material practices"

(Barad 2007, 26, emphasis in original). This chapter tends to ocean life and nonlife, physical and biological natures, as they are enrolled in various ways, to enact borders, perform territories, and legitimate uses in producing political spaces (Povinelli 2016).

The following discussion begins by investigating the complexities and controversies that emerge from the oceans of New Zealand, beginning with the kinship of the kauri and the whale, emphasizing the ontological differences between Western categorizations and Māori cosmologies. The implementation of land and sea divisions via baselines, have led to political unrest in Aotearoa New Zealand and the rise of an independent Māori parliamentary party. Struggles over offshore indigenous property rights have been taking place amongst proposed development of seabed mineral projects. This chapter considers baselines as a political technology, the calculative apparatus that enacts cuts to refashion lively ocean worlds into divisible spaces and objects, in direct opposition to Māori tribal holdings that span mountains to sea. Legislation nationalizing the foreshore and seabed, along with projects seeking to mine offshore, has created rifts in New Zealand society at the center of ongoing protests. Some protestors have taken their actions offshore. These protestors are meeting with challenges to their right to protest on and in the sea. While the freedom of navigation is enshrined in the UNCLOS treaty, particular ships—nuclear vessels, whaling boats, and activist flotillas—have encountered restrictions, demonstrating the difficulties and ambiguities of emergent offshore governance. Looking to specific moments, as the New Zealand government continues to produce legislation to (re)shape an ocean governance apparatus, this chapter will demonstrate how these events "ground" oceans politics within material and lived oceans.

This research partially draws on four months spent in New Zealand in the austral winter of 2014, hosted by the University of Auckland. In-country data collection included roughly thirty

interviews with government employees from institutions such as the Environmental Protection Authority, Petroleum and Minerals, and Ministry of Māori Development, leading national scientists and academics; participation in conferences, workshops, and debates; and visits to archives, museums, black-sand beaches, fern forests, and kauri stands.

Kauri Rāua Ko Parāoa - Kauri and the Sperm Whale

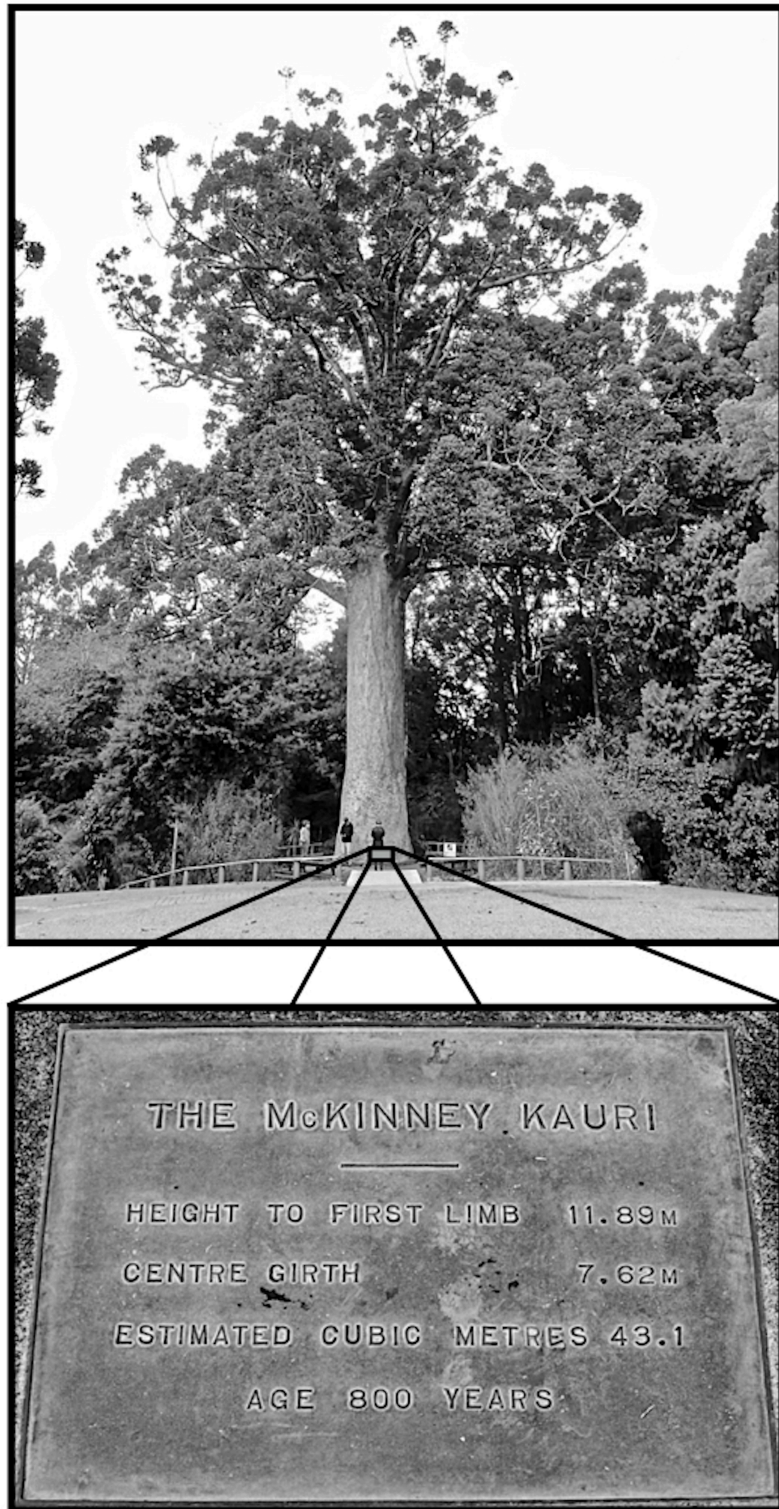|	
Ina rā o nehe	In times long past
Te ūnga o Parāoa ki uta	A sperm whale came ashore
Te kī nāna ki a Kauri	And spoke thus to the kauri
E Kau! Hoake tāua	Kauri! Come with me
Ki tai te tio nā te mauru.	to the sea which is fresh and cool.
Kāo! I tā Kauri	No! Said the kauri
Ngākauria koe te taitai	you may like the sea
Engari au te tū iho nei	but I prefer to stand here
Ōkū wae ki rō onetapu.	with my feet in the soil.
Heoi e tā Parāoa	All right said the whale
Tēnā ia, whakawhitia ngā kiri.	then let us agree to exchange our skins.
Nā reira ia	So that is why
Te kiri rākau kauri	the bark of the kauri
I rauangi, i kī nā i te hinū.	is thin and full of resinous oil.

—Wall text, Te Ao Tūroa - Māori Natural History gallery.

While dominant understandings of a land-sea binary were codified by international law, Māori cosmologies and mythologies do not share this Western ontology, nor necessarily divide natures—materially, practically or politically—as demonstrated by tribal governance of areas

that regard customary rights from mountains to sea. As Harmsworth and Awatere explain, one fundamental tenet of Māori belief *whakapapa* engenders "connection, lineage, or genealogy between humans and ecosystems and all flora and fauna" (2013, 275). This includes a relationship with environments as a whole, a network of connections, as defined by *ki uta ki tai,* "a whole-of-landscape approach, understanding and managing interconnected resources and ecosystems from the mountains to the sea" (Harmsworth and Awatere 2013, 275). Whakapapa situates human and more-then-human bodies and materials all within a smooth onto-epistemological frame of kinship, entanglement, correspondence, exchange and dispersed agency. One account, central to Māori mythology, offers some insight into the smooth exchange of materials, bodies, and narratives between the *hydro* and *geo* spheres by the shared origin account of kauri and whale.

Indigenous to New Zealand, kauri (*Agathis australis*) are towering trees upwards of 50 meters high (Figure 3.1). Māori oral traditions present kauri to be the father of the sperm whale. Due to their incredible size, both are esteemed as *rangatira* (chiefs). Beyond their immensity, they are comparable in their smooth, yet textured, greyish-brown exterior, both bark and skin enclosing valuable oils, where, "kauri gum is like the ambergris found in the intestines of the sperm whale" (Tāmaki Paenga Hira Auckland War Memorial Museum). Due to its combustibility, Māori long used kauri resin for cooking and lighting, similar to how spermaceti, the oil of the sperm whale (*Physeter microcephalus*), was used in early western industrial nations. Colonizing Europeans harvested and sold kauri timber, known for its resistance to seawater and sturdy, straight-grained lumber for masts and spars. Used for various wares domestically and abroad, this tree, like the whale, was exploited to near collapse in the nineteenth century.

THE McKINNEY KAURI
———
HEIGHT TO FIRST LIMB 11.89M
CENTRE GIRTH 7.62M
ESTIMATED CUBIC METRES 43.1
AGE 800 YEARS

Figure 3.1: The 800-year-old McKinney Kauri, Parry Kauri Park, Warkworth, New Zealand. Photo by author, July 6, 2014.

Other Māori narratives also bridge land and sea, employing human and more-than-human entities that openly exceed or exchange categories. The two main islands that constitute Aotearoa New Zealand are not presumed to be static land in a moving sea, but rather moving amidst the ocean as canoe and fish. Epeli Hau'ofa (1994) offers some broader Pacific context when he writes that, "Continental men, namely Europeans . . . introduced the view of 'islands in a far sea'...tiny, isolated dots in a vast ocean . . . our ancestors, who had lived in the Pacific for over two thousand years, viewed their world as 'a sea of islands' rather than as 'islands in the sea'" (153). This continental gaze forms the dominant hegemonic view of oceans as seen from land, drawing lines of division between land and sea, between kauri and whale. Categorical binary divisions as an apparatus of settler colonial governance of difference and markets are defined by Elizabeth Povinelli (2016) as geontology. Povinelli's understanding of geontopower ensures the enclosure of life (*bios*) from nonlife (*geos, meteoros)*, as a "way of sorting the world [that] makes sense only from the disciplinary logic of geology, a disciplinary perspective that relies on natural types and species logics" (2016, 11). Applied to ocean spaces and resources, divisions are employed to categorically enclose land (*geos*) from sea (*hydros*), human (*anthropos)* from animal (*zoe)*, and surface seas (*pelago*), from deep ocean (*abbyso*) and seafloor (*bathy*). As Māori traditions instead draw lines of connection, instituting cuts between land/sea, human/non-human, creating discrete, bounded entities, goes against Māori whakapapa. The legislative implementation of these cuts in the form of baselines and offshore resource appropriation by the New Zealand national government led to widespread protest. Resulting political actions demonstrate the divergent ontologies, worlds at odds, "the world in which the dependent oppositions. . . are sensible and dramatic and the world in which these enclosures are no longer, or have never been, relevant, sensible, or practical" (Povinelli 2016, 16).

Developing Divisions

In a contemporary context, borders of nation states and the spatial category of sovereign territory are often imagined as predominantly fixed. Politically constructed boundaries can be concealed as wholly technical, or even scientific affairs, as if a coastline were an essential and stable object. Yet, current events are reminders of how national boundaries are produced and in flux, demonstrated by the dredging up of islands in the South China Sea for their associated liquid territories, and the shifting of sands across the Singapore Strait as discussed in Jennifer Gaynor's chapter in this volume, or the disappearing territory, particularly of Pacific Island nations, due to sea level rise.

Intrinsic to defining ocean boundaries are baselines, the technical division between land and sea. Defined as "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State" (UNCLOS, Article 5), the baseline is a mechanism by which dynamic and shifting coastlines are transmogrified into static political borders. Baselines are geopolitically significant because, not only do they provide the foundation for measuring maritime jurisdictions, but they also delimit the outermost extent of a nation's territorial land (Bateman and Schofield 2008). They are therefore a significant part of the discursive means by which the totality of the ocean is disassembled from an interrelated whole and reconfigured as disparate parts.

Following Stuart Elden's (2010) notion of territory as a political technology, made up by techniques to calculate, evaluate, and control both land and sea, the highly technical knowledge employed to delineate offshore territories can be examined alongside the political negotiations involved in making claims on these spaces. Baselines are one apparatus within the political technology for ocean territorialization. An act of measurement that "enacts agential cuts that

produce determinate boundaries and properties of 'entities'" (Barad 2007, 148). While

represented as natural, as an approximation of the coastline, baselines create meaning through

social-material practices of boundary making, they enact "cuts" that fashion land and sea spaces

into discrete entities. They are the foundational technical and political apparatus used by

UNCLOS to partition the ocean. To consider the political technologies used to bound offshore

territories, the materiality and mobility of ocean spaces and beings must be addressed. Yet, the

national government in New Zealand has struggled to legislate around these issues, and the

partitioning of land and sea through the implementation of baselines and nationalization of the

seabed provoked passionate demonstrations in response. Controversies persist as seabed mining

projects seek to commodify ocean minerals.

Drawing a Line, Creating a Rift

The Foreshore and Seabed Act (2004) claimed all submerged lands and associated

resources as property of the Crown, subsuming them under national authority. This became the

central focus for political actions over clashing worldviews, one that embraces a western land/sea

binary inherent in ocean jurisdictional boundaries, and another based in Māori cosmologies

contending sovereignty extends from mountains to sea. Interpreted as trampling Māori

customary title to offshore spaces, the volatile debates stemming from these diverging ideologies

triggered vigorous protests, or *hikoi*, in the capital city of Wellington. The onto-epistemological

rift inherent in this legislation, "went off like an atomic bomb in the New Zealand political

landscape . . . these events fractured New Zealand society" (pers. comm., September 4, 2014). [1]

The dispute initiated a UN Special Rapporteur report on human rights and fundamental freedoms

of indigenous people (United Nations 2006), and instigated the formation of an independent

Māori parliamentary party. The Foreshore and Seabed Act was finally replaced by the Marine

and Coastal Area (Takutai Moana) Act in 2011. Notwithstanding, there is still an incredible amount of contention and confusion over the status of ocean spaces and resources.

In implementing parts of the Marine and Coastal Area Act, the Ministry of Māori Affairs (now renamed the Ministry for Māori Development) required *iwi* (Māori tribes) to submit applications to have their customary marine title over marine and coastal areas recognized. Submissions required Māori prove continued exclusive occupation since the 1840 Treaty of Waitangi signed with the British. Many iwi refused to participate in proving property rights over places they had never relinquished. Other New Zealanders have been worried they will lose access to the ocean if iwi rights are recognized. A government employee explained, "you gotta sort of tilt your head to the left and squint to get your head around [this act], whilst no one owns it [the coastal waters], there are a set of rights underneath. First of all, starting from the top, is that the non-ownership applies to the physical stuff, the water column you can do all sorts of things in the water column, fishing and navigation and all that stuff remains. So, all New Zealanders' rights to navigate, recreate, fish, are codified in here" (pers. comm., September 4, 2014). Resource rights and issues of access, in the water and on the seabed, are still being determined as iwi applications, due in 2017, are still being sorted.

Beyond the foreshore, the New Zealand government has contended with questions surrounding ocean resources and access within its expansive offshore jurisdictions. In practice, ocean space allows multiple uses to be stacked on top of one another, opening it up to a complex matrix of rights and responsibilities in both the horizontal and vertical dimensions. As the seafloor is being looked to as the next frontier for large-scale resource extraction, New Zealand has been surveying its offshore riches. The island nation has been one of the first to develop seabed mining legislation and regulatory bodies. This experimental industry aims to cut away

chunks of the seabed or dredge up loose materials from the seafloor, crush them, and pump them up to a surface support ship. While there has yet to be a large-scale commercial seabed mining project operating in New Zealand or elsewhere, coalition movements aligning along indigenous and environmental issues have arisen around the ecological damages of these nascent excavation practices. Some have taken their protests to sea, blocking survey and extractive vessels using boats and even bodies. Some protestors exchange their skins for survival suits to submerge themselves into the sea, employing thick buoyant neoprene, designed for ocean immersion, enclosing a body's trunk and limbs to resist lethally hypothermic seawater. These bodies in the sea have posed new challenges to the government regarding policing within ocean territory, specifically in the arguably ambiguous jurisdictions, exclusive economic zones (EEZ). Within this watery, dynamic field, the mobility of bodies are guaranteed by UNCLOS, as freedom of navigation is one of it fundamental tenets to maintain global flows. However, as discussed below, some nations want to choose whose bodies, and which ships, are allowed within their EEZs.

Ocean Materiality

The complexities that ocean materiality brings to offshore delimitation and governance is a key factor to unpacking the logic of UNCLOS. The mobility of water bodies, ship bodies, and animal bodies within, across and through fixed jurisdictions forced the creation of new spatial logics to control ocean resources. Through oceanic studies in the social sciences and humanities (Bélanger 2014; Blum 2010; 2013; Helmreich 2011; Lambert, Martins, and Ogborn 2006; Steinberg 1999), critiques have arisen about the ocean being theorized as a frictionless space for globalization, as merely a metaphor for fluidity, mobility, and contingency. Yet, determined materialist approaches have embraced oceans as water, waves, flows, and energies, addressing

the more-than-human physical characteristics that exert powerful agency. Some scholars include the biological as important components to engage the oceanic, addressed through human-coast or human-ship experiences (Lehman 2012; Peters 2012) or more-than-human sea animal studies (Helmreich 2009; Johnson 2016). In Astrida Neimanis' chapter (this volume), the ocean is a chemical solvent suspending toxic materiality, an impermanent benthic depository of chemical weapons. In Steinberg et al.'s chapter (this volume), the sea ice confounds legal objectification by transcending the abstractions of earth-system disciplines. More than just conduit between atmo-, bio- geo- and hydro-spheres, the ice edge is always slipping between systems as its dynamically changes states—solid, liquid gas—failing to collapse to the dimensionality of a bounded line. The political and legal regimes created to manage oceans only partially and sporadically confront ocean materiality.

After years of deliberations, the UNCLOS treaty produced a jurisdictional matrix representing a horizontal gradient of diminishing sovereignty with increasing distance from land (Sammler 2016); where full national territorial sovereignty is granted nearshore, a different bundle of spatial rights and responsibilities is granted further offshore (see Figure 3.2). Offshore space is largely designated as EEZs, a sort of hybrid jurisdiction where coastal states are granted sovereign rights over resources, but not outright sovereignty over the space itself (Jacques and Smith 2003). Predominantly the objects of state sovereignty are resources, "for the purpose of exploring and exploiting, conserving and managing . . . whether living or non-living" (UNCLOS, Article 56), not the space containing them, enabling extraction without the full territorial responsibility. At the same time that offshore resources are secure, all other states maintain the right to peacefully navigate unrestricted through all nations' EEZs (UNCLOS, Articles 58 & 87), posing a conundrum for states reluctant to abandon the idea of full territorial sovereignty. As will

be demonstrated below, the temptation to fully territorialize the EEZ, to establish the same sovereign control as on land, has proven difficult for many countries—New Zealand in particular—to resist.
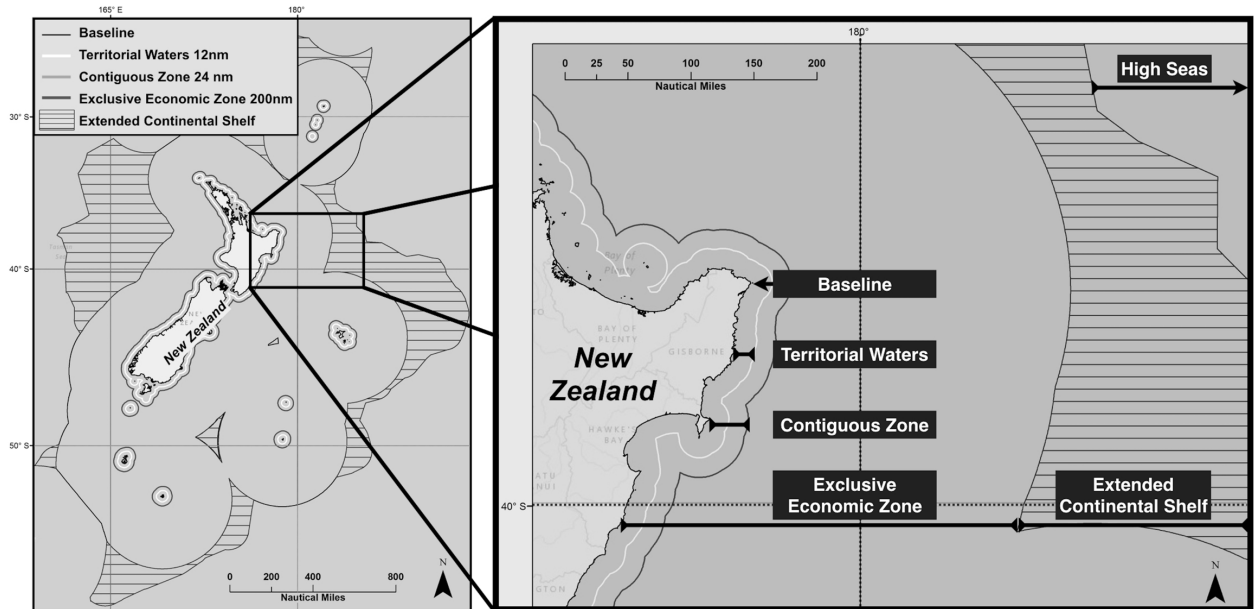
Figure 3.2: UNCLOS jurisdictions, territorial waters (12 nm) full territorial sovereignty, contiguous zone (24 nm) customs enforcement, exclusive economic zone (200 nm) sovereignty over resources but not control of navigation. Image by author. Data source: United Nations, 2016.

Ambiguity and Over-Territorialization

The attempted balance of state's rights within EEZs has prompted assorted incidents. Despite guaranteed navigational rights, ships have indeed been stopped, deterred or taken to international court when passing through other nation's EEZ jurisdiction. A routine function of states, to regulate borders, restrict access, and manage crossings, makes governments reluctant to relinquish offshore territorial sovereignty. Examples include various notifications or restrictions within an EEZ, such as the EU banning single-hulled heavy grade oil tankers from accessing

their ports, and France demanding the interception of ships releasing ballast water out to ninety miles from shore. In fact, the International Maritime Organization (IMO) can be petitioned to designate Particularly Sensitive Sea Areas (PSSA) and change shipping routes to create areas to be avoided for the protection of "ecological, socio-economic, or scientific attributes" (International Maritime Organization 2016). Some coastal states have petitioned to designate almost their entire EEZ as a PSSA (Caron and Scheiber 2014). Jon Van Dyke discusses this trend, "a new norm of customary international law appears to have emerged that allows coastal states to regulate navigation through their EEZ based on the nature of the ship and its cargo" (2005, 107).

While the EEZ is designated High Seas for navigational purposes, open to all states and common to all (UNCLOS, Articles 58 & 87), ambiguities emerge in managing the conflicting rights and responsibilities of a coastal state and navigating state. Despite UNCLOS expressly proclaiming that ocean spaces "need to be considered as a whole" (UNCLOS, Preamble), the jurisdictions it prescribes nationally compartmentalize resource management. Yet, at the same time coastal states have limited recourse under this treaty to address transnational environmental fallout from ship pollution and transportation of hazardous materials. Hazards that are exacerbated by the oceans ability to mix, dissolve, and circulate pollutants, in contradiction to the intended fixity of borders, as if the discrete political units act as physical barriers. In the case of navigation, the political boundaries must be permeable. By this logic, ship activities are regulated by the IMO, not UNCLOS, releasing them from governance within the domain of territorial sovereignty. The slow creep farther and farther offshore of mining and hydrocarbon development are only two of many anxieties inherent in the proliferation of ocean uses. The history of whaling and nuclear testing in the Pacific give rise to specific apprehensions in the

region (Vltchek 2013).

A Nuclear Past

The devastating nuclear testing history in the Pacific motivated New Zealand legislators to pass the Nuclear Free Zone, Disarmament, and Arms Control Act (New Zealand Parliament 1987). This law bans nuclear-powered or nuclear-armed vessels from using ports or navigating New Zealand's internal waters, territorial sea, and the airspace above New Zealand's territory. This legislation caused friction with other nations, especially the United States, which terminated its security commitments to New Zealand, agreed upon in the 1951 Australia, New Zealand, United States Security Treaty (ANZUS). As it is the policy of the U.S. to neither confirm nor deny the existence of nuclear weapons on its warships, this legislation effectively banned all American Navy ships. The first U.S. Navy ship to enter New Zealand's territorial waters since the creation of the nuclear free zone wasn't until 2016. While not publicly confirmed as a non-nuclear propelled or armed ship, New Zealand's Prime Minister restated the country's nuclear free policy to soothe any public concern over the USS *Sampson's* visit.

In 2000, New Zealand's Green Party attempted to pass the Nuclear Free Zone Extension Bill, amending the original legislation to include the EEZ. Their justification that, "under the Law of the Sea, ships have some rights of navigation through this zone; yet if those ships carry a cargo which could contaminate marine resources for centuries, this creates a conflict with the purpose of the EEZ. This bill resolves that conflict, for New Zealand, in favour of environmental protection" (New Zealand Nuclear Free Zone Extension Bill 2000). This amendment lost in Parliament in 2002, but it would have prohibited nuclear propelled ships, and ships carrying radioactive fuel or waste from transiting their four million square kilometer EEZ and demonstrates that interpretations of navigation within this jurisdiction are multiple. Despite

UNCLOS's definition of fixed and distinct boundaries, although based on a hybrid and shifting coastline, the EEZ is an offshore space being performed by various actors, the product of ongoing political negotiation. This reveals the political, social and cultural entanglements that undergird negotiating oceanic space as a medium of multiple materialities, mobilities, and meanings.

Whalers Not Welcome

More recently, New Zealand has expressed its view that Japanese whaling vessels are not welcome to transit their EEZ. In 2014, when a whaling vessel did enter, the Japanese ambassador was called to the capital for a rebuke by New Zealand's Foreign Minister, Murray McCully. He conveyed, "the deep disappointment of the New Zealand Government that Japanese whalers had been insensitive to the views of New Zealanders by entering New Zealand's EEZ" (McCully 2014). While at the same time admitting that the "Government has no legal means of excluding any vessel . . . [and] while the Japanese vessel has a right to pass through our EEZ, it is disappointing a request not to do so was ignored" (ibid.). The regulation of whaling vessels is a stand in for the desire to regulate whale bodies—or the capture, slaughter, and transport of them—aligning with the justification of environmental protection in the declaration of a nuclear free zone.

While New Zealand tests it ability to exclude ships from transiting its EEZ, operationalizing gaps and ambiguities created by this jurisdiction, this is certainly not the only coastal nation to confront such uncertainties. Struggles over ontoepistemological statuses of extraterritorial spaces are taking place through the rifts opening between the land/sea binaries used for delimiting territorial sovereignty. While theoretical understandings of territory and sovereignty recognize that these categories are never stable (Elden 2013a), oceans make a

prodigious space for examining emerging ruptures in relationships between states, space, and power. Ambiguities surrounding how much control states have in their offshore jurisdictions are culminating in frictions between nations, as well as within nations. This ambiguity of governance raises questions regarding responsibilities concerning conservation and environmental degradation, as well as conflicts over each coastal nation's infringements on the rights of other states and non-state actors. New Zealand's implementation of ocean governance legislation has incurred intense debates from the start. The enactment of baselines through the national appropriation of all submerged lands prompted indigenous Māori groups to mobilize against this epistemological and ontological division of land and sea.

Mobilities and Flows

Sovereignty is defined within the EEZ as pertaining to extraction, exploration, and conservation. However, while the sovereignty over resources is explicit, the space itself is considered international commons, where all states benefit from the "freedoms of navigation and overflight, freedom to lay submarine cables and pipelines" (UNCLOS), same as on the high seas. Nevertheless, these freedoms must be "exercised with 'due regard' to the right of the coastal state to exploit the resources of the EEZ and the responsibilities of the coastal state to protect the marine environment" (Van Dyke 2005, 108). This balance between state's rights are tense, and have largely been playing out between foreign-flagged vessels and coastal states. However, there are emerging conflicts in New Zealand between the government's ability to regulate its own citizens within their EEZ. Clashes between protesters near offshore extractive infrastructures, have confused the policing of bodies and vessels at sea, forcing renewed scrutiny over inclusive and exclusive uses of this space.

Stephen Graham has called on scholars of geopolitics to move beyond the "classical,

modern formulation of Euclidean territorial units jostling for space on contiguous maps" (2004, 20). As Steinberg and Peters (2015) highlight, the ocean is not a fixed Euclidean space within which power is exercised, but a turbulent material volume of Lagrangian flows with multiple and nonlinear temporalities. Such materiality gives rise to what they refer to as a "wet ontology" that can assist in better understanding how "power is simultaneously projected on, through, in, and about space" (261). This theoretical trajectory offers considerable potential for examining heterogeneous political spatial arrangements and territorial configurations that are not produced or maintained by conventional means, falling outside dominant practices based on the imaginary of discrete borders delimiting an internally sovereign area (Agnew 2013). A wet ontology refocuses mobility as a part of territory and territoriality, and allows for an analysis of mobility within and through novel jurisdictions, such as the EEZ. This theoretical vantage is helpful to analyze the proposed exploitation of precious sediments that flow from land, downstream and into the foreshore.

From Mountains to Seabed Mining

The New Zealand government has been working to initiate institutions and regulations for the seabed mining industry. The experimental nature of seabed mineral extraction, as well as the increasing distance and depth of offshore hydrocarbon drilling, have motivated multiple concerned groups to organize protest campaigns against such development on environmental and jurisdictional grounds. Kiwis Against Seabed Mining (KASM) formed in 2004 in reaction to a proposal to extract iron-sands off the coast of Taranaki Bight on the North Island, which is also home to the world's rarest, and critically endangered, Maui's dolphin (pers. comm. August 5, 2014). Local iwi also organized, with one of the focal points directing attention to the origins of the coastal ironsands, flowing from sacred Mt. Taranaki (see Figure 3.3). The black sands of

Taranaki's beach and seabed are made of titanomagnetite, containing high concentrations of iron ore. These sands originate from the flanks of the volcanic mountain, eroded by streams and rivers into the sea, representing a direct material exchange from mountains to sea, a connection that illustrates whakapapa.

Operating new mining technologies at unfamiliar depths is full of uncertainty and potential hazards. Regulation addressing environmental management in the EEZ was undertaken in 2012 by New Zealand's Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act. The opacity and indeterminacy of the ocean as a medium, shrouding the seafloor beneath, dominates the imaginaries and practices of mining operations. As one government scientist put it, "at least with fisheries being surface, you can sort of see what's going on. If you are 3,000 meters down or 4,000 meters down with manganese nodules, then it's so much harder to actually measure what's happening, period. And that's a major problem for governance, as well as natural science" (pers. comm. July 29, 2014). While the ironsand mining proposed off Taranaki is relatively shallow compared to deep manganese nodule extraction, the environmental impacts are concerning. Demonstrators walked, biked and surfed 500 miles along the Taranaki coast to raise awareness about the proposed project. These actions were considered successful in raising awareness, as 4,850 submissions were sent to the Environmental Protection Authority (EPA) regarding the mining permit, with only a handful supporting the project (Environmental Protection Authority 2014). The permit was denied consent by the EPA in 2014, citing concerns over environmental impacts and uncertainty regarding economic benefits to the nation (Sammler 2017). However, the mining company, Trans-Tasman Resources, resubmitted its application and was granted a permit in August 2017, prompting several groups to submit appeals. The approval was then overturned by the High Court in August, 2018, ruling that the "adaptive management"

approach violates the precautionary principles built into the EEZ Act.

Figure 3.3: Black ironsands wash down from Mt. Taranaki and into the sea. Their dark color and magnetic properties signify the coveted ore within. Indigenous and environmental groups voice opposition to a proposed mining project off their shores. Clockwise from top left: Mt. Taranaki; Black sands of Taranaki Beach; Iron within the sands align with magnetic field; Protest sign in the Taranaki region. Photos by author.

Bodies at Sea: Emerging and Submerging Oceanic Activism

In reaction to increasing offshore exploitation, environmental activists have taken their protests to sea. Boats and kayaks have been used to physically interfere with, and voice political opposition to, extractive industries and ecological destruction. Protests on the water, by what some have dubbed kayaktivists, have been taking place in many locations around the world over the past several years. In Japan, Russia and the United States, they have blocked ships conducting seafloor resource surveys or towing offshore drilling equipment. For example, in 2015 demonstrators took to the Puget Sound in Seattle and the Willamette River in Portland to block Shell's drilling platform from sailing for the Arctic. In Okinawa, hundreds rallied in 2014, many in kayaks and canoes, in support of Japanese sovereignty against the US military base on the island and the new construction underway to relocate the base on an environmentally sensitive bay. While these actions took place within territorial or internal waters, the trajectory for extractive projects farther offshore is provoking opponents to follow.

New Zealand protesters have also taken to the sea in reaction to deep water oil drilling. Some use boats with signs and banners to voice opposition, while others have blocked ships associated with developing these resources. In 2013, a group called Oil Free Seas sailed a flotilla over 100 nm offshore to block the Texas-based company, Anadarko, from drilling oil in the Deepwater Taranaki Basin. In reaction to such protests, the government amended The Crown Minerals Act (2013) to create protective exclusion zones around exploration and extraction vessels, and artificial structures within New Zealand's EEZ. These non-interference zones authorize the New Zealand Defence Force to arrest and detain boat protesters, who then face steep fines and even incarceration (New Zealand Parliament 2013). Within the EEZ, the New Zealand Ministry of Business, Innovation & Employment admits that there are "no clear

enforcement powers" to restrict a ship's freedom of navigation, as territorial sovereignty ends at twelve nautical miles (MBIE 2013, 2). UNCLOS does offer a provision for coastal states to construct artificial islands, installations and structures, which allows for a safety zone up to 500 meters (these zones are intended to protect extractive industry and energy generation platforms within settled jurisdictions, unlike the artificial islands being built to bolster territorial claims like the Spratly case discussed by Gaynor, this volume). The state may take appropriate measures to ensure the safety both of navigation and of any structure (Article 60). While this allows for some type of regulation of vessels entering a static exclusion zone, there is still ambiguity about whether it is legal to enforce such zones for mobile vessels. These gaps in jurisprudence have created legal battles and overturned court decisions all the way up to New Zealand's High Court.

In 2011, a skipper was arrested as part of a protest with the *Te Whanau a Apanui iwi* for interfering with a Petrobras vessel conducting under-sea oil exploration surveys in the EEZ. He and several other protesters entered the water in survival suits to block the vessel's path. Because the vessel was not a fixed structure, and because the man's body was not considered a 'vessel,' the application of law was unclear. However, The High Court ruled to uphold his arrest for interfering with the ship's operation. In their ruling, the court dismissed the police's justification that New Zealand ships are part of the territory and instead utilized the Maritime Transport Act (MTA 1994), stating that the "MTA was amended . . . [to] remove any doubt about the extraterritorial effect . . . There are also now new offense and enforcement provisions in the Crown Minerals Act (1991) dealing with conduct interfering with structures or ships engaged in mining activity in the territorial sea, in the exclusive economic zone or above the continental shelf" (New Zealand High Court 2015, Article 11). Debates continue over whether it is a violation of UNCLOS to regulate navigation outside territorial waters, but the New Zealand

government has so far upheld these amendments, attempting to fill legal gaps and quell

uncertainty surrounding offshore resource extraction.

Conclusion

These examples highlight how the ocean's geophysical and biological materiality gets

leveraged by different interest groups for geopolitical, national, indigenous, and environmental

motivations, as well as "the epistemological impact of colonial ontologies" (Prescod-Weinstein

2017) on the New Zealand seascape. As governments and indigenous and environmental groups

struggle over the definition of rights and responsibilities within ocean spaces, there is potential

for an intervention, to choose onto-epistemological cuts with greater care, "to take responsibility

for the epistemological and ontological worlds we enact through the paths we walk and talk"

(Sundberg 2014, 40), and boat and swim.

Māori and other indigenous and trans-nationalist theorists and activists have long invoked

multiplicities beyond the essentialism of land-sea binaries, and invoked more-than-human

ontologies in environmental governance and sovereignty struggles. One recent example in New

Zealand, the *Te Urewera* Act of 2014, gave legal personhood to what was previously a national

park, with "all the rights, powers, duties, and liabilities of a legal person" (16). The Act

poetically approaches Te Urewera with whakapapa as "ancient and enduring, a fortress of nature,

alive with history . . . a place of spiritual value, with . . . an identity in and of itself, inspiring

people to commit to its care" (Te Urewera Act 2014, 8). Pita Sharples, a Māori academic (and the

Minister of Māori affairs when this legislation passed) recognizes that this ontoepistemological

shift provides "a profound alternative to the human presumption of sovereignty over the natural

world" (Te Urewera Bill -Third Readings 2014). Parliament has since granted personhood to the

Whanganui River, recognizing it as "an indivisible and living whole from the mountains to the

sea, incorporating the Whanganui River and all of its physical and metaphysical elements." (Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Subpart 2). Oddly enough, despite these shifts, these Acts expressly maintain the mining rights of The Crown, as authorized under the Crown Minerals Act (New Zealand Parliament, 1991). Despite this reluctance to completely remove state mineral resource sovereignty, the legal espousal of indigenous ontology sets a precedent which, Māori legal scholar, Jacinta Ruru (2014) highlights as "undoubtedly legally revolutionary . . . in Aotearoa New Zealand and on a world scale."

Introducing more-than-human bio- and geophysical connections and sovereignties provides alternative frameworks to the state's writing of the sea, exchanging colonial epistemologies for non-binary counter-narratives, which "challenges the (geontological) ground on which the state derives its sovereignty, including the state's claims to the strand, seabed, and creatures of the ocean" (DeLoughrey 2015, 367). Reversing the continental gaze and preponderance of extending land metrics into the sea, there is potential for ocean imaginaries to creep onshore, creating openings for flows, transformations and relationalities, building on Steinberg and Peters (2015) "wet ontologies" towards manifesting "wet" coalitions, resistances, and emancipations on, in, and near the sea (Hadjimichael 2016).

Acknowledgements

References

Adey, Peter, Mark Whitehead, and Alison J. Williams. 2011. "Introduction: Air-target: Distance,

Reach and the Politics of Verticality." *Theory, Culture & Society* 28(7-8): 173–187.

Agnew, John A. 2013. "Territory, Politics, Governance." *Territory, Politics, Governance* 1: 1–4.

Barad, Karen. 2007. *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Durham: Duke University Press.

Baldacchino, Godfrey. 2010. *Island Enclaves: Offshoring Strategies, Creative Governance, and Subnational Island Jurisdictions*. Montreal: McGill-Queen's University Press.

Bateman, Sam, and Clive Schofield. 2008. "State Practice Regarding Straight Baselines in East Asia - Legal, Technical and Political Issues in A Changing Environment." A conference on *Difficulties in Implementing the Provisions of UNCLOS*, 16–17 October.

Bélanger, Pierre, ed. 2014. *Wet Matter, Vol 39*. Cambridge: Harvard Design Magazine.

Blum, Hester. 2013. "Introduction: Oceanic Studies." *Atlantic Studies* 10(2): 151-155.

Braun, Bruce. 2000. "Producing Vertical Territory: Geology and Governmentality in Late Victorian Canada." *Cultural Geographies* 7(1): 7–46.

Caron, David D., and Harry N. Scheiber, eds. 2014. *The Oceans in the Nuclear Age: Legacies and Risks*. Leiden: Brill Academic Publishers, Inc.

Prescod-Weinstein, Chanda. 2017. "The Self-Construction of Black Women Physicists." Paper presented at Yale's Critical Histories, Activist Futures: "Decolonizing Science by Reconstructing Observers," Feb 25. https://medium.com/space-anthropology/decolonizing-science-by-reconstructing-observers-d62168fca19f.

DeLoughrey, Elizabeth. 2015. "Ordinary Futures: Interspecies Worldings in the Anthropocene." In Global Ecologies and the Environmental Humanities: Postcolonial Approaches, edited by Elizabeth DeLoughrey, Jill Didur, and Anthony Carrigan, 352-372. New York & London: Routledge.Elden, Stuart. 2010. "Land, Terrain, Territory." *Progress in Human*

Geography 34(6): 799–817.

Elden, Stuart. 2013a. *The Birth of Territory*. Chicago: The University of Chicago Press.

Elden, Stuart. 2013b. "Secure the Volume: Vertical Geopolitics and the Depth of Power."

    Political Geography 34: 35–51.

Elden, Stuart. 2013c. "Commentary: Bodies, Books, Beneath: A Reply to Adey and Bridge."

    Political Geography 34: 58–59.

Environmental Protection Authority. 2014. "Trans-Tasman Resources: 2013 Submissions

    received." Retrieved from *http://www.epa.govt.nz/EEZ/previous- activities/notified-*

    consents/trans tasman/submissions-received/Pages/default.aspx.

Forsyth, Isla. 2016. "A Bear's Biography: Hybrid Warfare and the More-Than-Human

    Battlespace." *Environment and Planning D: Society and Space* 35(3): 1–18.

Graham, Stephen. 2004. "Vertical Geopolitics: Baghdad and After." *Antipode* 36(1): 12–23.

Hadjimichael, Maria. 2016. "Right to the Sea: Coming together Demanding Environmental and

    Social Justice with a Global Movement to Reclaim Our Oceans and Coastlines."

    Retrieved from *http://reclaimthesea.org*.

Harmsworth, Garth R., and Shaun Awatere. 2013. "Ecosystem Services in New Zealand -

    Conditions and Trends." In *Indigenous Māori Knowledge and Perspectives of*

    Ecosystems, edited by Dymond J.R. Lincoln, New Zealand: Manaaki Whenua Press.

Hauʻofa, Epeli. 1994. "Our Sea of Islands." *The Contemporary Pacific* 6(1): 148–161.

Helmreich, Stefan. 2009. *Alien Ocean: Anthropological Voyages in Microbial Seas*. Berkeley:

    University of California Press.

Helmreich, Stefan. "Nature/Culture/Seawater." *American Anthropologist* 113(1): 132–144.

International Maritime Organization. 2016. "Particularly Sensitive Sea Areas." Retrieved from

http://www.imo.org/en/OurWork/Environment/PSSAs.

Jacques, Peter J., and Zachary A. Smith. 2003. *Ocean Politics and Policy: A Reference Handbook*. Santa Barbara: ABC-CLIO.

Johnson, Elizabeth R. 2016. "Governing Jellyfish: Eco-Security and Planetary 'Life' in the Anthropocene." In *Animals, Biopolitics, Law: Lively Legalities*, edited by Irus Braverman, 59-78. London: Routledge.

Lambert, David, Luciana Martins, and Miles Ogborn. 2006. "Currents, Visions and Voyages: Historical Geographies of the Sea." *Journal of Historical Geography* 32(3): 479–493.

Lehman, Jessica S. 2013. "Relating to the Sea: Enlivening the Ocean as an Actor in Eastern Sri Lanka." *Environment and Planning D: Society and Space* 31(3): 485–501.

McCully, Murray. 2014. "EEZ Entry 'Unhelpful'." Ministry of Foreign Affairs. February 9. https://www.beehive.govt.nz/release/eez-entry-"unhelpfulquot%C2%9D-mccully.

Ministry of Business, Innovation & Employment. 2013. "Regulatory Impact Statement: Protection of Offshore Petroleum and Mineral Activity from Unlawful Interference." Retrieved from http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/rmbie-pop-apr13.pdf.

Museum of New Zealand *Te Papa Tongarewa*. 1998. "Kauri (*Agathis australis*)." Mountains to Sea. Retrieved from http://collections.tepapa.govt.nz/topic/10.

New Zealand High Court. 2015. "New Zealand Police v Teddy." Retrieved from https://www.courtsofnz.govt.nz/cases/elvis-heremia-teddy-v-new-zealand-police-1/@@images/fileDecision.

New Zealand Nuclear Free Zone Extension Bill. 2000. *Green Party of Aotearoa New Zealand* Retrieved from https://home.greens.org.nz/bills/new- zealand-nuclear-free-zone-

extension-bill.

New Zealand Parliament. 2014. "Peters, Winston: T̄uhoe Claims Settlement Bill, Te Urewera

   Bill - Third Readings." Session 1, Volume 700 (Week 78).

Peters, Kimberley. 2012. "Manipulating Material Hydro-Worlds: Rethinking Human and More-

   Than-Human Relationality Through Offshore Radio Piracy." *Environment and Planning*

   A 44(5): 1241–1254.

Povinelli, Elizabeth A. 2016. *Geontologies: A Requiem to Late Liberalism*. Duke University

   Press.

Ruru, Jacinta. 2014. "Thoe-Crown Settlement – Te Urewera Act 2014." *Māori Law Review*

   October. Retrieved from http://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-te-

   urewera-act-2014.

Sammler, Katherine G. 2016. "The Deep Pacific: Island Governance and Seabed Mineral

   Development" in *Island Geographies: Essays and Conversations*, edited by Elaine

   Stratford 10–31. New York: Routledge.

Steinberg, Philip E. 1999. "Navigating to Multiple Horizons: Toward a Geography of Ocean-

   Space." *The Professional Geographer* 51(3): 366–375.

Steinberg, Philip E. and Kimberley Peters. 2015. "Wet Ontologies, Fluid Spaces: Giving Depth

   to Volume Through Oceanic Thinking." *Environment and Planning D: Society and Space*

   33(2): 247–264.

Sundberg, Juanita. 2014. "Decolonizing Posthumanist Geographies." *Cultural Geographies*

   21(1): 33–47.

"Te Ao Tūroa - Māori Natural History Gallery." 2014. *Tāmaki Paenga Hira* - Auckland War

   Memorial Museum. The Auckland Domain, Parnell, Auckland, New Zealand. 17 August.

Treaty of Waitangi. 1840. http://www.tiritiowaitangi.govt.nz/treaty/translation.pdf.

United Nations Convention on The Law of The Sea (UNCLOS). 1958.

    http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm

UN Commission on Human Rights. 2006. *Indigenous Issues: Human Rights and Indigenous Issues, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, Addendum*, 17 January. Retrieved from http://www.refworld.org/docid/441182070.html

Vltchek, Andre. 2013. *Oceania: Neocolonialism, Nukes and Bones*. Waikato: Atuanui Press.

Weizman, Eyal. 2002. "The Politics of Verticality," *Open Democracy,* 24 April. Retrieved from https://www.opendemocracy.net/ecology-politicsverticality/article_801.jsp.

Whanganui iwi and The Crown. 2011. "Record of Understanding in Relation to Whanganui River Settlement," October 13. Retrieved from http://www.ngatangatatiaki.co.nz/wp-content/uploads/2015/04/DocumentLibrary_WhanganuiRiverROU.pdf

---

Notes

[1] Generic titles are used for those interviewed instead of full title or names to remove any identifying information. This choice was made given the extreme controversy surrounding the issue, and the tightly-knit community of people involved.