

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.1 Introduction

2. THE PEOPLE'S CLAIM

2.1. Introduction

The tribunal has already explained how the overlapping nature of mahinga kai, which involves the total food resources of Ngai Tahu both sea and land-based, makes for difficulty in dealing with fisheries separately. In the Ngai Tahu Report 1991 the tribunal extensively covered the subject of mahinga kai but with emphasis on land-based resources. As the tribunal moved throughout the South Island, however, it received at the request of the people of Ngai Tahu a great many of written and oral statements relating to the sea based resources of Ngai Tahu. In this evidence the tribunal was reminded of the importance of fisheries to the iwi and of the effect of pollution, depletion and inadequate management of the resource. This evidence was generally contemporary or was passed down to witnesses from grandparents. In some cases the witness would relate back to earlier times.

In the main the people of Ngai Tahu were strongly protesting that they had been dispossessed of a resource which was part of their personal livelihood and more importantly, a tribal requisite. It was a sadly repetitive story about the depletion and destruction of fishing resources. Time and again we were told how once plentiful seafoods from all around the Ngai Tahu tribal coastline and in the estuaries and rivers could no longer be caught or gathered. Time and again pollution and over-fishing were held responsible for the loss. Sewage outlets, industrial discharges, river water deviations and agricultural run offs have contaminated and depleted traditional beds and fishing grounds. Decades of over-fishing with no concern for renewal of the resources has meant some species of kai ika and kai moana that once "graced the table" of the marae and home have all but vanished. Poor conservation management by the Ministry of Agriculture and Fisheries was also a frequently voiced criticism by Ngai Tahu people. It was the view of many that commercial fisheries legislation and Ministry of Agriculture and Fisheries policies, notably the Quota Management Scheme (QMS), had proved quite inadequate to ensure the preservation of marine resources. In some respects government policies were held to blame by the witnesses for the damage that had occurred. At the other end of the scale, legislation restricting the quantities of seafood individuals might harvest was condemned for failing to take into account Maori values and needs. As a result the tribunal was told by claimants that Ngai Tahu people had been harassed in the exercise of customary fishing rights to the point where those rights had been denied altogether. In this chapter we relate the story told to the tribunal by the people of Ngai Tahu, as much as possible in the witnesses' own words. In this way it is hoped that the sense of direct and tangible loss felt by them can best be conveyed. For the sake of convenience we have grouped this evidence, which came largely from kaumatua, under headings of pollution, loss of access, depletion from over-fishing and inadequate management strategies. In the last

part of the chapter we present a number of suggestions given by the people to try and remedy the damage and loss. We commence first by highlighting some observations from these witnesses on the importance of this fisheries resource to them.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.2 The Importance of the Fisheries Resource to Ngai Tahu

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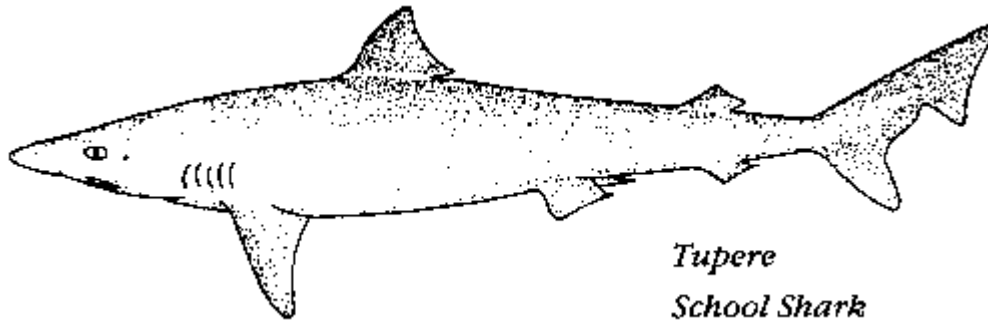
Rakiihia Tau, the deputy chairman of the claimant trust board and the individual claimant before the tribunal, gave a compelling personal account of how mahinga kai had shaped the daily and seasonal pattern of his life. Mr Tau gave extensive oral and written evidence to the tribunal (J10, J45) and also produced numerous maps of fish breeding areas, ocean currents and fishing marks. His evidence forms a substantial part of the written material submitted to the High Court, as well as of the evidence filed with this tribunal (AA12(b)). Rakiihia Tau stressed the importance of the availability of seafood for tribal purposes as well as for personal sustenance (AA12(b):27-28). In recounting his personal experiences Mr Tau told not only his own story, but also the story of many Ngai Tahu families of his generation and generations before. It has been quoted in full in the Ngai Tahu Report 1991, but portions relevant to the fisheries claim are reproduced here:

I was brought up at Tuahiwi and my father was a seasonal worker with shearing as his main occupation. Because his work was seasonal, there were often periods when he was unemployed. When he was shearing the job would take him away from home and into the foothills and the high country. In his absence or at times when he was unemployed we depended on what we could catch to feed our family.

... Dad and other relatives taught us the ways of catching food at very early ages. The people of Tuahiwi would camp for extended periods on the banks of the Ashley, Waimakariri and the Cam rivers near the sea and spend the days fishing both for personal use, barter or for sale. We hunted for Whitebait, Eels, Salmon, fresh water Crayfish, Flounder, Mussels and Pipis. These were some of the fish caught

... We would regularly go fishing off the North Canterbury coast line and Banks Peninsula seeking Kaimoana (Shellfish) and Kai ika (fin fish). We would keep some of the fish for ourselves and give some to our relatives who would always give us something in return. When I was young we would dry some of the fish we caught so that we had food to eat. In particular, I remember catching and drying Shark and, also, being given dried Shark by relatives who lived on the Coast. As a schoolboy I would take a strip of dried Shark to school for my lunch....

... It is important to stress that the Kai which we got in this way formed the basis of our diet. It was not a case of catching food to supplement what we could buy, rather it was the other way round; we bought food to supplement what we caught. This practice was unquestioned among my family, it was the way that my parents and their grandparents had always lived. (J10:21-23) {FNREF|0-86472-103-X|2.2|1}



Mr Tau referred to the process of seeding or planting of kai moana around the coast line. In his view shellfish did not just appear but were planted and cultivated by his ancestors using the traditional process of rimurapu with kelp bags (J10:9; see also J10:76-79). {FNREF|0-86472-103-X|2.2|2}<fish2[v]>

Like a number of other witnesses, Mr Tau told us about the attitude of Pakeha to kai moana. Until recently, he said, it was common for Pakeha to be dismissive of the many types of shellfish enjoyed by Maori: "If you can eat those things you can eat anything" was typical of the view expressed by Pakeha (J10:10). From this Mr Tau concluded that the ordinary New Zealander has always recognised that the fisheries belonged to Maori (J10:10).

2.2.1 Trevor Hapi Howse belongs to a generation of Maori, perhaps the last, who learned in childhood the traditional ways of gathering and preparing natural resources. The knowledge and skills passed on to this witness by his grandparents were relied upon in daily living and some are still practised today. He recalled that as a boy "the gathering of those food resources filled a major part of what today may be termed leisure time".

Mr Howse gave a list of mahinga kai resources commonly used by his tupuna. Fish and seafood " kai ika, kai moana, kai awa " make up more than half the list. He recalled that "When the tide was low we ate, when it wasn't at times we went hungry" (H7:30). He referred to the impact of fisheries legislation, "it restricted our right to take the natural resource which we had relied on so heavily, the restrictions placed on those who could least afford it was a major catastrophe to the Maori".

2.2.2 Like other members of his hapu and their tupuna, Wiremu Solomon of Kati Kuri has been a fisher all his life. For the people of Kaikoura this is not surprising: the rugged northern coast and the sudden plunge of the continental shelf lend themselves to a life built around the sea:

My Dad started fishing commercially at 14 years of age and died at sea at the age of seventy-seven. My two brothers fish commercially and my son fished with them seven years all through his school holidays, and weekends - he is now eighteen. We believe that we have acquired a certain amount of expertise of the sea and its resources we have fished and eaten these resources all our lives. (H7:4-6)

2.2.3 Kelly Davis (aka Kelvyn Te Maire) of Arowhenua spoke on behalf of the Waihao runanga. He listed the areas of mahinga kai known to him from childhood

and the species of fish and shellfish taken from those areas. He recalled his father's practice, when out of work:

to fish ... every day when possible to feed us as there was no unemployment benefit those days. He used to catch red cod mostly, blue cod was also caught, also grey shark and dogfish. (H10:34)

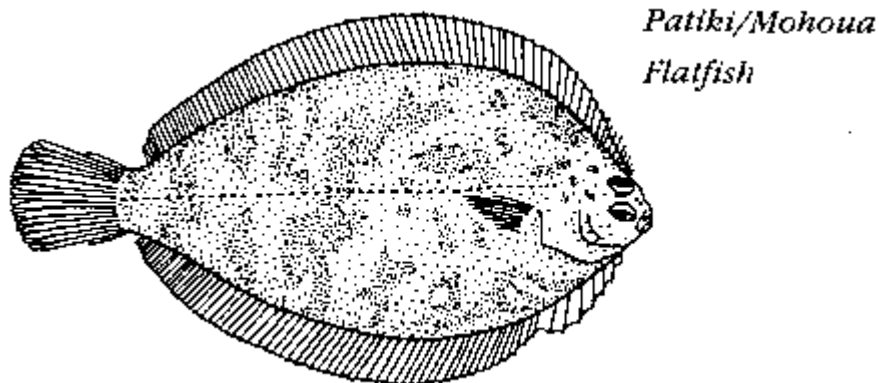
Rangimarie Te Maiharoa, also of Arowhenua, paid tribute to his tupuna and spoke of childhood experiences at Wainono and the Waitaki river mouth:

In my youth, I spent many fruitful days netting whitebait, and the latter part of the season paraki (silvery). If we caught any quantity they would be taken home and dried on the roof of the buildings then stored, we were very fond of them dried. I have taken a large number of Mullet and the elders split and dried them, also netted and speared flounders, I have seen shoals of Kahawai on the north-side of the mouth just off the beach. I have caught many. The Sea martins and terns lay on the gravel cox, their eggs are good eating. We also gathered kaio that were washed ashore. (H10:44-45)

He also remembered the gathering of tupuna at Te Hapa o Nui Tirene, the marae built by Arowhenua kaumatua in 1913 as a monument to the unfulfilled promises of the Crown. The tupuna had come to discuss the Ngai Tahu claim:

I was at school but I can remember these people coming here for this hui and several others.

We were able to feed them, PROUD, because we had plenty of eels at Washdyke. It was no trouble to get sacks of eels, watercress and mussels again and again from this region to provide for our manuhiri. (H10:42)



Another Arowhenua witness, Kelvyn Anglem, spoke of changes that had occurred over many decades to the natural line of the Timaru coast and its kai moana. He described the coast just south of Timaru as unique for its proximity to many kinds of kai moana (H48:1-2).

2.2.4 As noted in the Ngai Tahu Report 1991 submissions given on behalf of Otakou tangata whenua regarding past available food resources were most informative. {FNREF|0-86472-103-X|2.2.4|3} Edward Ellison presented a detailed

account of the types of kai, the ways they were procured and preserved, and the places where they could once be found:

Places of Mahika Kai around the Otago Peninsula (Muaupoko) were numerous.

The tidal bays providing excellent Tuaki (cockle), Patiki (Flounder), Pateke (duck), netting being practiced also produced red cod (Moka) Leather Jacket (Kokiri/Puamorua) Seals, the Kake (female sealion) was sought after from December to May as was the Whakahao (Male Sealion). A favourite site for the Whakahao was around the mouth of the Makahoe (Wickcliffe Bay) where small parties of people would kill the sealion cook the meat in large umu on the edge of Okia Flat, carrying the cooked meat back to the villages near Te-Umu-Kiri (Wellers Rock).

Barracouta were a major source of kai, the Otago Pen. (Muaupoko) being a major fisheries for this fish. The calm waters in its lee allowing the sighting of schools of Barracouta to be done at regular intervals, the calm seas allowing the lures to be thrashed on the surface without being masked by other surface disturbances. This was largely a summer activity. (H12:5)

2.2.5 Robert Whaitiri of Murihiku said this:

Fisheries were ... of the greatest importance to our people. Inshore fisheries being resources such as shellfish, eels and whitebait were some of the prime items or [sic] our staple diet as they were readily accessible on the foreshore and inland waterways. They had a very significant part in our lifestyle and sustenance. They were even more important in this part of the country because the climate was much harsher for growing things. (E1:1)

The tribunal was told by Harold Ashwell about the traditional fishing grounds in the rivers and surrounding seas of Rakiura (Stewart Island):

From the time the first Maori began to visit the Titi Islands they were made aware of the vast abundance of sea food available to them

Many places named by those Maori of long ago still have those names attached. They were places that could always be depended upon as places of mahi ka kai. They were known traditionally. Places such as Hopu Toroa and Tauraka Hapuka were miles out to sea and could only be used by using landmarks. They are reputed to be hundreds of years old. (H13:10)

He described some of the main species that were fished and the different ways they could be caught.

George Newton Te Au, a justice of the peace and kaumatua from Murihiku recalled this evidence from his experience:

I can recall as a child at our Kainga, Tokoro on Ruapuke, my Poua (George Newton) and my Taua (Arihi Pohe Newton nee Whaitiri) used to talk to us about how they and their parents used to live on Whenua Hou (Codfish Island), the Neck (Rakiura), Murihiku (Mainland) and (Ruapuke). They spoke of the abundance of Kaimoana, Kai

Ika, Kai Manu, Kai Awa and Kai Roto and how easy it was to obtain. Poua or my Uncle Frosty would at times take me in the dinghy in to Henrietta Bay where we would be able to catch the Kai Ika that we required. We would at times catch Green Bone, Moki, Rawaru (Blue Cod), Hapuka (Gropser) sometimes Tuere (Blind Eel), also at times we would set pots and catch the Koura (Crayfish). At the beach (Te Kirikiri) below our Kainga, we were able to get Kaimoana-Paua, Kina (Sea-egg), Kutai (mussel), Pupu (periwinkle), Kakihi (limpet) we were told never to Kohiti (take them out of their shell) at the place where you get them, or leave the shells there because if you did it would become a (Wahi-mahue) deserted place as the Kaimoana would shift. Also at times we would be able to get the Kaio (sea spud) these would be washed ashore, they were attached to stems, and sometimes these were in clusters of 50 or more called Pukaio. On the other side of our Kainga was Lagoon Bay (Te Awatuiau - stream of fleas), where we would gather Tuaki (cockles) and spear Patiki (flounder) The waters around Ruapuke and Papatea used to have a plentiful supply of Kaimoana however today they are fast becoming depleted by commercial fishing and diving, to rectify this situation, a Rahui on all commercial fishing and diving should be placed around the Islands up to a two mile limit. Also along the shores at Rakiura they could get Tio-kohatu (rock oysters) Tio-paru (mud oysters). (H56:1-2)

2.2.6 When the tribunal sat on the West Coast to hear the Arahura grievance several witnesses referred to group fishing by whanau and hapu. James Russell, chairman of the Katiwaewae runanga, and a person deeply steeped in knowledge of his people's background and culture, gave lengthy evidence stressing how Maori life was situated and moulded around valued resources, their availability and sustainability. James Russell explained in detail the cultural and specific significance to Maori of the water resource. The tribunal was told by this witness of the many times in his youth when in early spring, summer and autumn evenings the whole of Arahura pa gathered to go drag net fishing in the sea along the coast, and of how the catch was distributed amongst the families of the pa. He spoke nostalgically of the abundance of fish at this time in the late forties and early fifties, of his leaving Arahura in 1954 and returning 20 years later to find the fish gone and that the people of the pa fished no more (H8:64-65).

Allan Russell gave evidence gathered from talking to old people from Arahura pa and related the experience of those people from 1903 up until the present. He spoke with deep concern of the present shortage of kai moana, kai ika and tuna caused by over-fishing, pollution and drainage (H8:81-82).

Kelly Wilson, aged 69, whose mother was born in Bruce Bay in 1885, said this:

Maori people had another great resource as well and this was the sea. It was not only a garden that provided much of the food. It was also a highway by which he travelled up and down the country. The coast and the coastal fishing grounds were identified like the land, marked off in tribal boundaries just as the land was. And there was no significant shellfish bed or fishing ground ... [t]hat was not claimed, possessed or jealously guarded. The importance of Kai-Moana was very great as it is today. Seafood was the staple diet of Maori people. It was as it is now a matter of Mana for the hapu or tribe to preserve seafood on any special occasion. (H8:22)

There were other witnesses such as Iris Climo (H8:39), Emma Grooby-Phillips (L32:31) and Gordon McLaren (H8:30) who narrated their whakapapa proudly and who spoke of the abundance of kai ika in earlier times and how the people fished as whanau and hapu.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.3 Pollution

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During the hearing of kaumatua evidence and as reported fully in the Ngai Tahu Report 1991, wherever the tribunal sat there was constant complaint of the effects of pollution. {FNREF|0-86472-103-X|2.3|4} Most of the evidence was directed to pollution of kai moana along the sea shore and in estuaries caused by effluent from sewerage schemes, rubbish dumps, wool scourers, freezing works, paper mills, hide tanneries and a variety of agricultural and industrial wastes. In his evidence, Rawiri Te Maire Tau spoke of the concern of Rapaki people over the pollution of Whararua (Whakaraupo) (Lyttelton) harbour and how, in matters of tradition relevant to Maori, pollution of the sea beds was repugnant (H6:36). Witness after witness spoke of pollution of shellfish beds by noxious effluents and nutrient wastes; by dredging, erosion and silting of beds. The tribunal was told of the pollution of lakes and rivers that depleted tuna (eel), patiki (flounder) and kanakana (lamprey).

Robert Whaitiri queried the danger of effluent discharges from ships in the harbour and the effects on oyster beds and other kaimoana (H13:3). Mr Whaitiri is a member of the Southland Catchment Board and gave numerous examples of pollution in his area which have made it dangerous to eat shellfish in the Bluff estuary (H13:2-4).

2.3.1 In a separate submission presented on behalf of the Otakou runanga, Edward Ellison told the tribunal of Otakou people's concerns about pollution and over-fishing around the Otakou harbour. He noted the pollution of the harbour had affected the prized tuaki (cockles) of Otakou, making them unfit to eat:

Otakou has always prided itself on being able to feed their visitors with Tuaki, among the largest in New Zealand. Not to be able to do so if current pollution trends continue will further reduce our ability to properly host our guests (Manuhiri). (H53:1)

Another Otakou witness, Matt Ellison, speaking for the people of Puketeraki area, put this question:

Forty years ago you could eat the cockles and bubus in the Waikouaiti River but there is no way you would eat them now.

The same applies to Blueskin Bay. Recently signs were erected by the Health Department stating the shellfish were unfit for human consumption.

When the Waikouaiti River shellfish became inedible more importance was placed on the Blueskin Bay and Purakanui areas.

Now where do we go? (H11:3)

Another member of the Ellison family, Craig Ellison, identified six traditional mahinga kai resources in Otakou that were contaminated by sewage and other wastes (L32:42). He said this:

The Ngai Tahu have always looked at the waterways and seashores of the region as a convenient and often abundant source of food. In effect the Maori used these areas as a "refrigerator", and it is with a real sense of loss that the pakeha has used these same waterways as sewers, as receiving waters for the dilution of industrial, domestic and agricultural wastes. (C13(a):1)

Otago harbour, Papanui Inlet, Waldronville and the Taieri, Tokomairiro and Clutha rivers all suffer various forms of pollution. Domestic, industrial and agricultural discharges affected the quality of water and create health risks. Toxicity problems may exist in parts of Otago harbour because of the introduction of heavy metals such as lead, zinc and cadmium. Raw or partially treated sewage discharges contaminate shellfish beds and the gathering of kai moana is not recommended. Parts of the Otago harbour have been shown to be eutrophic. Portions of the Otago rivers are unsafe for swimming, fishing and canoeing (C13(a):1).

Craig Ellison concluded that:

There has been significant pollution in these waterways. The maintenance of water quality has in some cases been very poor. In all cases the lower river levels are significantly affected. It was these particular areas that were of importance to the Ngai Tahu. There is a crucial difference in perception to the use of a waterway, be it river or marine, between the Pakeha and Maori that is reflected in the abuse of these waters. (C13(a):2)

2.3.2 Kevin O'Connor spoke of pollution in four Southland rivers and the Riverton estuary. He said that plans for a paua nursery and kutai farm had had to be abandoned as a result of sewage pollution and that kelp, karengo, kai moana and other marine life half a mile either side of the outlet were dying (H13:39). In its Ngai Tahu Report 1991 the tribunal gave detailed account of how two principal tuna and patiki mahinga kai resources in lakes Waihora (Ellesmere) and Wairewa (Forsyth) had been despoiled almost beyond recovery. {FNREF|0-86472-103-X|2.3.2|5} The above extracts from evidence to the tribunal are a sampling only. There were a number of other complaints about pollution.

The tribunal was left in no doubt that Ngai Tahu were concerned and indignant that their fisheries resource had been so substantially destroyed by pollution. Several witnesses such as Rakiihia Tau (J10:25) and Robert Agrippa Whaitiri (H13:4) acknowledged that regional authorities had shown signs of preparedness to listen to Maori views. However, there is obviously much support for the view expressed by the claimant Rakiihia Tau:

I feel a deep sense of outrage that the promise to maintain our Mahinga Kai has been broken and that what Mahinga Kai is still left is fast disappearing. (J10:25)

A similar view was expressed by Kelvin Anglem as he described the present state of the once proud Opihi river and its sea estuary as being unfit for humans and animals to swim in:

I am glad my Tupuna cannot stand on the banks of the Opihi and see what I have stood back and allowed to happen to their river. (H10:24)

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.4 Loss of Access to Fisheries; Acclimatisation Laws and Diversion of Water

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Various kaumatua referred to loss of the fishery resources by denial of access as a consequence of land settlement, insufficient reserves, drainage of wetlands and river straightening, acclimatisation regulations and diversion of water from rivers for power-supply dams. These matters which substantially affected inland fisheries were sufficiently covered in the Ngai Tahu Report 1991 and will not be repeated here. {FNREF|0-86472-103-X|2.4|6} There is little need for the tribunal to indicate the cumulative effect of these measures on the depletion of the Ngai Tahu fishery resource.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.5 Depletion of the Resource

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The loss by Ngai Tahu of their fisheries resource is really what this claim is all about. In later chapters of this report we shall be looking at the crucial issues involved and of course, determining whether any act or omission of the Crown has been inconsistent with the principles of the Treaty and has thereby led to a breach of the Treaty. We shall also be looking at the nature and extent of Ngai Tahu rights to its fisheries under the Treaty. In this chapter the tribunal is simply narrating the views of individual members of Ngai Tahu as they appeared before the tribunal at the commencement of each hearing and expressed their personal grievances and feelings. Obviously, these views are relevant to the overall claim and will be considered as part of that claim, but they will also be subject to analysis and will be tested against evidence and submissions presented by the Crown and the fishing industry. This chapter is also not an examination of all the claimants fisheries evidence. There is a substantial amount of evidence and submissions outside the purview of this chapter such as the evidence of fishers and other experts in the field of history, archaeology, geography, anthropology, marine biology, law and custom and so forth, which all form part of the fabric of this claim under the Treaty. In its inquisitorial function the tribunal needs and welcomes the contribution members of the tribe make in these individual submissions. It is an essential part of the whole. It clothes the bare form with a cloak of reality, a cloak which itself is woven from the intertwined threads of oral tradition handed down from tupuna as well as from the experience of the witness. We now see how Ngai Tahu have reacted to the depletion of their resource.

2.5.1 There can be no doubt that of all the factors responsible for the depletion of the fisheries, the principal culprit in Ngai Tahu eyes has been over-fishing caused by commercialisation. In a well phrased submission, Rangimarie Te Maiharoa had this to say of the first arrivals to this shore:

These ancient ones must have stood in wonderment and thanked Ihoa for his guidance to this once beautiful Te Waipounamu.

For many generations our people sustained a healthy living from land, bush, waterways and sea.

They treasured and preserved what this vast area had to offer.

Their environmentalism was second to none.

Their natural law forbade one to contaminate water where food was gathered Wahi-Mahika-Kai.

Therefore I strongly state that the loss of our traditional fishing and hunting grounds has deprived our people of a recreational heritage that once built a strong body and soul.

Money has brought us to the point of crying in the wilderness.

The fishing and hunting grounds, an area so vast, was always a challenge to the healthy young.

The wisdom of our elders who taught the finer points was valued knowledge and an appreciation of nature.

Most everything living on this earth is born free, but when you put a text book in the hand of man and money in his pocket then his values and priorities give wisdom a false meaning.

Recreational freedom of this nature must always be preserved for all mankind not just for untamed species.

I feel immense damage has been done to Justice. (H10:45)

A sad picture of over-fishing of shellfish on Rakiura (Stewart Island) was presented by Harold Ashwell:

Shellfish were gathered by hand and there was an old saying I recall hearing, that when the tide was out the table was laid. Paua, Kina, Tio, Bubu, Pipi, Kakahi, Koeo, Tuaki, and Kaio covered the shore in great abundance, sadly this is no longer the case, where once there were so many Tio (oysters) in Port Adventure that boats when the tide was out could lie on their bilges while the crew shovelled them aboard, then as the tide rose the boats righted themselves and the crew levelled them off in the hold before sailing off to sell them in Dunedin, now there is nothing. The same thing has happened to the Paua and the rape still goes on. When the fishery resources of Rakiura were controlled by the Maori he only took enough for his immediate needs and did not waste food.

Pakake was the general name for all Seals or Sealions and seal meat also featured in the Maori diet. Prior to the coming of the Pakeha they were available for food on every Island and beach around Stewart Island but it took just a few short years to bring them to the point of extinction once the Pakeha found there was profit to be made from the skins. At first this created disharmony between Maori and Pakeha. The Maori who had been brought up to practice conservation could not understand why the Pakeha took only the skin and left the meat to rot. The Maori did not use the skin as an article of clothing (H13:10-11).

The Titi Islands are reserved exclusively to Maori for the taking of the mutton bird. It was suggested to the tribunal by the claimants in its Ngai Tahu Report 1991 that the management and administration of these islands in respect of the titi was perhaps the nearest living example Maori had to rangatiratanga of its natural resources or mahinga kai. {FNREF|0-86472-103-X|2.5.1|7} Sadly, however, the exclusivity does not apply to the kai moana lying around these islands, a resource which Ngai Tahu badly need

in order to supplement their stores during their two month stay catching titi. Paddy Gilroy said:

As previously mentioned, our people complemented their stores with kaimoana, from around each island. We were taught to take only what was required and that we were not to open any shellfish below high-water mark. Up until five years ago, there was plenty of kaimoana. Then slowly we began to notice the decline in paua and more recently, with the introduction of the Quota System, the kina. I mention the kina because, although it is not in the Quota System, if a commercial fisherman has a hand-picking, he may take as much kina as he wishes, hence the rape of our Mahinga kai. I add here that because the titi islands are so far away, and the area is so large to police adequately, it is left wide open to abuse. Our people are only on the islands for two months of the year, so we are powerless to prevent such abuse. (H13:19)

2.5.2 But it was not only commercial fishing that caused depletion. All of the factors mentioned in paragraphs 2.3 and 2.4 (supra) were also responsible. Edward Ellison presented the Otakou runanga's take to the tribunal and claimed that local stocks of traditional kaimoana such as paua, kutai, kina and tuatua were now seriously depleted and that the Ministry of Agriculture and Fisheries had been totally ineffective in protecting the resource (H53:1).

Kelvin Anglem, who had lived all his life at Arowhenua, related this story of what had happened in the Opihi river:

I recall as a child from the age of four years onwards, being taken by my grandparents each year, on a night in March, across to the North bank (Milford side) of the Opihi river immediately opposite our home. We would anchor our boat under the willows and using the Moenu or Bob we would proceed to catch our winter supply of Eels. About 300 was considered sufficient for our needs and these were usually obtained from approximately 8pm until between 11pm and midnight, seldom was it necessary to return for a second night.

These Eels were cleaned, dried and preserved some being used as barter for other foodstuffs the remainder as a winter food supply. Later at age twelve or thirteen it became my task to catch our winter supply and I was usually able to do this in two nights fishing from the river bank, I recall taking 180 eels in one night and returning to the same hole the following night and taking 120 eels. I also recall in March 1944 going towards the river mouth one night and coming upon the Heke, the migration of eels to the sea to spawn, at the time the river mouth was blocked and the eels had elected to travel overland and across the shingle beach to the sea, I picked out of the grass and shingle as many as I could carry in the space of 15 minutes. Alas 1988 tells a different story, a similar expedition but covering an area from the river mouth to 3 miles up river including backwaters of which there are now only one remaining, yielded in 1986 eleven eels, 1987 nine eels, 1988 four eels, the largest of these weighed 7 lbs and a lot of the others were barely takeable.

What has brought about the depletion of the eel population between the late 1920s and today?

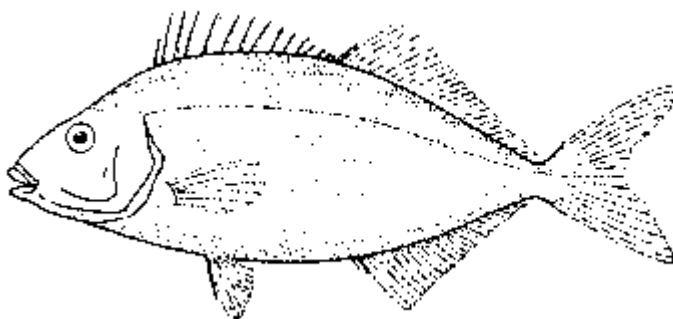
It began with eels drives designed to protect the young trout from the predatory intentions of eels, hundreds of eels were slashed with lengths of hoop iron and allowed to float down river or left on the banks to rot.

This was then followed by Catchment Board works, river re-alignment and the removal of willows from the river thus taking away their natural habitat, then followed a period of commercial fishing which reduced the eel population to less than a quarter of what it had been in 1940. Increased demand for water for town supply and irrigation then began to drastically reduce water levels, drying up most of the remaining backwaters and thereby destroying most of the habitat still left at this time.

The tuna is a fairly hardy and adaptable fish and had managed to survive thus far, albeit in severely reduced numbers, the many assaults on its existence, but the final assault that is being delivered in 1980s is maybe more than this fish along with other species can survive. (H10;22-23)

There were other witnesses who gave their personal experience. Wiremu Solomon described the fishing method taught to him by his father:

Our Dad told us that we were NEVER to use those [nylon] nets-because they would eventually destroy the resource. Nets cannot discriminate between mature and immature fish. This is the reason why we do not use nets today. We were LONG LINERS and still are today. Long line fishermen catch a superior quality of groper. Long lines have no impact on young groper, it is therefore desirable in terms of conservation and the survival of the species. (H7:5)



Moki

Blue Moki

He contrasted this traditional practice, and its underlying conservation principle, with contemporary fishing methods which, in his view, were based on short-term maximum economic gain rather than long-term sustainability of resources:

Nets and trawls take evrything [sic] and you have a crazy situation in that fishermen are dumping as much as they are selling I have personal experience of a fisherman dumping 20 tons strictly on the grounds of economics (H7:5)

2.5.3 We finish this section on depletion of the resource by setting out in full a submission made to the tribunal in April 1988 at Te Rau Aroha marae at Bluff by Hana Morgan. It is a strong statement. It comes from a marae where Maori women are trying to maintain tribal tikanga. It is a frank and pragmatic analysis of what has happened. Although strongly critical of a system that has almost bankrupted Maori of

their most traditional resources it nevertheless spells out a situation with which most New Zealanders would find accord:

Within the confines of the Bluff Harbour there once lay very fertile kai-moana beds namely paua, kina, kuku, tuangi and titiko, not to mention the kai that abounded beyond the harbour. These delicacies included oysters, scallops, sole, patiki, koura, hapuku, moki and many other species of fish. Our people enjoyed the luxury of having as much kai moana as their hearts desired. Many of them have been raised on this kai, it has constituted a major part of our diet. Our dependence on the sea for sustenance goes back many generations and sadly, we are now having to compete with a faceless majority for the right to food that was traditionally ours. Our tupuna ... [were] ever mindful and appreciative of what Tangaroa provided for their sustenance and never abused the laws of nature. They took only what was necessary. The rituals and tapu associated with the gathering of kai were strictly adhered to and so Tangaroa and our tupuna enjoyed a harmonious relationship for many generations.

The barter system used by our forebears had endured successive changes of government policy until quite recently. With the imposition of the Quota System, pollution of Mahinga Kai areas, and the depletion of our natural resource, the barter system is nearly non-existent. The supply of fish and oysters for the home people has become impossible through regulations and laws that govern the industry. These laws are imposed by a monocultural society, whose authors and advocates lack the perception and knowledge of the sea that our tupuna possessed. The governing principle is Money, at whatever cost, in terms of a way of life, and the systematic breakdown of our Maori principles and values. We have no mana over our mahinga kai. We have had no input into policy and we have no say in the decision making process. We are expected to stand by and watch the resource disappear without feeling or showing emotion. Many of our people dislike what has and is happening, but feel powerless to prevent it, to the extent that they have become quite apathetic.

It has become apparent to us that within ten years, our inshore paua and kina fishery will be exhausted. The amateur regulations, imposed by MAF to control the taking of kai-moana, are excessive.

10 paua per day per person

50 kina per day per person

250 pipi per day per person

50 kuku per day per person, and so on.

Who eats that amount of shellfish in one day or even two? I maintain that these regulations encourage abuse of the resources and has allowed a "black market" situation to be created. Furthermore, why introduce a set of regulations knowing that there are not the numbers of MAF fisheries officers to police the areas and enforce the regulations. Our people have voiced their concerns and government came up with Honorary Fisheries Officers. However, what can one person do when there are six or seven divers gathering kai-moana, all at different localities within his zone. He has no power to confiscate the catch, nor to arrest or prosecute the offenders. He is merely a

voluntary "watchdog" for the MAF. All he can do is report the offence to the MAF or to the police. In remote areas, how is it possible to prove an offence when the bird has flown. Maori methods and experience in conservation could have made it possible to ensure the supply for future generations, but "who are we to tell the Pakeha scientists, economists and researchers what is best for New Zealand. We are uneducated Maoris." "we are nobody" Our knowledge and skills have been ignored, we are silently angry and frustrated and extremely saddened at the loss of one of our major resources. What was once the staple diet of the Southern people is now a luxury many of us cannot afford.

Crayfish was one of our most frequent meals until about 15 years ago. We must now settle for the bodies and claws, if we are lucky enough to receive some from the fishermen. Blue cod and hapuku are the most popular of the finfish and it was customary for them to bring in feeds for their families, neighbours and friends. The ITQ's have put paid to that tradition. Cod-heads, which were always available are hardly ever seen now, and quite often one must purchase them from the factories if one wants a feed. A turbot regularly graced the table, and now we obtain the heads and flaps from the factories, fillet them, and batter them to make the meal go further. We have been reduced to eating what the factory would normally dump.

The over-fishing of our mahinga kai areas, through mismanagement and pressure to supply overseas markets have upset the balance in the sea and we are feeling the effects of it at home and particularly on our Marae.

It has always been customary to provide the best kai available in the area for our manuhiri. Up until five years ago we managed to [do] this quite well with the help and generosity of our fishermen. However they are no longer able to provide the kai-moana anymore because of the quota system, and regulations. We must now purchase almost all the Kai-moana we require to feed our manuhiri. The oystermen traditionally provided families and the marae with oysters, not any more. The merchants and the industry stopped the practice by limiting the amount of take-home feeds. The resource now belongs to the industry, in our eyes. The depletion of our kina and paua beds within the harbour make it difficult to gather enough for hui purposes. The mussel beds at Riverton which used to provide sufficient kuku for hui, have been depleted by recreational divers.

I hesitate to mention the struggle we had to obtain kai-moana at the time of the last tribunal sitting here at Te Rau Aroha, but it is the only way I have of illustrating the point I am trying to make. We knew that this hui was of major importance to us as a tribe, and that along with the tribunal members, there would be many of our kaumatua from all over Te Waipounamu as well as the North. To all of us here, it is most imperative that we maintain the Mana of our Marae and our reputation for kai-moana, because we are situated by the sea. so, we set about our tasks:

Kina - two days diving for 1/2 to 3/4 sack.

Pauas - two days for a feed - not enough to even make the quota - had to use other ingredients to make our patties go further

Fish - purchased from a factory

Cod Heads - purchased from a factory

Crayfish - Unable to get any at all

Toheroa - Requested a special permit, but was denied

Mussels - Purchased from Nelson farm.

The kai-moana that was once abundant and easily accessible five years ago is no longer there. It upsets me more than anything, that through laws, regulations and policies and we are finding it extremely difficult to entertain our manuhiri adequately. On the other hand, I am certain that if government wish to entertain their guests they will bend rules to provide whatever delicacies they require for their state banquets. We adhere to the laws, but we are the ones who suffer. We teach our children to abide by the MAF regulations as well as our own rules, but we are becoming so disillusioned that we are tempted to ignore the restrictions and assert our rights as Maoris. The amateur regulations although excessive to me, are nothing in comparison to what is happening in the commercial fisheries. There is no limit on kina - numbers or size - if one possesses a hand-picking licence. The Japanese market dictates the future of our kina resource. Their appetite for one particular type of kina has resulted in tons of kina being harvested some of which is not the desired type. This is dumped on the N.Z. market. There is also a lack of knowledge about when to gather the kina which results in more waste, because when harvested at the wrong time of the month, the kina has no kai in it. The paua export industry and more recently the interests in the shell of jewellery, has made the paua a most desirable commodity. The lifting of export restrictions on paua, has added to the decimation of that fishery. Again we see the export of our best kai. Evidence of the exploitation of our paua resource can be seen in the mountains of shell that adorn Rakiura Riverton and all around our coastline. The fisheries are no longer ours. They belong to the overseas markets, the industry and the huge conglomerates. New Zealand fishermen are the harvesters or gardeners and we, the Maori people are merely left to pick up the rubbish that no-one wants. Within twenty years, the sea garden will be bare, just as our land is bereft of the native forests and birds that once abounded.

We are angry and frustrated, but it doesn't seem to matter how loud we scream or who we go to - we are still disregarded. I even wonder how much notice the government will take of this tribunal. I feel for our tupuna who signed the Treaty of Waitangi in good faith, and I feel for our children and moreso our mokopuna who will probably never know what it is to gather Kai-moana in its natural habitat.

I wish to recommend that:

- (a) An immediate review of the fishing industry, its past, present and future, be made, and that statistics and evaluations be made public, and that steps be taken to rectify the damage done to our fishery.
- (b) That the amateur regulations be reviewed to take into consideration the areas that need time-out to allow for regeneration of kai-moana.

(c) That the Maori people have equal say in all matters pertaining to our fisheries and land as was intended by our tupuna when they signed the treaty. Then we will take the step to becoming a true nation. (H13:32-35)

That honest statement of concern evoked considerable emotional support from Ngai Tahu people present at the hearing. It also impacted on the tribunal and counsel before it.

We turn now to look at some of the criticism of fisheries management made by kaumatua witnesses and also their suggestions for reform.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.6 The People's Criticism of Present Management Systems and their Recommendations

2.6. The People's Criticism of Present Management Systems and their Recommendations

As stated previously in this chapter, we are looking only at views placed before the tribunal by those kaumatua and other persons who appeared at the various hearings and put forward their personal views. In later chapters we will measure these views against evidence and submissions from the Crown and the fishing industry and give our findings and recommendations. The views here expressed will also need to be examined against the views of the claimant as finally presented in September 1991 to the tribunal. Again we have grouped the witnesses' statements into sections dealing firstly with fishery regulations, secondly with the quota management scheme and thirdly with general management of fisheries. In the final section we list various suggested remedies put forward by these persons.

Fishery regulations

2.6.1 Rawiri Te Maire Tau told us:

One major problem with gathering Kai Moan[a] for the people of Tuahuriri is that MAF regulations hinder many from gathering food for their families. The Te Weehi case in Christchurch 1986 clearly shows that Maori people are continually being hindered from gathering their Kai Moana and continual harassment through imposing fines has discouraged many from using their Kai Moana. (H6:36)

This statement was made in the context of the gathering of shellfish but was also related to the difficulties faced by the tribe in the inland rivers where they came into conflict in their fishing operations with the acclimatisation regulations. On this particular question the claimant Henare Rakihia Tau said this:

When the European came he bought [sic] among other things sheep, gorse, stoats, wheat, fruit trees and trout. With the Pakeha Trout came his laws. They were placed in our waterways, our garden, Te Marae o Tangaroa. For me to catch a Trout, I have to pay a licence for this privilege even though it is destroying my garden. It is an offence according to the laws of this land to take property that belongs to another. I believe this to be a just law, it is why our ancestors signed the Treaty. Now, if you are Maori, and you have property, should not the same law apply? Should not the person who put the Trout in our garden pay rental for this privilege. Should not those who take from our garden obtain permission also, and if required pay for this privilege. (J10:10-11)

James Russell gives several extracts from West Coast fishing books of the abundance of inaka (inanga, whitebait) (H8:67-68). After having spoken of official concern in 1975 that the inaka was becoming extinct, the witness said that poor management of the resource, over-fishing and habitat modification had all contributed to the depletion.

Quota Management Scheme

2.6.2 In the evidence criticisms of the Quota Management System (QMS) were voiced. Oral evidence given by Vivian Russell blamed the QMS for over exploitation and waste of fish by commercial boats at sea (L32:36).

William Goomes claimed that the ITQ system had excluded many Ngai Tahu from the fishing industry (H5:25-31). Mr Goomes told the tribunal that many people had left the industry prior to the 12 months preceding the implementation of the ITQ system as they found it uneconomic to continue within it.

Mr Goomes said the implementation of the ITQ system was an attempt to protect full-time fishers by excluding those who sought to reap the short term benefits of fishing at peak season. He suggested that while the rule may have looked sensible in Wellington it did not work in the field; and that it had dispossessed local Ngai Tahu of their right to participate in commercial fishing while enabling the new larger scale fisher people to fish regardless of "local Ngai Tahu efforts to maintain a traditional mahinga kai area for the tangatawhenua" (H5:29-30).

It should be stated at this point that the tribunal intends to deal more particularly with the question of the exclusion of the part-time fishers later in this report. The tribunal had presented before it a paper concerning the whole question of the "80 percent rule" and this will be dealt with later on in this report.

Further evidence was given to the tribunal by Martin Taiaroa, whose evidence was also given orally, asserting that the QMS took away the ability of the individual, including local Maori, to survive in the industry and that bigger boats had depleted the inshore grounds (L32:37). Similar evidence that individual rights had been affected by the QMS was also given by Taare Bradshaw (L32:66).

The QMS was also blamed by Wiremu Davis for the exploitation of areas of importance to the tangata whenua around Riverton and Foveaux Strait (L32:65). In every area in which the tribunal sat it received complaints about the exploitation of fish. In claiming that the deep sea fisheries were of utmost importance to Kati Kuri of Kaikoura, particularly as the deep sea species were available at easy distance from the shore, Wiremu Solomon suggested that the QMS supported those who had created the shortage of deep sea fisheries close to the shore by exploiting the resource (H7:5). The QMS had in fact "disadvantaged those who had nurtured the resource" said Mr Solomon.

We also received evidence from several Ngai Tahu people, who had formerly been fishers at Lake Waihora, who spoke of the effect of the QMS in depleting the resources of the lake as well as depriving them of the opportunity to fish the lake (H9:44-47).

Whilst in the Otakou area, several witnesses referred to the paua and kina. Matt Ellison emphasised that paua beds had been very hard hit by commercial harvesting licences to the extent that the land-based gatherer found it difficult to gather paua (H11:4). Mr Ellison referred to the same problem with mussels. This evidence was confirmed by Paddy Gilroy, also of Murihiku, who spoke again of the loss of paua and kina since the QMS system had been introduced (H13:19).

Kevin O'Connor, again of Murihiku, had this to say:

It is along this beach and others close to the township of Colac Bay that the Paua are being depleted through over fishing. These areas cannot sustain the large amounts of Paua being taken by so many small boats with such large quotas. It would be better if a Rahui were placed on these areas until they had time to regenerate, then only have smaller quotas with less boats. That way the M.A.F could police these areas better than they have done in the past. A similar thing is happening to the Kina Quotas that are issued. People gather them but when they are opened they are empty or have small roes, and the Japanese market only want the white ones. It is the same with the Paua they bleach them to make them white for the American market. If these markets do not want them the way they are, then leave them in the sea for those that do. It will not be long before there is a quota for the taking of what is commonly known as Sou-Westers which thrive between the Oreti and Aparima Rivers. At the moment the only way that this shell fish is gathered is by nature. That is after heavy rains, and sou-westerly winds which dislodge, and wash them ashore, where most die. It should be left this way, or otherwise monitored closely. The whole thing is education, when to take it, how to get it, how to cook it, how to preserve it, and especially not taking any more than you should, so that there is always some left for regeneration for years to come. (H13:39-40)

We have already referred to evidence from Huhana Morgan. In addition there were numerous other witnesses who criticised the QMS and its effects.

Management by the Crown and its agencies

2.6.3 We have earlier referred to the problem concerning pollution of the rivers and estuaries. The tribunal was told of difficulties caused by river beds silting up at the river mouths due to lack of flow in the rivers caused largely by draw off for water schemes and other uses (H11:4). We were also informed of several instances of inadequate control of noxious discharges (H13:2). Depletion of water in the rivers was brought to notice in several areas. Ihaia Hutana reminded the tribunal of the example of the Arahura river. Over the last ten years, the West Coast Power Board and the catchment board built a power station in the Kumara area. To feed this station water was taken from the Kawhaka creek and other tributaries to the Arahura, reducing water supply downstream and causing the river mouth to retract. This was in turn affecting the ability of the people of Arahura pa to fish (L32:48).

The tribunal visited the Opihi river during the hearing at Arowhenua and witnessed the obvious deterioration in the lower river and estuary area as a result of the diminution of water flow. The area, which had previously been a great source of food for the people of that area was sad to behold; there was slime and weed apparent and obviously no sign of the various species of tuna and shellfish that were once there.

There were also complaints about the lack of adequate policing of the resources. We were told by Matt Ellison:

MAF policy now is, due to work load, policing of recreational resources has been downgraded as an objective to the stage where it is reliant on honorary Fisheries Officers who are unpaid workers doing the work outside their normal vocation. In the past, MAF laws have not worked. (H11:5)

Various other parties also referred to the inadequacy of enforcement provisions.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.7 Remedial Action Suggested by Ngai Tahu People

2.7. Remedial Action Suggested by Ngai Tahu People

During the course of their evidence many of the witnesses proffered their own recommendations to remedy the problem of depleted and damaged resource. Rather than set out the many and often repetitive suggestions we have grouped and summarised them. It is emphasised these are the personal views of the many witnesses who appeared before the tribunal.

(a) Fishery regulations

Eels under 150 grams should not be taken.

Specific areas to come under the manawhenua of runanga for management and control purposes.

Increase penalties for offences.

Review amateur regulations with view to imposing time-out to allow regeneration.

(b) Fisheries management

Create specific seashore and estuarine reserve areas for exclusive Maori use.

Reserve in-shore "rahui" areas for recreational and non commercial fishing.

Appoint more permanent paid inspectors.

Appoint more honorary inspectors.

Engage researchers to assist in conservation.

Specific areas to be placed under manawhenua control

Use rahui procedure to close off all fishing in depleted areas.

Carry out an immediate review of the fishing industry.

Involve more Maori representation in management.

Introduce a more regionalised management system with Maori representation.

Extend access training scheme to train young fishers.

Make fisheries inspectors accountable to local people.

Give Maori people an equal say in all fisheries matters.

Cancel all licences in Waihao estuary because of its important historical and kai resource to Ngai Tahu.

Restrict commercial in-shore fishing to areas beyond most distant rock outcrop.

(c) Quota Management Scheme

Allocate quotas to Ngai Tahu as a tribe.

Redirect resource rental to iwi.

Withdraw paua licences and develop a paua enhancement plan between Ngati Huirapa and MAF.

Terminate QMS scheme, return fisheries to local people and bar foreigners.

(d) Water use and quality

Return industrial draw off of water from Arahura river back to the river.

Government in association with regional authorities to produce a waste management plan for Opihi river.

Appoint a government body to guard against pollution.

Avoid reclamation of tidal areas.

Increase Maori representation on catchment boards to at least 2 members.

Amend mining legislation to prevent pollution by permitted discharges of debris, tailings and waste water.

Upgrade Opihi river water quality by augmenting water supply and combating illegal effluent.

(e) Miscellaneous conservation measures

Introduce legislation in environmental modification and conservation to embrace Maori values and traditions.

Increase public education on need to conserve.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.8 Waihora (Lake Ellesmere)

2.8. Waihora (Lake Ellesmere)

In the Ngai Tahu Report 1991 the tribunal determined that Waihora was an important source of mahinga kai to Ngai Tahu. It recommended:

At the option of the claimants either:

8 (a) That the Crown vest Waihora for an estate in fee simple in Ngai Tahu and contemporaneously enter into a joint management scheme with Ngai Tahu which would include such matters as:

(i) controlling the opening of the lake to improve the fishery; and

(ii) improving water quality by controlling bird population and use of land margins around the lake, control of lake usage and control of sewage disposal. The joint management scheme binding the Crown to provide financial, technical, scientific and management resources;

or

8 (b) That the Crown, in manner similar to the Titi Islands, vest beneficial ownership of Waihora in Ngai Tahu but remain on the title as trustee. The Crown then, in consultation with the beneficial owners, to make regulations for the future control and management of the lake in manner similar to the Titi Islands regulations and to provide the resources of the kind mentioned in the first alternative to improve the fishery and water quality. {FNREF|0-86472-103-X|2.8|8}

The tribunal was of the view that the lake should be returned to Ngai Tahu and that the tribe be significantly involved in future decision making concerning the lake both in regard to management and use.

Despite its importance as a food resource, no fishery reserves were created over it to protect its use by Ngai Tahu. The tribunal heard evidence from a Ngai Tahu fisherman that, as a result of mismanagement and over-fishing the lake was almost fished out of eels and that local Ngai Tahu had been squeezed out under the 80 percent of income requirement to qualify for a licence because they traditionally fished the lake only seasonally (H9:39).

The tribunal was asked by the claimants to recommend that existing commercial eel licences for Waihora be cancelled. This question was deferred in the earlier land claim report as the fishing industry notified its intention to call evidence from some of the commercial fishermen. The industry later presented affidavit evidence from five

persons, three of whom held current fishing licences. Kenneth Nordstrom said he had fished for flounder and eels on the lake for 36 years and now had an ITQ for flounder and an annual licence with quota (not transferable) for eels (Z23). He supported an ITQ system for eels.

Neville Climo claimed he was Ngai Tahu and although not now holding a licence, he had fished for three years commercially (Z22). He was in favour of a QMS and opposed exclusive Maori use. Trevor Gould stated he and his family had fished Waihora for 20 years, built a fish export packing house and their home at the lake, and had invested about \$600,000 in buildings and a plant (Z24). Mr Gould said the present annual catch had been reduced from 650 tonnes in 1978 to 130 tonnes in 1986. He claimed the commercial fishers there had been led to believe they would be granted ITQs in perpetuity. The fourth deponent, Clem Smith, in an extensive affidavit, said he was born and raised on the lake and had fished it commercially for 14 years (Z25). He explained some of the history of fishing on the lake from the 1960s and gave reasons for the issue of transferable and perpetual quota and the retention of an ITQ system. Mr Smith refuted certain earlier evidence given to the tribunal by a number of witnesses. He also claimed that Maori and non-Maori had fished the lake for recreation and commercial purposes side by side for years.

The final industry witness was deponent William Wards (Z26). Mr Wards said he was of Ngai Tahu and born and raised at the lake. In a brief statement he disagreed with the claimant trust board and queried why those who seemed to be complaining had never been on the lake.

The tribunal understands the concern that the present holders of eel licences must have, particularly as eels have not been brought under the QMS and individual transferable licences issued. The fishermen have no security for the investment they have in the industry. The commercial eel fishers are therefore vitally interested in acquiring perpetual licences, one advantage of which gives them a valuable monetary interest arising from the grant.

This tribunal has on an earlier occasion noted the enthusiasm of individual fishers for the ITQ system. The tribunal does not intend to diminish the arguments put forward by the commercial fishers of Waihora but simply to record, as was done in the Muriwhenua Fishing Report, that perhaps Maori rather ironically might view the QMS as a process that presented a valuable right to those who might well have contributed to the shortage. That is not the ground upon which this tribunal moves. In the case of Waihora the tribunal, having recommended the return of the lake to Ngai Tahu, considers it also desirable that the tribe should have exclusive fishing rights from this resource. Further fishing activities must be planned and developed to fit in with the management processes needed to improve the quality of the lake. Waihora for long prior to 1840 and subsequent thereto has been an important food resource of Ngai Tahu. The tribunal has recommended it be returned to the tribe. Consistent with the right of ownership it is appropriate that user rights also be returned to the tribe. Ngai Tahu have shown in the past that they have been prepared to share resources with settlers. In the tribunal's view, and as expressed in the Ngai Tahu Report 1991, the tribunal would expect Ngai Tahu to continue that sharing in the provision of public facilities for the enjoyment of the lake by all.

The recommendation that this tribunal now makes pursuant to s6(3) of the Treaty of Waitangi Act 1975 is that all existing eel fishing licences on Waihora (Lake Ellesmere) be not renewed on expiry so that the lake can be returned to Ngai Tahu as a Ngai Tahu eel fishery. The tribunal further recommends that existing licence holders be compensated by the Crown for any consequential loss.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

02 The People's Claim

2.9 Summary

2.9. Summary

This report is written at the end of a series of claim hearings which commenced on the 17 August 1987 and concluded with final submissions on 2 September 1991. Much has happened in the fishing scene over those four years. In this chapter, apart from the affidavit evidence of the commercial fishermen filed in the High Court in 1990 and to the tribunal in 1991, most of the evidence recorded was given during 1988. In later chapters of this report we will specifically refer to the legislative and judicial proceedings and background events following the introduction of the QMS in 1986. We shall also consider whether there have been any breaches of Treaty principles by the Crown. However in the dynamics of this claim it is quite significant and worthy of note at this point that government has already legislated certain changes in fisheries control and is contemplating further policy changes. These changes and potential changes have no doubt been generated by earlier decisions of the Waitangi Tribunal, by the impact of High Court and Court of Appeal decisions and by continuing discussions between government, fishing industry and Maori. To that extent the claimants' recommendations listed above (see para 2.7) have been largely overtaken by later government action. In particular we have seen the passing of the Maori Fisheries Act 1989. This statute and its content will be examined closely further on in this report. Of more recent origin, the tribunal notes the report of the Fisheries Task Force set up by the Minister of Fisheries in August 1991 to review and make recommendations on the future development of fisheries legislation and associated structures in New Zealand. The task force released its report Sustainable Fisheries, Tiakina Nga Taonga a Tangaroa in April last. {FNREF|0-86472-103-X|2.9|9} The report is at this stage a discussion paper only and not yet government policy. It is worthy of note that one of its recommendations under the heading of mahinga kaimoana favours the setting up of small areas of the sea (estuary, reef or coastline) with exclusive rights to local iwi. This particular question of exclusive Maori use of traditional areas is also raised later in this report.

The task force report also addresses taiapure reserves, wahi tapu and a large range of environmental and conservation issues and goals. The report looks at over-fishing not only from the need to ensure long term sustainability of the fishery resource, but also so as not to compromise the interests of other harvesters such as Maori and recreational fishers.

It is a most timely report, coming as it does on the eve of the issue of this report. If the recommendations of the task force are implemented, and the tribunal would support such action, then the apprehension and concern of Maori, as expressed so strongly to this tribunal, would be allayed in the areas of traditional tribal fisheries, consultation and control, conservation and environment. Because many of the peoples'

recommendations have now been addressed in legislation or subject to review as part of the task force report recommendations we do not propose to examine them seriatim in this report.

The tribunal does however urge the respective Ministers of Fisheries, Conservation, Maori Affairs, Environment and Internal Affairs to take note of these expressed concerns of the people so that they may be considered in the policy decisions of their respective departments.

This tribunal has in its Ngai Tahu Report 1991 looked at the effect of such things as pollution and has already recommended processes for better consultation with Ngai Tahu in planning and environmental matters. {FNREF|0-86472-103-X|2.9|10} The main thrust of this sea fisheries report, as will be evident from following chapters, is to address the issue of Ngai Tahu fishing rights as affected by breaches of the Treaty.

We now commence the historical review by turning to Ngai Tahu use of the sea in earlier times.

References

{FNTXT|0-86472-103-X|2.2|1} 1 Ngai Tahu Report 1991 (Wai 27) Waitangi Tribunal Report 3/4 WTR pp 844-846

{FNTXT|0-86472-103-X|2.2|2} 2 For a discussion on Nga Tahu conservation practices see also Ngai Tahu Report 1991 pp 878-880

{FNTXT|0-86472-103-X|2.2.4|3} 3 Ngai Tahu Report 1991 pp 850-852

{FNTXT|0-86472-103-X|2.3|4} 4 ibid pp 897-898

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