

1. SUMMARY

1.1 BACKGROUND

1.1.1 Invasion

Ngati Tama and Ngati Mutunga invaded Rekohu (the Chatham Islands) five years before the Treaty of Waitangi was signed in 1840. They had voyaged more than 1000 kilometres from Port Nicholson (Wellington), where they had been under threat from Ngati Toa. Their true, ancestral home was in north Taranaki, from whence they had been driven by Waikato tribes, moving south in search of arms. This was all part of the 1820s wars after the musket came. Such rapid tribal shifts are not known to have occurred before.

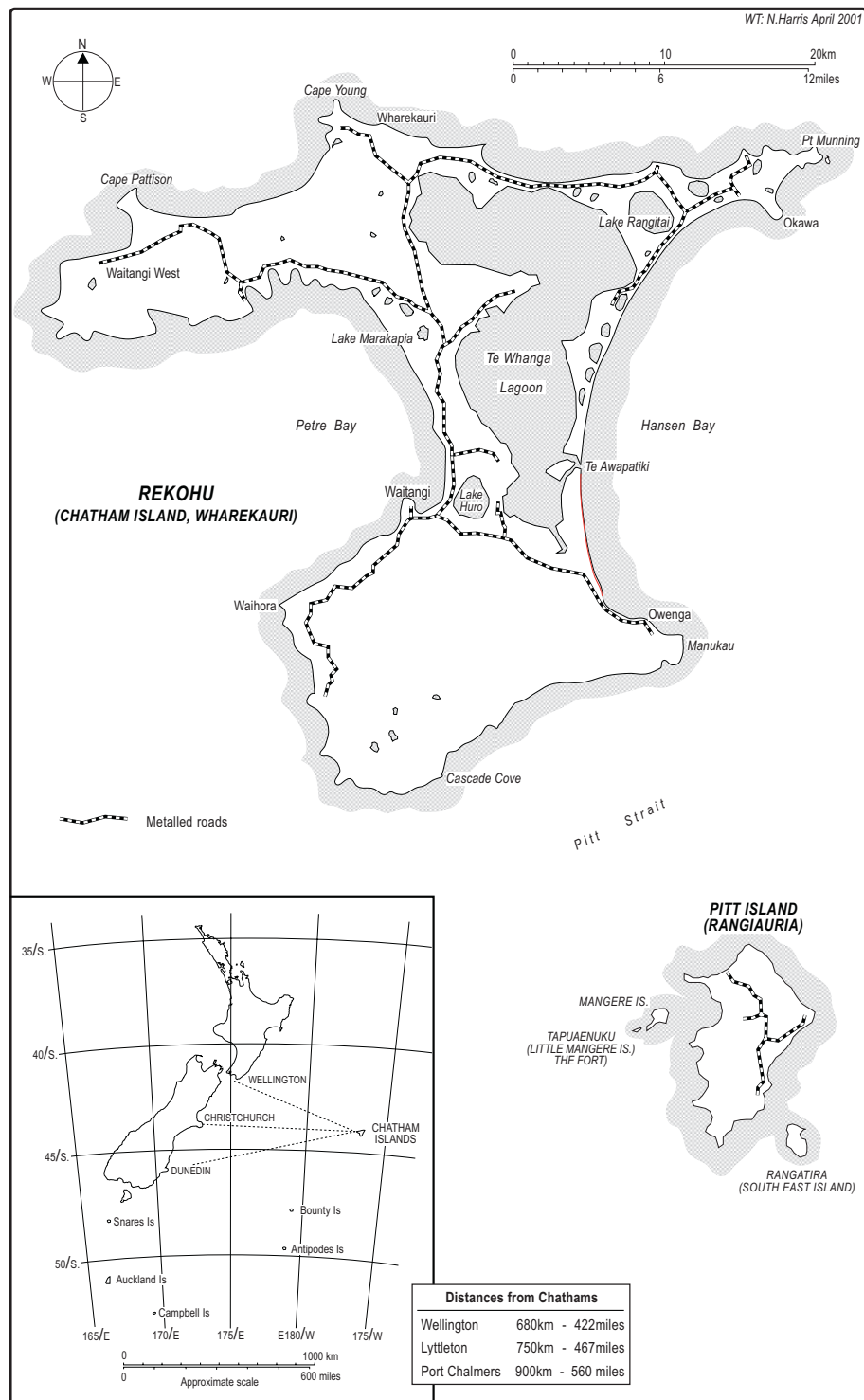
Others of Ngati Tama and Ngati Mutunga had been taken as slaves to Waikato. They were released in 1839 after the missionaries had persuaded most Maori to end slavery.

In 1835, some 900 in two trips on a British trading brig landed on Rekohu with guns. Moriori numbered about 1600 at that time. They made no objection and, it seems, were willing to have the newcomers amongst them. Later, the insurgents attacked. Moriori offered no resistance. A peaceful people, with plentiful food and no competitors, Moriori had outlawed warfare centuries before, after parting from mainland Maori and settling on Rekohu. The rule of peace was described to us as 'Nunuku's law'.

A few Europeans, mainly former sealers, were on Rekohu at the time. They were powerless to intervene but at least they were left alone. Not so the Moriori. Though Moriori were part of the Maori people (the evidence is clear on that), sailors had led the invaders to believe that they were the same as the 'paraiwhara' or 'blackfellows' of Australia, good for slaves but not for marriage in their opinion. And those not killed were enslaved. European accounts tell of their servitude in such atrocious conditions that the population was reduced to less than 200 within 30 years.

1.1.2 The Taranaki connection

The Taranaki connection was a significant factor in subsequent Rekohu events. In Taranaki, over this same time, the slaves taken to Waikato were



Map 1: Rekohu location map

freed and returned home, Europeans settled under planned colonisation schemes, many other Taranaki hapu (tribes) returned from various places, war broke out between Maori and the Crown, and the Crown confiscated most of the Taranaki land. The Compensation Court, comprised of judges of the Native Land Court, was established to return some land to Maori, but there was competition as Europeans had already occupied most of it. Meanwhile, the war continued.

The 'Chathams Maori' returned to Taranaki at about this time to hold onto their Taranaki land. The Governor had no desire to see them there. The more Maori in Taranaki, the larger the potential foe, and the less land for settlers. The Chathams Maori went to the Compensation Court, but the court declined them land. It determined that they had lost land rights through being absent at 1840. Then, later, the Native Land Court sat on Rekohu. Would Maori or Moriori get the land there?

The presiding judge, one of the judges who had heard the Taranaki case, awarded nearly all the land to Maori – 97 per cent of the main island and, later, all the outer islands. The judge appears to have been considerably influenced by a Ngati Mutunga leader who was also a Native Land Court assessor and would become the major owner of Rekohu.

The award was based on conquest. As far as Moriori were concerned, there was no conquest as there had never been a war – war being against their law – and they were prepared to share the land. There was only ever a kohuru or murder.

When the court sat, most of the Maori were actually still in Taranaki, where they remained determined to recover their own ancestral lands. The Government eventually relented, allowing them a small part of the land there. Had that not been done, Chathams Maori were likely to have joined the 'rebels' in the war, which lingered on even after the retreat of the Taranaki 'rebel' leader, Titokowaru, in 1869. But the land returned was not enough for all, and, six years after the Rekohu hearings, numbers of Ngati Mutunga went back to Rekohu to take up their land awards there.

Ngati Tama did not return to Rekohu. By a stroke of luck, half their ancestral land lay beyond the Taranaki confiscation line. The Rekohu land they sold to Europeans, and in fact they had purported to sell a large part of it even before they left for Taranaki, needing money for the voyage. Accordingly, a third party – the European runholders – had been interested in the outcome when the court sat. Acceding to the Moriori claim could have dispossessed them.

Even before Ngati Tama and Ngati Mutunga had returned to Taranaki, Moriori had appealed to the Government and the British sense of justice to relieve them of their enslavement and to restore to them their ancestral land. Their appeal, however, fell on deaf ears.

Moriori had predominated in numbers at the time that the court sat, for most of the Maori were still in Taranaki. Maori did not return until about six years later. The Moriori case was founded upon an appeal to the higher principles of justice. The court found no difficulty in deciding on the grounds of conquest. It disposed of the case in a few lines. However, the court was bound by the criteria set by the Government in the Native Lands Act. The matter was to be decided in accordance with custom, not according to any higher principles of British justice, such as might have been gleaned by reference to the Treaty of Waitangi.

The Government still did not intervene after the decision was known, and though most of the Maori were still in Taranaki, not in occupation of the Rekohu land. Any thoughts of higher justice fell prey to the war years. Settlers and many politicians spoke openly of effecting a conquest at that time, claiming that conquest was good Maori law and gave the right to confiscate the land. The Chathams case had so shown, in their view.

Most Moriori were rendered landless. In time, they shifted to the South Island. About 1000 persons are known to trace Moriori descent today, but very few still live on Rekohu.

1.2 HISTORICAL CLAIMS

1.2.1 Moriori

The Moriori claims, the context, and our main findings are essentially as follows.

(1) Enslavement

European accounts show how Moriori were treated appallingly by the Maori intruders of 1835. They were housed in inadequate whare, poorly fed, compelled to undertake extreme labour, brutalised, made to respond to everyone's bidding (including even Maori children), and, for a time, gratuitously killed at whim. They were forbidden to marry or to have children. In 1862, Moriori elders made a plea to the Government for relief,

listing the names of 226 killed and 1366 who, they wrote, had died of 'despair'. But the Government did not respond.

The Moriori claim (Wai 64) was that, in breach of Treaty obligations, the Crown failed to take reasonable steps to secure their release from slavery. Some of the main findings are that:

- ▶ Slavery was contrary to human rights standards as recognised at the time, was contrary to law, and was contrary to Treaty promises of justice, protection, and equal citizenship.
- ▶ Slavery continued on Rekohu for some 20 years after annexation, long after it was ended elsewhere.
- ▶ The Crown knew of the plight of the Moriori. There was an official resident on the islands and there were many reports over time, but the Crown did not intervene.
- ▶ Despite difficulties of distance, it was feasible for the Crown to have intervened. A few missionaries ended mainland slavery by moral persuasion alone, and Chathams Maori had special cause to be persuaded by Government wishes, for their rights to Taranaki land had been under question by the Government since 1844.
- ▶ The failure to intervene cost Moriori many lives, and prejudiced later land claims.
- ▶ The continued survival of the Moriori as a people is now at risk as a result of the loss of people over this time.

We recommend compensation with negotiations to that end.

(2) Land awards

The facts are that the Crown established a Native Land Court to determine the ownership of tribal land according to native custom. Whether the court correctly applied custom in determining land rights on Rekohu was a recurring question in our proceedings and one on which we have an opinion. But in our view the nature of the custom is not the issue. The first question is whether the Crown should have appointed the court to the task. We think that there were better options. One was to have a Maori panel decide. Something close to that was envisaged in the initial legislation but it did not proceed. The second question is whether, given that the task was entrusted to the court, the direction to decide on the basis of native custom was sufficient and was consistent with the principles of the Treaty of Waitangi.

In relation to Rekohu, the relevant variables, as we find them, included:

- ▶ The ancestral right was with Moriori. Maori were recent invaders.
- ▶ The invasion resulted from the ill effect of contact with Europeans. It flowed from the musket. But for the musket wars and a British brig, the invasion would not have happened.
- ▶ Most of the Chathams Maori had in fact returned to their ancestral homes by the time that the matter was decided. When the court sat, Moriori predominated.
- ▶ Prior to the hearing, Moriori had petitioned the Government to apply principles of British justice, as they saw them, to their case in order to relieve them from the consequences of their enslavement and to return the land to them.
- ▶ If custom had to apply, then which one, the Maori (so-called) ‘right by arms’ or the Moriori ‘right by peace’? And was the invasion customary?

Relevant policy considerations include that:

- ▶ In terms of Colonial Office instructions and the New Zealand Constitution Act 1852, custom was to be respected only where consistent with fundamental principles of humanity.
- ▶ An implied term of the Treaty was that British justice would apply where necessary, in order to – to use the Treaty’s words – ‘avert the evil consequences which must result from the absence of the necessary Laws and Institutions’ and secure ‘Peace and Good Order’. Prior Maori warfare, an end to fighting, and just outcomes were amongst the matters raised by Maori when the Treaty was signed.

The claim was broadly that the awards were unjust and contrary to the Treaty.

We consider that Moriori were prejudiced by the fact that the criteria set by the Crown prevented the consideration of the whole of the relevant circumstances and that to so consider all pertinent matters was consistent with British law at that time. An indication of the then law is that custom was not then seen as sacrosanct in law but was to be disregarded where it was repugnant to humanity. The Treaty envisaged the application of British law where that was called for, and it was called for on this occasion.

Accordingly, we find that the criteria resulted from an act of the Crown, that it was contrary to the principles of the Treaty of Waitangi, and that Moriori suffered prejudice as a result.

We further find that, had the proper criteria been applied, Moriori would have received more land and that the awards were unjust as a result.

To assess the extent of the prejudice, we consider that, had all the matters been considered, Moriori were likely to have received at least half the land.

Going back to the first question, we consider that an independent Maori panel should have been called in to consider this dispute (and others elsewhere), and that such was practical and had happened in Maori custom. We do not accept that there was an absolute right by conquest (as seems to have been the court's view). Maori sanctified rights by ancestry, deprecated conquest without just cause, but took a pragmatic approach to recognise an invader's interests in time. The main question concerned who was living on the land when a decision had to be made. We think that more land for Moriori would have been a likely result.

As to the Crown's performance of duties, we consider that prior to the hearing the Crown had been informed of the issues by Moriori and was aware of the likely outcome as a result of previous decisions of the Land Claims Commission, the Compensation Court, and the Native Land Court. In other cases, the Crown set up special inquiries if the circumstances required or intervened where the court's awards had worked an injustice, but it did not do so here. The Crown intervened for Ngati Mutunga, for example, in Taranaki.

We further observe that the Crown cannot divest itself of its Treaty responsibilities by delegating responsibility to someone else – in this instance, the Native Land Court.

Today, Moriori lack a land base for their corporate, economic, and cultural redevelopment, and we recommend that compensation be negotiated with leave to return if need be.

1.2.2 Moriori and Ngati Mutunga

Moriori and Ngati Mutunga respectively made claims concerning tenure reform. The tribal system of land rights and land control had blocked the Crown's purchase of Maori land, and so in 1862 the Crown instituted land reforms to vest all tribal land in individuals. As this affected Maori throughout New Zealand, a close study was made of the topic.

The claims were broadly that the tenure reform was culturally inappropriate and had immediate and long-term deleterious effects. We accept these claims and find that, amongst other things:

- ▶ The Crown imposed the tenure system and Maori, nationally, opposed it.
- ▶ The system was contrary to Treaty principles: Maori were entitled to hold their land according to their own preferred systems.
- ▶ The tribal system was not inimical to economic development and had a proven capacity to adjust naturally to new economic influences without affecting basic concepts. In fact, Maori leaders in various places came up with well-structured options for tribal land management.
- ▶ Under the new system, many people were denied land, tribal rights were denied, customary society and norms were seriously affected, and an unworkable title system resulted to plague the present.
- ▶ The introduced title system has considerably impaired Maori economic development.
- ▶ Consequential absentee ownership has affected Chathams Maori more than it has affected Maori on the mainland because of the extra distances involved.

We consider that the impact of tenure reform was far more than is generally appreciated in New Zealand. It had many of the same consequences as land confiscation. Negotiated compensation is recommended for both groups. Referring particularly to Ngati Mutunga, since Moriori have other heads of claim, the main loss affecting them was the direct loss of land without approval, as customarily required, the main loss that affects them in the present is the loss of tribal, corporate capacity in respect of all the land that remains. Compensation should be directed to tribal responsibilities in social, cultural, and economic advancement.

There is a further concern. Maori are about 47 per cent of the islands' population compared with about 13 per cent for the mainland. Maori land comprises about 11 per cent of the islands while it is about 7 per cent of the mainland. The effect of absentee ownership is more marked on the islands owing to distances. The consequence is also inimical to cultural ethics whereby those on the home base have priority. The title system has marked effects on Maori productivity and housing, more so than on the

mainland. The effect is also considerable on the maintenance of a viable island economy.

We recommend that a study group investigates a special Maori land law for the islands – one that gives more support to customary principles, as described in the report.

1.3 CONTEMPORARY CLAIMS

1.3.1 Crown administration

Numerous complaints were heard about the Crown's administration of the islands. We find, however, that many of the complaints relating to health and education services are not well founded, despite the reality of the concerns, the servicing being primarily affected by distance and economics. A lack of housing and farming support is conditioned by the same factors, but the housing and farming difficulties were primarily the result of the unworkable title system, and we make recommendations about that.

1.3.2 Fishing

As small and remote islands in large and distant seas, Rekohu has depended upon fish for the maintenance of a fragile island economy – and simply for personal survival. Probably, the islanders have depended upon the seas more than any other people in the country, and Crown fish management policies have had extraordinary effects on individual islanders. Many were put out of the fishing industry. The effect was more for Moriori and Maori, because they also had customary interests that were cognisable as rights in law and that were denied. However, Moriori and Maori claims have been settled in a national settlement. That being so, we are constrained in commenting, but one area appears to deserve further attention. Subsistence marine reserves are needed on Rekohu, probably more than elsewhere. Current laws allow particular areas to be defined upon cultural grounds, but here reserves from commercial exploitation are needed, not as a cultural treat, but because they are required to feed ordinary families.

1.3.3 Chathams waters

The mainland exploitation of the Chathams seas particularly rankles all islanders – Moriori, Maori, and Pakeha. More seems to have been taken from the Chathams seas than was ever put back into the islands, and the integrity of the island economy would be much stronger were the islands independent of New Zealand and were New Zealanders kept out of their seas. We are sympathetic to the call for an alternative constitutional arrangement but make no recommendations. Those issues are wider than our process could permit of and would be more suited to an alternative inquiry.

1.3.4 Conservation

Conservation measures were the subject of further debate, but generally we find that the Department of Conservation is acting consistently with the principles of the Treaty of Waitangi, and we make no recommendations. In fact, we were impressed by the level of cultural awareness amongst department officials and with the steps now being taken to preserve the cultural heritage. Above all, we appreciated their perception that, to achieve environmental objectives, it was necessary to work with, and to work in with, the community. This is especially important in remote places where regular policing is not feasible.

1.3.5 Cultural harvest

Cultural harvest, the taking of albatross and mutton-birds especially, was the subject of special examination. Moriori and Maori have legitimate concerns about the restrictions placed upon them in view of the historical intermix of harvest, survival, and culture. We acknowledge a Treaty right to take, but equally we acknowledge that the Crown has a Treaty duty to preserve, and, on the evidence, we find that the current restrictions are still reasonably necessary.

1.3.6 Te Whaanga

The title to Te Whaanga was also before us. Statutory resource use controls may still apply, but the title, we find, should be vested in a body representative of Moriori and Maori.

1.3.7 Consultation – tangata whenua and mana whenua

Statutory injunctions for authorities to consult with tangata whenua, being persons with mana whenua, or, so it is said, customary authority, have created needless headaches on Rekohu and have engendered an unnecessary bitterness. As used, the terms appear to us to be out of kilter with Moriori and Maori custom. Mana is inherent in persons, not land, and ‘mana whenua’ appears to be a modern thought that does violence to traditional ethics. It has prejudiced all on the islands and prejudices Maori generally. Our reasons are introduced in chapter 2 and developed in chapter 13. We recommend that the term ‘mana whenua’ be taken from the legislation.

We find that Moriori and Maori are both tangata whenua of Rekohu, that both have the right to their own institutions, and that both should be consulted with. The Department of Conservation had already reached the same conclusion, and so we make no further recommendation.

1.4 PRELIMINARY CLAIMS

For context, we must also report on certain preliminary claims by which Maori hoped that the Moriori claims might never reach a hearing.

1.4.1 Right to claim

In terms of the Treaty of Waitangi Act 1975, only Maori may bring claims to the Tribunal, and, it was said, Moriori are not Maori. But the scientific evidence is clear that Moriori are part of the Maori race. An old thought that they are really Melanesian was disproved as long ago as the 1930s. That popular opinion persisted, although it has been disproved in many subsequent inquiries.

1.4.2 Status

It was said that Moriori had ceased to exist as a people and that the claims were pretentious as a result. We find that, as a people, they exist, and we describe the history of their regrouping.

In the alternative, it was said that, through conquest and enslavement, Moriori had lost mana and had no mana on which to claim. The best

evidence against that was the history of the people who were saying it. Ngati Mutunga had also been conquered and enslaved, but still they have mana now. Mana, of course, is personal. It comes and goes and is held in different degrees over time. And, by their hosting and bearing, we could see that Moriori have mana today.

1.4.3 Treaty rights

It was claimed that Moriori have no Treaty rights since the Treaty does not refer to them. We find that they are as much Treaty beneficiaries as any other Maori. (Incidentally, the Treaty does not refer to Maori – it refers to the native people.)

1.4.4 Jurisdiction

Before we heard the matter, Maori took a jurisdictional point to the High Court concerning the Moriori land claim. The argument was that a court made the land awards, not the Crown, and that claims can lie only against the Crown. However, the issues before us were whether the Crown had set the right rules by which the court was to decide and whether the Crown should have intervened in this case after the court awards, as it had done elsewhere.

1.5 REKOHU, THE CHATHAM ISLANDS, OR WHAREKAURI?

In this report, we refer to Rekohu by its three names. Taking them in the order in which the islands were occupied, the name is Rekohu to Moriori, the Chatham Islands to Europeans, and Wharekauri to Ngati Mutunga. Each name is legitimate, each now meaning home for the respective occupants. Yet, unless we are talking of the Europeans or Ngati Mutunga, Rekohu is preferred in this report. Ngati Mutunga should appreciate the point. In Taranaki, they were the conquered and complained of the many name changes that followed. They also objected to Mount Egmont. In the *Taranaki Report*, we accepted that point as valid. Here, the same principle applies.



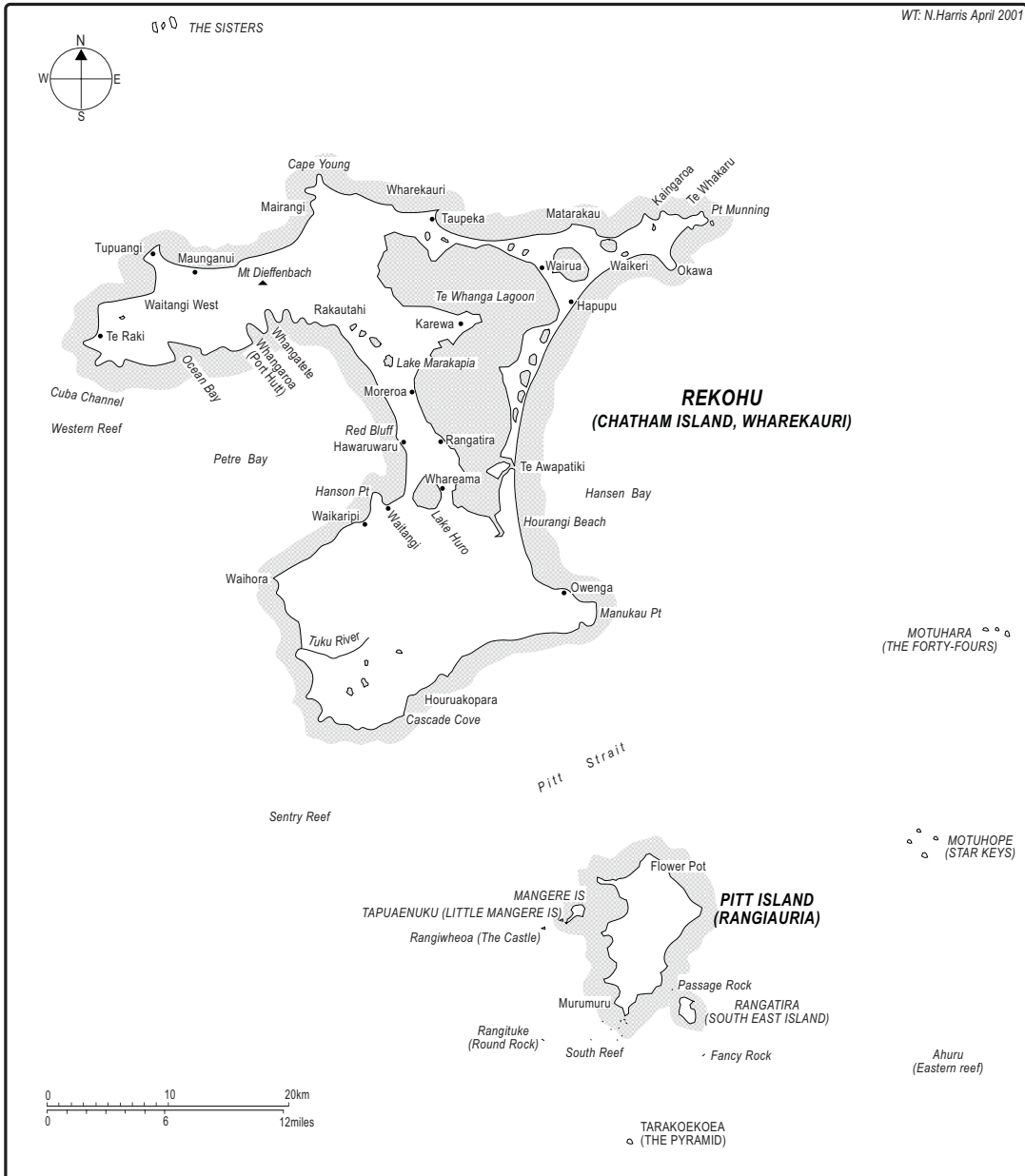
Figure 1: There are stories of blackfish or pilot whales stranding on Rekohu from the earliest times of human habitation. Moriori regarded the whales as gifts from the sea gods. Photograph courtesy Alexander Turnbull Library (038501).

1.6 CONCLUDING REMARKS

The Moriori claims were as much about the recognition of Moriori today as about compensation for historical losses from the denial of land rights.

Moriori have faced numerous challenges to their status and identity and still do. But they represent a unique and distinct culture that greatly enhances the New Zealand cultural heritage and the current cultural mosaic. They developed the rule of peace, which might also be seen as the rule of law, to an unprecedented level in early New Zealand, and we found them to be still most kindly disposed. Any steps that will assist the advancement of the Moriori culture, and of its people, will be of long-term benefit to the country.

The Chatham Islands are also a unique part of New Zealand, with their remoteness, their special blend of Moriori, Maori, and European, and the common culture that we describe as the 'Chathams way'. Many mainland laws can make no sense there. But nor can mainland justice make sense for so long as the islanders are kept out of the control of their own resources, the land and the sea.



Map 2: Rekohu – the islands