

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND
I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

UNDER the Resource Management Act 1991
IN THE MATTER of appeals under Clause 14 of Schedule 1 of the Act
BETWEEN **BAY OF ISLANDS MARITIME PARK
INCORPORATED**
(ENV-2019-AKL-000117)
**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND
INCORPORATED**
(ENV-2019-AKL-000127)
Appellants

AND **NORTHLAND REGIONAL COUNCIL**
Respondent

**REBUTTAL EVIDENCE OF ROBERT WILLOUGHBY AND
MATUTAERA CLENDON FOR NGĀTI KUTA KI TE RAWHITI, BAY OF
ISLANDS MARITIME PARK INC AND ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INC (CULTURAL)**

TOPIC 14 – MARINE PROTECTED AREAS

22 JUNE 2021

MAY IT PLEASE THE COURT

1. Our names are Robert Willoughby and Matutaera Clendon.
2. Our qualifications and experience are set out in our primary statement of evidence dated 18 March 2021. We confirm that in preparing this evidence we have complied with the Expert Witness Code of Conduct.
3. This statement of rebuttal evidence responds to the evidence of:
 - a. Wane Wharerau.
 - b. Hugh Rihari
 - c. Aperahama Edwards
 - d. Paul Knight
 - e. Tā Tipene O'Regan
 - f. Dr Phil Mitchell
 - g. Kipa Munro
 - h. Nora Rameka

Wane Wharerau and Hugh Rihari

4. Mr Wharerau talks about not being notified directly of this appeal by Forest & Bird and BOIMP.
5. When public submissions were called for on the Northland Regional Plan, Ngāti Kuta was late getting involved. Ngāti Kuta joined the appeals by Forest & Bird and BOIMP on the basis that Ngāti Kuta has an interest greater than the public generally.
6. There was no deliberate ploy to side-line iwi or hapū. Ngāti Kuta responded to a public submission and appeal process as it affected Ngāti Kuta kai cupboards, our own backyard and the marine life that lives within it. The same opportunity was offered to the public at large. Ngāti Kuta took the initiative to participate given the importance of our rohe moana to our whānau/hapū.
7. We respect the role of TRAION and what they are trying to achieve, but we have had very little support from them (although they did support our rāhui rollover in 2020). We conclude we are “out of sight, out of mind” and have no choice but to take care of ourselves.
8. Mr Wharerau questions Patukeha’s position. Patukeha has made it clear they will determine their own whakaaro on social and political matters that affect them. Regardless, in all things we take each other with us on almost all matters of social, cultural and political importance.
9. Mr Wharerau says that TRAION is strongly opposed to controls or restrictions being proposed through RMA plans, and that iwi and the community are better served if the Court decides to leave the work of conservation to kaitiaki under the Fisheries Act and MPI.

10. There are customary tools prescribed in the Fisheries Act 1996, and we currently use them in the Maunganui Bay rāhui and Waikare Inlet taiāpure. We do not see any problem with using those tools alongside regional plan rules which last for 10 years.
11. Mr Wharerau says TRAION will support hapū to protect and manage their ecology below the waves. Ngāti Kuta is not looking to establish marine reserves and is not opposed to customary, recreational or commercial fishing. We are opposing damaging fishing methods in sensitive ecological areas. While customary tools are available under the Fisheries Act, the Regional Council also has a responsibility to care and protect those same ecosystems.
12. We believe it is important to note that the Fisheries Act is settled in two parts, the Commercial Settlement managed by TRAION and Ngātiwai Trust Board and the Customary Regulations. The Fisheries Act is built on extraction (sustainable utilisation) whereas the RMA is for the protection of fauna and flora. Ngāti Kuta is trying to find a balance between these responsibilities that meets Māori collective interests. After all, a lot has changed since 1996.
13. Mr Wharerau says that he is confused as to why kaitiaki would “seek to relinquish their responsibilities for an indistinct provision in the Resource Management Act”. Mr Rihari says kaitiakitanga is not an end goal and cannot be achieved by creating a rule. He says the proposed controls will diminish the mana of the kaitiaki and kaimoana.
14. Ngāti Kuta is not relinquishing its kaitiaki rights and responsibilities. We are seeking protection of fauna and flora against damaging fishing methods. To us, this is part of kaitiakitanga.
15. The rohe pōtae of Ngāti Kuta is grounded in the care and protection of our fauna and flora above and below the waves. This goes to the heart of our cultural heritage and responsibilities as kaitiaki and is consistent with our own customary lore and traditions of kaitiakitanga and its underpinning principles:
 - a. Respect for the seas, our lands above and below the waves, the coastal environs, its natural habitats and natural wildlife, resources and dependent communities.
 - b. Respect for our traditions and cultural heritage of the ahi kā and their customary lore handed down that keeps our home fires burning.
 - c. Respect for our relationships and ancestral connections that speak to us as Whānau/Hapū/Iwi and to those living in our wider communities.
 - d. Respect for natural lore of nature, our customary lore, the laws of NZ and Te Tiriti O Waitangi with particular regard to Article 2 – Political, Social and Economic rights.
16. We have two different world views. Māori customary lore, which is holistic and long term, built around tribal communities of Whānau and Hapū, and Iwi who have social and commercial imperatives to meet. We recognise the demands placed on the fishery to fulfil customary, recreational and commercial take. It is

good that our collective knowledge is at the table representing different perspectives with the aim of integrating these into a common understanding.

17. Ngāti Kuta is not advocating the option of putting a Mātaitai reserve around Area C. This would close off all commercial fishing around Motukokako and down to Taupiri Bay. This would be unhelpful to the commercial sector that has work and employment obligations to meet. We are trying to achieve a balance.
18. Ngāti Kuta agrees kaitiakitanga is not an end goal. It is an ongoing obligation to care and protect the resources and our dependent communities. Kaitiakitanga is a rule of customary lore and reinforces the need for Ngāti Kuta to equip itself with trained kaitiaki practitioners to oversee the health of our coastal environs below and above the waves.
19. Ngāti Kuta can only use the tools available to us to give effect to rāhui concepts. We have no intention of surrendering our rights under the Fisheries Act and we do not agree that 10-year regional plan rules equate to surrendering our rights. There are other areas where kaimoana gathering can take place. We would not issue customary permits within a rāhui. We are fisher people by tradition, and we understand a healthy fishery is a sustainable fishery. The RMA offers a different set of tools based around fauna and flora protection. What we know is the state of our fishery has changed and our rohe ecosystems need help.
20. The role of kaitiaki will not be diminished, on the contrary we want our kaitiaki trained in a range of disciplines to enable kaitiakitanga to be given effect. We would like to be involved in monitoring and enforcement if possible. We would like to see Te Rāwhiti Hau Kāinga equipped and trained to carry out an effective role, like kaitiaki rangers, with powers to oversee a range of activities above and below the waves. This could be a shared resource to DOC, NRC, Min Fish, Surveys, Civil Defence amortised across agencies.
21. Mr Wharerau and others say that a s 186A closure is consistent with kaitiakitanga, but RMA rules are not. We disagree.
22. In 2007 Ngāti Kuta purchased the frigate HMNZS Canterbury and put it down in Maunganui Bay as an artificial reef to restore the mauri of the fishery. We learned from our research and historical records that Maunganui Bay was a flourishing fishery where fishing seasons were open and closed by Maramataka science. We took it upon ourselves to establish a rāhui under customary lore, advertising to the public “you can look but you can’t touch”. It had no backing in western law. This led us to finding other ways to restoring the mauri of Maunganui Bay under a s 186A temporary closure.
23. In 2010 our s186A rāhui was approved for the first time. The Fisheries Act was the only tool available to Ngāti Kuta. We must re-apply every two years, which we have done since 2012.
24. In 2018, despite having got our application in on time, the application was not processed in time by MPI and the Minister, and as a result there was a 5-week period when there was no legal protection in place. Robert wrote to MPI in October 2018, before the rāhui expired, to raise his concern that the fishing community had become aware of the upcoming gap in protection. Our concern

was that the recovering marine life could be quickly stripped out by fishing during that period (which included Labour Weekend). Robert asked if Maunganui Bay could get some protection over this period, such as from DOC. The MPI official told Robert that Minister Nash had agreed to the new closure but still needed to sign the Gazette Notice and that due to parliamentary recess Ministers were less available than usual. The Analyst also said that there was no other legislative protection that MPI could put in place, and she didn't know about what DOC would be able to provide. She suggested that Ngāti Kuta put out its own communication about the Bay, which MPI would link to in its social media pages. She suggested bullet points for Ngāti Kuta to communicate, such as:

- a. A pod of orca visited the Bay last weekend.
- b. The Bay is a great community asset.
- c. We are delighted that Minister Nash has agreed to a further fishing closure of the area.

A copy of the emails is attached as **Appendix 1R**.

25. That was not an effective response to a 5-week gap in protection.
26. The Minister of Oceans and Fisheries has the last say on our applications. Our fear is that political influence could veto an extension application, whereas the regional plan is in place for 10 years and the decision whether to have these controls in place is not politically influenced.
27. The concept of a 186A rāhui is designed as an extraction-based tool to open and close a fishery. For Maunganui Bay the fishery was so depleted it is only now starting to recover. The risk we face is our application might be declined and opened up to fishing, destroying all of the work and efforts we have put into building the biodiversity primarily for education purposes.
28. For those reasons, we cannot agree with the opinions of Wane Wharerau, Hugh Rihari, Aperahama Edwards, Paul Knight and others that the s 186A tool represents the best tool to exercise kaitiakitanga. In our experience, it all depends on MPI's (and the Minister's) will and processes.
29. Mr Wharerau refers to the Waitangi Tribunal finding that the Ngāpuhi Rangatira who signed Te Tiriti o Waitangi did not cede their sovereignty to Britain. Ngāpuhi and Ngāti Kuta are also bound by the findings of the Waitangi Tribunal and the reinforcement of Tino Rangatiratanga and Mana Motuhake. Our origins in Rawhiti and the Bay of Islands go back since time immemorial. Every statement of claim secures our ahi kā and kaitiaki status to Te Rawhiti. Ngāti Kuta has never ceded their Tino Rangatiratanga.
30. Mr Wharerau refers to TRAION's vision (at 6.1). Ngāti Kuta respects the important role TRAION plays in the wellbeing of all Ngāpuhi whānau. Equally, Ngāti Kuta also plays its part by taking care of its own backyard and getting on with its own survival as a hapū. The projects, activities and networks add currency to our presence and Mana Motuhake.

31. Mr Wharehau describes a hui on 7th May 2021 at Rawhiti (at 8.1 – 8.3). We were at the hui and do not agree with what Mr Wharehau says was agreed there. The hui was well attended. Ngāti Kuta and Patukeha representatives including Moka Puru were present. Issues around the Fisheries Act versus the RMA were discussed at length. No decisions or resolutions were made but attendees came away better informed on possible solutions under the Fisheries Act and the RMA.
32. Mr Wharerau talks about the discussions that happen in relation to support for mātaītai reserves before an application for a bylaw can be granted (at 10.6). Ngāti Kuta has socialised their relief with the Rūnanga Taumarere Rohe Moana Collective, which is a collective of neighbouring hapū who are part of the Ngāti Kuta Patukeha Gazettement (Kororareka Marae Society, Kapotai, Ngāti Manu, Patukeha, Ngāti Kuta, They are aware of what Ngāti Kuta is seeking and hapū feedback was taken on board for all three initiatives (Sub-areas A, B and C).
33. Mr Wharerau says that the area where the appellants and Te Uri o Hikihiki are seeking protection in the Northland Regional Plan are within Ngāpuhi's exclusive coastline area, and the shared coastline with Ngātiwai (at 11.3). Ngāti Kuta objects to Ngāpuhi assertion of area exclusivity with Ngātiwai in the customary area of Ngāti Kuta rohe moana. They may have an agreement between themselves but at no time have the parties come into our Rāwhiti Marae to consult with us. In fact, our Kaumātua Moka Puru was told it was none of our business. We are now at a point of looking after our own backyard under imposition by TRAION who have done nothing to support Ngāti Kuta or the Hau Kainga at Te Rawhiti in their endeavours.
34. Mr Wharerau talks about siltation (at 11.6). Ngāti Kuta agrees siltation is detrimental to a healthy benthic platform. Sea grass beds are an integral part of our ecosystems providing habitat for shellfish, crustaceans and small fish. Ngāti Kuta supports putting more effort and resources into upstream mitigation efforts. The cumulative effects of sedimentation are detrimental to a healthy marine life. That does not take away from the need to remove damaging fishing methods in sensitive ecological areas.
35. Ngāti Kuta is heartened by Mr Wharerau's evidence (at 12.11) that TRAION may consider setting sustainable fishing methods conditions in future. We fully understand the commercial challenges and working toward a "Values" point of difference.
36. Mr Wharerau talks about Ngāpuhi people's reliance on the sea's resources (at 14.4). Ngāti Kuta whānau have lived off the sea since mai rānō. Rock fishing and beach netting was a norm. We are hunter gathers by need and that is how we have always lived and remains today. We are using the RMA tools to limit damaging fishing methods that are wrecking our reef systems, sea floors, kelp forests, sponges and reef corals.

Paul Knight

37. Mr Knight talks about effects on commercial fishing. The challenge we face is in matching "Value with Values". Maximising commercial yields has the effect of

supporting TRAION social and cultural endeavours. The same applies to Ngāti Kuta where “Values” is the measure we judge ourselves by. Our economic base is not in TRAION dividends but in the way we excise kaitiakitanga and traditions. Ngāti Kuta is reliant on its own talents to do things for themselves. Their lands, seas, nature, and whānau are our social assets we have left to work with.

38. Mr Knight says that Fisheries Act mechanisms are much nimbler than RMA plans (8.21). We have discussed our experience with the s 186A closure above. Based on that experience, we disagree. We do agree the tools in the Customary Fishing Regulations are tactical by design. Our objective is to mitigate damaging fishing methods and the RMA tools look better suited.

Tā Tipene O’Regan

39. Tā O’Regan says that sustainable use is a critical feature of kaitiakitanga. Rāhui is a replenishment and extraction tool. It was used to open and close fishing seasons. It means no take. It is this tool we used at Maunganui Bay. It is part of kaitiakitanga.

Kipa Munro and Nora Rameka

40. Relationships go to the heart of our kinship ties. Māori do not use hard lines on a map to define territories or areas of interest. Hapū boundaries are fluid like the fish below the waves. Fish breed and feed and have no idea of where our boundaries lie. Therefore we refer to relationships and the principles of customary lore that respects those resident hapū communities. Ngāti Rehia are very close relations to Ngāti Kuta and Patukeha. We share areas of interests for customary gathering. When Ngāti Rehia come into Ngāti Kuta rohe it is customary to ask permission and vice/versa. These are unwritten rules all whānau and hapū follow.
41. The new Area C boundary ensures that the fishing controls proposed by Ngāti Kuta do not go into the gazetted rohe moana of Nga Hapu o Taiamai Ki Te Marangi, which is of interest to Ngāti Rehia.

Andrew Johnson

42. Andrew Johnson (NZSFC) talks about the abundant fishery in the Bay of Islands. Maunganui Bay to Oke Bay used to be a thriving fishery. It is not now. Ngāti Kuta would be happy to work together on a fish count survey sponsored by the NZSFC to confirm this. Ngāti Kuta has resident marine biologists that can undertake such survey work.

Kim Drummond

43. Mr Drummond talks about pātaka and says the controls could prevent the establishment of a pātaka in the area (79). Pātaka means kai cupboard. The kai cupboards we refer to are being depleted by damaging fishing methods, sedimentation, and over-fished reefs. Pātaka can only be re-established through re-generation of our ecosystems and biodiversity. We have inter-generational knowledge of pātaka and where to fill our needs. The rules we want to introduce will not restrict pātaka. We would not establish pātaka in a rāhui anyway.

44. The area we want protected represents a tiny part of the total fishing area in and around the Bay of Islands and out to 12 nautical miles.

Phil Mitchell

45. Dr Mitchell says that prohibiting fishing would not recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga as required by section 6(e) of the RMA. Dr Mitchell's opinion does not consider the evidence of Ngāti Kuta about our relationship with our water and taonga. Our taonga are depleted and we want to protect them to sustain those relationship.
46. Dr Mitchell also says the Fisheries Act tools are better. The obligation of kaitiakitanga goes to the heart of our culture, customs, and traditions. We have discussed kaitiakitanga above.
47. We agree that both Acts have a place but for Ngāti Kuta we want to play an active part on things that affect us and taking care of our own backyard, not a passive role where policies are written or thought up that are out of sync with the way we live or with the traditions instilled in us. The rule of protection, participation and partnership is what we must endure in this process as kaitiaki ki te moana ki te whenua.

Matutaera Clendon and Robert Willoughby

22 June 2021

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: Dee Wallace <Dee.Wallace@mpi.govt.nz>

Date: 9/10/18 08:45 (GMT+12:00)

To: huri.rewha@gmail.com

Cc: "Blake Abernethy (Blake)" <Blake.Abernethy@mpi.govt.nz>, David Scranney <David.Scranney@mpi.govt.nz>, Judith MacDonald <Judith.MacDonald@mpi.govt.nz>, Matua Ra Heke <MatuaRa.Heke@mpi.govt.nz>

Subject: RE: Re: 186A Maunganui Bay - Response from Rob Willoughby

Kia ora Robert,

Thank you for your email. The new closure is scheduled to begin 16 November 2018.

Minister Nash agreed to the new closure on 9 September 2018. I am hopeful that he is able to sign the *Gazette* notice that formalises the new closure notice this week, however I am mindful that it is parliamentary recess at the moment which means that Ministers are less available than usual. You are correct in that we are currently in the procedural part of the process to put the new closure into effect.

I will let you know as soon as I'm advised that the Minister has signed the new *Gazette* notice. The date he signs won't change the date that the new closure comes into effect but certainly shows that the new closure is inevitable.

Although Te Kupenga o Ngāti Kuta and Patukeha ki Te Rawhiti are maintaining their traditional rāhui over the Bay, MPI and its fishery officers are not involved in managing traditional rāhui. There is no other legislative protection that MPI can put in place. I don't know about what DOC are able to provide.

I've discussed your email with others in MPI. The suggestion has been made that you put out your own communication about the Bay. MPI can then link to your information in its social media pages, to get the message out to a wider audience.

You are best placed to decide what include in a media release or article on a website, but here are some suggestions:

- A pod of orca visited the Bay last weekend.
- The Bay is a great community asset.
- The area is iconic, and an international tourist destination. Many people travel to the Bay to dive on the ex-frigate Canterbury.
- The area is important to the local tangata whenua, who have a traditional rāhui over the area that prohibits fishing, except for harvesting kina.
- The rāhui protects the fish stocks in the area that were previously decimated by fishing.
- The fisheries sustainability of the area is important for everyone.
- We are delighted that Minister Nash has agreed to a further fishing closure of the area.
- When Te Kupenga o Ngāti Kuta and Patukeha ki Te Rawhiti proposed the closure, it received overwhelming public support from both New Zealanders and internationally.

Please let me know what you decide.

Please also feel free to contact my manager, Blake Abernethy, who I have copied into this email, or on mobile 021 918 488.

Nga mihi

Dee

Dee Wallace | Senior Analyst

Spatial Planning and Allocations
Fisheries Management | Fisheries New Zealand - Tini a Tangaroa

Ministry for Primary Industries - Manatū Ahu Matua | Pastoral House 25 The Terrace | PO Box 2526 | Wellington 6140 |
New Zealand
Telephone: 64-4-819 4637 | Web: www.fisheries.govt.nz www.mpi.govt.nz

From: Dee Wallace

Sent: Monday, 8 October 2018 11:07 AM

To: 'Huri Rewha' <huri.rewha@gmail.com>

Cc: Helen Harte <helen.harte.nz@gmail.com>; Matua Ra Heke <MatuaRa.Heke@mpi.govt.nz>; Anya Hook <arnz4037@gmail.com>; Shirley Hakaraia <Shirley.Hakaraia@nzei.org.nz>; Northland Dive <shane.julia@northlanddive.com>; sreedthomas <sreedthomas@doc.govt.nz>; Richard Witehira <blandyw@hotmail.com>; Bronna Brown <matclen@xtra.co.nz>; Jamie Hurikino <jamieh@tepuna.org.nz>

Subject: RE: Re: 186A Maunganui Bay - Response from Rob Willoughby

Hi Robert

Thanks for advising.

The gazette notice for the new closure is being put before the Minister to sign this week. It will be gazetted shortly thereafter, and come into effect 16 November 2018. It will end 15 November 2020.

I will discuss your email with my manager today, and then get back to you.

Thanks for the great footage.

Dee

From: Huri Rewha [<mailto:huri.rewha@gmail.com>]
Sent: Monday, 8 October 2018 10:58 AM
To: Dee Wallace <Dee.Wallace@mpi.govt.nz>
Cc: Helen Harte <helen.harte.nz@gmail.com>; Matua Ra Heke <MatuaRa.Heke@mpi.govt.nz>; Anya Hook <arnz4037@gmail.com>; Shirley Hakaraia <Shirley.Hakaraia@nzei.org.nz>; Northland Dive <shane.julia@northlanddive.com>; sreedthomas <sreedthomas@doc.govt.nz>; Richard Witehira <blandyw@hotmail.com>; Bronna Brown <matclem@xtra.co.nz>; Jamie Hurikino <jamieh@tepuna.org.nz>
Subject: Fwd: Re: 186A Maunganui Bay - Response from Rob Willoughby

Dee, appears the word is out the Maunganui Bay is open to fishing from 13th October till 1st December. The idea of keeping it quiet and hoping no one will notice has not worked. We are now insisting a gap protection is put in place to cover us for this period. The rule of precedent and intent could be used to ensure the fishery doesn't get fished out like what happened on the ASTROLAB reef. Can Maunganui Bay get some protection over this period who should we do this ourselves? Can DOC provide some fauna and Flora coverage? Please Advise. Rbt

And also enjoy the Orca footage in Maunganui Bay on the Weekend.