

MAORI FISHING RIGHTS
IN NEW ZEALAND:
AN ECONOMIC PERSPECTIVE

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PREFACE

New Zealand is a country with a long coast line and a large fisheries resource. Over recent years, this resource has become more significant both in terms of value and the visibility of the claims upon the resource by the Maori people. The allocation of the property rights involved with the fisheries resource has recently been receiving attention and the 1983 Fisheries Act provides for an integrated management approach and a balancing of the needs of different use groups.

This paper examines the question of the Maori claim to the fisheries resource and the economic efficiency aspects of meeting those claims. The mechanisms proposed are applicable to a wide range of resource allocation questions and, as the author points out, could be used without impairing the economic efficiency of resource use.

R G Lattimore
Director

SUMMARY

The present call for recognition of Maori fishing rights is based on the Treaty of Waitangi. Similarities between the Maori rights and recent developments with North American Indian fishing rights are presented and discussed. Traditional Maori fishing and cultural values are discussed and a current Maori position outlined.

Economic efficiency issues are examined, and the conclusion is reached that a change to more Maori ownership of fishing rights is unlikely to compromise economic efficiency. Issues arise in trying to value different cultural beliefs between two groups in society, but these differences can be accommodated within an economic model. The major issue is an equity concern, and the debate should concentrate on equity and the legal and moral ramifications of the Treaty of Waitangi.

Section 1

Maori Fishing Rights

1.1 Introduction

There is a growing concern in New Zealand about the issues associated with traditional fishing rights. The legal and moral claim for Maori ownership of the New Zealand fishing resource is based upon the Treaty of Waitangi. This treaty was signed between many of the Maori Chiefs of New Zealand and the English Crown on 6th February, 1840. The English version of Article 2, the part relevant to fisheries, reads, in the first part:

"Her Majesty, the Queen of England, confirms and guarantees to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession." (Pearce 1968).

Although this treaty has never been ratified and passed into law, it has come to be a most important symbol to all New Zealanders. The issue is that many New Zealanders, including most of the Maoris, feel the rights guaranteed under the treaty have not been honoured. This is exemplified by the following two quotes:

"There is a view that Maori fishing interests can be protected as part of the general public interest in fishing. This view reflects a refusal to take Maori values seriously or to come to grips with the promise our forefathers made in the Treaty of Waitangi. We must now face Maori demands for the exclusive use of traditional fisheries in accordance with a literal interpretation of the Treaty." (Findings of the Waitangi Tribunal on the Manakau Claim 1985), and:

"We conclude unanimously that the law pertaining to Maori fishing grounds does not give proper recognition to Maori interests in the light of the Treaty of Waitangi" (Interdepartmental Committee on Maori Fishing Rights 1985).

A similar situation has arisen in Canada, with many issues unresolved between traditional fisheries and current resource use. Pearse in a major policy statement on Canadian Fisheries, concluded, with respect to Indian Rights:

"...apart from the law Canadians have a moral responsibility to ensure that this important claim on fish resource is respected. It is inconceivable to me that those Indians who entered into treaties more than a century ago would understand or could have anticipated, the subtleties of the parliamentary and judicial system that could override their bargain with the government" (Pearse 1982).

In the United States the Boldt decision of 1974 reaffirmed the Treaty-Indians of Washington States' right to one half of the salmon resource and also the guarantee of preservation of that resource (Blumm and Johnson 1981). In many respects the Indians of the Pacific Northwest and the New Zealand Maori have parallel cases. Both regarded fishing as the economic and cultural centre around which their life-style evolved. In both the Stevens' Treaties of Washington and the Waitangi Treaty, the tribes were prepared to sell land only if they were guaranteed the right to fish. Both were negotiated by Government diplomats with tribal representatives unfamiliar with legal expression and not represented by lawyers. The Stevens' Treaties have been ratified by law, the Waitangi Treaty has not been.

The objective of this paper is to review Maori fishing rights from an historical perspective and discuss the current position of these for the Maori. The efficiency and equity implications of possible changes in ownership of the fishing resource are discussed. Some parallels and differences between the New Zealand and North American Native fishing rights issues will be outlined.

1.2 Traditional Maori Fishing

In a predominantly coastal society where no land mammals were available for meat, the Maori society placed great reliance upon the fishery resource. It was more however than just a source of food. In a spiritual sense the oceans were of great significance. They were under the domain of a deity (Tangaroa) and the "products" were his children. A complex set of rituals governed the relationships between fisherman and the produce of the sea. These rituals included a set of ethics which provided the additional benefits of conservation through prohibition (rahui) of harvesting at certain times of the year. This combination of respect and reverence for the sea and its products endures today and underlies much of the concern for fisheries expressed by the Maori. Firth writes that in spite of popular belief about common property, the Maori had a well-defined property rights system with regard to both land and fishing grounds. Each hapu (extended family) owned a fishing area with carefully defined boundaries, and these were handed down from one generation to the next.

The Maori had a seasonal pattern of labour organisation for each occupation. Fishing was divided by season, with geographical and climatic differences explaining much of the apparent variation in these fishing seasons. There can be little doubt that the Maori were excellent fishermen with a reasonably sophisticated technology. Seine nets were sometimes very large, possibly up to 5 fathoms deep and 400 to 500 fathoms in length. Barbed hooks, rolled 2-ply flax lines and traps were all used extensively. The combination of a plentiful resource and skilled fishermen ensured the Maori of a good catch. More importantly, they knew when and where to fish: "No Maori threw a baited hook into the sea or set a trap on chance but he knew definitely the kinds of fish he was after and the time and place where he would meet with success" (Te Rangi Hiroa (Sir Peter Buck) 1949).

Harvesting of seafood (kaimoana) also held great cultural importance for the Maori. Much mana (prestige) and standing was associated with being able to provide feasts at meetings and cultural events, and it was important that supply of food should exceed the needs of guests. A catch was often shared, sometimes to the extent that there may be none left for the original catcher of the seafood. Tribes were renowned for a particular species of seafood, and it was considered important to invite guests to share in this particular food. This tradition is still part of modern day Maori culture, and the desire to harvest kaimoana for special occasions is behind much of the present concern for rights to the fishery resource.

1.3 Current Situation

An historic national hui (meeting) to consider Maori fishing rights was held in November 1985. All the Maori tribes of New Zealand were represented, and this hui was the first occasion in New Zealand's history where this has happened. Following this hui, a submission has been made to the Parliamentary Select Committee on Fishing. A Maori position has been made quite clear with this submission, with the Maori Council stating that the Treaty of Waitangi maintains ownership of fisheries to be the sole domain of the Maori, and any impact which results in financial gain/return must be negotiated between the Government and the Maori. The principle of joint ownership as enacted in the Lake Taupo case (discussed later) is adopted in the management plan, and one half of all royalties from fishing shall belong to the Maori. Whether or not this position will be agreed to is likely to become an important issue in New Zealand politics. An opposing view, expressed later by commercial fishermen, considers "it is not too surprising that a national group (newly formed) should "shoot for the moon", when in real terms they will be lucky to make it around the block in the near future" (Maori Fishing Hui 1986).

The major precedent for ownership and administration of fisheries is Lake Taupo, New Zealand's largest lake and an internationally renowned trout fishing resource. Under the terms of a 1926 Act, "The bed of the lake known as Taupo, . . . , together with the right to use the respective waters, are hereby declared to be the property of the Crown, freed and discharged from the [Maori] customary title (if any) or any other [Maori] freehold title thereto." A special Trust Board was established to pay the Tuwharetoa Maori Tribe one half of all licences, camp fees and fines and penalties associated with this resource. These have been in the order of \$200,000 annually in recent times. Also, up to 50 licences are to be made available to members of the Tuwharetoa Tribe free of charge.

Should the Maori view as exemplified by the Lake Taupo example be adopted, what are the implications? Firstly, the Maori claim is for all fish resources in New Zealand, including species such as orange roughy which have only been harvested from New Zealand's deep water in the last few years. It is generally recognised that the Maori claim to "shellfish" resources such as paua, kina and cockles may be legitimate, but present claims are much wider than this.

Section 2

Economic Efficiency

Most analysts are familiar with the so-called common property problem of open access dissipating any economic rent from a resource and the subsequent biological overfishing. New Zealand is addressing this overfishing problem in three different management areas. Firstly, the deep water resource is operated by Individual Transferable Quotas (ITQ's). This was relatively easy to introduce, as the resource has only been developed by New Zealand interests in the last 10 years and a few large scale operators reduce transaction costs. Secondly, most shellfish and crustaceans are allocated by a system of licences and quotas. Many of these resources have been overfished in the past but now are controlled. Finally, major problems exist in the inshore fin fishery and ITQ's are being introduced to alleviate these problems (Sandrey and O'Donnell 1985).

Theoretically, ITQ's provide an excellent solution to problems of commercial overfishing. Property rights pass from a public to a private solution. Transferability ensures economic efficiency as rights move to those with the highest willingness to pay for them. Limitations of ITQ's

include transaction costs, which involve both enforcement and intervention costs, and in the equity issues associated with the initial allocation. Once the initial allocation has been made, economic rents should accrue to the owners of the fisheries resource. How the owners of the resource are defined is purely an equity issue and does not alter the efficiency of ITQ's.

Problems exist in the allocation of fish stocks between recreational and commercial fishers. As discussed, commercial fishery allocations can be accommodated by the ITQ's. With recreational fishing the valuation techniques are more complex. The value of fish caught is only one aspect of benefit. Total value of the experience, measured as consumer surplus or willingness to pay, is the relevant economic benefit. Both aspects of the same fishery can be optimally allocated by "public management for maximum net social benefits" and optimality is where marginal social cost equals demand in each fishery (Copes and Knetsch 1979). Price rationing by licence and quota in the recreational fishery and ITQ's in the commercial fishery would, in theory, optimally allocate the resource between these two potentially competing users. The marginal fish should be worth the same in each usage. Willingness to pay can be monitored in both areas to ensure optimal allocation.

However, with traditional fisheries a third user group becomes a beneficiary of the resources. This is recognised in New Zealand with the 1983 Fisheries Act. The Act provides for a more integrated approach to the management of the resource through management plans and for balancing the needs of different user groups. These user groups are considered by the Ministry of Agriculture and Fisheries (MAF) to include "recreational, commercial and traditional users" (MAF undated). Traditional users of the fishery resource have explicitly been written into New Zealand law, but no definition, or even mention of "traditional fishing" is given in the 1983 Act. In the National Goal for Fisheries Management the aim is "To ensure that the fishery resources of New Zealand are conserved and managed for the maximum benefit of the nation" (MAF undated). It is proposed to develop a separate policy on Maori fisheries, with the goal "To respect the cultural value of fishery resources to the Maori people and provide for traditional Maori fishing" (Cooper 1986).

The problem facing managers in New Zealand is to incorporate this third dimension of "traditional" fishing into an operational plan. Legal interpretation of the Treaty of Waitangi will obviously be important. Ranking the goals is a political issue, but any change in objective's will have distributional effects. The issue for economists' to consider is how possible changes of ownership may impinge upon efficiency and to look at consequences of the distributional effects.

There are at least two possible outcomes of the Maori ownership issue. These are complete ownership of the resource at one extreme and a recognition of certain rights to harvest kaimoana in selected areas at the other. Obviously, some intermediate position is a possible outcome, but I shall examine the efficiency issues associated with each of these two situations.

Complete ownership of the resource can be accommodated within the framework of ITQ's and quota and licence fees. This is the situation currently existing between the Government and the Tuwharetoa Tribe on Lake Taupo. Rights to the resource were declared to be property of the Crown in exchange for one half of fees over and above an administrative allowance. This issue is purely one of distribution of economic rents. Economic efficiency is in no way compromised. Transaction costs would be minimal.

Although the Maori view of "traditional" fishing as applied to special rights to harvest kaimoana is not considered to be recreational fishing, allocation of some special rights could be made within a framework of recreational fishing. One group in society, by virtue of a different set of values, may have a different perspective of allocative efficiency. Even if the concept of placing monetary values on kaimoana is abhorrent to Maoris, the two groups have, in effect, a different willingness to pay. This would be reflected in demand curve analysis and optimal societal allocation made using marginality conditions. Economic efficiency is again not compromised. A cautionary note must be sounded about transaction costs. Both allocation and enforcement of special rights may not be costless and the setting up of special areas may become a protracted issue. Even if areas and rights are agreed upon, rigidities in the system may make it difficult to fine tune allocations in the future.

Some interesting efficiency issues arise should any intermediate position result. For example, in the case of complete ownership the Maori people may want to maintain an operational interest in allocation of fishing rights. As discussed earlier, the Maori view may place a higher value on resource preservation. This would imply both a lower discount rate and a higher existence value placed on individual species. Both of these conditions would lead to a lower harvest rate, especially in the short term as stocks increased. The optimal time path for resource allocation in a society where two distinct sets of values exist becomes complicated. Usually different time preferences in society are considered to be a continuum among individuals and not a discrete change between cultures. In this case the ownership of rights becomes an efficiency issue. Pacific salmon provides an example where rights to harvest and enforced preservation of stocks are mandated under the Boldt decision.

A comparison with the Pacific salmon raises the issue of the relationships between ownership and control of the resources. There are at least two ways in which a one half ownership could be accommodated within the ITQ or licence framework. One approach would be, following the Tuwharetoa case, for MAF to administer the resource and redistribute rents. Another approach would be to allocate the Maori one half of all licences and ITQ's. This one half could then be transferable on the open market, with possible restrictions on transferability between Maori and non-Maori fishers. Leasing, but not ownership of rights by non-Maori's of the Maori allocation would ensure efficiency is not compromised but one half Maori ownership and control is ensured. The question then becomes one of deciding upon how transferable the T in ITQ's is!

The conclusion must be that in most cases any possible changes in ownership of the fisheries is not an efficiency issue. Some special cases, exemplified by transaction costs, discount rate or preservation differences, do exist where efficiency becomes an issue but the major implication is one of equity. To whom should economic rents accruing to fisheries be distributed? Answers to these questions are political and not strictly economic issues. Distribution of rent is a transfer payment.

Section 3

Discussion and Conclusion

Should the complete Maori ownership position prevail with one half of fees and royalties being redistributed, what are the equity implications? Rents from the deepwater ITQ's and royalties are expected to be in the order of \$30 million for the 1986 year. Inshore resources are being moved to ITQ's, but before this can happen the Government is facing negative rents (costs) in the form of an estimated \$26 million buy-back scheme. Licence fees from shellfish and crustaceans are not significant. Redistributing one half of current rents of \$15 million from the deepwater resource, the major rent producing area, would amount to around \$50 annually for each Maori.

Rents are now accruing to fishers or to MAF as administrators of the resource. The distributional issue revolves around whether either of these two groups has a more legitimate claim to rents than do the Maoris.

Adopting an intermediate position and allocating special areas for kaimoana harvest appears to be accepted by New Zealanders, including commercial fishers - "it is

realistic to expect that where a fishery has cultural significance then access will be guaranteed for cultural reasons" (Maori Fishing Hui 1986). This view is reinforced by the MAF view on traditional fishing (Cooper 1986). These changes can be incorporated into management plans. Equity considerations are less than those which will arise from an initial allocation of inshore ITQ's.

There is little doubt Maoris are a less privileged group in New Zealand society. The 1981 Census showed median adult Maori male income to be \$9,936 compared with \$11,975 for non-Maoris. This partly reflects a younger age structure, but is also a result of lower educational attainment, different employment patterns and a much higher unemployment rate amongst Maoris (New Zealand Year Book 1985). It is considered to be a legitimate role of government to make income transfer payments to less privileged members of society. Transfer payments to Maoris for fishery rights, as discussed, a political issue, but these transfers may be socially desirable in view of the economic indicators above. Fifty dollars per head will not go very far towards equalising incomes, but the explicit recognition of a Treaty right would be of considerable social and political significance.

The United States Supreme Court has repeatedly stated the Indian treaties must be interpreted as they would have been understood by Indians at the time (Blumm and Johnson 1981). This same consideration is being asked by the Maori in New Zealand - "They want their own experiences, traditions and values to occupy an honourable place in our society" (Finding of the Waitangi Tribunal on the Manakau Claim 1985).

A precedent for Maori ownership has been set by the Tuwharetoa Tribe declaring the Lake Taupo fishery to be the property of the Crown in exchange for one half of the fees and some special licence privileges. Should this precedent be followed in the future the efficiency distortions are unlikely to be large. Where ITQ's are in place, the relevant issues are the setting of quotas and distribution of rents. Efficiency may be involved in the first, the second is an equity consideration only. The major efficiency issue which is likely to occur is a possible lower harvest rate, reflecting a different discount rate and higher preservation value. This preservation has been legislated in North America following the Boltd decision (Wilkinson and Connor 1983). Where special kaimoana rights are legislated for the Maori for cultural reasons, this can be justified on an efficiency basis if the "psychic" revenue is included in the calculations. There is a need for the economist to evaluate cultural heritage and cultural maintenance as a negotiable factor in relations between indigenous people and the ruling sovereign. Property rights may be conferred because of economic determinants, but it is

essential to recognise that such determinants have a cultural base. It is not only the "psychic" revenue that needs recognition, but also spiritual and physical beliefs. Resources can be allocated between commercial, recreational and traditional users following marginality conditions and incorporating these concepts.

Recognition of Indian rights after long years of neglect came following a major court decision. Recognition of the Maori rights is inextricably tied up with the legal and moral issues of the Treaty of Waitangi. Discussion of these issues is outside the domain of an economist. My conclusion is that efficiency is unlikely to be compromised and the debate should concentrate on the equity considerations.

The treaty of Waitangi specified "Lands and Estates, Forests, Fisheries, and other properties". Given the major problem of open access to fisheries resulting from a lack of clearly defined property rights, it should be no surprise that fisheries have become the focal issue in attempts to seek recognition of the Treaty of Waitangi.

Tena Koutou Katoa

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