

# Fishery Policies and their Impact on the New Zealand Maori

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**Abstract** *The introduction of innovative fishery policies in New Zealand has recently attracted international attention. The introduction of an ITQ system was premised on the notion of Crown ownership of fishery resources. Conflict has accompanied these policies as Maori people have challenged the government over ownership of fishery resources and decried the skewed impact of the fishery policies. This paper examines the source of these problems focusing particularly on the Treaty of Waitangi negotiated in 1840 between the Crown and heads of Maori tribes. The Treaty guaranteed to Maori the full, exclusive and undisturbed possession of their fisheries and other properties, guarantees which were until recently ignored. The Crown has subsequently ceded some authority over and ownership of fishery resources to Maori.*

**Keywords** New Zealand fisheries policies, Treaty of Waitangi, resource ownership, distributional impact, Maori unemployment rate.

## Introduction

In New Zealand, as in other New World societies, disputes over ownership and access to land and other resources have been a source of long standing grievances. These grievances have centred on the failure of successive governments to honour the Treaty of Waitangi negotiated in 1840 between the Crown and the heads of Maori tribes. Under the Treaty, the Crown guaranteed to Maori the full, exclusive and undisturbed possession of their lands, estates, forests, fisheries and other properties.<sup>1</sup> Recent articles have briefly noted the impact of New Zealand fishery policies on Maori but have not adequately described the conflicts which have arisen over fishery policies during the past seven years (Clark, Major and Mollet 1988, and Dewees 1989). Controversy has focussed on two issues: ownership of the fishery resources; and the skewed impact of fishery policies. The current article attempts to explain the genesis of those problems and explores the role of fishery policies in the conflicts.

The authors wish to thank Associate Professor P. Maitra, University of Otago and Dr G. Cant, University of Canterbury, and the two anonymous referees for their comments on an earlier draft of this paper.

<sup>1</sup> The English and Maori language versions of the Treaty do not exactly correspond and this has added to the problems in determining ownership of the resources.

Maori people constitute approximately nine percent of the total New Zealand population and in terms of their current socio-economic status, occupy a lowly position within the New Zealand society.<sup>2,3</sup> This may be attributed in significant measure to dispossession of the Maori consequent on European settlement and lack of Maori participation in the export-based pastoral economy. The development of the modern New Zealand society has, to a very large extent, been dominated by European values. Maori values, economic systems and forms of government, including traditional institutions for resource management, have to a large extent, become marginalised. The guarantees and privileges accorded to them by the Crown, including rights of access to land and water resources, and participation in management decisions, were overlooked or deliberately ignored in the growing apparatus of state sponsored legislation and related instruments for resource allocation and management.

Only very recently have the concerns of the Maori people been accorded some degree of political recognition. From the Maori perspective attempts by the government to restructure the New Zealand economy and the public sector have raised important issues relating to ownership and management of fishery and other natural resources. The government, the fishing industry, and the Maori people, the principal actors involved, sought to grapple with these conflicts. The Labour Government pledged to honour the Treaty settlement of Maori property rights over New Zealand's fisheries within the framework of suitable institutional arrangements for sustainable management of this resource.

### **Restructuring of the Fishing Industry Consequent on Colonization**

Economic restructuring is not a new phenomenon in New Zealand. The present economic system, which is the subject of restructuring policies has, from a more historical perspective, itself been a product of a more drastic restructuring process. This eventually led to the disintegration of the traditional, predominantly indigenous, Maori economy and the growth of an export oriented economy within the global mercantile framework.

In many societies impacted by European colonization, particularly in Africa and Asia, agricultural and mineral export enclaves which developed were juxtaposed with traditional subsistence economies of the indigenous people. Over time a significant degree of dependence emerged between the two sectors, but often to the benefit of the former. By comparison, Maori traditional economic systems were not able to survive to any significant degree in New Zealand. While it may have been assumed that the Maori would eventually become assimilated into the modern mainstream economy, it can be argued that in some respects, their position was marginalised to a far greater degree compared to the experience of many

<sup>2</sup> Table I provides data on Maori and Non-Maori populations. The definition of Maori used in this and following tables is extracted from New Zealand Census forms . . . 'persons who specified themselves as half or more New Zealand Maori plus those who indicated they were persons of the Maori race of New Zealand, but did not specify the degree of origin.' During the 1960s and 1970s the Maori-descent population recorded growth rates more than double those of the total population. (Royal Commission on Social Policy 1988 p. 386 vol II)

<sup>3</sup> New Zealand Planning Council (1988). For example unemployment rates amongst the Maori are significantly greater than for the total population as Table 3 below shows.

other societies colonised by the Europeans during the nineteenth century. Explanations for this marginalisation include the imposition of a system of individual property rights on Maori society, and the rapid outnumbering of the Maori population by numbers of colonists. While Maori population in 1840 exceeded European population by perhaps 70 to 1, numbers were equal within twenty years, and Maori population fell to 4.5 percent of total population in 1921.

The pre-colonial Maori tribes shared, to varying degrees, a combined land and water based culture. The descendants of the Polynesian migrants to Aotearoa (New Zealand) learnt, over the course of a thousand years, to develop successful niches within a dynamic physical and cultural environment (Cumberland 1962). Consequently, on the eve of European settlement in New Zealand, the early explorers and missionaries and their successors witnessed in a number of regions, several relatively large, flourishing coastal communities whose economic base was dependent on fishing. Fish were an important commodity of local and inter-tribal trade as well as a staple diet. Recent research findings collated by the

**Table 1**  
Total and Maori Population, and Total and Maori Labour Force

Year	Total Population	Maori Population	%	Total Labour Force	Maori Labour Force	%
1858	115,462	56,049	48.6			
1874	344,984	47,330	13.7			
1878	458,007	45,542	9.9			
1881	534,030	46,141	8.6			
1886	620,451	43,927	7.1			
1891	668,651	44,177	6.6			
1896	743,214	42,113	5.7			
1901	815,862	45,549	5.6			
1906	936,309	50,309	5.4			
1911	1,058,312	52,723	5.0			
1916	1,149,225	52,997	4.6			
1921	1,271,668	56,987	4.5			
1926	1,408,139	63,670	4.5			
1936	1,573,812	82,326	5.2			
1945	1,702,330	98,774	5.8	635,384	N.A.	—
1951	1,939,474	115,676	6.0	740,496	32,625	5.1
1956	2,174,062	137,151	6.3	816,852	39,845	4.9
1961	2,414,984	167,086	6.9	895,363	47,818	5.3
1966	2,676,919	201,159	7.5	1,026,039	58,213	5.7
1971	2,862,631	227,414	7.9	1,118,835	70,898	6.3
1976	3,129,383	270,035	8.6	1,272,333	89,729	7.1
1981	3,175,737	279,252	8.8	1,332,342	104,181	7.8
1986*	3,307,084	295,659	8.9	1,278,204	96,417	7.5

Source: Department of Statistics Monthly Abstract of Statistics, 1989, and Various Censuses.

\* Definition of full time member of labour force changed from 20 to 30 hours per week in 1986 census.

Waitangi Tribunal, based on ethnographic, archeological and historical accounts and substantiated by oral evidence attest to the existence of a substantial indigenous fishing industry during the pre-colonial period (Waitangi Tribunal 1988).

The process of European colonisation initiated fundamental and lasting changes in the traditional Maori society. The New Zealand Land Wars which began in 1860, dislocated the indigenous economy by confiscation of land for European settlement. Initially, the large quantities of Maori grown produce played a significant part in feeding the European population of the Auckland Province, and provided an important contribution to the exports of the newly established settlement. However, since the 1860s, Maori agriculture experienced a rapid decline (Hargreaves 1959, 1960). The fate of the Maori fishing industry was to prove comparable.

The model of a dual economy provides a suitable conceptual framework to discuss the changes in the New Zealand fishing industry. In the early whaling industry in New Zealand, during the eighteenth and first half of the nineteenth centuries, Maori and the Europeans were commonly jointly involved on the basis of a mutually acceptable partnership. In contrast, the subsequent development of the fishing industry in New Zealand came to be characterised by structural differentiation in the form of a duality. This polarisation, which manifests itself in terms of differences in participation, gradually came to acquire distinctive economic and technological characteristics during the twentieth century.

The state has played a significant role as an actor in facilitating these changes. The primary and most enduring objective of the successive early settler governments, in a climate of periodic economic uncertainty, was to establish a foothold for the European economy in New Zealand, and subsequently to promote its growth (Franklin 1978). An inevitable outcome of this process was restructuring of the fishing industry, which effectively displaced the Maori. However, it would be overstating the argument to assert that such state policies were actively formulated and implemented by the government, and on the basis of a clearly articulated long term strategy. In hindsight, these actions appear to have evolved incrementally over the course of several decades and without much consideration of their possible implications.

Until the 1930s, involvement by the State was limited to promoting exploitation of fishery resources, strongly dominated by a *laissez faire* attitude. A system of restricted fishery licensing was introduced in 1937 in response to overfishing concerns. But it was subsequently rescinded in 1963 because it was believed that the resource was being under exploited. Licenses generally became available on demand but by 1976 it became clear that parts of the inshore fishery had been overfished and certain species were under threat and requiring regulation.

The relative lack of interest on the part of the state has to be seen in the wider context of the political economy. Even though there may have been a general perception within settler communities of the nineteenth century of the relative abundance of fishery resources in New Zealand waters, in terms of its wealth generating potential this resource did not appear to hold the same attraction as land. Hence investment and the attention of early governments were focussed on acquisition and development of land. The success in 1882 of exports of refrigerated mutton and dairy products to the distant British markets, effectively sealed the future of New Zealand as a grasslands based export economy for the next hundred years. In fact, it was not until the end of the 1970s that fish became a

**Table 2**  
Employment in the Fishing Industry

Year	Total Employed	Maori Employed	Part time Employed	Total Unemployed	Maori Unemployed
1926		148			
1936		100			
1945	839	100	—	23	—
1951	1487	131	—	19	0
1956	1451	122	—	20	4
1961	1499	140	—	29	7
1966	1926	181	—	19	3
1971	2569	230	20	39	2
1976	2884	242	41	54	5
1981	3621	255	120	183	27
1986	3900	342	612	N.A.	N.A.

Source: Department of Statistics Various Census.

significant export commodity and earner of foreign exchange.<sup>4</sup> The New Zealand fishing industry was until then, a small scale industry, with large numbers of small boats, mostly owner operated. Its operations were restricted largely to the inshore fisheries and as Table 2 illustrates, provided limited employment compared to other sectors of the economy. Maori participation tended to be communal, part time, non-monetised, and quite likely underestimated in census enumerations.

A number of factors precipitated rapid expansion of the commercial fishing industry after the mid-1970s. The New Zealand economy found itself in a deep-seated crisis, following the entry of Britain into the European Community and the OPEC-generated oil price shock. The response of the government, faced with declining popularity, was to introduce a number of strategies in an attempt to increase exports. To this end, primary producers including fishers, were offered generous production incentives. The enactment of the Exclusive Economic Zone Act in 1977, coupled with industry pressure, spurred the government to encourage New Zealand companies into the deeper water fisheries through a package of assistance measures (Cullen and Memon 1990). These incentives included a duty free import scheme, concessionary interest and suspensory loans through the Rural Bank to finance the purchase of large vessels, and more general assistance measures such as investment allowances, export tax incentives and price support schemes for the primary production sectors of the domestic economy.

Equally significantly, the government also sought to encourage low risk expansion of the domestic industry by allowing companies to enter into joint venture arrangements with foreign firms. Given the relatively underdeveloped state of the domestic fishing industry, joint venture arrangements were seen as a means to enable domestic firms to acquire fishing technology and expertise in areas and in vessels which were unfamiliar to domestic fishermen, as well as knowledge of international markets and access to those markets (Cullen and Memon 1990).

<sup>4</sup> Fish exports comprised 0.5 percent of total New Zealand exports in 1960, 1.4 percent of total exports in 1970, and 6 percent in June Year 1987. See Cullen and Memon (1990)

Maori fishers could in principle participate in this expansion and development of the fishing industry but in practice rarely did so. The reasons for this non-involvement appear to include both preference and constraint factors including the following: Maori people have a strong attachment to the land, and a preference for almost subsistence level living; Rural Maori tended to be part-time land workers in order to retain their land, and part-time fishers in order to supplement their income; Maori people had relatively lower educational and business expertise levels and a comparative lack of ambition to develop modern business enterprises (Waitangi Tribunal 1988).

To summarize, given the relatively small size and unsophisticated technology of the commercial fishing industry in New Zealand, there was an inevitable overlap between the Pakeha (European) and Maori fishing sectors. Nonetheless, in the long term, the cumulative impact of change on the Maori fishing industry has proved to be little different from the parallel impact on Maori agriculture. From an historical perspective, the development of the modern commercial fishing industry had comparable dislocating impacts on Maori participation as the growth of European agriculture had on Maori farmers. Equally significant has been the role of the state. While the state has not, until recently, exercised an aggressive role in its capacity as a development agent, its intervention was nevertheless instrumental in fostering the expansion of the commercial fishing industry. This was to the detriment of small scale operators and particularly Maori fishing interests.

### **Restructuring of the Fishing Industry in the 1980s**

While the government initiatives and industry response were instrumental in rapid expansion of the New Zealand fishing industry and growth of exports during the late 1970s and early 1980s, they precipitated an escalating crisis. Biological and economic sustainability came to be seen as critical issues facing the industry, making inevitable the introduction of industry restructuring measures. The cause of this structural problem was attributed to overcapitalisation resulting from competitive fishing of a common property resource (Cullen and Memon 1990). Overcapitalisation in the catching sector was most critical in the East Coast and Northland regions of the North Island, which had significant concentrations of Maori population, many of whom were part-time fisherman. While total fish landings by the domestic fleet had steadily increased since 1978, there had been a decline in most inshore species landings. The shortfall in inshore catches was offset by substantial catches of the deepwater species (orange roughy and groper) by the larger New Zealand trawlers. While there was still a relatively large number of part-time fishermen, the New Zealand industry had now come to be dominated by a handful of large operators. Thus by 1981, 5 percent of the vessels caught more than 67 percent of the total fish and 3000 boats out of a total of 3928 landed less than 10 percent of the catch.<sup>5</sup> In order to promote stability and efficiency in the industry, the government proposed in 1983 to adopt an alternative management regime of Individual Transferable Quotas (ITQ).<sup>6</sup>

ITQ grant rights to catch specified quantities of fish but ensure that Total

<sup>5</sup> MAF (1983) p. 4.

<sup>6</sup> Several studies have examined the introduction of the New Zealand ITQ system including Clark, Major and Mollet (1988), Dewees (1989), and Cullen and Memon (1990).

Allowable Catches are set at sustainable levels. Such a management system, based on creating tradable individual property rights, was advocated as a highly effective way of achieving the twin objectives of biological sustainability and economic efficiency. Introduced in October 1986, ITQs aim to control fishing by establishing quasi-property rights to fish. After research and/or estimation has established the sustainable yields of each species in each zone, Total Allowable Catches (TAC) are set and then allocated in small parcels to fishing companies. These parcels are permanent rights to catch fish of a designated species in a specified zone.

Claimed major advantages of the ITQ system are its ability to impose control on total quantity of fish caught while allowing fishing companies to catch fish at least cost. TAC can be varied under the ITQ system and this flexibility is needed to deal with overfishing of particular species. However, the introduction and acceptance of the ITQ as a management tool for New Zealand fisheries has proved to be a protracted affair. A key presumption in the introduction and use of the ITQ system in New Zealand was initial Crown ownership of the fishery resources. The presumption has proved to be highly controversial, as discussed below.

### **The Muriwhenua Claim**

In seeking to operationalise the ITQ management system, the Crown ran into resistance from a pressure group it presumably least expected to delay the implementation of what was perceived as an innovative and radical policy instrument. While the officials in the Ministry of Agriculture and Fisheries, as well as the Minister, had been sensitive enough to consult and solicit the support of the organisations representing the fishing industry during the process of negotiating the development of the ITQ management system, the government initially chose to ignore Maori interests. The fishing industry was represented by two organisations, the Fishing Industry Association represented the handful of large corporations while the Federation of Commercial Fishermen represented the smaller, predominantly European operators.

The existence of the Waitangi Tribunal is a major reason why the Maori have been able to function as an effective pressure group to challenge the introduction of the ITQ system. In order to placate continual Maori land grievances, the more conservative and rural based National administration initially set up the Waitangi Tribunal in 1975. However, its mandate was deliberately limited to claims dating from 1975. In contrast, the Labour administration after coming into power in 1984, demonstrated greater political willingness to address these issues. Hence, the powers of the Tribunal were widened in 1985 to consider all claims dating from the signing of the Treaty of Waitangi in 1840.

Maori from the Muriwhenua or northernmost region of the North Island lodged a claim with the Waitangi Tribunal. The Muriwhenua claim to the Tribunal was concerned with fisheries as well as land. The fisheries portion of the Muriwhenua claim was principally concerned with the contention that full Crown control of the fisheries was contrary to the Treaty. The Maori people argue they have not surrendered the fisheries guaranteed to them under Article II of the Treaty of Waitangi. In its report, the Tribunal noted that while the Northland fishery had not suffered the same impacts from pollution as in other areas, the

impact of resource depletion through overfishing was just as severe here (Waitangi Tribunal 1988).

The Tribunal documented a long chain of events that had contributed to this outcome. The first example of resource depletion was that of the grey mullet fishery. Booming in the 1870s and 1880s, it was reported to be in decline by as early as 1895.<sup>7</sup> The innovation of steam trawlers in the New Zealand fishing industry in 1916, followed by technologically more sophisticated trawl/seine operations, further contributed to resource depletion. In 1963 the government adopted fresh policy initiatives to encourage the New Zealand inshore fishing industry. In response to this, '... both small and large operators worked their way up the coast, ranging from trawlers at sea to small trailer borne boats on land. Muriwhenua was not exempted, despite its remote position. . . . Their coastlines are now dominated by trawlers and fishermen based in the south.'<sup>8</sup> The more recent growing crisis of the inshore fishery in Northland was precipitated by events following the declaration of the Exclusive Economic Zone in 1977. Serious overfishing in many inshore fisheries required rapid action and the moves taken in 1983 included mandatory removal from the industry of all fishermen earning less than 80 percent of their income or \$10,000 per year from fishing. An unanticipated outcome of these actions on the inshore fishery was their disproportionate impact on Maori fishing operations. At a regional level, a considerable proportion of the Maori population in Northland and the East Coast made a living from fishing. But unlike most European fishing operations, the Maori fishing operations generally tended to be small scale, single person, often part-time ventures and restricted to harvesting inshore waters.

The reasons for this exclusion of part-time and small scale fishers from the industry are unclear as little was achieved in terms of effort reduction. A 1983 MAF document commented '... the exclusion of all "part-time" fishermen would have a very minor impact on the industry although it would reduce the potential for expansion of effort from that sector.'<sup>9</sup> Exclusion of part-timers could not be justified on efficiency grounds as the same MAF study commented that profitability was inversely related to vessel size among the inshore trawl fleet.<sup>10</sup>

MAF were warned that such policies could have devastating social impacts, particularly in Northland, and the Ministry commissioned a social impact report to identify possible modifications to the ITQ proposals which might minimise some of the adverse consequences. Unfortunately, the recommendations of the Fairgray Report (1986) were ignored by MAF. The Fairgray Report also showed that in 1984/85, 300 Northland fishermen, mostly Maori, lost their licences, usually after failing to meet MAF requirements. Having cut out the smallest operators, quota was then allocated to those who fished a particular species. But since the aim was to cut back on the overfishing, the Total Allowable Catch was reduced for many species. Where this occurred, quota was allocated on a pro rata basis, which meant that the next layer of smaller fishers received so little quota that it was no longer viable to remain in the industry. The initial quota was allocated without change but when quota became tradable commodity, large com-

<sup>7</sup> Waitangi Tribunal (1988), p. 94.

<sup>8</sup> Waitangi Tribunal (1988) p. 119.

<sup>9</sup> MAF (1983) p. 4.

<sup>10</sup> MAF (1983) p. 4.



**Table 3**  
Total and Maori Unemployment

Quarter	Total Unemployment Rate %	Maori Unemployment Rate %	Maori Unemployment As percent of Total %
3/1986	3.91	10.87	22.20
4/1986	4.04	12.21	23.57
1/1987	4.29	12.50	23.24
2/1987	4.27	11.31	20.46
3/1987	4.12	11.27	21.64
4/1987	4.28	10.33	18.50
1/1988	5.27	15.51	21.96
2/1988	5.59	13.67	18.05
3/1988	6.46	18.13	20.94
4/1988	6.33	15.63	19.11
1/1989	7.94	22.55	20.98
2/1989	7.87	24.51	20.94
3/1989	7.23	21.10	19.30
4/1989	6.89	17.54	20.27
1/1990	7.29	18.84	20.31

Source: Department of Statistics, The New Zealand Labour Force.

panies moved in, buying up quota that was commercially non-viable. Small scale fishers were hard hit by the introduction of the quota system because banks were unwilling to accept quota as collateral and therefore would not lend against it. This constraint on availability of capital meant small scale fishers who held non-viable parcels of quota were unable to purchase further quota. Large companies could of course borrow against other assets and moved to buy up quota from small scale operators.<sup>11</sup> The Maori unemployment rate which was already double that for the total labour force, was undoubtedly exacerbated as a result of these fisheries policies.

These changes had a disproportionate impact on the Muriwhenua claimants, alongside several other Maori fishing communities, and contributed to the lodging of the Muriwhenua claim with the Waitangi Tribunal. The Tribunal's findings and recommendations were issued to the government incrementally in four reports and memoranda between December 1986 and June 1988 and may be summarised as follows:

1. The allocation of Individual Transferable Quotas (ITQs) could prejudice the Muriwhenua claim, and considerable disruption and need for compensation may ensue if ITQs were issued. (December 1986 memorandum to the Minister of Agriculture and Fisheries).
2. The fisheries were owned by the Maori in the same way as land, the Crown therefore was required under the Treaty to negotiate for a right of commercial use. (September 1987 memorandum to the Minister of Maori Affairs).
- 3a. The Treaty guaranteed to Maori full protection for their fishing activities,

<sup>11</sup> Geen (1987) p. 13.

including unrestricted rights to develop them along either or both customary or modern lines. Without prior agreement (which was not obtained), general fishing could neither delimit nor restrict this Maori fishing interest: to the extent that general fishing might do so, the Crown is bound to intervene.

- 3b. The fishing activities of the Muriwhenua people involved the whole of the adjacent continental shelf. Those activities, in fact, had been developed on commercial lines, and would have been developed as a commercial industry, had the Treaty guarantee been maintained by the Crown.
- 3c. The Crown is obliged to support Maori economic initiatives in fishing, or otherwise to seek arrangements whereby Maori and non-Maori fishing could proceed to the mutual advantage of both sides. It is consistent with the Treaty and in the interests of both peoples that new agreements or arrangements on fishing should now be sought. In Muriwhenua, the Crown must bargain for any public right to the commercial exploitation of the inshore fishery. In terms of the Treaty, the Crown's only interest in that fishery at present is the full protection and promotion of tribal fishing activities.
- 3d. The Quota Management System, as currently applied is in fundamental conflict with the Treaty's principles and terms, apportioning to overwhelmingly non-Maori the full, exclusive and undisturbed possession of the property in fishing that was guaranteed to the Maori. However, the Quota Management System need not be in conflict with the Treaty, and may be beneficial to both parties, if an agreement or arrangement can be reached.
- 3e. The damage to the Muriwhenua tribes had included the loss of a viable industry. Very substantial relief to the claimants is required in respect of past breaches and to restore their fishing economy to what it might have been. A long term programme of rehabilitation is required and special account must be taken of their reliance on fishing due to the small area available to them, the lack of alternative industries in the district and the need to rebuild their communities. (June 1988 Report).

The Tribunal advocated bicultural negotiations to resolve the matters of resource allocation. The Crown chose to politely ignore the Tribunal's recommendation of December 1986 not to allocate quotas until the Tribunal had the opportunity to report to the Ministers and that report had been considered. The Director-General of Agriculture stated that the Crown had already made key policy decisions and created expectations of prompt issuance of ITQs, and would proceed to issue ITQs. Following the refusal by the Crown to accept the September 1987 recommendation of the Tribunal not to take further steps to implement the ITQ policy, the Muriwhenua along with seven other claimants and the New Zealand Maori Council applied to the High Court for restraining orders. Temporary orders were issued for the Muriwhenua territory only, and subsequently in November 1987 for the whole fishery, until the Maori fishing rights question could be fully and finally resolved.

This forced the Crown to negotiate with the Maori owners by convening a Joint Working Group on Maori Fisheries to report to the Crown and Maori tribes

on Maori fishing rights by June 1988. The group comprised four Maori members from the claimant tribes and four Crown representatives.

The Maori members of this group focussed on three particular themes: *tino rangatiratanga* (defined as tribal control of tribal resources), resource allocation, and conservation of the fisheries resource. They claimed rights over all the fisheries of New Zealand but they were prepared to concede 50 percent of this resource to the Crown. Taking into account the need for conservation as well as economic development, they proposed that the two functions be exercised by separate bodies. Management and conservation of the fisheries would be exercised by a Commission. Development of the Maori share of the resource would be vested in a Maori corporate authority. The main proposal from the Crown negotiators bore an uncanny resemblance to Treasury's earlier plans for FishCorp—the establishment of a new fisheries control institution with commercial objectives. Within the commercial framework, it would also 'enhance the fishery resource' and 'protect the fisheries.' In deference to the Treaty of Waitangi, the proposed agency would be bicultural and permit a minority Maori membership (Public Eyes 1989).

Negotiations took place between the two parties but since they could not reach an agreement, the matter went back to the government. In August 1988, the High Court granted orders sought by the Crown allowing the fishing season to begin on 1 October unhindered by the discussions.

### **The Maori Fisheries Bills**

The Maori Fisheries Bill introduced in September 1988 contained some matters agreed upon between parties and acknowledged that the Maori do have a legal right to the fishery resource. But it went much further in introducing matters pertaining to fresh water fisheries not under negotiation. Even more significant, it proposed a restrictive allocation of quota. Under the Bill, Maori tribes would receive 2.5 percent of fishing quota each year, until they reached 50 percent, provided that the tribes fished 'substantially' their yearly allocation. As a matter of fact, the government did not expect the tribes to fully exploit the yearly allocation and gain 50 percent control of the resource.

In exchange for these rights, the Bill sought to repeal Maori rights of access to Courts and the Waitangi Tribunal with respect to fisheries, under the Treaty of Waitangi or under any rule of law relating to aboriginal title. It proposed to repeal Section 88(2) of the Fisheries Act 1983 which states that . . . 'Nothing in this Act shall affect any Maori fishing rights.' Hence, in the future, they would be barred from legal action and would be dependent on the Crown's interpretation of their fishing rights under the Treaty of Waitangi. Finally, it made provision for local non-commercial fisheries zones with local management committees, but did not specify criteria for selecting committee members nor guarantee traditional fishing access.

While recognising Maori fishery rights, there was no intention on the part of the government to transfer the resource rental for this quota to Maori tribes in order that they could redevelop their fishing industry. On the contrary, Maori tribes were to be charged a rental for the fishery resources they claimed under the Treaty. However provision was made for \$10 million to be transferred to the tribes for the development of the industry.

In protest at the proposed Bill, the New Zealand Maori Council filed proceedings in the High Court in September 1988 claiming negligence by the Crown for having failed to protect Maori fisheries as guaranteed by the Treaty and as protected by Section 88(2) of the Fisheries Act (which the Bill sought to repeal). A Crown proposal reported in the media in October 1988 suggested that Maori rights of access to Courts and the Tribunal could be retained if the total quota allocation to Maori were reduced to 10 percent from 50 percent.

In the face of widespread condemnation of many features of the Bill, it was drastically revised, reintroduced into the House and became legislation on 20 December 1989 (Maori Fisheries Act 1989). The Maori Fisheries Act established a Maori Fisheries Commission and agreed to grant a total of 10 percent of the fishing quota to the Commission on behalf of iwi. In addition the Government provided \$10 million finance to the Commission to help establish Maori fishing operations. The Act required the Commission to create a commercial company Aotearoa Fisheries Limited, and transfer half of the Maori fishing quota and the funding to it. Finally the Act establishes Taiapure—Local Fisheries, to provide for iwi or hapu use of estuarine and coastal waters as food sources and for spiritual or cultural reasons.<sup>12</sup> Accompanying these actions are moves to extend the quota management system to rock lobster fisheries and to grant up to ten percent of the quota to Maori fishing operations. Freshwater fisheries however are excluded from consideration under the Act.

### **Wider Implications**

The Maori Fisheries Commission and its commercial arm, Aotearoa Fisheries Limited, have been appointed as trustees of the quota by Parliament, until 1992 when the Act enables the quota to be allocated to individual iwi. The Commission and the company share a common objective to enable the Maori to become a major participant in the New Zealand fishing industry. As required in the Act, transfer of quota in sections of 2.5 percent per year began in February 1990. The Commission can lease on the open market the balance of the quota left, after the allocation to Aotearoa Fisheries Limited. However the Commission has chosen to allocate the remaining quota preferentially to iwi based sea fishing groups, or to individuals. In comparison the company is obliged to act in a commercial manner and has sought to achieve its legislative mandate by seeking the greatest financial return for its quota on the international market. The Commission and the company have negotiated a number of joint ventures with established New Zealand and foreign firms. The Commission has also endeavoured to purchase quota in its own right on the open market, additional to the basic ten percent allocated to it, in an attempt to extend its control over the fishery resource.

Interpretation of the Act is totally dependent on perspective. The success of the Government in resolving a very difficult crisis has been generally welcomed by the Maori as well as the fishing industry. The fishing industry has generally welcomed the new law as it awards the 2.5 percent annual increase in quota from new resources rather than reducing the share held by existing fishing companies. From a Maori viewpoint, it appears battles won in the past have resulted in

<sup>12</sup> Iwi are subgroups within a tribe. Hapu are family or kin groups.

ownership of a limited share of fishery resources. The proportion granted, a maximum of ten percent of quota, is clearly far less than the complete ownership recognised in the Treaty, or the fifty percent proposed by Maori as a starting point in negotiations. From a Crown perspective, the assertion of total Crown ownership implicit in the quota management system, has had to be conceded, but early Maori successes before the Waitangi Tribunal and in the High Court, have been contained, damage control has kept the share of resources granted to ten percent, approximately the proportion of Maori in the total population.<sup>13</sup>

It is significant that a Maori leader who played a prominent role in negotiations with the Crown and currently heads the Commission, sees the Act only as an interim agreement between the Crown and iwi, whilst preparing for future action to own and control the balance of the fifty percent share of the country's fishery resources.<sup>14</sup> Negotiations with the Crown are continuing, to determine the full extent of Maori fishing rights, including the rights to non-quota species, the coastal rights and freshwater fisheries. The outcome of these negotiations remains to be seen.

More immediately, there are difficult problems to be resolved relating to the ownership of the Maori fishing quota and the future role of the fishing company as a commercial arm of the Commission. The Act provoked some anger amongst certain Maori as it appears to award a share in fishery resources to landlocked tribes. Some tribes are adamant that the Maori fishing asset is iwi property, guaranteed under the Treaty of Waitangi and in keeping with the intentions of the Maori Fisheries Act, and not for collective Maori ownership. The existence of the fishing company has been deeply resented as paternalistic and a forced imposition on tribal autonomy. During the process of negotiations and Select Committee hearings leading to the Maori Fisheries Act, Maoridom strongly advocated a tribal distribution of quota. But the tribal aspirations did not prove politically acceptable to the policy makers, in the face of concern about economic efficiency and tribal squabbles over the resources. One result of this non-tribal distribution of resources is that the Aotearoa Fisheries company is perceived as bringing no benefit to the Maori fisherman of the far north of New Zealand, on whose behalf the Muriwhenua claim was lodged.<sup>15</sup> Seafishing iwi in particular see the company as taking away half of the quota they could be using.

But an equally compelling alternative view, based on economic rationality and pragmatic considerations, is that after 1992, the deep water species from the Maori quota should be allocated by the Commission to a pan-tribal company owned on behalf of, and to the benefit of all Maori. The Commission has to balance the desire on the part of some iwi who want control of their own quota, against the reality of the relatively small size of the quota available and the small parcels that would exist were this quota fractionalised among many iwi.

Moreover defining iwi property rights is a difficult task. Some of the alternatives considered include: should the quota be allocated amongst the numerous

<sup>13</sup> Native people in other countries have similarly, recently had resources and cash granted to them. Witness the recent Canadian government decision to return 180,000 sq km to 15,000 Dene and Meti Indians. C\$500m is also to be provided in cash grants over the next 20 years. *Otago Daily Times* (1990).

<sup>14</sup> Statement by the Maori Fisheries Commission Chairman Tipene O'Regan, quoted in the newsletter of the Maori Fisheries Commission, 1990.

<sup>15</sup> *New Zealand Herald*, 1991.

tribes or to groups of iwi on a regional basis? Should the Commission allocate a share of the total quota, or should it portion out each species in each area to iwi who have coast line bordering a particular fishing zone? Already concerns have been expressed by South Island Maori leaders about North Island tribes fishing in their region.

## **Conclusion**

Literal interpretation of the Treaty of Waitangi acknowledges Maori owned all fishery resources and only through voluntary sale could those resources be lost. This was the interpretation of the Waitangi Tribunal which, however, has proved politically unacceptable to the general population and to Parliament. Equally the notion of *te tino rangitiratanga* has only very grudgingly been accepted by the Crown. Limited management rights over fishery resources have been granted in Taiapure-Local fisheries. Clearly, much less than equal partnership status has been attained. If the Maori Fisheries Act is a highwater mark of Maori ownership and control of fishery resources, a pessimist can argue little has been gained. An optimist however, may argue that any gains over an apparent starting point of zero represents considerable success.

Recent rapid growth in fish catches and fish exports has revealed the magnitude and value of the New Zealand fishery resource. During the one hundred and fifty year period since the signing of the Treaty of Waitangi, Maori rights to those resources have been dramatically circumscribed. Accretion of rights to the Crown and private interests has occurred at great cost to Maori, both historically, and more particularly since the gazettal of the Exclusive Economic Zone in 1977, and the introduction in 1986 of the Quota Management System. Recourse to the Treaty of Waitangi Tribunal, the Courts, and finally negotiation with the Crown has forced the return of some of those fishing rights, and has wrung from the Crown an admission that Maori do have rights guaranteed under the Treaty of Waitangi. The lessons learned here may provide useful guidance in other contested resource ownership and management issues.

The Maori population has the highest rate of unemployment in New Zealand. While the longer term significance of the gains that have been made in securing control over resources such as fisheries should not be underestimated, the expectation of immediate and direct employment and income benefits from the Maori fishing quota may prove to be misplaced. The Maori Fisheries Act has enabled the Maori to join an industry which is undergoing substantial restructuring. Many parts of the industry are still overcapitalised and it is a high risk investment area. Some species have recently been fished at unsustainable levels and the effectiveness of the Individual Transferable Quota system is compromised by a lack of information. The fishing industry currently employs about 100,000 people, nearly thirty percent of them are Maori. But the capacity of the industry to employ more people is limited.

Economic considerations underline the need for a strategic longer term view of iwi fishing rights. Rather than splitting the quota amongst numerous iwi, collective management by a company, or two or three companies on behalf of iwi, may be the most realistic way to manage the assets. The prospect of the quota becoming so fragmented as to be unprofitable cannot be lightly dismissed.

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