

Ngai Tahu Sea Fisheries Report

Appendix 05 MANAGEMENT AND DIRECTION

5.1 INTRODUCTION

Appendix 5

MANAGEMENT AND DIRECTION

(The following is a reproduction of chapter 8 of the Muriwhenua Fishing Report)

5.1 INTRODUCTION

(a) The Quota Management System provides the cornerstone of the modern fishing industry. It appears to be in fundamental conflict with the terms of the Treaty but nonetheless it has many meritorious features, and if an arrangement or agreement with Maori interests can be found, Maori concerns may well be accommodated within it.

(b) This chapter then reviews the structural arrangements for the modern industry. It is not one in which Maori have much part to play. For the Government, fishing provides some lucrative returns - for 1986-87 from the sale of quota \$83.4 million, from resource rentals \$21 million and from foreign licences fees \$14.4 million. From those returns the Crown funds the Ministry which performs essential functions in administration and research.

It also granted \$550,000 to the Fishing Industry Board in 1986. The Board represents larger commercial fishing interests, and undertakes essential work in production, marketing and research. In 1986 the Board had an income of \$3.96 million, of which the greater part, \$2.57 million, was from a fish sales levy provided for by statute. In neither the Ministry nor the Board however is there an adequate programme to research the Maori interest in the fisheries or to assist their re-establishment in fishing.

(c) In the meantime, a dearth of understanding on the nature and extent of Maori fishing interests affects all other management arrangements and plans including those for Fishery Management Plans, the promotion of the fishing industry, marine reserves and generally in balancing the conflicting interests of different user groups. A Maori Fishery Programme is directed to bringing new light into the arena but we understand the programme has been largely curtailed.

(d) Improvements in the consultative process were an important part of the programme described and had the potential to provide for a partnership in development between the Ministry and Maori interests. Improvements in the consultative process are required, in our view.

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5.2 THE QUOTA MANAGEMENT SYSTEM

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The Importance of the Scheme

5.21 Much information was provided on the Quota Management System. Its promoters extolled its virtues. We have no reason to doubt that it has many good qualities and was introduced for sound reasons. We were also made aware of much adverse criticism. It is obvious that a major policy proposal like this will not suit all persons and that some will see it as fundamentally unsound. Our task however is not to judge the system except to the extent necessary in assessing it against the principles of the Treaty. We recognise it to be an important state policy. It has become the cornerstone of our commercial fishery and operates more extensively in New Zealand than elsewhere in the world. If only some aspects of the system are contrary to the Treaty we must enquire if they can be remedied without affecting the overall strategy, or whether any breach is so minor as not to justify a total overhaul.

The Rationale

5.22 It is significant, when enquiring into its purpose, that the Quota Management System arose from a concern to protect the fish resource. At 6.5, the policies of the 1960s were described as actively encouraging more people to spend more time and money to catch more fish. During the 1970s, it became apparent that the inshore fishery was seriously overfished, to the extent that the survival of some species was jeopardised. The drastic action that was needed began with the moratorium on new licences and the cancellation of those not then in use. Later, those fishermen whose catch returns were under a specified amount or whose income was mainly from other sources had their licences removed. Others were paid out voluntarily to retire.

Most Maori fishermen operated in a part-time or small way and were affected by these schemes. Some who had left fishing for a short time found they could not fish again and of course, others who had hopes of starting in fishing were precluded.

The Methodology

5.23 While these things were happening the Quota Management System was being planned. It was promoted as a conservation and management tool. It aims to prevent too much fishing by apportioning to fishermen the right to catch the total amount of any species that might be safely caught in any prescribed area at any time. The total amount of any species that may be safely caught, without impairing its continued fecundity, or its necessary recovery, is called the 'total allowable catch' (TAC).

The Biological Base

5.24 A key element in the exercise is the assessment of the total allowable catch of any species. Though much must depend upon an intimate biological knowledge of the species concerned, it was readily conceded that the state of the art was not nearly as good as it should be. There also seemed to be some lack of the necessary equipment to do the job properly. Nonetheless the urgency that arose from overfishing may have been enough to justify the general yardsticks deployed at the time, like the need to achieve an overall catch reduction of 20 per cent, or according to others, one-third.

It appears to us a great deal might also come to depend on the ability of the assessor to withstand pressure from commercial fishing and other economic interests to allow maximum rather than biologically sustainable catches, the more so since much is a matter of estimation. Presumably, since the system reduces competition, the industry will also be concerned to protect the resource, for the sake of its own survival and the protection of its substantial investment. Nonetheless, it would certainly change the proclaimed intention of the scheme if decisions were based on political or other non-biological considerations.

The Property Interest Created

5.25 While conservation was the scheme's rationale, and the basis on which it was promoted, the more radical feature of the scheme was the creation of a property interest in an exclusive right of commercial fishing.

From its initiation, the scheme had the facility to continue the policy of excluding small operators, and so to continually reduce the pressure on the overworked resource. To start with, those who fished a particular species were regarded as having a right to catch a given share, or quota, assessed according to their latest catch records. Where the sum of such quota exceeded the total that could be allowed, which was usual in the inshore fishery, the quota that each held was cut back pro rata. This left some of those at the bottom of the scale with quota that were too small. Those under a minimum figure were compulsorily purchased by the Crown.

Others chose to sell. It is an important feature of the system that individual quota can be readily transferred by sale, lease or licence. Thus the right to fish is given the characteristics of a property right. It is called an individual transferable quota (ITQ).

The Favouring of Larger Operators

5.26 There is some opinion that the system favours big operators better placed to buy out those with quota of uncertain viability. For that purpose, just as there are minimum holdings so also are maximum holdings presently prescribed. We are aware of criticism that these limits do not work well in practice and that the leasing and purchase of quota has introduced new economic masters for some who were once independent operators. We are only partially interested in that matter.

We are more concerned with the fact that small-scale operators were put out, and under this system, where quota are held in perpetuity, the only chance for a new entrant to get in, is to buy any available quota. It is costly to do so. It can cost well over \$10,000 to buy the minimum quota of 5 tonnes, quite apart from vessels and gear. Not unnaturally, many must lease from those better able to buy.

Buying is competitive and the Government operates a tender system for new quota, and a quota exchange for existing quota. Undoubtedly it is the case that those with the ability to marshal and mobilise capital are best placed to tender. There is apparently a market now in quota 'futures' trading and quota are traded using videotext terminals. Nor can it be assumed that aggregation controls will remain. In a comprehensive report, Connor, Grieve & Co suggest that true efficiency will not be achieved unless the laws against aggregation are removed (National Business Review 15.5.87 p24). There is even some talk of foreign licensed nations being permitted to compete for domestic quota (e.g., National Business Review 25.1.88 p1).

The Allowance for Maori and Other Users

5.27 (a) To ensure that the total allowable catches are not in excess of that required to maintain stocks, and although at present that is largely a matter of guess, it is provided that an allowance must be made for that share taken by recreational and other non-commercial users. Section 28C of the Fisheries Act 1983 provides for this, indeed, directs that it shall be done.

In that section Maori interests are grouped with the non-commercial. The Ministry of Agriculture and Fisheries admitted that when the section was drafted, Maori traditional interests were thought to have no commercial component. That is not surprising, in the sense that that had been a statutory arrangement for over 100 years. Naturally, the claimants were outraged. Not only were their fishing interests classed as non-commercial but, they claimed, no proper inquiry was made to establish the extent of their interest before the first step was taken in issuing quota. Again that is not surprising, for no such enquiry has ever been undertaken in over 100 years. But at least that enquiry was not undertaken in this case. That was admitted in the Ministry's evidence (Allen, doc B66,8-9).

(b) The failure to make proper allowance for the Maori user, though statutorily prescribed, highlights the major problem for Maori for over a century. It has seemed sufficient to consider that whatever the Maori interest is, or was, it need not be seriously regarded. Thus

(i) We were advised of the Ministry's Maori programme to inquire into the Maori interest. There is much to commend it, but it was not begun until after the total allowable catches for most species had been set! It is still far from complete, indeed has not passed beyond the most rudimentary stage (see 8.3.5). Had it been completed the foregoing part of this report might not have been required.

(ii) When asked to explain the assessment made of the Maori interest, we gained no more than this reply from a senior officer for the Ministry

Their activities that far out to sea really were so negligible, so negligible and unrealistic, and their technology, really it wasn't conceived of I think. My understanding is that the spirit, intent and words of the Treaty of Waitangi, I have some real difficulties with that ... As a fisheries manager above all else and I am sorry to demean the law and I don't mean to, but laws only work when they are practical and laws only work when people want them to work ... (Dobson, transcript pp4-5).

(iii) Later, when asked by the Primary Production Select Committee of Parliament to explain progress in identifying Maori fishing rights, the Ministry gave a written answer, on 6 October 1987, that

The Ministry does not consider that it has either the obligation or competence to identify Maori fishing rights. The Ministry is, however, working closely with the Law Commission which is examining the legislative base for the recognition and protection of such rights. It has also carried out some studies of Maori fishing practices.

(c) We ought not to go into the technicalities of the meaning and application of the section, however. That is a matter for the courts. For the purposes of the scheme, as distinct from the Maori interest, it could have been intended that the section should refer to Maori fishing for the purposes of subsistence and hui.

Rentals and Properties

5.28 There is an aspect of the system that is not directed to the maintenance of the resource but the protection of the public purse. The Government bears a substantial cost in fisheries research, management and administration. It seems only reasonable that private concerns should pay, and not only for that reason, but for the privilege of exclusive commercial rights to utilise that which is regarded as a public resource. It is a very valuable monopoly right that is held. Our estimate of the value of fisheries as represented by declared total allowable catches is 934 million dollars, as set out in appendix 11, but we recognise that valuations depend on the particular versions of the multipliers being used, according to the quantities allocated. In the affidavit of F T Baird filed in *NZ Maori Council v Attorney-General CP553/87*, Wellington Registry, the total value was assessed at \$1.2-\$1.5 billion. There are some 1,700-1,800 quota holders. The average value of quota holdings is about \$600,000 with larger holdings being held in the off-shore fishery.

The initial quota holders did not purchase these rights. The claimants graphically described it as a free gift of 'their' property to those who had destroyed their resource (doc H2:6-7). The position will not be the same for future entrants however; they will need to buy in.

In any event, annual resource rentals are payable, based upon the amount of fish quota each fisherman holds, the rate varying considerably according to species. The return to Government from this source is approximately \$21 million, based upon current charges (Bevin 1987).

Off-shore Extensions

5.29 The rationale for the scheme was to relieve the pressure on the inshore fishery. It was decided to extend it to the deepwater fishery offshore, which seems sensible, for prevention is better than cure. Part of the off-shore quota is available to New Zealand registered vessels (which includes foreign vessels under charter), and part is offered to foreign fishing interests. For the 1987/88 fishing year, the greater part of the quota allocated for deepwater species, or 510,000 tonnes out of a total of 590,000, was allocated to New Zealand interests (Bevin, 1987:48). A great deal of capital is

involved in this fishery however. Nearly 70 per cent of the quota is held by ten large companies (Bevin, 1987:52).

A government to government agreement is a prerequisite for licensed foreign fishing in New Zealand waters. Three countries, Japan, Republic of Korea and Union of the Soviet Socialist Republics have fishing agreements with New Zealand. Vessels from other countries have fished around New Zealand but only under joint venture agreements with New Zealand companies.

Initial Conclusions

5.210 (a) All in all, the Quota Management System appears to be an efficient means of controlling commercial fisheries. There is evidence that most fishermen within the industry support it, and there is quite a deal of support for it amongst Maori too. Under the old system, not only were too many fishermen seeking too few fish, but collectively the cost of all their gear and effort was disproportionate to the value of the total catch. The new method enabled rationalisation as well as restructuring.

The old limitations on gear, methods, seasons, the number of vessels and the like had not worked well either. The problem of too much competition still produced distortions. The new order eliminates competition by defining everyone's share. It enables a free choice in gear and methods and encourages the more efficient use of time and money. There are good grounds for believing that with restricted quota, fishermen will concentrate on those methods that produce the highest price for the fish caught, in order to get the best return for their share. The guarantee of a right to a certain level of catching has also engendered business confidence, encouraging investment in larger vessels, better gear, greater research and improved processing and marketing.

(b) These are early days however, and it is too soon to make a final assessment of the new system. In the meantime, there are definitely problems. The focus on higher quality catching and export is said to have made fish an expensive item at home. There is said to be some loss of fish at sea through nets bursting and some intentional dumping. Fishermen have discarded species that they have no authority to catch, or catches in excess of their quota, or lower grade fish that do not give the highest return. Once, all fish caught were sold.

For some, the main concern is the sheer waste involved. For many Maori, the wastage offends their traditional belief that the despoliation of fish habitats with dead food attracts predators and forces fish away.

The Ministry is well aware of these problems, and provisions for the purchase of by-catches, for quota overruns and for quota carry-over may help resolve them.

It adds to problems that if the total allowable catches are set too high there could be a later difficulty in reducing them. If Government has to buy back quota already allocated, the cost could be prohibitive.

(c) In any event, a major policy decision has been made. Other countries throughout the world have applied the quota system to no more than a few species. In New

Zealand it has been applied to nearly all major species and it is intended, eventually, to cover the lot, including even shellfish.

In other countries it was thought the system would be too difficult to monitor in order to keep fishermen to their proper limits. As a small and isolated nation however, with a limited number of landing places and the facility to monitor off-shore, and with many species that aggregate and are caught at limited times of the year, the problems for New Zealand are not considered to be as large.

(d) But, will it achieve the original objective of restoring the abundance of fish? It is too soon to say. Quota allocations have only recently been settled and it is thought that stock recoveries would not be noticeable until 2-10 years time depending on the species (doc B66:5). Essential to that end is the accuracy of the biological assessment of the total allowable catch, and as we have said, it is a demanding requirement; the state of the art and the gear to perfect it appears to be wanting.

(e) Our concern is with the effect of the system on Treaty fishing interests. From the foregoing discussion, that problem centres around the state of the inshore fishery, the dumping of waste, the exclusion of small time fishermen and the difficulties that face new entrants seeking to buy in. But there are also wider concerns. Not only has the process resulted in a substantial reduction in the number of vessels and fishermen, but there has also been a rationalisation in the processing sector, with small plant closures and the concentration of processing in fewer and larger plants. This development impacts on small communities.

Social Implications

5.211 Concurrent with the implementation of the system, the Ministry of Agriculture and Fisheries commissioned a study of the policy's potential effects on fishing communities in Northland. Part of the study objectives were to identify possible modifications to the policy to minimise adverse consequences, and to review alternative employment and social opportunities that might help offset any bad effects.

Fairgray's Report (doc A40) is the result. Some passages explain the Maori concern.

Fishing is a source of food, an occupation, a cornerstone of the rural mixed economy, a part of the relationship between the Maori, their ancestral lands and waters, and a source of income. It is therefore more deeply and widely entrenched in the community of the Maoris than in the non-Maori community. Commercial fishing is only one part of this whole (A40:51).

Maori attitudes to fishing are in many ways different from those of mainstream commercial fishers. As a result the issues facing Maori people associated with the introduction of the [quota management] system encompass more fundamental concerns than the equivalent issues facing the non-Maori community. They relate not just to commercial fishing but to all fishing ... It is difficult to accurately or adequately portray the Maori perspective on fishing from the outside. Nevertheless, the following discussion ..., [addresses] ... the major issues ... To the Maori of Taitokerau [the northern tribes], the ... changes [brought about by the system] ... are fundamental, as

the sea and kaimoana (food from the sea) have immense spiritual and cultural value of no less significance than the land itself ... Historically much of the settlement structure and division of tribal areas has been based around harbours and bays, with Maori coastal communities having "one foot on land and one in the water" ... Maori people are ... concerned by questions of ownership and access, particularly as the resource ... [is] ... subject to private property rights. The commercialisation of the fish resource raises questions about the continued discharge of inherited responsibilities of guardianship of the harbours and bays (A40:43-44).

They [Maori] feel there is a fundamental incongruity about ... [the ITQ] ... system ... They draw uncomfortable parallels with the history of Maori tribal lands where, apart from losses through confiscation, conferment of individual ownership was a major part of a process of alienation. ITQs run contrary to the concept of communal guardianship (not ownership) of and access to the fish resource ... Moreover, fragmentation of a communal resource through the creation of individual property rights is ... based on only three recent years of catching history, when traditional harvesting of the sea and foreshore goes back many generations. The conferral of ownership on commercial grounds at a time when there are very few Maoris fishing commercially is seen as effective alienation of the fishery in one move. Many believe this is contrary to the inalienable rights of the Maori to the fisheries guaranteed under Article 2 of the Treaty of Waitangi (A40:44).

In a more general sense the study identified the following key issues applicable to the North -

Most fishers are small scale operators who see themselves as having very little influence in terms of control of the resource or of political power.

- The Ministry of Agriculture and Fisheries is seen as having the final say over the future size and structure of the fishing industry.
- Regional versus central control is of serious concern.
- The life style connected with fishing is highly valued.
- There are no (or very few) alternative employment opportunities.
- There is a high level of uncertainty over all issues relating to the future viability of the local fisheries.
- Concern exists that the "big companies" have greater economic and political power and will win out over the small operator.
- There is significant stress within personal relationships in these communities - largely occasioned by uncertainty.

(b) While Fairgray concluded that the quota management system would indeed have an impact on the North, his report appears to have had little impact on the introduction of the system. It belongs to that category of report that is commissioned so that it can be said all aspects have been reviewed. It would appear however that while the

scheme is directed to the protection of the resource, and the state of the resource was the rationale for its implementation, the scheme had wide ranging ramifications well beyond the concerns of conservation.

The Fundamental Conflict

5.212 (a) In brief, fishing has been corporatised. The Government has issued shares in a resource that was once seen as publicly owned, and has backed those shares with a guarantee that a certain quantity of fish can be caught. And that is the central issue for us.

The claimants considered their fisheries, including the right to fish commercially, should stand outside the quota management system, or above it, for in their view, the Treaty secured the fisheries of Muriwhenua to them. Some witnesses for the Ministry on the other hand, considered that the commercial fishing rights of Maori should be no greater than that of the general public as provided for in the quota management system. That opinion however, was based upon a presumption as to what should be. We do not think it was intended to be put forward as a principle of the Treaty.

If it is true, as was stressed in the submissions to us, that the Crown does not own the fish resource, it has certainly created a property interest in the right to harvest it. There is undeniable truth in the opinion that unless the Crown orders otherwise, no one owns a fish until it is caught. Nonetheless, such opinions appear as fancy semantics when the right to catch is now worth many thousands of dollars, an exclusive right to catch has been established and apportioned to individuals, the quota right so given is held in perpetuity, quota are freely tradeable on a formal exchange in daily operation, and resource rentals are payable to the Crown. Subtle distinctions between ownership and access rights likewise are made academic. If a property has not been created in fish, it certainly exists now in the right to catch them.

(b) This Tribunal has no roving commission to intervene at any time, and must be activated by some reference or claim. It was not until 10 December 1986 that we heard the Muriwhenua claim against the quota management policy. We immediately conveyed our concern to the Director-General of Fisheries, that quota should not be allocated until the claim had been investigated (see appendix 3.4.2), but we were advised that the procedures for allocating quota had already gone too far (see appendix 4). We were concerned that that should have been so.

This Tribunal was first advised of the quota management policy proposals in 1984 during the course of the Manukau hearings. The policy was not then in issue and we had therefore no need to examine it in detail. It was sufficient for the purpose of that case that an intention to take steps for the conservation of the fishery resource was described (see Manukau Report 1985 6.3.2, 6.6 and 9.2.9). The Tribunal noted the lack of any comprehensive studies on the nature and extent of Maori fishing interests and recommended that studies be undertaken (recommendation 6 at p130). That was in May 1985.

In the course of this claim it was explained that the Ministry had been restricted in considering Maori fisheries as the government had referred to the Law Commission the whole question of providing for Maori fisheries in law. But the reference to the

Law Commission was not until May 1986. By then, the legislation for the quota management scheme was well beyond the drafting stage. It was enacted in July 1986.

In the Manukau Report the Tribunal said (at 9.2.8)

We think it would be unfortunate if Maori fishing rights fell to be determined solely on a literal interpretation of the Treaty which guarantees an exclusive use of all Maori fisheries, for Maori fisheries are extensive and indeed, the whole of the Manukau [harbour] could be described as a traditional Maori fishery There is obvious potential for conflict between Maori, private and commercial fishing interests and the potential for conflict should be minimised. Compromises will be necessary. But the answer is not in the blatant denial of Maori rights, it is not in glossing over the problem and it is not in the maintenance of a Fisheries Act that contains empty words and clearly fails to match the promises of the Treaty. Those answers merely strengthen, and probably cause Maori demands for the ownership of harbours, and exclusive fishing grounds, demands based upon a strict interpretation of the Treaty. Instead a genuine search should begin to define the options available for the recognition and protection of Maori fishing grounds and for securing compensation for Maori fishing losses.

We were further concerned that following the advice that quota allocations in the process of delivery, in 1986, could not be stopped, and having accepted that that had to be so, we later learnt that further quota for other species were in the process of being sent out. We had understood that that would not happen.

We do not wish to dwell on this matter, but we began to understand how difficult it had been for Maori to have their fishing interests examined. We had no need to look beyond our own experience to gain the impression that the Ministry was and had been intent on pursuing its own plans, *recte si possint, si non, quocunque modo* (legally if they can, otherwise, by any means).

(c) A question of good faith is involved. Our experience lends credence to the view that in presenting the policy (as an answer to the inshore fishery problem), insufficient emphasis was given to the more radical aspects of the scheme.

In Treaty terms they appear to be radical in the extreme. If Maori fisheries covered the whole of the inshore seas, as past records suggest, the policy was effectively guaranteeing to non-Maori, the full exclusive and undisturbed possession for the property right in fishing, that the Crown had already guaranteed to Maori.

The prospect of such a fundamental conflict should have been apparent in our view. It required no more than an inquiry into what Maori fisheries had been, when the Treaty was signed. It ought to have been obvious, even on a brief reading of the Treaty, that the Ministry's proposals stood to be diametrically opposed to the provisions of the Treaty.

(d) It was mentioned in chapter 1, that an international group led by Jacques Cousteau attended the first hearing of the Tribunal on this claim, at Te Hapua. It was a fleeting visit, but as reported in their international journal, they found

... the ITQ issue, though seemingly a specific biological measure, touches the core of New Zealand's social and political life as well. Maori fishermen, for example, while not objecting to the principle of a biological quota system to sustain fish populations, object to the imposition of those quotas by the government. The Maori argue that they have traditional rights to fish New Zealand waters, that they can set their own quotas, and that far from having the power to limit Maori fishing rights, the New Zealand government is bound by law and history to protect them.

... Such arguments emphasised again for the Cousteau team the complexity of environmental protection in today's world, as limits and rules crash into each other in an attempt to redress the imbalances human enterprise has brought to nature (Di Perna 1987:6).

The Room for Negotiation

5.213 (a) It still does not follow that if the Treaty is breached, the whole scheme must be jeopardised provided a reasonable agreement can be made. Warts and all, the scheme has many meritorious features.

Without shifting from its position that Maori should have no greater access to the commercial fishery than other citizens, witnesses for the Ministry of Agriculture and Fisheries stressed that any provision for Maori could be accommodated within the quota management system. Many Maori, it was contended, are supportive of the system, and we believe that to be so.

(b) The Ministry of Agriculture and Fisheries proposed various ways to provide for Maori fisheries under the scheme - that any increased Maori undertaking would simply reduce the future assessment of total allowable catches; that compensation could be provided from resource rentals; and that the Crown right to acquire and dispose of quota could be used to provide a 'Maori share'. It also appeared to us that if the quota system is properly managed and is true to its original purpose, as stocks recover there should be a substantial quantity of quota available in the inshore fishery for future allocations. It could be that a Maori interest in fishing could most easily be re-established through concentrating on smaller fishing efforts in the inshore fishery, geared either to the internal market or to high quality export catches.

(c) In the meantime, and on the action of the New Zealand Maori Council and the claimants in this claim, the High Court had ordered an interim injunction on further quota issuing for squid and jack mackerel in the far North (ex 30 September 1987); and on the action of the New Zealand Maori Council and various tribal groups, that injunction was extended to other areas and to other species (October 1987) (see appendix 5). On 25 November 1987, the Government and representatives for various tribes agreed that further quota should issue on a temporary basis. As a pledge of good faith, Government provided \$1.5 million to various Maori interests to meet their costs and assist them in further research. And a working group of Crown and Maori interests, that is to report on 30 June 1988, is seeking new and more permanent solutions. We consider it imperative that some agreement should be found.

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Appendix 05 MANAGEMENT AND DIRECTION

5.3 STRUCTURAL ARRANGEMENTS

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Management Areas and Plans

5.31 The Government fisheries service in New Zealand is represented in MAFFish, the fisheries business group within the Ministry of Agriculture and Fisheries, which handles all matters relating to research, administration, management and advice.

For administrative purposes the fisheries are divided into seven Fishery Management Areas (FMAs).

For each of the FMAs, Fishery Management Plans (FMPs), are to be developed and implemented. (At present only the Central Fishery Management Area has initiated a proposed plan).

Five Fishery Management Advisory Committees (FMACs) assist in the preparation of the proposed FMPs and will give advice on their subsequent operation. Their mission is to maintain relations with the many user groups at a regional level. Through them, MAFFish consults with the people.

Additionally, some 23 local liaison committees have been appointed by MAFFish to provide an input to the FMACs. They are drawn locally from the catching, processing, wholesaling and retailing sectors, recreational user groups, environment groups, local body representatives, other governmental agency groups (e.g., Wildlife Service) and Maori organisations.

A Fishery Management Plan is thus, or thus will be, constituted after the advices have been given of various persons representative of numerous interest groups; whereafter it is made public, and public objections may be made until eventually a plan is finalised. At this stage, no Plans have been finalised.

Industry Promotion

5.32 Greater finality has been achieved in the commercial exploitation of fisheries. MAFFish has a role in policy formulation, policy management, monitoring and control, but here, the main thrust is provided by the private sector.

A most important body in maintaining that drive is the Fishing Industry Board (FIB), a statutory authority established by the Fishing Industry Board Act 1963 with both Government and private sector representation.

At present the Board consists of eight members - the Chairman, appointed by Government; a nominee of each the NZ Federation of Commercial Fishermen and the NZ Share Fishermen's Association, both representing fishermen; a nominee of each the NZ Seafood Processors' and the Exporters Association, representing processors; one member representing fish retailers; one member representing MAFFish; and one further member appointed by Government (and who is at present the Deputy Chairman).

An executive staff is controlled by a General Manager, an Assistant General Manager (Economics and Marketing), an Assistant General Manager (Administration & Technical) and a Manager (Training and Information).

The functions of the Board are to promote the fishing industry, the full use of the fish resource, the sale of fish both locally and for export, and the maintenance of standards in handling, processing, storage, packaging, transport and the like. It also co-ordinates marketing, licences exporters, resolves problems relating to economic production, promotes co-ordination within the industry, advises the Minister and persons engaged in the industry, co-operates with fisheries research, promotes the financing of the industry and recommends on loan proposals.

The Board is authorised to report to the Minister on trends and prospects in overseas markets, movements in costs or prices, and other matters likely to prejudice the economic stability of the industry.

Several advisory committees are established under the Fishing Industry Board to conduct research, gather and review statistical data, conduct promotional or planning exercises, or negotiate product freight rates and other arrangements on behalf of the industry. In 1986 ten such advisory committees worked on matters concerned with aspects of the commercial fishery: Mussel Industry, Retail, Quality and Certification, Catching Sector, Market, Fish Technology, Rock Lobster, Scallop, Oyster, and Shipping (FIB Report 1986:24). These advisory and promotional functions were funded within the Board's reported 1986 expenditure of \$3.36 million, and appear to be the major items (FIB 1986:27).

The 1986 income of the Fishing Industry Board totalled \$3.96 million, up 17 percent on 1986. It included a general \$400,000 Government grant, and a special grant of \$150,000 towards a new computer required to analyse the ITQ system (FIB Report 1986:25). The major part of the Board's income is from the fish sales levy on commercial operations (\$2.57 million) as provided for under the Board's Governing Act (FIB Report 1986:27). The Board also administers a trust fund from the Commercial Fishing Levy, from which grants are made to assist various national organisations in the industry. In 1986, the grants, totalling \$288,408 were applied mainly to the NZ Federation of Commercial Fishermen and the NZ Share Fishermen's Association. Distributions are made at the discretion of the Minister.

The Board has estimated the total profits of the NZ fishing industry (before tax) at \$102 million on an investment of \$405 million, representing a 25 per cent return on investment. The sharing of total profits between private industry and the Crown was estimated to shift from 50:50 per cent in 1986, to 41 per cent industry: 59 per cent Crown by 1987 (FIB 1987:53).

Other bodies with an interest in the commercial fishery include

(a) The NZ Fishing Industry Association Inc (FIA), which draws its membership from seafood companies who are catchers, processors, wholesalers, distributors, retailers or exporters. We were informed that the larger corporations and commercial interests were in this Association.

(b) The NZ Federation of Commercial Fishermen (Inc), whose membership, we were told, is comprised mainly of individual, boat or small company interests.

(c) The NZ Fish Exporters Association (Inc).

(d) The NZ Fish Retailers Federation

(e) The NZ Share Fishermen's Association; which, we were told, represents fishermen who share catch earnings with boat owners.

(f) and various fish farmers' associations as for example

(i) The NZ Salmon Farmers Association

(ii) The NZ Oyster Farmers Association

(iii) The NZ Marine Farming Association

(iv) The NZ Aquaculture Federation and other groups involved in marine, estuarine or inland pisciculture.

(g) The NZ Fish Quota Exchange Ltd and also several brokerage firms, are involved in buying and selling quota, leasing quota, and also trading in quota futures contracts.

Marine Reserves

5.33 The Marine Reserves Act 1971 provides for the establishment and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study. Control is vested in certain management committees and commercial and other fishing uses may be restricted. From time to time proposals have been made to change the Act and provide for a far greater variety of marine reserve types.

Because of the focus on commercial fishing aspects, matters relating to marine reserve planning were not prominent in the hearing of this claim; and it is necessary to recall that the claim was precipitated by proposals by the Ministry of Agriculture and Fisheries to reserve large sea areas off the far northern coastline. In brief, the claimants would be more content if the name was changed from Marine Reserves to Muriwhenua Tribal Reserves, if the reserve areas were substantially expanded, and if the control and use purposes were changed.

A submission from Dr O Sutherland for ACORD (doc B89), was acutely critical of the Marine Reserve proposals for the Far North, the whole proposals being shaped, he

said, as though the northern tribes did not exist and as though the Treaty had never been written.

We have found no need to examine the proposals in detail. They were but proposals. Responsibility for the development of marine reserves has now been transferred to the Department of Conservation and no doubt new plans and even fresh legislation will emerge in due course. We wonder however how far marine or any other form of management planning can proceed without prior inquiry into the nature and extent of Maori fishing interests and the impact of the Treaty of Waitangi.

User Categories

5.34 Underlying all fisheries planning and legislation is the division of user functions to four categories, commercial, recreational, Maori and traditional. The basic philosophy is that various users have different functions, quite commonly in conflict with one another, and that a careful balancing of those interests is required in any management planning.

Though no-one was able to explain to us what the fourth category of 'traditional' entailed, the approach has obvious good sense to commend it insofar as it seeks fairness and equity for all. Nonetheless, there are at least three difficulties facing Maori. The first is that non-one in the administration or planning sector seems very much aware of what the Maori interest entails. The second is that the creation of categories in this way suggests that the Maori interest is something other than those in the other categories when it is in fact a combination of commercial, recreational, cultural and traditional aspects.

The third is that the principles of fairness and equity were already set in 1840, when the Treaty was signed. In one opinion the condition for cession of sovereignty and the acceptance of settlement was that important properties of Maori would be guaranteed, including their interest in fishing, which puts them in a category of their own, not to be balanced with but having a priority over other interested users.

The Maori Fishery Programme

5.35 Whether it be for the purpose of the Quota Management System, the formulation of Management Plans, the promotion of the Fishing Industry, the establishment of reserves or the balancing of conflicting interests, an understanding of the nature and extent of Maori fishing interests is obviously required. A Maori Fishery Programme has been established to that end, within the Ministry of Agriculture and Fisheries, and the importance of that programme cannot be over-stressed. Unfortunately however, the programme was not even started before 1985, by which time the major decisions had already been made on quota planning and the other matters mentioned. As at 1987 it had not passed beyond the stage of suggestions to define or determine the nature of traditional fishing.

The programme was begun with the organisation of a pan-tribal hui 15-17 November 1985 known as Te Runanga a Tangaroa to gain information on the traditional tribal control areas for fishing, and the past and present arrangements important to Maori fishing. Significantly, the Muriwhenua tribes were amongst those that strongly

resisted any attempt to restrict the Maori interest to isolated fishing grounds. It was obvious that the past policy of providing in law for Maori fishing reserves was no longer seen as sufficient, quite apart from the reality that few were created in fact, and none in Muriwhenua.

Since then, more specific studies have been initiated. The various programmes outlined to us are impressive. The lateness in getting them started ought not to diminish their significance; it rather highlights how compelling they now are. We were therefore disappointed to be informed that the operational funding for the Maori fishery programme, originally involving about \$1 million, was taken away, but we understand that it may be or has been re-instated.

An important part of the programme was to improve upon and rebuild the liaison and prospective partnership between the Ministry and recognised Maori tribal institutions. In our view, the need for this could have been foretold.

Waitangi Tribunal, Department of Justice, Wellington.

Ngai Tahu Sea Fisheries Report

Appendix 05 MANAGEMENT AND DIRECTION

5.4 CONSULTATION

5.4 CONSULTATION

Quite properly in our view, the Ministry of Agriculture and Fisheries takes pride in its recent arrangements to consult widely with all user groups in implementing new policy proposals. In September 1984 it published a booklet on the consultative structures that had been set in place for an exchange of opinion between users and management groups in fisheries management planning. Basically they involve the siphoning of views through various local, regional and area committees comprised of representatives of commercial, processing, wholesaling, retailing, recreational, Maori and consumer interests. These structures were used to explain the quota management policy, but consultation was not restricted to them.

Yet we were faced with an enigma, the claims of administrators to wide consultation on the one hand, and on the other, Maori claims that they had not been consulted at all. We think it was a classic case of two cultures simply talking past each other, for both have consultative procedures of their own and widely different views on what fisheries involve.

Discussions amongst the many user groups go back to at least 1983 when the seriousness of overfishing was apparent. Maori were not represented as such, though presumably some Maori fishermen were present.

In August 1983, a document entitled "Future policy for the inshore fishery - a discussion paper" was released by the National Fisheries Advisory Committee. The paper, which summarised the state of fisheries and outlined options for future management, including the Quota Management System, was discussed at 12 public meetings held throughout New Zealand in September 1983. The meetings were widely publicised and were attended by commercial fishermen (including some Maori), other fishing interest groups, and the general public. No special effort was made to include Maori groups.

Specific consultations on the quota management option began in August 1984, resulting eventually in the Ministry's publication "Inshore Finfish Fisheries - proposed policy for future management" (doc A64). It detailed the main elements of a proposed quota management system.

The "blue book", as it was called, was circulated widely to those interested in commercial and recreational fishing. Maori interests were catered to by circulating the Maori Councils, the Maori Women's Welfare League and Maori representatives on the various fisheries liaison and fisheries advisory committees.

For the Ministry, Mr Dobson described the further discussions. Consultation was wide ranging in his view, the Ministry being willing to meet with all interested parties. He thought there was a strong input from Maori commercial fishermen, although not from Maori groups (doc B67:5). Mr Martin held a similar view and described how the Maori representatives on the Fisheries Liaison Committee and the Fisheries Management Advisory Committee for the Auckland area were both members of the Tai Tokerau District Maori Council Fisheries Committee, a body of North Auckland Maori established by the New Zealand Maori Council for the express purpose of discussing fisheries developments.

Nonetheless we find there were few Maori representatives on the various Ministry's committees. The Auckland Fisheries Management Advisory Committee and Fisheries Liaison Committee each had a total of eleven members and one Maori, while the Northland Fisheries Liaison Committee had no Maori at all. Of the three Committees, 31 persons represented commercial fishing interests and there were 2 Maori.

The predominance of other interests was overwhelming. The same can be said of the public meetings. It is not an easy task for any member of a minority group to ventilate a view diametrically opposed to those of all others, in such a situation.

We found a number of other deep-seated problems for Maori. A Maori committee member might not necessarily represent a Maori view but rather his own interest as a fisherman in maintaining his livelihood within the system. We found that some Maori representatives on local committees were not even members of one or other of the local tribes but came from elsewhere, and in those cases where representatives were in fact of local tribes, they did not necessarily have an authority to speak for that tribe.

But comparatively those points are minor. The main and recurring problem in our view, is that officials, fisheries or otherwise, have tended to see Maori as simply Maori and to have overlooked the tribe. That cannot be done in our view, when land and fisheries are involved, for few things fit so clearly within the traditional jurisdiction of tribes.

We do not wish to criticise the Ministry, in at least this respect. It is also a major problem facing all Government departments that tribal authority, or rangatiratanga it might be called, is not clearly defined and cannot readily be located, even by an official; for tribal authority survives not because of official recognition but in spite of it. It is only in very recent years that the Department of Maori Affairs has begun attempts to formalise structures based upon traditional whanau, hapu and iwi lines.

It compounds problems further that national Maori bodies, while extremely important in Maori eyes, are not necessarily representative of local tribal opinions. Dr Dobson was well aware of this, pointing out the need for an authoritative national organisation as well as authoritative tribal and regional bodies (doc B67:5). Dr Allen of the Ministry was of a similar view stating

The current representation on Fisheries Management Advisory Committees has been shown to be not adequate to properly represent Maori views in the fisheries management planning process. We have recognised the need for a more detailed level

of input and are in the process of improving the consultative network to provide for tribal input into management planning (doc B66, p11).

By the same token however, the evidence was clear that at the crucial time, the Ministry had not been inclined to consult with Maori interests in their fisheries in any tribal or sub-tribal way. Marae meetings were suggested but were never held.

To its credit, the Ministry made subsequent efforts to attend some tribal meetings (it was represented at the Tai Tokerau Fisheries Committee meetings for example) but that was not until late 1985, by which time, the programmes had proceeded quite a way. But how much could the Ministry have absorbed from such meetings?

The main problem in this case, is that both parties applied entirely different criteria. It is here that there was rarely a meeting of minds. In the Ministry's terms, as we noted in the Te Atiawa and Manukau Reports, the problem is to reconcile the competing interests of various user groups in which none can be regarded as having a priority. In Maori terms that is the fundamental problem. Maori claim a traditional priority.

In the Ministry's perspective as well, Maori interests can be accommodated in a relatively narrow way. As Dr Allen said, with regard to Muriwhenua

It is commonsense that the cockle beds adjacent to Te Hapu[a] Wharf clearly are an important fishery to the Maori people of Parengarenga Harbour. [The Ministry] recognises that rights of access [by Maori] to this fishery may leave no room for access by others. In the same harbour mullet has historically been fished but ... exclusive access may not be just (doc B66:9).

Maori however have an expansive view of their fisheries which, they maintain, encompass the whole of the coastline and harbours adjacent to their tribal areas, and to which are attached traditional, commercial and also control rights (docs A41:40 and C1:31).

There is yet a further problem, by no means confined to Maori but perhaps more evident in their case. We had the spectacle of the Ministry claiming that Maori showed no objections to the Quota Management System and yet we were faced with a major claim concerning that system, and clear evidence that there are objections now. We have good reasons to consider that the focus of Maori attention at the time was on the immediate problems of overfishing and the exclusion of part-timers, and the scheme may have been proposed with overfishing mainly in mind; but the reality is, in any event, that some things simply take time to be fully comprehended, especially, as here, where a radical conceptual change is involved.

Added to that is the cultural mode of operation. The Maori consensus process requires a high level of community involvement and debate. New ideas must be allowed to lie for a long time, and there are inhibitions on all tribal leaders in expressing a view that has not been tribally approved. Under the consultative processes of Maori, nothing can be hurried along.

We appreciate the problem this poses for officials and the frustrations it can cause to those of a different training. We do not pretend to have answers. For the Ministry

however, Mr Cooper described an ambitious plan, as part of a Maori fishery programme described, to establish an improved consultation process with tribes. It was a tentative programme but it appears to us to hold much promise and we hope that it will proceed.

Waitangi Tribunal, Department of Justice, Wellington.