

The Fisheries Settlement Report

2 Background

The terms of the settlement are best explained by reference to the background. An inquiry into Maori fishing in Muriwhenua, in 1987, led to court actions concerning the Quota Management System, the primary policy for the regulation of New Zealand commercial fishing. There was some uncertainty within the industry as a result. Fish quota created a property right in fishing, the courts considered, and this was in conflict with the proprietary interests of Maori, which are protected under section 88(2) of the Fisheries Act 1983. Accordingly, the courts placed injunctions on developing the quota management policy, which, to the consternation of various fishing interests, have remained in force ever since.

The proprietary rights of Maori had not been quantified however, and, with goading from the courts, it became necessary that those rights should be settled. That is now what has happened. Maori negotiators were mandated at a national hui in 1988, and subsequently thereafter, to seek a settlement. They were instructed to settle for not less than 50 percent of the quota, in some opinions, on the basis that the Treaty gave a right to 100 percent.

A partial settlement in 1989 provided for the transfer of 10 percent of quota, as it became available, to a Maori Fisheries Commission established to promote Maori fishing. The proposed sale of Sealords this year however, provided the opportunity to overcome a major difficulty that most of the quota had been allocated, for Sealords holds some 26 percent of the quota. This represents a major quota holding and an opportunity unlikely to be repeated. The affidavits of the Maori negotiators, copied to this tribunal, testify to their concern to seize this opportunity.

The settlement was first proposed in an agreement in principle of 27 August 1992, called a Memorandum of Understanding, that was made subject to Maori ratification. It was taken to national hui and some 23 marae throughout the country. The negotiators' report on those hui appears to have satisfied the responsible Ministers that the understanding should be formalised in a deed of settlement.

The negotiators' affidavits consider that the hui were generally supportive of the settlement as proposed in the memorandum while still instructing the negotiators to oppose the inclusion of traditional and freshwater fisheries if they could. As it turned out they could not.

Thereafter events moved swiftly. It appears the deed was still being finalised when a gathering assembled at Parliament to mark the occasion of the settlement. Some of those present then executed the deed, moments after it was engrossed. Amongst the signatories were 43 from some 17 different iwi and 32 of the Maori plaintiffs in the various fish actions in the courts. Though only the signatories are legally bound to promote the settlement, the support is seen to emanate from the preceding hui.

Reading together the 1989 settlement as provided for in the Maori Fisheries Act 1989, and the terms of this current deed, there is a consistent objective, as it is put in the deed (para 3.1.3.1), to promote "the development and involvement of Maori in the New Zealand fishing industry". As we see it, that goal is more important than any precise quantification of the Maori proprietary interest.

In return the Crown expects an end to the litigation that has caused uncertainty in the industry and an agreement that further fish quota may now issue. There is no public gain unless those assurances can be given. Mindful of their treaty obligations however, the Crown and Maori make it clear that what is sought is a "just settlement" (preamble L) and "the resolution of an historical grievance" (preamble M).

A complete settlement was nonetheless seen to be necessary. There is "an uncertainty" respecting the whole of Maori fishing rights, preamble C and H declare, and it was the Crown's wish, according to the negotiators' affidavits, that all Maori fisheries should be included and that regulations should be settled to remove the uncertainties (as is provided for in para 3.6). The Maori negotiators have sworn to some diffidence over the broadening of the settlement to include other fisheries but that they eventually had to concede to an all-in settlement. The provision to regulate (and thus regularise) other Maori fishing interests, is nonetheless constrained by the Crown's recognition (in preamble K) of its "Treaty duty" to "develop policies ... for (the) exercise of rangatiratanga in respect of traditional fisheries".

The settlement has rightly been hailed as historic. While it is not the only national settlement, it is the first to extinguish claims (the forestry and state enterprise settlements were but steps along the way); and the first to affect all iwi (Railcorp binds only those who agree). It is significant too in that previously, 'first in, first served' applied, while this settlement proposes the allocation of benefits according to some regular plan.

Nonetheless there are objections. They tell of a division in the Maori community that reflects in part a desire on the one hand to seize the opportunity, and on the other, to maintain the integrity of the Treaty. It reflects as well anxieties over the level of consultation and over the prospective allocation of benefits. But it does not demonstrate a major division in our view. The concerns the claimants expressed are in fact shared by all. The difference was that some would give more emphasis to opportunity while others would give more to conserving customary positions.

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