

# Fisheries Bill Claim

## 1 Background

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1.1 The Maori Fisheries Act 1989 (the 1989 Act) followed a preliminary settlement. It created a Maori Fisheries Commission (the old Commission) to receive fish quota and cash from the Crown and provided for Aotearoa Fisheries Limited, a commercial operation returning to the Commission additional and on-going revenue. The old Commission's principal function was:

to facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing (s5)

All other powers were subsidiary to that purpose. The Commission could review Maori fishing proposals to render special assistance (s9) and could lend monies, provide advisory and technical services, promote research and assist industry restructuring (s6). It had nonetheless to operate on a profitable basis (s8) and had substantial additional powers in quota dealing and other matters of a commercial nature for the management, protection and enhancement of its assets and revenue (s9).

It appears that in the course of its work the old Commission was persuaded to the view that it could best promote Maori into fishing through the distribution of quota and funds to various iwi fishing groups so that some allocation of its assets became an important part of its operations. The extent to which it could do this was problematical however. Some complex legal issues were involved and it could be said the Commission had a duty to maintain its asset base and profitability for the continuance of its ongoing functions and in exploring ways in which Maori throughout the country could be got back into fishing.

Nonetheless, and no doubt with pressure from various iwi groups, the Commission pursued the allocation option and proposed to an annual general meeting of July 1992 that it should allocate the whole of its assets having regard to the extent of traditional resource ownership amongst the various iwi. That criterion was not provided for in the Act, and there also being doubts as to the Commission's power to dispose of its undertaking, it was proposed that legislative authority be sought. It was also intended that the assets of Aotearoa Fisheries Limited would be distributed as well.

The annual meeting, or Hui-a-Tau, endorsed the principle that allocation should be effected but the hui proposed further inquiry on the allocation method. The concerns of various hapu under that heading were outlined in our Fisheries Settlement Report.

1.2 The Sealord's settlement provided for in the deed of 1992 enabled the joint venture purchase of Sealord Products Ltd, providing a revenue producing central asset that effectively substitutes for Aotearoa Fisheries Limited. The old Commission was to be restructured as the Treaty of Waitangi Fisheries Commission (the new Commission) to receive the revenues from the joint venture and additional new

species quota from the Crown. The new Commission was to have an expanded membership of up to 13, and was to have greater input to fisheries management through representation on fish management bodies. Most especially, the new Commission was to be made more accountable to Maori and its members were to be appointed in consultation with them.

The new Commission was also to be empowered to pursue the allocation question, not just in respect of the assets of the old Commission and Aotearoa Fisheries Limited, but also in respect of future assets to be received.

Obviously the new Commission would have critically important functions in determining the vexed question of allocation principles and in deciding the future shape of the Commission itself - the extent to which it would be a mere distribution agency and the extent to which it would continue as a central agency to promote Maori fishing and assist particular Maori to become established in the fishing industry.

1.3 The 1992 Act, as described in the preamble, is to give effect to the Sealord's settlement contained in the 1992 deed. It amends but does not repeal the 1989 Act and the Commission's principal functions in s5 of the 1989 Act presently remain unchanged.

The old Commission is replaced by the new but the goal remains as before. The important additional functions that contemplate the distribution of assets to iwi, as are later referred to, are still subsidiary to the principal function in s5. As is also referred to later however, it is contemplated that the future focus of the Commission may change.

A significant aspect of the Deed of Settlement was that the new Commission was to be made more accountable to Maori. This is now reflected in s15 of the 1992 Act which calls upon the new Commission to propose a process to that end within 90 days.

1.4 The Maori-Brierley Investments Limited joint venture purchase of Sealord's is defined in s2 of the 1992 Act to mean:

the joint venture (including any company formed to act as the joint venture entity) established by and between the Treaty of Waitangi Fisheries Commission (through Te Waka Unua Limited) and BIL [Brierley Investments Ltd] to purchase Sealords.

This represents a change from the deed. The deed gave the old Commission as the Maori partner (1.1.9). The 1989 Act substitutes the new Commission. We were advised in the course of hearing that the Maori directors have already been appointed to the new joint venture company by the old Commission, as was published in issue 11 of Te Reo o te Tini A Tangaroa. It was mooted however that that might be an interim arrangement and that the final appointment of new directors could be a further important task confronting the new Commission.

Whether or not the joint venture directors can also hold office on the Commission is a matter that may not yet be settled. The 1989 provisions in ss19 and 30 prohibiting

such an arrangement, applied only to Aotearoa Fisheries Limited, and as that company now ceases business the prohibitions have been repealed (s16(3) 1992 Act). The new Commission may still need to determine however whether a person may hold office on both the Commission and the joint venture company or any company connected with it.

1.5 In addition to keeping the principal function to promote Maori into the business of fishing, the new Commission retains the substantial additional powers in quota dealing and business generation, in providing research and advise, and in rendering assistance to particular Maori in order that they might be established in business. As earlier said however, the Commission's role could change.

1.6 The 1992 Act then authorises the new Commission to allocate to iwi the assets of the old Commission and those of Aotearoa Fisheries Limited (s6(e)(i) 1989 Act as inserted by s15, 1992 Act). After a scheme has been put to the Minister of Maori Affairs, and his comments have been considered, the allocation may proceed (s17, 1992 Act). In addition the new Commission is to develop a procedure and propose legislation for the allocation of the future benefits to be received and the identification of the persons or groups to receive them (s6(e)(ii)(B) 1989 Act as inserted by s15, 1992 Act).

The new Commission may therefore become much more an instrument for allocation. Though at present it may still need to determine the extent, if any, that it should retain a central asset base to promote Maori fishing and provide assistance to particular individuals or groups, it may also propose legislation to change the whole nature of its focus and powers (s6(e)(ii)(A) 1989 Act, as inserted by s15, 1992 Act).

Plans for the allocation of future assets (as distinct from those of the old Commission and Aotearoa Fisheries Limited), and proposals for the identification of beneficiaries and the future restructuring of the Commission, are to be developed only after full consultation with Maori (s6(e)(ii) 1989 Act as inserted by s15, 1992 Act).

1.7 In summary it appears:

- \* the 1992 Act contemplates a major change in direction. The current assets are to be allocated to iwi and a plan is to be prepared and legislation provided for the allocation of future benefits to be received;

- \* the new Commission will have important tasks:

- in considering whether a Commission member should also serve as a director on the joint venture company or any associated company and possibly, in appointing directors;

- in determining, within 90 days, how the Commission can be made more accountable to Maori;

- in preparing a scheme for the allocation of current assets to iwi and in giving effect to it;

- in settling in consultation with Maori, a scheme for the distribution of future assets and the identification of beneficiaries and their interests;

- in determining the extent to which the Commission should in future be a simple allocation agency or should continue as a central agency for the promotion of Maori fishing by research, funding and other means; and

- in determining the shape of the future Commission to carry on work thereafter.

\* the new Commission now to be appointed may be seen as an interim body to settle the matters above referred to; and

\* while any ongoing Commission may need to have or need access to competent commercial, legal, management and research expertise, much will depend on the nature of the future Commission to be established, but it seems the persons most needed now, are those best able to guide Maori to proper conclusions on the allocation and restructuring matters.

1.8 For completeness and for the purposes of this claim, it has also to be noted that s40 of the 1992 Act adds a new provision to the 1989 Act. This provides:

Notwithstanding anything in this Act or any other Act or rule of law, on and from the commencement of this subsection the Tribunal shall not have jurisdiction to inquire or further inquire into, or to make any finding or recommendation in respect of -

(a) Commercial fishing or commercial fisheries (within the meaning of the Fisheries Act 1983), or

(b) The Deed of Settlement between the Crown and Maori dated 23 of September 1992, or

(c) Any enactment, to the extent that it relates to such commercial fishing or commercial fisheries.

It may then be observed that with the exception of one provision that need not be considered here, the 1992 Act does not come into force until provided for by Order in Council. That does not appear to affect our jurisdiction to consider the claim. It is still an Act and we can consider any Act. We can also consider proposed Crown policy (s6 Treaty of Waitangi Act 1975). On the other hand however, s40 being inoperative (unless Orders in Council have in fact issued) it does appear we currently have jurisdiction to consider the Deed of Settlement should that be necessary.