

Plenary Lead Speaker – Theme B Economic Solutions to Customary, Aboriginal and Traditional Fishing Rights Issues

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Thank you for inviting the Fisheries Commission to speak today. My name is Kirsty Woods, and I'm a senior policy adviser at the Commission.

The chairman, Shane Jones, was to speak to you this afternoon, but unfortunately he was unable to be here. He gives his apologies and asked that I deliver this speech on his behalf.

Today, I wish to cover a number of areas that discuss economic solutions to customary, aboriginal and traditional fishing rights issues, and the challenges facing Maori today.

Within that subject, I will talk about the Commission – or Te Ohu Kai Moana, as it is known with Maoridom – how it came to be established and its role. I then want to talk briefly about the challenges facing Maori in today's modern fisheries environment, including economic development in the seafood sector, sustainability of the marine environment, and the ability of Maori to participate in fisheries management.

Finally, I would like to conclude with some points about our recent allocation proposals and their contribution to economic solutions to customary fisheries management.

Prior to European colonisation of New Zealand and the consequent signing of the Treaty of Waitangi in 1840, fisheries and other aquatic resources were not common properties freely available to all, as was the situation in Britain.

New Zealand's fisheries were managed by the whanau (extended family), the hapu (sub-tribe) and Iwi (tribe) through a complex set of rights that determined who could take certain species, harvest in particular areas and at what times harvesting could occur.

Fisheries rights were established as a result of long-held practices and are based on the Maori view of cosmology and of particular importance in that view is whakapapa (genealogy, specifically the relationship of Tane Mahuta and Tangaroa) and tikanga Maori (Maori customary values and practices) including whanaungatanga (family relationships requiring active enhancement), manaakitanga (respect and reciprocity) and kaitiakitanga (guardianship).

Fisheries and all the resources of the sea emanate from Tangaroa – the Maori God of the Sea – and therefore are imbued with the mana of Tangaroa. It is a mana atua (a power and authority descending from a deity). Human kind on the other hand descends from Tane Mahuta, a brother to Tangaroa. The relationship between Tangaroa and Tane Mahuta carries with it certain rights and obligations. For example the right of humanity to share the bounty of the sea but the obligation to ensure that what is taken is sustainable.

These rights to fisheries resources were practised at a variety of levels. Whanau or extended families, for example, held the rights to small eel weirs on streams near their villages, small fishing canoes and fishing grounds and shellfish beds also in the immediate vicinity of their villages.

Hapu exercised control over larger areas than the whanau. This could include larger eel weirs on main rivers and some specific fishing grounds (tauranga ika) as well as larger fishing or seafaring vessels.

The Iwi or tribal property included the lands of the various whanau and hapu, the lakes, rivers, swamps, beaches, mud-flats, reefs and the ocean itself.

The practices that formed the basis of Maori customary law were recognised by British Common Law as Aboriginal rights. These are the rights that were enjoyed by Maori prior to the establishment of British jurisdiction in New Zealand. The Waitangi Tribunal has found that:

Customary rights exist and continue to exist unless by Treaty they are voluntarily surrendered or modified (Wai 6:46).

Such rights included the right of the hapu and Iwi to determine their own membership, to licence their own members, and to deny tribal fishing rights to those who do not observe rules set out by the hapu or Iwi.

It also included the right of hapu to permit persons outside their tribal group to enjoy any part of the tribal fishing resource, whether generally or for any particular purpose or occasion.

Traditionally fisheries were communally owned and defended by the Hapu and Iwi of a particular region. Many hapu and Iwi speak with great pride about their Kapata kaimoana (seafood cupboards).

It was these values – these Maori fishing rights – that were secured and guaranteed by the Treaty of Waitangi, an agreement signed in 1840 between the Crown and Maori.

During the period between 1840 and the 1980s, Maori continued to assert these fishing rights. But it wasn't until the Government attempted to introduce a rights-based system of commercial fisheries management – the system of Individual Transferable Quota – that Maori successfully challenged the Government to give formal recognition to their rights.

The initial concept of the Quota Management System did not take into account those Maori fishing rights under the Treaty, and it was in direct conflict with evidence being presented at the time to the Waitangi Tribunal by Muriwhenua and Ngai Tahu tribes.

1987 High Court – Justice Greig

“I am satisfied that there is a strong case that before 1840 Maori had a highly developed and controlled fishery over the whole of the coast of New Zealand, at least where they were living. That was divided into zones under the control and authority of hapu and tribes of the district. Each of these hapu and tribes had the dominion, perhaps the rangatiratanga, over those fisheries. Those fisheries had a commercial element and were not purely recreational or ceremonial or merely for the sustenance of the local dwellers”.

In 1989, the Crown and Maori – through representatives of four Maori groups (Ngai Tahu, Muriwhenua, Tainui and the New Zealand Maori Council) – reached an interim agreement that allowed for the QMS to be fully implemented. That interim agreement allowed for Maori to receive 10% of all fishstocks introduced into the QMS. It also provided for \$10 million cash.

In 1992, with the impending sale of Sealord Products Limited in Nelson, the Crown and Maori agreed to a final settlement – colloquially called “The Sealord Deal”. That final agreement allowed for Maori to receive 20% of any new fishery introduced into the QMS and \$150 million cash, which enabled the purchase of a 50% share in Sealord Products Limited in Nelson.

This agreement with the Crown was a pan-tribal settlement to be delivered through tribal mechanisms. As a result, Maori fully and finally settled all further claims to marine and freshwater commercial fisheries under the Treaty of Waitangi.

Ownership of these assets is currently vested with the Commission, and it is the job of the Commission to propose a method for these assets or the benefits derived from them to be returned to Iwi, ultimately for the benefit of all Maori. For many Iwi, especially those who have yet to settle land claims, the Fisheries Settlement will represent the first significant set of assets they will receive through the Treaty of Waitangi claims settlement process with the Crown.

How much is the Fisheries Settlement worth?

Since receipt of the assets from the interim Settlement in 1989 and the final Fisheries Settlement in 1992, the Commission has increased the value of the assets at a rate of 8.8% per year compounding and they are now worth over \$700 million.

As a result of the fisheries settlement with the Crown and the ongoing commercial activities of the Commission, significant commercial assets are held by the Commission. These include:

Sealord Group Ltd (Sealord)	The Commission owns 50% of Sealord with the other 50% owned by Nippon Suisan Kaisha Ltd (Nissui). Sealord is the largest business in the New Zealand seafood industry. Sealord's core products include hoki, Greenshell™ mussels and orange roughly.
Moana Pacific Fisheries Ltd (Moana)	The Commission owns 84% of Moana. Moana is the largest inshore fishing business in New Zealand. Moana's core products include snapper and crayfish.
Prepared Foods Ltd (Prepared Foods)	The Commission owns 50% of Prepared Foods the other 50% is owned by Ocean Ranch. Prepared Foods is the largest New Zealand exporter of paua.
Prepared Foods Processing Ltd (PFPL)	The Commission owns 100% of PFPL. PFPL is the largest processor of paua in New Zealand the company also produces ready meals for Defence Departments in a number of countries.
Chatham Processing Ltd (Chathams)	The Commission owns 100% of Chathams. Chathams is the largest crayfish quota owner within the Chatham Island's fishery.
Pacific Marine Farms Ltd (Pacific Marine)	The Commission owns 100% of Pacific Marine. Pacific Marine is one of the largest New Zealand exporters of Pacific Oysters.

In the 10 years since the final settlement with the Crown, the Commission has also increased the involvement of Maori within the industry. From owning almost none of New Zealand's commercial fishing industry, today Maori own or control about one third (33%) of the industry.

What is the job of the Commission?

The Commission has a range of functions that, among others, require it to:

- Facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing, and
- Consider how best to allocate the assets and distribute the benefits of the Fisheries Settlement.

These obligations are set out in the Maori Fisheries Act 1989, the Deed of Settlement and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Last week the Commission released proposals for allocation of these assets and distribution of the benefits to Iwi, ultimately for the benefit of all Maori, and I will discuss this later in my talk.

But a point which I would like to make, and one that is often overlooked, is that the Commission's activities cover a broad field and include much more than developing a model for allocating fisheries assets. They also include:

- Securing the growth and development of Maori fisheries assets, alongside allocation and transfer to Iwi
- Ensuring fisheries are managed in a manner consistent with the rights guaranteed and confirmed by the Treaty of Waitangi.
- Securing proper recognition of Maori Customary Fishing Rights and to promoting these rights with hapu/Iwi.

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- Facilitating the developing the skills and capacity needed for Iwi/Maori to manage their fisheries interests into the future.

As such, the Commission is involved in:

- All facets of national and international fisheries management affecting New Zealand fishing activities, cost recovery and industry planning and organisation;
- Consultation on legislative change and judicial actions affecting the fishing industry.
- Development of conservation plans, marine reserves, mataitai and taiapure
- Customary fisheries issues, including freshwater coastal space and seabed ownership.
- Protection of ITQ rights for Maori gained under the 1992 Settlement
- Education and training of Maori in all of the areas noted above
- Annual distribution to Iwi of fisheries access to quota held for Maori.

Economic solutions – what are the challenges?

As I see it, there are two main challenges that arise as we assert our fishing rights in a modern economy. These are:

- Maori participation in the development in the seafood sector, and
- Environmental management

With most of New Zealand’s wild fisheries being fished at or near maximum sustainable yields the future value of our seafood exports from those wild fisheries will in general only vary with changes in the value of products produced.

New areas of development for Maori are opening up with the introduction of new species into the QMS, in which case Maori will be allocated 20% of the Total Allowable Commercial Catch. It will be important for Maori to ensure that species that are introduced into the QMS provide commercial and environmental benefits.

An additional area of potential growth for Maori is the successful assertion of rights to coastal space, alongside more active involvement of the Commission’s subsidiaries and Iwi in aquaculture ventures. That is not to say that Iwi must work with the Commission or its subsidiaries, rather there are opportunities for them to explore their own fisheries ventures, in some cases Maori may need to consider making trade-offs between their rights in capture fisheries and their potential involvement in marine farming.

Aquaculture will increasingly provide opportunities to meet growing international demand for seafood. Currently aquaculture makes up around 25% of world seafood production. International predictions are that in the next 20 years this will increase to 50%.

The training and development needs of Iwi and Maori in the seafood sector are wide, diverse and complex. To ensure that the overall value of the fisheries settlement is maintained, the Commission has developed requirements to ensure that:

- Those who receive the assets on behalf of Iwi are properly mandated representatives
- That Iwi meet certain constitutional and structural requirements

In 1992, the Commission formally recognized 78 Iwi for fisheries settlement matters. Each of these Iwi must have a representative organization that meets certain minimum requirements with regard to representation (“mandate”) and organizational structures.

As the Commission works towards the finalisation of its allocation model, the emphasis to prepare Iwi for the receipt of these assets becomes a priority. Two distinct issues are now emerging:

- The need to prepare through skills development of Iwi organisations and Asset Management Bodies (fisheries) for the receipt of the Maori fishing asset; and:
- The need to develop initiatives that assist Maori who wish to participate effectively in the business and development of fishing.

As part of this, Iwi also assert their rights in non-commercial / customary fisheries. These fisheries are local, and harvest is carried out for non-commercial and purposes. Here, one of the challenges for Maori is to benefit from our commercial assets without compromising our non-commercial fisheries. Integration between these two aspects will be

crucial. As part of the settlement, the Government is bound to promulgate regulations to enable Maori to manage their customary non-commercial fisheries. There are many challenges in implementing these, but that would be the focus of another presentation.

I do not wish to speak at length on environmental management, except to say that it is, and will continue to be important for Maori to participate in fisheries management at all levels (be that local management of non-commercial fisheries, participation in the development of fisheries plans alongside other stakeholders, to participation in central government policy –making).

Maori recognise that fisheries are managed in the absence of perfect information and that caution needs to be exercised when decisions are made. Maori advocate a sustainable utilisation approach to marine management based on a responsible environmental ethic and adaptive management. Permanent preservation without utilisation was not and is still not a feature of Maori resource management.

It is important for Maori to question the basis for decisions, what is to be achieved and how far it meets sustainability objectives. For example if an area is to be closed to fishing to provide for public enjoyment, we would expect to be compensated for any loss of our fishing rights.

Allocation as part of the Solution

Of these, it is the first and second challenges I spoke of that relate to our proposals released last week for allocation of the more than \$700 million to tribes.

To outline our proposals, all fisheries quota is to be allocated to tribes. This is aimed at putting significant fisheries resources directly into tribal hands. The Commission considers that quota is the closest proxy in modern terms to the customary rights that Maori had to commercially fish.

I alluded to this earlier in my talk in discussing the customary fishing rights of Maori. From there, we would expect to see a better integration between commercial and the non-commercial / customary use of fisheries.

Our allocation proposals also include the creation of a company that will singularly hold the largest amount of fishing assets in New Zealand. This company is to be called Aotearoa Fisheries Limited and will provide a vehicle for Maori to strengthen their influence within the seafood industry.

Through assets held by the Fisheries Commission, Maori currently own or control more than 33 percent of New Zealand's commercial fishing quota, and Aotearoa Fisheries Limited will initially account for almost 39 percent of total earnings from the industry. The businesses of AFL will directly own approximately 25 percent, by volume, of New Zealand's entire quota.

AFL will provide a vehicle for Maori to leverage presence and influence within industry, place Maori in a position where they are the pre-eminent force and provide a platform for Maori fishing interests to grow on a global basis.

Tribes will be allocated "income shares", while the "voting" or "ownership" shares in the company will be retained by a new body working ultimately for the benefit of all Maori.

AFL will make a dividend payment each year to its holders of these "income shares" equivalent to 40% of the consolidated group net profit after tax. The balance will be retained within AFL to fund investment opportunities and provide for the continued growth of AFL and Maori within the fishing industry.

Over 90 percent of the product from the companies that will come within the AFL Group is sold in export markets throughout the world. The total revenues generated by the companies within the group are approximately \$NZ790 million (not on a consolidated basis). The combined businesses will service a broad spectrum of customers including retailers, food services trade, wholesalers and industrial users.

There is debate within tribes at present over the shareholding of this particular company and whether this is an appropriate road for the future. Some argue that a direct ownership of AFL is a better recognition of tribal sovereignty or tino rangatiratanga. We are working with all tribes over the next six weeks to work through these issues.

However, I would conclude that when recognising economic solutions to customary and traditional fishing rights issues, this has been achieved through three ways:

- The implementation of the Quota Management System, through which Maori receive a portion of all species managed within it,
- Control to tribes of quota, delivered through the Commission from the Crown, and
- Through the creation of AFL, which provides collective leverage for Maori and acts as a trading arm

The Commission considers that the economic base that Maori develop will enhance the ability of tribes to manage their non-commercial fisheries, through a better integration between the two.

Overall, we believe the allocation model released last week provides two substantive outcomes for Maori. It strengthens tribal organisations through the allocation of substantial fisheries resources and it provides a method through which Maori can obtain gains from increased corporate strength in the fishing industry.

The proposals acknowledge the loss of customary commercial rights but are fundamentally forward looking to provide a regime of enhanced tribal authority while establishing an environment that encourages co-operative arrangements that can mean Maori will forge an even stronger path in all aspects of fisheries in New Zealand and beyond.

Thank you