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A CUSTOMARY RIGHT OR WRONG?

A Study of the Effects of the Kaimoana Customary Fishing Regulations on Hapu of Ngati Kahungunu

A thesis presented in partial fulfilment of the requirements for the degree of Master of Philosophy at Massey University, Palmerston North, New Zealand.

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p. 48	"Opposing the interpretations that Prendergast adopted, are arguments in law"	Unnecessary comma.
p. 49	…Te Whiti, and Tohu…	Unnecessary comma.
p. 53, last line, 3rd full para.	…clause two…	Inconsistent: Article Two
p. 58, 2nd line from the top.	…if the going gets tough."	Colloquilism, i.e., too informal.
p.63, 2nd line last para.,	exclusive economic zones	Exclusive Economic Zones (EEZ) [The acronym should be used the first time the term appears].
p. 64	First para.	Lots of numerical data that needs to be referenced.
p. 65	Spoonley et al,	et al., [et alia is the full term, al. is an abbreviation].
p. 70	Davidson (1999)	Missing from reference list.
p. 74, first para.	Smith 1999 Ruwhiu 1999 etc.	Smith (1999), Ruwhiu (1999), …
p. 74, first line, 2nd para.	Durie (1996, p. 10) asserted, Maori…	Superfluous comma.
p. 76, last line, 2nd para.	…Maori centred…	…Maori-centred…
p. 84, 1st para.	…we've always had the conservation approach (Matai).	…we've always had the conservation approach."
p. 84, 2nd line, 2nd para.	…stating;	…stating:
p. 92, 2nd para.	Schroder 2003	Schroder (2003)
p. 92, last line 2nd para.	He adds that -	He adds that: [consistency needed]
p.111, 3rd para.	Para. too short.	Connect with next para.

ABSTRACT

This thesis presents a critical analysis of customary fishing in the light of the rise of indigeneity in these post modern times. The cumulative effects of early colonial fisheries legislation and the exploitation of natural resources aligned with diminished tangata whenua traditional knowledge and practices have generally gone unnoticed. Given recent fisheries litigation and the subsequent legislation development, this study focuses specifically on the effects of the Kaimoana Customary Fishing Regulations (1998) for all the relevant shore based hapu of the iwi/tribal nation of Ngati Kahungunu.

The central research question for this thesis explores how these Ngati Kahungunu hapu have responded, adapted, challenged, or adjusted to Crown law and customary fisheries legislation. Of equal significance, is finding out whether or not such contemporary Westminster originating laws engendered difficulties for Maori traditional hapu lore especially when it came to managing their customary fisheries.

In order to examine these questions, tangata kaitiaki (Maori customary fisheries managers) were identified as the respondent pool to draw from, and four were selected to be interviewed based on their experience and understanding of the Kaimoana Customary Fishing Regulations and knowledge of their obligations to hapu.

As a qualitative piece of research, the interview questionnaire for these chosen tangata kaitiaki allowed for their thoughts and experiences to do the talking and, more importantly, be recorded. The korero of the respondents and results of the study are envisaged as guidelines for improving hapu customary fisheries management practices, traditional knowledge and increased awareness. In addition, the overview of historical and contemporary Maori fisheries provides an understanding and awareness of a complex and difficult subject.

The duel need to satisfy academic requirements of Massey University and remain focused on the well-being of Ngati Kahungunu hapu customary fisheries led my

preference toward a qualitative research approach principally because Te Ao Maori is immersed in oral traditions. The tangata kaitiaki shared their wisdom and understanding of the Kaimoana regulations based on the impact on their rohe, feedback from their hapu and philosophical values of maintaining and promoting rangatiratanga over their resources.

Key indicators from the study show that tangata whenua and particularly tangata kaitiaki are adjusting customary fishing practices and traditions to align with the contemporary reshaping of customary fishing rights into a regulatory regime. All the respondents understood there is no survival of the resource without sustainability, the fundamental aim of kaitiakitanga. And, despite all the administration and resources residing with the Crown, tangata whenua have continued to undertake their kaitiaki responsibilities with little or no resources.

After loss of land, chieftainship, language, resources and economic and political power, customary fishing is the last bastion of Maori control over a tangible asset.

The key findings of the study sign posts for me the following whakataukï.

Ka pu te ruha ka hao te rangatahi ka awatea.

The old net is cast aside, the new net goes fishing, it is a new dawn.

Acknowledgements

I would like to thank my wife and family for their support and patience whilst I was pre-occupied with this study and not them. I also acknowledge hapu of Ngati Kahungunu and Ngati Kahungunu Iwi Incorporated for supporting in principle this thesis.

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I hope you enjoy reading this thesis that it can empower your fisheries management goals and assist the wellbeing of your hapu.

Ma te Atua, e manaaki, e tiaki i nga wa katoa.

Na, Wayne Tahiwi Ormsby

CONTENTS

INTRODUCTION

I grew up at Kohupatiki Paa beside the old Ngaruroro river. The river was tidal and its mouth empties into Hawkes Bay about 2 kilometers further downstream. My ancestors settled this area because of the kapata kai that was provided by our awa. I still remember how we always dined on the flounder, eels, kahawai, mullet, herrings and whitebait that were once plentiful. The loss of our customary fisheries resource because of local government political and economic decisions shaped my desire to do something that would help protect traditional fisheries.

It is no accident that the focus of this thesis is customary fisheries. My role working for the Ministry of Fisheries has added to the realization of helping to protect customary fisheries. First as a Fisheries Officer for five years and more recently as Pou Hononga (Relationship Manager) working with tangata whenua of Ngati Kahungunu through the Crown's Fisheries Deed of Settlement obligations that support tangata whenua input and participation into fisheries management decision making.

Many fisheries issues facing iwi and hapu across the north island are similar. Internationally, indigenous fishing issues are also similar to tangata whenua of Aotearoa. The range of interview questions used in this study whilst relevant to regional and national New Zealand issues are also relevant to international indigenous issues. The questionnaire focused on four distinct themes within the Kaimoana Regulations; the cultural, economic, political and philosophical aspects. The questionnaires central themes of taonga, mauri, kaitiaki and tikanga provided insight on the epistemological leanings of each respondent and how that influenced their immediate or pressing fisheries management issues.

The research emphasis sought to gauge the effects of the Kaimoana Customary Fishing Regulations 1998 on hapu of Ngati Kahungunu and focused on 'legislative queries' concerning legal protection of traditional fisheries values to gauge political realities and contemporary application of rangatiratanga. The first part of the thesis

provides a foundation for kaitiakitanga by journeying through the spiritual beliefs of Maori and their creation stories.

Chapter one is an introduction to the customary foundation and philosophical base of Te Ao Maori. It provides a backdrop to spiritual concepts and Maori worldview for conservation of the environment. Four key themes - taonga, tikanga, mauri and kaitiaki - emanate from the creation story and embody the cultural traditions woven throughout this thesis.

Chapter two begins with an introduction to indigenous peoples and their historical exposure to industrial expansion, colonization, globalization and resource appropriation. It provides background to the modern plight of tribal societies worldwide from nation states and sets the fisheries rights context for hapu and iwi in Aotearoa, New Zealand. The chapter describes familiar patterns of global colonial exploitation of cultural systems. It does this by examining the proliferation of treaties worldwide as an extension of government control and eventual denial of treaty rights. Chapter two concludes by exploring the close comparisons of New Zealand Maori and North American Indian treaty rights, land issues, environment and customary fisheries and underpins those issues with the philosophical sacredness of the fisheries resources. It does this by investigating the Indian fishing rights movements from the 1960s, landmark United States Court decisions, and highlights some rare victories of self determination and settlement of treaty rights in North and South America. The significance of New Zealand's Treaty of Waitangi Fisheries Settlement Act 1992 is forged here.

Chapter three steps back in time to early settler establishment in Aotearoa, the Treaty of Waitangi, the 19th century constitutional development and Maori control of the fishery. It is about the relationship between Maori and the Crown and breaches of that relationship are illustrated through legislation. Maori responses to legislative neglect are discussed alongside their isolation from early political and economic development. The chapter also covers the legacy of Maori legal challenges against

treaty breaches, judicial interpretations and changes over time and contemporary Maori attempts to regain authority over their fisheries resource leading to the Deed of Settlement.

Whilst the first three chapters provide the historical background of colonization and customary fishing rights, chapter four is about Maori research methodology. The influence of 'kaupapa Maori' and 'matauranga Maori' research procedures, in regard to Maori wellbeing as a research goal, guide this research. My research journey describes the reasons for choosing this topic, the selection of research participants and whakawhanaungatanga as a strategy to legitimize Maori knowledge and empower Maori development for Maori by Maori.

Chapter five is about the content of the interviews and the research participants views on how they perceive the effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu. The participants express their experiences of kaitiakitanga from both a traditional and regulatory perspective. The analysis looks at the essence of what those experiences have endured with regard to maintaining traditional concepts in a contemporary regulatory regime administered by the Crown. Some participants raised issues of lack of resources, compliance, competition, consultation, commercial impacts and the pervasive influence of the Ministry of Fisheries. For tangata kaitiaki the influence of the ministry has been enormous.

Chapter six provides insight into three of the key themes of this thesis – tikanga, mauri and kaitiakitanga. Those themes are followed with an expression of rangatiratanga that contrasts the legislative intent to 'provide for rangatiratanga', with the reality for hapu and kaitiaki to validate that.

Chapter seven is the concluding chapter and presents the key learning's from the interviews and identifies my conclusions and recommendations for any future customary fishing research.

One aim of the thesis was to provide an easy to read inter-related history of customary fishing rights litigation in Aotearoa New Zealand and internationally. The chapters are intended to guide the reader through events in history from denial to reinstatement of rights and to explore the experiences of people affected by those events.

CHAPTER ONE

TE AO MAORI, A CUSTOMARY FOUNDATION

Introduction

This thesis is focussed upon fisheries legislation and the effects of the Kaimoana Customary Fishing Regulations on hapu and traditional lore of the Ngati Kahungunu tribe. In order to better understand this customary fisheries journey it is prudent to begin with the philosophical basis of Te Ao Maori.

The Maori creation story outlined here intends to set a foundation of linkages that whanau, hapu and iwi associate with the role of kaitiakitanga over the resources of Tangaroa (the sea). Man's descent from the gods, whakapapa, and human dominion over the land and sea are inherent concepts within the creation story. The personification of nature in the Maori creation story codifies man's relationship to the earth and its resources.

The section on philosophical views provide some detail of Maori values, spiritual concepts and their worldview for conservation of the environment and use of resources including a framework to understand Maori values with regards to environmental management. Kaitiakitanga is described in traditional terms and rangatiratanga (customary authority) as the overarching framework for guardianship of coastal land and sea is also explored. The customary foundation overview concludes with Maori communal concepts of customary ownership and usage in traditional times, how that was undertaken and enforced and contrasted with contemporary customary access and usage.

Creation Story

The Maori creation myth recognises three states of being from the beginning of the universe to the creation and descent of man. The sequence of development is arranged in the form of a genealogical recital beginning with Te Kore (the void). This first period corresponds to the aeons of geological time when the world came into being. It was divided up into sub-periods each with its own descriptive adjective, for example Te Kore te Whiwhia (the void in which nothing could be obtained) and Te Kore te Rawea (the void in which nothing could be done). Then followed Te Po (the darkness). This second stage of existence was also marked off into divisions by qualifying adjectives, for example Te Po Nui (great night) Te Po Roa (long night), to the tenth, hundredth and thousandth night. Again, this state corresponded to aeons of geological time, but unlike the preceding state of Te Kore, was pregnant with potential. The recital culminates in the names of Ranginui (Rangi the sky father) and Papatuanuku (Papa the earth mother) who had materialized in Te Kore and begat their offspring the sons of earth and sky (Buck, 1959; Best, 1924; Metge, 1976; Walker, 1987).

The offspring of Rangi and Papa who were very numerous were not the shape of men. They lived in darkness for their parents were not yet parted. The Sky still lay upon the Earth no light had come between them. Her covering was creeping plants and rank low weed, and the sea was all dark water, dark as night. The time when these things were, seemed without end.

At length the offspring of Rangi and Papa, worn out with continual darkness, met together to decide what should be done about their parents that humanity might arise. Shall we kill our parents, shall we slay them, or shall we separate them? And long did they consider in the darkness. At last Tumatauenga, god of war and the

fiercest of the offspring of Sky and Earth, spoke out. Said Tu, "It is well, Let us kill them."

But Tanemahuta, god and father of the forests and all things that inhabit them answered, "No, not so. It is better to rend them apart, and to let the sky stand far above us and the earth lie below here." The other sons and Tu the war god among them saw wisdom in this and agreed with Tane, all but one. This one, that now forever disagreed with all his brothers, was the god and father of winds and storms – Tawhirimatea. At the end of a time no man can measure, the five decided that Rangi and Papa must be forced apart and they began by turns to attempt this deed (Alpers, 1996, p. 16).

First Rongomatane, god and father of the cultivated food of men, rose up and strove to force the heavens from the earth. When Rongo failed, next Tangaroa, god and father of all things that live in the sea, rose up. He struggled mightily but had no luck. Next Haumiatiketike, god and father of uncultivated food rose up and tried without success. So then Tumatauenga god of war leapt up. Tu hacked at the sinews that bound Earth and Sky, and made them bleed. Yet even Tu, the fiercest of the sons could not with all his strength sever Rangi from Papa. So then it became the turn of Tanemahuta.

Slowly, slowly as the Kauri tree, did Tane rise between the Earth and Sky. At first he strove with his arms to move them, but with no success. Then he placed his shoulders against the Earth his mother and his feet against Sky. Soon and yet not soon, for the time was vast, the Sky and Earth began to yeild. The sinews that bound them stretched and ripped. With heavy groans and shrieks of pain, the parents of the sons cried out and asked them why they did this crime, why did they wish to slay their parents love? Tane thrust with all his strength, which was the strength of growth. Far beneath him he pressed the Earth. Far above he thrust the

Sky, and held him there. As soon as Tane's work was finished the multitude of creatures were uncovered whom Rangi and Papa had begotten, and who had never known the light (Orbell, 1995, p. 11).

Now rose up Tawhiri, the god of winds and storms, who had all this time held his breath. Great anger moved him. For he was jealous now, jealous of all that Tane procured, for Tane was author of the day. Tawhiri followed Rangi to the realm above, and consulted with him there. And with his fathers help Tawhiri begot his numerous turbulent offspring, the wind and storms. He sent them off between the Sky and the Earth, one to the south, another to the east, another to the northeast. Then, in his anger he sent the freezing wind, the burning dusty wind, the rainy wind, the sleety wind, and with them all the different kinds of clouds. Most powerful of all, Tawhiri himself came down like a hurricane and placed his mouth to that of Tane, and shook his branches and uprooted him. The giant trees of Tane's forests groaned and fell and lay on the earth to rot away, and became the food of grubs.

When his fury had dealt with Tane, Tawhiri turned on Tangaroa the sea god. From the forests he swept down to the sea and lashed it in his rage. He heaved waves as high as cliffs and whipped their crests away, he churned the sea to whirlpools, he battled with the tides till Tangaroa took flight in terror from his usual home, the shores, and hid in the ocean depths where Tawhiri could not reach him. As Tangaroa was about to leave the shores, his grandchildren consulted together as to how they might save themselves. For Tangaroa had begotten Punga, and Punga had begotten Ika Tere, the father of fish, and Tu te Wanawana, the father of lizards and reptiles. Those two could not agree where it was best to go to escape the storms. Tu te Wanawana and his party, shouting into the wind cried 'let us all go inland', but Ika Tere and his party cried 'No, let us go to the sea'. Some obeyed one and some obeyed the other. Those of Tu te Wanawana hid themselves on land, and those of Ika Tere in the sea.

So they fled their separate ways, the fishes in confusion to the sea, and the lizards and reptiles to the little hiding places in the forests and rocks. And for this reason Tangaroa, enraged that some of his offspring deserted him and were sheltered by the forests, has ever since made war on Tane, who in return has helped those who are at war with Tangaroa. The sea is forever eating at the edges of the land, hoping that the forest trees will fall and become his food, and he consumes the trees and houses that are carried down to him by floods (Alpers, 1996, p. 18).

When Tawhiri had done with Tangaroa he returned to the land again and fell upon his two most peaceful brothers, Rongomatane and Haumia. But Papa the Earth mother, to save them, snatched them away and hid them in safe places. And so well did she protect these children, that Tawhiri pursued them in vain. Tawhiri having attacked four of his brothers, determined next to try his strength with Tu the war god, and rushed against him. Tawhiri stormed and howled but Tu withstood him for he placed his feet securely on the breast of the Earth his mother and was safe. Thus Tu alone, the only one of the party who had been for murdering their parents stood upright and unshaken. And so at last Tawhiri let his winds die down and Rangi ceased to urge him on. Their rage was spent and peace was in the space between the Earth and Sky.

But now a savage mood came over Tu the war god, wrath of man. Since Tane and the other three had left him to withstand Tawhiri on his own he felt a wish to injure Tane. Besides he knew that Tane's offspring were increasing and were making the earth more lovely and he feared that they might become his enemies. He therefore gathered some of the long stringy leaves of the ti whanake tree and twisted them into nooses and when he had made enough he went into the forest setting snares and hung them in cunning ways. Soon the offspring of Tane were caught in snares and lay trembling unable to fly away and became his food. Next Tu took revenge on Tangaroa for being no help to him against Tawhiri. He sought out the sea gods offspring and found them leaping and swimming in the water. He cut down strips of

Tane's flax and wove them into nets, and dragged them into the sea and hauled out Tangaroa's children. And he cooked them and thereby removed their tapu state (sacredness) and made them common (noa), and ate them.

After that he took revenge on the meekest of his brothers, Rongo and Haumia. From a stout piece of one of Tane's trees he shaped a digging stick, or ko, and with some flax he plaited baskets and dug up the children of Rongo and Haumia, and by cooking them de-sanctified them and made them common, and he ate them. His four brothers of the earth and sea, Tu had now defeated entirely and their offspring were his food. But Tawhiri he could not defeat nor make into food. And so Tawhirimatea, the last born of the children of Sky and Earth remains as an enemy for man today and both are eternally at war. Thus Tu, the god of war, is man, but only the spirit and not the body, for man was not yet made (Alpers, 1996, p. 22).

In separating the Earth and Sky the sons of Rangi and Papa established the third state of existence known as Te Ao Marama (the world of light). It is in this period that the first human was created out of the earth mother by Tane to establish Te Ira Tangata (the life principle), the descent of man and the world as we understand it today (Walker, 1987, p. 42). The conflict between the Gods over the separation of earth and sky established man's superior position in nature with the right to take the progeny of the departmental gods, i.e. (Tangaroa and his children the fish) and convert them to his own use. The food which comes from the bosom of the earth mother provides sustenance for man; who in his turn loves the earth as a mother is loved. This personification of nature in the Maori cosmogenic myth codifies man's relationship to the earth and its resources (Best, 1924; Buck, 1959; Metge, 1976).

Philosophical Views

Tangata whenua at the marae, hapu, and iwi levels, maintain strong links to their rivers, lakes, the ocean, and hold in-depth traditional knowledge of the resource and associated Maori spiritual obligations (Muriwhenua Report, 1988). Understanding Maori values, spiritual concepts, and whakapapa, including whakapapa of the fishes and man's inter-connectedness to the creation of all things should assist in comprehending the Maori world-view of the environment and use, access and stewardship of resources. Gaining an understanding of those concepts can provide greater awareness of why Maori take kaitiakitanga so seriously. Matunga (1994, p. 4), conceptualised a four part framework for understanding Maori values with regard to environmental management. In contemplating the fisheries resource the framework, Taonga; Tikanga; Mauri; and Kaitiakitanga; is outlined below.

1. TAONGA

   Taonga is interpreted to mean in its broadest sense, an object or resource which is highly valued. 'Treasure' can be used as a literal translation. Taonga was used in Article 2 of the Treaty. "Ko te Kuini o Ingarani ka whakarite ka whakaae ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa" (Tauroa, 1989, p. 112).

   Maori were guaranteed tino rangatiratanga (full chieftainship) over all those treasures important to them. (For a full translation of the Maori Article Two text see Muriwhenua Fishing Report, 1988, p. 173).

   Durie states that, "Taonga has been said to cover cultural properties such as language, social properties including children, and environmental properties - rivers, birds, and special land sites including lakes, fisheries and the sea" (Durie, 1998, p. 23). With regard to environmental properties, David Williams in Kawharu 1989 states. "We consider that the Treaty envisaged

protection for Maori fishing grounds because the English text specifically provided for that while the Maori text implied it" (Kawharu, 1989, p. 81).

2. TIKANGA

"The way in which a taonga is valued varies according to particular methods of recognition practiced by different tribal groups – the tikanga" (Durie, 1988, p. 23). Tikanga are used as 'guides to moral behaviour' and within an environmental context refer to the preferred way of protecting natural resources, exercising guardianship, determining responsibilities and obligations, and protecting the interest of future generations (Matunga, 1994, p. 4).

3. MAURI

In Maori terms all living things, including natural and physical resources, possess a Mauri, a life principle or life essence. Distinctions between inanimate and animate objects are therefore blurred, because each is afforded a spiritual existence which complements the physical state. Nothing is lifeless. Damage to a resource not only creates physical impairment but also causes spiritual damage and in the process impinges on the mauri of other objects, including people. (Matunga, 1994, p. 4).

4. KAITIAKI

The fourth part of the framework for understanding Maori environmental values is kaitiaki. It denotes the burden incumbent on tangata whenua (i.e. tribal members in a particular area) to be guardians of a resource or taonga for future generations. The act of guardianship, kaitiakitanga, requires clear lines of accountability to whanau, hapu or iwi and is more frequently associated with obligation than authority. Transfer of the ownership of a resource away from tribal ownership does not release tangata whenua from exercising a protective role to the environment, although it does make the task more difficult since others will also have an interest. In environmental

terms, the kaitiaki approach is holistic and provides for restoration of damaged ecological systems, restoration of ecological harmony, increased usefulness of resources and reduced risk to present and future generations (Matunga, 1994; Walker, 1987; Kawharu, 1989).

Some, perhaps many, Maori have an intuitive grasp or faith in spiritual things and their esoteric knowledge is highlighted below in comparison with science.

Mauri, the life essence in all things including both animate and inanimate objects is portrayed as Gnostic, meaning, possessing knowledge especially spiritual knowledge. For science, the empirical recognition of a spiritual dimension in all things requires proof.

Maori relationship dynamics with the para-normal is normal.

Gnosis =

Atua
Wairua
Tangata
Manaaki

Mauri is physically and spiritually inherent in all the above.

Sciencia =

Evolution
Man
Science

Physical and spiritual essence is not always affirmed.

The Maori word Kaitiaki (guardian) has spiritual connotations and its meaning can reflect "God" or "of Godhood". Ngati Kahungunu tribal usage of the word was largely restricted to spiritual matters only. Use of the word Kaitiaki described in

Customary Fisheries Legislation is qualified by the preceding word tangata. Tangata means people or person and indicates the human element. The legal interpretation defines "tangata-kaitiaki", as an authorised, appointed guardian who manages customary fisheries in a specified local area. (Kaimoana Regulations). Alternatively, historian Kawharu (1998) asserts that kaitiakitanga (guardianship) is the exclusive preserve of mana whenua groups (groups with authority and rights over ancestral land) and, depending on context, meanings extend beyond guardianship and include management of human, material and non-material resources. Rangatiratanga (customary authority) is the necessary overarching framework within which kaitiakitanga operates.

Mana moana (*sea jurisdiction*) and mana whenua (*land jurisdiction*) when used together can refer to a tribe or a sub-tribe's traditional relationship and authority over the coastal land and adjacent sea in their tribal territory. In a cultural sense that authority is handed down from ancestors and as such that historical authority remains intact regardless of land being bought or sold. In times of war and conquest of land, intermarriage between factions, usually at a chiefly level, was commonly used to restore connection to historical authority.

Communal concepts of ownership and usage

Maori viewed the marine environment, specifically the inshore fishery, lakes, swamps and rivers in a similar context as land. The tribal territory was in reality made up of the lands of the various hapu, each jealously and exclusively maintained, while further segmentation gave specific rights of many kinds to family groups and individuals (Firth, 1973, p. 378). Land was apportioned and held in three ways, either by the entire tribe, by some family of it, or by a single individual (Taylor, 1974, p. 384). Without oversimplifying, the concept of land, fresh water or marine ownership was largely a communal concept.

> The common rights of a tribe are often very extensive. These generally apply to waste lands or forests, and convey to the tribe rights of hunting and fishing over those parts. Rights to some parts of territory or of fishing places, specific rocks, places where fish are abundant, were often specifically dedicated to groups or individuals. (Taylor, 1974, p. 384)

Transgression by other Maori was rigorously opposed. Hapu today view specific traditional hunting and fishing territories as handed down to them and continue that rigorous defence albeit within legal parameters rather than by warfare as described by Firth. For example, Firth, records an instance of a hapu group hunting pigeon in trees belonging to another whanau group and when confronted an argument ensued. The incident was reported to the father of the whanau group who angrily chastised them for not killing first and asking questions later (Firth, 1973, p. 375). Nicholas in 1815 remarked on the existence of sharply defined fishing rights at Kawakawa, the limits being marked out by stakes driven into the water. He observed several rows of these stakes belonging to different hapu, each having their prescribed boundaries beyond which they did not venture to trespass for fear of punishment from their neighbours (Nicholas 1846, cited in Firth, 1973, p. 379).

The exclusive attitude which the people of a hapu adopted towards their economic privileges is indicated by many incidents in Maori history. In spite of strong kinship ties, hapu and whanau guarded their fishing and hunting domains to the point of death or war against other tribes and also against other hapu within the tribe. The legacy continues today as hapu strongly assert mana over rohe-moana where they proclaim and protect their traditional fishing interests and boundaries, albeit the power plays involved are often constrained to political, legal and economic debate's that are played out in courts of law. The next chapter addresses the legal struggles indigenous peoples have had in pursuing their rights to land and fisheries.

CHAPTER TWO

Indigenous Fisheries Rights

Introduction

The goal of this chapter is to summarise the state of knowledge concerning the place of indigenous traditional fishing rights in contemporary times. In order to do this the literature review must first go back in time to grasp the predicament of indigenous people from the industrial revolution and subsequent global expansion by industrial nations. The chapter is divided into sections.

Section 1 provides a quick snapshot of indigeneity in these post modern times and gives a brief insight into the rise of the international indigenous movement. This is a precursor to the following segments that explore the global expansion of industrial nations on indigenous tribal societies.

Section 2 backgrounds tribal societies and the considerable changes to tribal resources brought about by the expanding industrial powers and their intent toward indigenous people. Understanding the history of indigenous fisheries resources and fishing rights may raise awareness of the political repercussions facing nations and governments today.

Section 3 describes colonisation, treaty making and world-wide commonalities characterising interaction between industrial nations and tribal cultures since 1765 and state exploitation of cultural systems. A description follows on the proliferation of treaties worldwide as an extension of government control where states sought to gain acceptance and eventual rule. The discussion considers the dearth of literature that describes the application of, and impacts on traditional customary fishing practices incorporated within contemporary legal frameworks. This suggests that worldwide colonial exploitation and denial of customary fishing rights remain largely unresolved.

Section 4 begins with similarities between indigenous American Indians and New Zealand Maori and European arrival in New Zealand, the Treaty of Waitangi, subsequent decades of colonial domination, and eventual Maori resistance to treaty breaches. This is followed-up by comparing American Indian nation's own treaty experiences. The review describes similar patterns of American colonial domination and exploitation of indigenous resources with New Zealand colonial settlers and the subjugation of Maori customary fishing rights and practices.

This historical exploitation theme proceeds as a comparative evolution of important relations of interest where, amongst other things, the contemporary white backlash against treaty rights for minorities perpetuates marginalisation and denies restoration of lost rights. The use of democracy and majority rule is shown as a weapon of domination and exploitation of customary rights and practices, nevertheless the legal system as the 'new front line' describes some successful outcomes for a few indigenous groups.

Section 1.

Indigeneity

The world's indigenous peoples are found on every continent. The social, cultural and spiritual values of indigenous people are diverse, unique and often linked with adjustment to their respective environments over significant periods of time. Adaptation to the environment is commonly associated with indigenous cultural beliefs, sustenance and spiritual knowledge. Specific beliefs and practices often connected indigenous people to the habitats and eco-systems around them. However, the largely consistent lifestyles of indigenous people were vastly altered under the devastating impact of colonisation and assimilation.

> In many parts of the world indigenous people were once seen as a remnant population on the brink of extinction if the government did not intervene. Government policy was predicated on a belief that they were going to disappear. Programmes such as establishing reserves or forced relocation

were implemented to cushion their demise. When it became evident that indigenous peoples were not disappearing, government initiatives were re-channelled into absorbing them into the mainstream. (McIntosh, 2000, p. 4)

Government organisations were instituted to assist the assimilation process and further erode independence and separate cultural systems. New Zealand has Te Puni Kokiri – previously the Department of Maori Affairs and before that Native Affairs; the United States has the Bureau of Indian Affairs and the Department of Hawaiian Homelands; Canada has the Department of Indian Affairs and Northern Development. "Typically indigenous peoples are the only ethnic groups with government agencies to monitor their outcomes and deliver policies designed to improve their poor group level status" (Robson, 2004, p.12).

Assimilation attempts were not without risk to either the colonising power or to the indigenous group. Western ways dominate the colonial systems although in small ways indigenous subtleties may infect those systems to varying degrees. "Any indigenous specificity disappears under the overwhelming pressure of the homogenizing civilisation impact of the west. The ultimate result is hybridization of culture" (Sztompka, 1996, p. 76).

Change wrought upon indigenous systems brought with it enormous social problems. Many indigenous nations still struggle with the realities reflected in their overwhelmingly negative socio-economic status. These nations' histories resound with stories of resistance, consistent and ongoing reaffirmation of rights, and renewal of relationships with the environment, ancestors and the generations to come (Robson 2004). In many countries indigenous people are seeking ways to dismantle their histories of colonisation, exploitation, exclusion and oppression.

Despite colonisation and erosion of their traditional way of life, indigenous people have been able to retain most of their cultural values although they must constantly be vigilant and guard against any further cultural erosion. Maori still hold values

practiced by their ancestors as do aboriginal people of Australia and American Indians. Although the dispossession effects of colonisation has left pockets of indigenous people socially and culturally corrupted, there are those who retain their identity and proudly maintain those traditions. "Indigenous people are no longer confined to the margins of society rather they have become key contestants on the global stage yet indigenous people remain the poorest of the poor and their culture and lifestyles continue to be eroded" (Fleras and Maaka, 2005, p. 45).

The social status of indigenous people is often found at the lower end of the socio-economic ladder. Not because indigenous people themselves are stupid or lazy, but more because of government policies, rapid social change, appropriation of their resources and racism. Inequality is the legacy confronting many indigenous people:

> The functionalist school of modernisation argues that global inequality exists because indigenous peoples refuse to modernise. Inequality arises from their reluctance to discard cultural practices that are at odds with modernisation, a rejection of assimilation into the mainstream and a refusal to become fully involved in the global market economy. In other words indigenous people are to blame for their poverty and lack of power. At odds with modernisation theorists are dependency and world systems theorists who believe that indigenous problems arise from the excessive exposure to and involvement in modern economies. Rather than improving their lives and life-chances, exploitative global economies and ruthless corporate structures have systematically and systemically generated patterns of marginalisation, impoverishment and disempowerment. Instead of blaming the victim, according to this line of argument, the system is the problem. (Fleras and Maaka, 2005, p. 36) [1]

[1] See Commercial Impact p.98 for a comparison of the modernisation argument and tribal elites.

People sympathetic to the colonial power find it enormously easy to point the finger at marginalised indigenous people and blame them for not accepting what's good for them! Nonetheless, indigenous people are attempting to throw off the legacy of colonialism that sought to displace them yet they must do so without destroying themselves or the nation state of which they are a part of. Belonging to a nation state is concerned with citizenship. Article three of the Treaty of Waitangi bestowed all the rights and privileges of British citizens to Maori. Formal citizenship was not the problem for Maori, rather it was being denied full equality up until the government adopted the principles in the Hunn Report in the 1960s (Fleras and Maaka, 2005).

According to Denis, (1996) whilst the principle of formal equality and full participation in society has been a step forward, a citizenship that suppresses notions of indigenous differences is just as debilitating as a citizenship that exaggerates differences as an excuse to exclude. Both, in effect, deny the legitimacy of identity and difference as grounds for engagement and entitlement. In short, for indigenous peoples to be equals they must be seen as different. Indigenous people possess the same rights as any citizen of society but they also have what is known as indigenous rights that reflect their constitutional status as descendants of the original occupants. It is all about living together differently.

International Indigenous Rights

Debate over indigenous people's rights has coalesced into an international social movement (Smith 1999). The first international organisations of indigenous peoples emerged in the 1970s, including the World Council of Indigenous Peoples in 1975. "The Working Group on Indigenous Populations was established in 1981 and consisted of independent human rights experts who served as a think tank on indigenous questions" (Burger, 1998, p. 5). Since then sixteen indigenous peoples organisations with consultative status in the United Nations have appeared. In 2000 the United Nations forum on indigenous issues was established.

In 1993, the working group on Indigenous Populations tabled a draft Declaration on the rights of indigenous peoples. The draft Declaration asserted the right of indigenous peoples to self determination as well as rights over land, culture, identity, language and security:

> Having an internationally accepted body of rules to protect indigenous peoples means that rights are defended not only as the minimum necessary for survival, dignity and well-being of indigenous peoples; they are also enshrined in international law through the notion of customary law. (Fleras and Maaka, 2005, p. 45)

The Declaration has forty five articles divided into nine sections. The following examples of rights stated by the declaration sets the international indigenous context for investigating customary fishing rights of indigenous Maori of Aotearoa.

- All human rights of Indigenous Peoples must be respected. No form of discrimination against indigenous peoples shall be allowed.
- All Indigenous Peoples have the right to self determination. By virtue of this right they can freely determine their political, economic, social, religious and cultural development, in agreement with the principles stated in this declaration.
- Indigenous Peoples have inalienable rights over their traditional lands and resources. All lands and resources which have been usurped or taken away without the free and knowledgeable consent of indigenous people shall be restored.
- All treaties reached through agreement between Indigenous Peoples and representatives of the nation states will have total validity before national and international law.
- The customs and usages of the Indigenous Peoples must be respected by nation states and recognised as a legitimate source of rights.
  (cited in Fleras and Maaka, 2005, p. 46)

Conclusion

Put bluntly, indigenous people claim to have more rights than non-indigenous populations. Their claim to be 'first among equals' is because of a unique constitutional relationship between indigenous people and settler states; a relationship that eludes immigrants and their descendants. This relationship is founded on the principle of indigenous difference (Thornberry, 2002). Nonetheless indigenous people will continue to be bombarded by assimilation attempts, ethnocentrism, and resource appropriation and must continue to be vigilant in protecting their rights, resources and identity.

Section 2.

Tribal Societies In Modern Cultures

There appears to be a dearth of literature on the application of contemporary customary fishing rights in Aotearoa, New Zealand. Similarly there is difficulty locating international literature that investigates the modern application of traditional fishing rights for indigenous peoples wherever they may be. Nevertheless there are publications that investigate the loss of customary rights per-se, including indigenous commercial and subsistence fishing rights and how the history of that loss has affected particular native populations and groups.

There are various anthropological literature, see, for example, E. Best, (1924). J. Metge, (1976). C. Orange, (1987), and other research publications, M. Jackson, (1992), E. Pomare, (1995). M. Durie (1998) that have, among other things, attempted to assess and explain the impact of colonisation on indigenous people by settlers from expanding industrial nations, and the political, social and economic implications decades or even centuries later on tribal peoples. Notwithstanding an element of those colonial situations was where local colonisers, whose interests were often at variance with and vigorously opposed by their home governments, were a law unto themselves (Adams, 1977, p. 103 - 133).

Pre-1840, Hobson received written instructions from Lord Normanby (Orange 1987), outlining protocols to treat with and protect the natives from colonial excesses, due to past experience of settler trends toward indigenous native people. Notwithstanding, according to Bodley, (1990), "almost invariably the trends have been similar; the original native inhabitants have become marginalised and dispossessed of their former lands, resources and social structures. Many modern nation states today are grappling with the legacy of century old colonial excesses and broken treaty rights" (Bodley 1990, p. 12).

Industrial Explosion

The expansion of industrial nations brought considerable change to tribal societies, including iwi of Aotearoa New Zealand, through new technology, new conditions, the culture of consumption and the pursuit of material wealth, notwithstanding the fact that these things may have presented attractive options. Invariably some chiefs resorted to trading slaves or women to secure money, weapons or both (Belich, 1986).

Although some tribal individuals adapted very quickly to the pursuit of wealth, the culture of consumption was mostly opposite to tribal usage of natural resources. Tribal societies lacked political and economic opportunity and therefore maintained a focus on self-sufficiency in a sustainable and ecologically managed way.

> Industrial ideological systems stress belief in continual economic growth and progress and characteristically measure 'standard of living' in terms of levels of material consumption. Tribal cultures contrast strikingly in all of these aspects. The most obvious consequences of tribal consumption patterns are that those cultures tend to be very stable, make light demands on their environments and can easily support themselves within their own boundaries (Bodley, 1990, p. 6).

Conclusion

On a world scale the often well maintained, unpolluted and preserved resources of tribal peoples was not missed by the industrial powers. The so-called reclassification of those well maintained ecological resources into the category of 'under utilised resources' created the justification and opportunity for exploitation. The more powerful nations have always assumed a natural right to exploit the world's resources wherever they find them and to undermine the power base of traditional indigenous institutions regardless of prior claims of indigenous populations (Burger, 1987). Although the interests of the Colonial power and their local representatives did not always concur, attempts by indigenous people to redress their grievances by visiting the Colonial country of origin were mostly ignored (see - Maori Legal Battles, p 47).

Section 3.

Colonisation, Treaty Making And Neo-Colonialism

This section highlights colonisation within Aotearoa, New Zealand and the extension of government control by treaty making. Consumption, progress and the unprecedented assault on Maori tribes and their resources is described including the loss of political independence. Treaty making globally as a means of acceptance and agreement to a foreign presence is discussed. As a background to the Treaty of Waitangi the proliferation of colonial treaties is explored including the presence of military threats and unscrupulous practices to gain signatories. Reviewing why there is a dearth of literature that investigates the application of customary fishing practices within a contemporary legal framework, suggests world-wide colonisation practices and exploitation are largely unresolved. The section concludes by describing Maori attempts to seek international support via the United Nations and highlights the lack of Maori unity as a shortcoming.

The Maori of Aotearoa New Zealand underwent colonisation like many other indigenous people, and regardless of their treaty guarantees and prior claims to New Zealand's resources, exploitation eventuated nonetheless. In New Zealand,

land appropriation for settlers was the major emphasis of the early part of the colonisation period. Resource appropriation in regards to New Zealand fisheries quickly followed and was largely undertaken by way of legislative controls that transferred rights from Maori to the Crown.

A number of writers argue that the problem at the outset must be viewed in a long-term perspective as a struggle between two incompatible cultural systems: tribes and states. (See Bodley, 1990; Nettheim et al, 2002; Steward, 1967). In order to understand the interaction between these two politico–cultural systems, the most critical features of tribal groups are their political independence, reliance on and sustaining local natural resources and relative internal social equality. In comparison with states, especially industrial states, tribal systems tend to expand more slowly and have been environmentally less destructive. Territories still controlled by tribal groups are attractive to developing nations because tribal territories often contain 'under-utilised resources'.

In most instances Maori tribal systems largely maintained an internal social equality that, prior to European arrival, created less incentive for tribes to elevate economic production and consumption beyond local subsistence demands and largely satisfied their basic human and kinship needs (Moon, 1993, p. 87). Nevertheless with regard to fisheries resources, Maori did trade, barter and provide koha and manaakitanga. It was not unusual for häkari (feasts) to be held where fishing nets over a mile in length were used to provide fish for many hundreds of visitors. "In 1814 an Englishman reported, Maori nets as being larger than any in use in Europe" (Bourassa, 2000, p. 160).

Once colonisation of Aotearoa began it was followed by a rapid increase in the number of settlers that eventually destroyed Maori political independence and altered tribal society. The settlers demand for land meant that Maori tribal territories were greatly reduced (Walker, 1990). The European monetary system and consumption, often referred to as 'progress', led to an unprecedented assault

on Maori tribes and their resources although in some cases Maori were willing participants.

Treaty-making as the first step in extending government control was carried out widely in India, North America and Africa as the frontiers of settlement were extended. Driven by capitalism and seeking gold, minerals and other resources, the Portuguese, Spanish, Dutch, French, German, and British were the dominant colonisers during the 17th, 18th and 19th centuries. Over time expansionist policies, methods and assimilation practices were perfected. The British, in particular, used 'treaties' as a means of agreement and acceptance of a British presence, and, explicit or not, eventual rule. Representatives of colonial government's often merely located individuals who were assumed to be tribal leaders and obtained their marks on official documents thereby transferring tribal sovereignty to the state and at times, extinguishing their claims to the land (King, 1992).

British colonisation activities had resulted in the signing of numerous treaties before 1840. More than 300 treaties in just one continental area were signed between 1765 and 1845, all with the potentates and princes of India. Between 1798 and 1845, Britain was a party to 40 treaties with identified rulers of Arabia and the Persian Gulf. Recognition of aboriginal title to land is found in West African settlements where treaties were made between Britain and the native peoples between 1788 and 1827. Many others had been instituted during the growth of the British Empire in Canada, in Africa and in the Pacific (Tauroa, 1989, p. 20). Thus treaty agreements were not new when the Treaty of Waitangi was drawn up.

Treaty-making often concluded military campaigns as part of a formal surrender ceremony but even under peaceful conditions the threat of force was always in the background. It was also not unusual for lavish gifts to be presented to the signing tribal dignitaries, often accompanied by promises of new authority and special privileges to be accorded by the government (Bodley, 1990). Although the signing of the Treaty of Waitangi did not conclude a military campaign, the use of force

would manifest itself a short time later in the land wars and confiscations of the 1860s.

International Arena

Some international literary works investigate colonisation practices and the effects on fishing peoples like the Inuit of Alaska, Greenland and Iceland - (Birkes, 1999; Burger, 1987; Hughes, 1974; Kalland, 1994; Wolf-Kidde, 1995; Wright, 1992). Others examine and explain commercial fishing practices, historical customary fishing practices and modern day impacts on traditional forms of fishing - (Best, 1924; Firth, 1929; Grant, 1989; Josephy, 1982; Memon and Perkins, 2003). Nevertheless it has proven difficult to locate literature that specifically investigates the application of customary and traditional fishing practices within a contemporary legal framework, the impacts of that and how people have reacted to it.

The exploration of why there is a dearth of literature suggests that colonial attitudes categorised tribal knowledge and practices as mere superstition (Ruwhiu, 1999; Kuka, 2000), and subsequent ethnocentric processes have allowed very few, if any, traditional practices to be incorporated into a modern legal and political framework. This presumes that colonisation practices of the past 200 years have been enormously successful and continue to marginalise indigenous people, their knowledge, traditions and practices.

The advent of technological advances in communication and travel has brought with it a so called shrinking world that provides opportunity for marginalised indigenous groups to unite and share common issues such as State exploitation and grievances and empathise across international boundaries. The post World War Two United Nations (U.N.) is a world-wide political forum that indigenous groups use for political purposes. At the U.N. world stage marginalised indigenous groups including New Zealand Maori raise concerns that seek international support and to draw attention to their governments' indigenous rights shortcomings and treaty breaches. For example, Moana Jackson and Dr Tamati Reedy put a case

forward at the United Nations for an international investigation into the violations of Maori fishing rights by the instigation of the Sealord's Deal (it was opposed by the New Zealand government's U.N. representative). It was made at a special United Nations General Assembly session during the launch of the International Year for Indigenous People (Moon, 1999 p. 107).

The United Nations have international protocols and charters concerning indigenous rights to which New Zealand is a signatory. "Not surprisingly the U.N General assembly declared 1993 the international year for the worlds indigenous people in hopes of pinpointing the paradoxes of their lived experiences" (Corpuz, 2001, p. 26).

White dominance in the anthropological literary field has also been challenged by indigenous self determination which draws on the importance of control over research which involves indigenous subjects or which investigates aspects of indigenous society, culture, or knowledge. The concerns are founded on issues surrounding intellectual property, guardianship and exploitation by unscrupulous researchers. Essentially, self-determination enforces indigenous initiative and drive in research and rejects attitudes of superiority that in the past have resulted in natives being regarded simply as passive objects.

Conclusion

Treaty making by industrial nations established a pathway for political and economic domination of indigenous peoples. Despite marginalisation and assimilation attempts cultural domination was not so clear. Internationally indigenous people have similar struggles and on the global stage, resisting exploitation, asserting indigenous rights and challenging nation states are making significant impacts despite some governments refusing to acknowledge the plight of their indigenous people.

Section 4.

Similar Struggles; American Indians And New Zealand Maori

Background

With regard to treaty rights, land, environment and customary fisheries issues, North American Indians have experiences compatible to those of New Zealand Maori. The severity of the threat to their sacred fisheries resource and associated spiritual and cultural values, like Maori, is of great concern. This section investigates the Indian fishing rights movements from the 1960s and their treaty claims that led to some landmark United States court decisions in their favour. It also considers the white backlash against those American court decisions that has many connotations for Maori legal and political treaty claims amidst a majority non-Maori population. This pinpoints possible future repercussions for any Maori legal successes. Highlighting rare victories of self-determination and settlement of treaty rights and grievances in North and South America provides some examples of indigenous success and shows several different types of victories including economic gains, reinstatement of rights and the rare political independence. Although some schools of thought may consider those settlements hollow victories, others may view them differently.

North American Fisheries Rights

Two centuries of white portrayal of Indians as savage and barbaric has not completely diminished and stereotype attitudes remain. "Like the southern rebels, these savages tolerate no opposition in their unfriendly attitude toward the whites" (Adams, 1973, p.79). Some North American literature written by American Indians provides a refreshing native perspective of their history. (See Grant, 1989; Josephy, 1982; Matthiessen, 1991; Nerburn, 1994). Native descriptions provide insight into Indian society, culture and values from the position of the oppressed that differ markedly from some non-native descriptions or academic biographies that mostly describe but do not experience. Nonetheless, the latter does provide useful information, description and history. "The various colonial powers dealt with

Indians in different ways, however in every area settled by Europeans, Indians, were victims... they suffered discrimination, exploitation, and wholesale destruction by disease and demoralisation, if not by sword and bullet" (Hirschfelder, 1995, p 1).

In the last four decades the literature published on North American Indians describes a lengthy history of struggle to have treaties honoured and to recapture their traditional rights and ownership of their fishery resources - (Kalland, 1994; Josephy, 1982; Hirschfelder, 1995; Steward, 1967). For most tribes there has been little resolution over the loss of their sacred fishery resources and the struggle continues:

> Throughout the Northwest as well as in Michigan and other parts of the United States, fishing oriented-tribes had had histories of tense and inconclusive conflicts with the State and local officials over whether their treaties gave them fishing rights not possessed by others. (Josephy, 1982, p. 178)

Some Northwest American Indian nations, Chippewa, Lakota, Sioux have been occupied with treaty rights over land issues, including waterways, fisheries and the environmental and social impacts on their culture, traditions and resources. The commercial and environmental impacts on fisheries resources have serious repercussions for tribes whose cultural traditions are interwoven with their fishing history. "The greatest amount of fishing was done in the northwest. During the Salmon run entire tribes would turn out for fishing" (Grant, 1989, p. 51).

The severity of the threat to their cultural and spiritual values and in particular their sacred fisheries resource with its ceremonial purposes, like Maori values, are not always easily understood by those from the outside whose main interest in fisheries resources is commercialism or sport. Hence, some Indian nations have taken direct action or protest and some have had mixed success in gaining legal recognition of their treaty rights. In Washington, Oregon, and Idaho, Indians

challenged half a century of attempts by the State of Washington and its courts to deny them the fishing rights guaranteed by the Treaty of Medicine Creek 1854. This was a treaty:

> in which their peaceable forebears had signed away most of the Pacific Northwest in exchange for permanent access and a fair share of the river running Salmon. Like the Buffalo of the Plains tribes, the Salmon was a sacred creature that carried with it the very life and spirit of their culture. In the next century as the white population took over the region several Salmon species and the Trout as well were drastically reduced by over fishing, hydro-electric dams that blocked spawning runs, and logging and industrial pollution that poisoned the rivers. And inevitably it was the Indians, taking less than 1 percent of annual harvest who received the blame.[2] (Matthiessen, 1991, p. 35)

The Indian fishing rights battle began to spiral into a major issue as had the land issues, and reached a climax in the early 1960's. In 1963 they acted on their treaty rights in a series of confrontations that began at a fishing place known as Franks Landing.

> The fish-ins were joined by the National Indian Youth Council and other organisations, and attracted the support of Indians from all over the country. It was not until 1974 that the fishing rights struggle had been temporarily resolved when a courageous District Court Judge (Boldt), upheld the Indian treaty. (Mathiessen, 1991, p. 317)

However, their victory was short-lived as it would soon suffer from the inevitable white backlash.

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[2] See page 65 for similar accusations on Maori customary crayfish harvest.

White backlash

A white backlash would seem ironic, hypocritical and confusing for indigenous people especially when the white majority perceives special rights bestowed on indigenous groups as being discriminatory and unfair. It appears not to matter that treaties purposefully sought special rights for the protection of indigenous cultural traditions or that the treaties were agreed to and signed by the ancestors of the modern white majority.

> In the Pacific Northwest the Boldt decision in regard to the fishing rights treaty was upheld by the Supreme Court causing new outbreaks of bitterness and violence. On February 2nd 1976, anti-Indian groups in Washington State, Montana, and South Dakota had joined forces to fight what it perceived as federal discriminations against the white majority. (Mathiesen, 1991, p. 318)

Ironically the fight against Indian legal successes highlights the so-called 'tyranny of the majority' where white numerical supremacy can perpetuate denial of the right to redress.

> In making his decision Judge Boldt and his law clerk went through every single case from the beginning of their country that pertained in any way to the rights of Indians. Judge Boldt pointed out in his decision, that by the treaties, the Indians had granted the White settlers the right to fish beside them; he upheld the right of the treaty tribes to fish and manage the fisheries in their traditional fishing places and ordered that they be given the opportunity to take 50% of the harvestable fish. (Josephy, 1982, p. 206)

He also declared 'illegal' all state regulations that went beyond conserving fish to affect the time, manner and volume of off-reservation fishing by treaty Indians at their usual and accustomed sites (Josephy, 1982). But it was not over; Judge Boldt was burned in effigy, vilified, accused of having an Indian mistress and attacked by

white fishermen. In addition the State of Washington refused to accept the decision, and the Washington State's Supreme Court held that the state could not allocate a resource 'among races' and enjoined the Department of Fisheries from enforcing Judge Boldt's orders amid a growing conflict between the state and federal judges. The decision went to the Court of Appeal who upheld Judge Boldt's decision and later with the same result, to the US Supreme Court (Josephy, 1982). Playing the so called 'race card' almost always gains non-indigenous public sympathy and support against perceived special rights and privileges for indigenous minorities.

In 1981, the Chippewa tribes waging the same kind of struggle as occurred in Washington and Oregon won their own landmark decision in the US District Court (and later upheld by the Supreme Court), which recognised their right to fish free of state regulations in the areas of Lakes Superior, Michigan, and Huron. "By a similar insistence on the observance of treaty guarantees, where they applied, tribes noted that hunting and fishing rights could also be protected" (Alvin, 1982, p. 211).

Maori who statistically make up 15% of the New Zealand population were on the receiving end of the political and public reaction to the foreshore and seabed issue. For Maori, the 2003 foreshore and seabed ruling in their favour by the New Zealand Court of Appeal, the Labour government's initial reaction to legislate against it, and the Pakeha perception and backlash, has striking similarities to the Boldt decision and ensuing events in the State of Washington, albeit allocation of fishing resources differs somewhat from ownership of the foreshore and seabed. [3] Nevertheless the overseas patterns regarding treaty fishing rights issues provide indicators for New Zealand Maori that signal possible repercussions of backlash, anti treaty-ism and covert racism under the guise of democratic majority rule.

[3] Foreshore and Seabed Act Section 9 states - Existing fishing rights preserved. Nothing in this Act affects any rights of fishing recognised, immediately before the commencement of this section, by or under an enactment or a rule of law.

Treaty settlements or hollow victories?

The loss of customary fishing rights and practices by indigenous peoples around the globe are similar to the extent that many are yet to receive fair treatment, recognition or redress of their claims. Even the few successful cases, where treaties have secured for tribes some of their former rights, are still subject to ongoing threats. The following international examples of rights based victories are included to outline the strengths and weaknesses of each settlement.

The Chippewa tribes protect their mineral resources through their treaty guarantees, nevertheless pro-mining interests have responded with renewed calls for Congress to terminate treaties. Once the Chippewa's began hunting and fishing according to ancient custom and treaty protected rights, anti-treaty sentiment reached a fever pitch in Northern Wisconsin. Because of the violence and outright racist activities, HONOR (honor our neigbors origins and rights), and several other organisations supporting treaty rights formed (Giddicks, 1992, p. 77).

Chippewa rights remain at the mercy of the government of the day. Lobby groups, economic considerations, public mood and voter discord may or may not alter the rights of the Chippewa tribes. Maori treaty rights are also prone to the same political swings that may or may not uphold past settlements or judicial decisions.

The Inuit of Greenland and Sami peoples of the Nordic states have experienced some success in various land and resource rights issues (Nettheim et al 2002). However, the following three international examples describe indigenous groups that have re-captured some measure of independence, nationhood and self-determination although these examples are few.

> In rare cases, indigenous peoples have successfully been able to force governments to accept their proposals. In 1925, the Kuna Indians of Panama declared themselves an independent nation and fought a brief

> armed rebellion before the government compromised with them in 1930 and accepted the Kuna plan to establish an autonomous Kuna reserve. (Bodley, 1990, p.158)

The reserve still exists today and its lands are communally held by the 28,000 resident Kuna who carefully restrict use of their resources by outsiders.

In 1959, outnumbered by colonists and rapidly losing their most valuable subsistence lands, the Shuar Indians of Ecuador were threatened with disintegration of their entire way of life. They sought self-determination and their 1964 solution was to create a fully independent, but officially recognised, corporate body – a federation based on regional associations of local Shuar communities (www.Shuar Indians. Native American Indian Cultures: Shuar Indians).
By 1978 the Shuar had 95,700 hectares securely in communal titles, huge cattle numbers that were their primary source of income, and had developed an education system that suited their needs with Shuar schools and Shuar teachers.

The best example of self-determination revival in North America is the Dene Indians of Canada. In 1988 the Canadian Prime Minister signed a settlement with the President of the Dene Nation that the Dene receives full title to some 10,000 Square kilometres of land, with both surface and sub-surface mineral rights. They receive surface rights and significant mineral royalties over another 170,000 square kilometres, as well as traditional land and fishing use rights to more than 1 million square kilometres and a $500 million dollar cash settlement. The precise details of Dene self-government were still to be worked out but clearly it was a major achievement and it has been called the largest land transfer in Canadian history (www.Dene Indians. Dene/Metis sign historical land claim agreement. "On This Day" CBC Archives).

The key point raised in the above three examples was the goal of independence and autonomy. The Dene, Shuar and Kuna Indians are no longer subject, as minority groups, to the whim of a majority government. Their rights in the areas they control are theirs to determine.

The experience of the Northwest Indians provides hope that legal system's can uphold treaty fishing rights. The experience also indicates how nasty those hard fought treaty battles can become. The successful run of Maori fisheries litigation began with the landmark, 1986 Tom Te Weehi case.

Te Weehi was found in possession of excess shellfish over the regulatory amateur fishing limits. Te Weehi claimed he was fishing pursuant to a customary right where he had sought and gained local kaitiaki (verbal) approval to gather fish for a customary purpose. The New Zealand High Court found that Te Weehi had been fishing pursuant to a customary right, (Section 88.2), that had never been expressly extinguished by statute nor could any legislation be found that clearly extinguished it (see p. 57).

It was a right clearly still in existence. "Justice Williamson preferred a reasoning that customary rights were preserved unless specifically extinguished, rather than the argument that such rights did not exist unless specifically preserved in statute. Clearly, it applied in this instance to the Ngai Tahu tribe" (Tauroa, 1989, p. 56).

The decision handed down was that Te Weehi was not guilty of the charge under the Fisheries Act as claimed. (Tauroa 1989) For the first time in 130 years, a New Zealand court had upheld that Maori customary rights do still exist in law. The Ministry of Agriculture and Fisheries [4] responded by introducing Regulation 27, a system where authorised Maori representatives issue written customary permits to gather kaimoana for hui and tangi. Customary permits provide a defence against

[4] Fisheries were under the Ministry of Agriculture and Fisheries (MAF) until 1995 when fisheries separated into a stand-alone department – Ministry of Fisheries (MFish).

the amateur fishing regulations whereby authorised representatives can exceed those regulations by specifying amounts to be taken, and determine sizes and types of fishing method restrictions or uses. As with legal successes in the American Northwest, Maori customary fishing rights were defended and legally upheld.

Thus 1986 began a series of Maori legal challenges through the New Zealand Courts that culminated in the Maori commercial and non-commercial fishing rights settlement of 1992. After a century of treaty rights denial by colonial government's, legal recourse through the courts has provided some success for Maori, Indians and other indigenous peoples.

Conclusion

For the 78 tribes in Aotearoa, New Zealand, the likelihood of securing Maori independence is difficult to imagine because of past colonial experience, tribal uniqueness and an expected hostile public and government reaction to Maori independence. Nonetheless, iwi Maori represented by the Maori Fisheries Commission and its subsidiary Aotearoa Fisheries Limited have become economically powerful and Maori ownership of commercial fisheries is significant. In 2004, Maori ownership of commercial fishing quota was estimated at approximately 62% of all available commercial quota and is increasing each year (He Kawai Amokura, 2003, p. 21). Customary fishing is entirely in Maori hands and under article three all Maori are recreational fishers. Therefore if economic power is the next best substitute to independence or autonomy, the Fisheries Deed of Settlement, a decade on, is of enormous economic, cultural and political importance.

CHAPTER THREE

FISHERIES & EARLY NEW ZEALAND LEGISLATION

Indigenous Indignation

At a hui in August 1873 Te Ataria noted that, 'the plains and the mountains are being removed from under our feet, the hundred pathways of Heretaunga are being trampled by angry greedy people. Soon all we may have left will be the sea and the beaches although even now the Pakeha covert our fish, drain the waters that feed the sea and take away the rocks and sand, the ocean is in danger of being taken like the rest of the whenua'.

Today we face what our tipuna feared and we are confronted with a new 'land taking'. However like our tipuna Ngati Kahungunu now repudiates this latest government attempt to remove us from the whenua which belongs to us and to which we belong. We have an ancient tradition of living with the sea on one of the longest coastlines in the country and we have never erected any artificial barriers between the whenua and the moana, between the foreshore and shore, or the seabed and the waters that flow with it. They are part of our whakapapa and we cannot and will not accept any diminution of our whakapapa or the rights and obligations that go with it. That we have to make such a stand yet again is a cause of anger and pain that this government has no right to burden us with and it makes the same mockery of the Crowns treaty promises that were witnessed in this place over a century ago.

(Extract from Ngati Kahungunu submission on the Foreshore and Seabed Bill, 2003).

Introduction

Chapter Three, "Fisheries and early New Zealand legislation", discusses 19th century legislative neglect and the isolation of Maori from political and economic development. Significant legislation impacting on Maori autonomy and traditions is

discussed including the first fish laws that reduced Maori commercial fishing aspirations to a level of subsistence fishers only.

Section 1 explores fisheries legislation within the New Zealand legal system. The discussion explores the early development of the settler government, New Zealand constitution, legal system, isolation of Maori from that development and the difficulties in law that the treaty presented. Treaty guarantees and fishing rights are considered in contrast to economic marginalisation of Maori through legislative oppression and the takeover of Maori commercial fisheries.

Section two explores important Maori legal challenges and rights struggles through the 20th century and eventually how those struggles led to a re-shaping of political and judicial interpretations over time.

Section three discusses the significant decades of change and the Waitangi Tribunal is outlined where change was wrought upon governments leading to the evolution of contemporary settlements of Maori treaty fishing rights.

Section 4 concludes the chapter with a discussion on the establishment of Maori non-commercial (customary) fishing rights into contemporary regulations and how Maori commercial fishing rights and economic wealth have created a new dynamic of tribal capitalism verse customary traditional interests.

Section 1.

Establishing A Settler Government

Under the 1840 Treaty of Waitangi (English text), an assembly of chiefs ceded absolutely and without reservation all rights and powers of sovereignty over their respective territories to the British Crown (Kawharu, 1995). The treaty was the first step in establishing government authority over Aotearoa. However, regardless of colonial dominion, Maori remained autonomous until the government physically

established contact with them and initiated political integration into the national polity by appointing political authorities over them (Mulgan, 1995, p. 62).

Shortly after the signing of the treaty, Governor George Grey began the task of developing a settler government. "In 1846 Sir George Grey began the gradual implementation of a new constitution and the set up of New Zealand's political power structures, which Maori were not party to" (see Speeches and Documents on New Zealand History 1971, McIntyre & Gardner). Nonetheless any mid-nineteeth century incorporation of Maori society into a British parliamentary system would have presented serious tribal, although not insurmountable, difficulties. Maori omission from the political power structures left the treaty as the only source of protection toward their rights and tino rangatiratanga.

Although a Pakeha framework the treaty re-affirmed rights that always existed since pre-European times (Robinson, 1994, p. 26). Full chieftainship (tinorangatiratanga), has been interpreted by the Waitangi Tribunal as meaning full authority. "Maori authority is personified in chiefs but derives from the people. Maori understood 'rangatiratanga' to mean authority" (Muriwhenua Fishing Claim Report, 1988, p.174). Article two of the treaty provides that Maori should have "te tino rangatiratanga o o rätou whenua o rätou kainga me o rätou taonga katoa". The literal translation means Maori were guaranteed full authority in respect of their land, homes and all other precious things (McIlroy, 2000, p. 63). The treaty's English version guaranteed Maori "full exclusive and undisturbed possession of their lands, estates, forests, fisheries and other properties which they may collectively or individually possess" (Kawharu, 1990, p. 316).

At the time of the treaty signing, iwi and hapu of New Zealand were many and varied each with its own political power structures and autonomy. Within one tribe there were many divisions into sub-tribes each under their own chief. An explanation of the treaty by Apirana Ngata raised the point "how could such an organisation as a government be established under Maori custom? There was

without doubt Maori chieftainship, but it was limited in its scope to its sub-tribe and even to only a family group" (Ngata, 1922, p. 2).

Ngata claimed that Maori did not have authority or a government that could make laws to govern the whole of the Maoridom. The treaty could allow for a government to implement national laws that would assist with the rights of all Maori in protection of their article 2 rights. It was the reason Governor Hobson arranged for copies of the treaty to be taken from end to end of each island to obtain the concurrence of chief after chief.

Unfortunately, and probably deliberately, Maori were not involved in the creation of a national government system and all too soon the new settler government implemented national laws that assisted the interests of settlers thereby depriving and alienating Maori. "Legislation was quickly implemented which neglected or overrode safeguards written into the Maori version of the Treaty of Waitangi" (King, 1975, p. 23). Oppression of Maori through the legal and political process would last for the better part of a century.

> The English legal system of the mid-nineteenth century was adapted to meet the needs of the capitalist patriarchy. Once transported to Aotearoa it was manipulated by Pakeha colonists to meet the early requirements of the settlement process. Later it formed an integral part of the hegemonic apparatus of the twentieth century welfare state. But for Maori, it was a system imposed upon them by an aggressive coloniser. It could not, would not, and did not provide any place for the Maori as other than a pseudo-päkehä. (Spoonley, Macpherson, Pearson, Sedgewick, 1984, p. 21)

Legislative neglect

Maori use and control over their fisheries resources remained uninterrupted for two decades after signing the Treaty. Maori had already taken advantage of commercial fishing opportunities and trading with settlers prior to 1840, including

international trade. "Fishing was carried out for personal consumption, hospitality and trade before 1840" (Treasury, 1985, p. 334).

Parkinson's sketch in 1769 is the earliest recorded snapshot of Maori commercial trade with Europeans. Contrary to Crown assertions in the 1884 Sea Fisheries Act that Maori were only subsistence fishers, the sketch and other historical information (McIlroy, 2000; Muriwhenua Fishing Report, 1988; Pü-ao-te-Atatu, 1986) confirm that Maori, until the mid 1860s, controlled the commercial fishing industry in Aotearoa.

Sketched in 1769 by Captain Cook's artist Parkinson – Courtesy of Alexander Turnball Library. A Maori exchanging rocklobster for cloth. Cook's log book also records Maori trading fish with the crew of the Endeavour (Salmond, 1999).

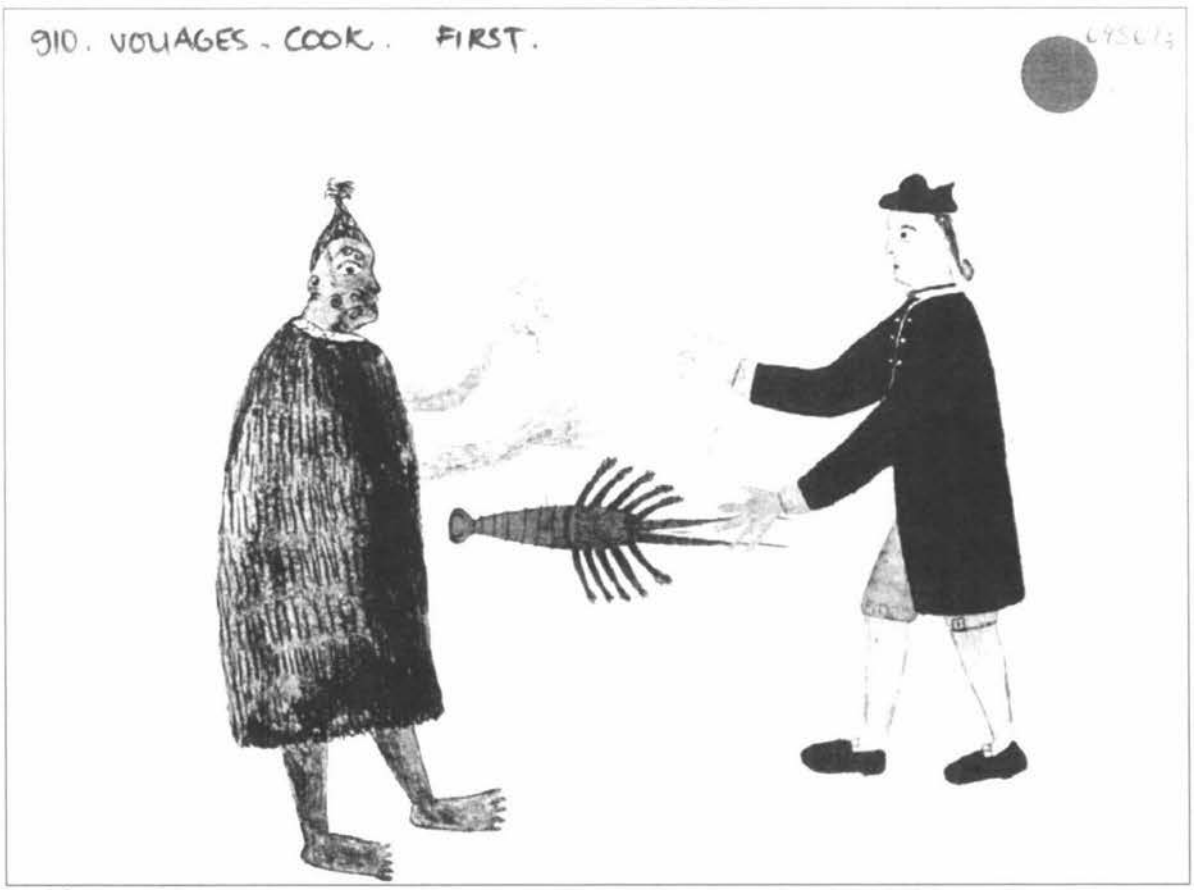

Figure 1.1

As more interest was expressed by settlers in the potentially valuable fishing resource the settler government moved to end Maori economic control and passed the Oyster Fisheries Act 1866. This particular Act, the first piece of fishing law passed in New Zealand, made no provision for the guarantees made to Maori under the Treaty and in short excluded them from selling oysters. "It provided for the leasing of Oyster beds for commercial purposes but made no specific provision for Maori apart from not allowing them to sell oysters from their own reserves until 1874" (Durie, 1995, p. 149).

The initial breaking down of Maori economic and commercial fishing enterprises followed the patterns used on other indigenous nations around the world. New Zealand legislation blatantly re-defined Maori fishing practices as being one of sustenance purposes only; particularly the 1884 Sea Fisheries Act that, until 1986, essentially ended any notion of Maori having commercial fishing rights in spite of tribes operating commercial fishing operations.

> According to Ross (1966) the famous 'Te Kooti' said he had been a trader and boat-builder, and a schooner of his own building ran regularly to Auckland supplying his trading post with fish. His success he claimed caused much jealousy among his Pakeha competitors. He later was branded a rebel, was arrested and deported without trial to the Chathams. (Ross, 1966, p. 15)

Gaining control over resources and simultaneously reducing tribal political independence was key to extending government control.

Whose rights are right?

From the late 1870s onward the notion began that fisheries belonged to the whole nation, with control of the resource being assumed by the government. Retained, however, was the recognition that Maori had special treaty rights regarding fisheries resources. Reference to those rights was made in legislation from 1877

onwards. Nevertheless, early legislative references to the Treaty of Waitangi were characterised by a lack of definition or articulation of exactly what the Maori fishing right was.

> The purpose of the 1877 Fish Protection Act was to regulate the general fish resource and assumed the public was entitled to exploit it in spite of Maori having full and exclusive ownership. This Act included the first reference to Maori fishing interests. Nothing in this Act shall be deemed to repeal, alter or affect any of the provisions of the Treaty of Waitangi. (Durie, 1995, p. 142)

The 1877 Act was followed by the Sea Fisheries Act 1884 that forbade the sale of oysters from beds reserved for Maori. It made no reference to the Treaty and reduced Maori fishing interests to one of subsistence only. "Provided that when shellfish in the middle island are required as an article of food by the aboriginal native population they shall be exempt from the operations of this Act" (Walker, 1990, p. 142). The exclusive and undisturbed possession of their fishery was fast becoming the exclusive possession of the Crown. The Muriwhenua Report released by the Waitangi Tribunal supported the finding that pre-European fishing in Aotearoa New Zealand did indeed have a commercial component. In an attempt to transpose this fact into a modern context, the Tribunal found that;

> It is readily imaginable that with State encouragement, not discouragement, Maori would have developed an offshore fishing capability. The pre-1840 experience is indicative of that. (Muriwhenua Report 1988, p. 236)

From the conclusion of the Tribunal, Maori, had they not been unjustly legislated out of the fishing industry would have developed new fishing technology, new methods of fishing, discovered new species and new fishing grounds. Hence, Maori demand for a say in all fisheries matters.

In 1903 Maori fishing rights were referred to but never defined in the Sea Fisheries Amendment Act 1903 and again in the 1908 Fisheries Act, "Nothing in this Act shall affect any existing Maori Fishing rights". This reference to Maori fishing rights remained intact through to the 1983 Fisheries Act and was known as Section 88.2 of the Act.[5]

The Treaty of Waitangi has an ironic history, for on the one hand it was perceived by Maori to guarantee their rangatiratanga and rights but on the other to be the very medium through which their rights were eroded and their resources seized. In 1840 they were the superior power and one would suspect they looked to that to protect their interests. From 1870 on, Maori looked to the Treaty because their military power had been eclipsed.

> In 1840 the Maori people would have outnumbered the Pakeha by fifty to one; they were militarily more powerful, secure in their resources, and arguably still in control of their destinies. But within a decade parity was reached in population numbers; and every year since has seen a continuing subordination of the Maori to the Pakeha, not just in numbers, but in every facet of life. (Kawharu, 1995, p. x)

It is fair to say that Maori economic and social disruption took place because they lacked sufficient political representation and military power to adequately defend themselves against a dominant settler society or to press for their demands. Maori customs, boundary limitations of chieftainship, and tribal autonomy created further barriers.

[5] Although accepting of Justice Williamson's reasoning that S.88.2 of the Fisheries Act preserved customary rights in law and that such rights do still exist, the dilemma for the Crown was S.88.2 lacked clarity as to what those rights involved and unless specified carried risk of very broad interpretation.

Section 2.

Maori Legal Battles – The New Front Line

Introduction

Contemporary fisheries management is a highly political arena that involves tangata whenua, and the Crown – representative of all Tauiwi and non-Maori ethnic groups, and a range of fisheries stakeholders that utilise the resource for cultural, social, and economic purposes. This section explores Maori legal attempts to regain authority over their fisheries resource and the legacy of challenges against Crown treaty breaches. Maori attempts to establish a Maori parliament and King Movement as responses to Maori solutions for Maori problems and subsequent government opposition to those moves is portrayed. Defining rights of cessation as a legal instrument to dispute Judge Prendergast ruling that the treaty was a nullity is explained. Then follows a century of treaty legal challenges through to the latter 20th century and concluding with the emergence of Maori academics that were at the forefront of the decades of change (1980s & 1990s). The section concludes with the Waitangi Tribunal findings that led to incorporation of treaty principles into New Zealand statues, Crown agencies and the psyche of New Zealand's judiciary, and subsequently the Maori fisheries challenges leading to the Deed of Settlement.

Maori Political Struggles

Since the Land Wars of the nineteenth century and eventual settler dominance much of New Zealand's colonial history involving Maori has seen consistent rights struggles and treaty challenges. In 1866 King Tawhiao appealed to government for a Maori Council to administer Maori land rights as promised under the treaty. The appeal was rejected (Orange, 1987). In 1882 the first deputation of chiefs led by Parore journeyed to England to petition the Queen for redress under the Treaty of Waitangi for the wrongs perpetuated by the settler government. The deputation was treated evasively.

A second deputation led by King Tawhiao went to England in 1884 suffering the same result (Kawharu, 1989, p. 273). The failure of the two deputations to gain redress in England drove the chiefs to the conclusion that Maori solutions were needed for the problems confronting them. King Tawhiao established the Kauhanganui 'Great Council' as a political forum for the Waikato, Hauraki and Maniapoto Confederation of Tribes. The tribes outside the King Movement formed Te Kotahitanga Mo te Tiriti o Waitangi (Unity under the Treaty of Waitangi). This political federation otherwise known as the Maori Parliament held its first assembly in 1891 at Waipatu marae, Hawkes Bay (Kawharu, 1995, p. 273).

> The first meeting of the Maori Parliament claimed the right to make laws for Maori land and the right to take up land grievances after the signing of the Treaty of Waitangi. Later this would include lands wrongfully confiscated or unfairly purchased. The rights of the Maori to fisheries, oyster beds, shellfish beds, mudflats, tidal estuaries and other kai (food) resources, as promised in the treaty were to be clarified. The resources controlled by the harbour boards and other government agencies, the abolition of the Native Land Court and the control of Maori Reserved Lands were all topics of discussion. (Tauroa, 1989, p. 23-24)

In 1894 Hone Hekë introduced the Native Bill of Rights into the House of Representatives on behalf of the Maori Parliament. Hekë the member for Northern Maori introduced the bill for the establishment of Maori Councils to administer Maori land. His additional proposal for an over-riding body – effectively a Maori Parliament, drew immediate fire. Hekë presented petitions from 20 chiefs representing different areas, with some 6000 Maori signatories. Heke's bill faced enormous opposition. In 1894 it was defeated by the simple expedient of members vacating the House. When Hekë reintroduced it in 1896 it was lost by 36 votes to 5 (Tauroa, 1989, p. 24).

Following the New Zealand Land Wars Maori military challenges towards the Crown were replaced by legal battles in attempts to seek redress towards their Treaty claims. Yet in 1877, Chief Justice Prendergast said with devastating simplicity, "that the treaty was a legal 'nullity", an edict that blew the treaty away into a judicial limbo for the better part of a century. (Orange, 1987, p. 187) Maori have expressed their grievances almost continuously since but the inertia and indifference of the dominant European society treated Maori grievances as mere background noise.

Rights of Cessation

Opposing the interpretations that Prendergast adopted, are arguments in law. A fundamental right long accepted within the doctrine of international law, declares that the property rights of conquered or ceded inhabitants are not affected by conquest or cession (Jackson, 1988). International Law establishes a definitive rule concerning the rights of indigenous inhabitants who cede certain rights under a treaty of cession.

A further established extension of these rights is that the inhabitants retain all of the rights that are a part of common law unless certain specific rights are taken from them by a specific Act of law. These rights remain inviolate (Tauroa, 1989). For centuries this doctrine was practiced almost unchanged. In the matter of retention of property rights, there is a court decision handed down as far back as 1608.

> Calum, born a Scot, defended his right to his continuing ownership of land against two Englishmen who, following annexation of Scotland by England, claimed ownership. Lord Coke found in favour of Calum. The basis of this finding was that, following annexation, people of one nation would become subjects of another sovereign. Nevertheless, having become such subjects, they were then entitled to all the protections offered by common law as were available to those who had always been subjects. Calum's property rights were not affected by cession. (Tauroa, 1989, p. 28)

The application of this principle to New Zealand asserts that the property rights of Maori are not affected by cession and second, relating to the Treaty of Waitangi, is the doctrine of international law whereby the existing rights of subjects of newly annexed territories survive the annexation and these are enforceable in the courts of the new sovereign. The basis of Prendergast 1877 rulings were challenged in the New Zealand Courts in 1903. Eventually the case of Wallis v the Solicitor General was heard before the Privy Council that same year. The decision handed down expressed the view that Prendergast's principles, established in the Wi Parata v Bishop of Wellington case and upheld by the New Zealand Court of Appeal, were quite wrong. "It caused a furore and the New Zealand judiciary sought all possible means to justify their rulings" (Tauroa, 1989, p. 29). This reflects the rebellious and oppressive attitude of the colonial New Zealand justice system of that time, where contempt and disregard for Maori rights, obvious in the denial reaction to the British Law Lords, would continue for decades.

A Century of Grievance

In the early 1920s, Ratana-ism swept Maoridom like wild fire. "It began as a faith-healing cult and year by year during the 1920s it gathered new hosts of believers. Its sphere of influence grew and the basis on which its teachings rested became more obvious. Its impact was nationwide" (King, 1992, p. 144). The movement was by no means the first of its kind in Maoridom. Other movements, the Hauhau, Ringatu, Te Whiti, and Tohu movements, the King Movement of Waikato, Kotahitanga, and to a certain extent the Young Maori Party of 1900, had preceded it, all coming before the turn of the century. "Viewed in the light of its forerunners and considered in regard to the deterioration in the circumstances of the Maori people and their still unrequited land claims, emergence of such a personality as Tahupotiki Wiremu Ratana is not surprising" (King, 1992, p. 144).

In 1924, the Ratana Movement decreed that its leader and a party of 40 should go to England and lay before King George V the grievances of the Maori people.

Similar to prior expeditions an audience with the King was declined and the expedition proved fruitless. The leaders decided to call in on the League of Nations in Geneva to present their troubles but were also refused a hearing. King (1992) speculates that it is difficult to say if Sir James Allen, the High Commissioner in England at that time, was acting under instructions from New Zealand.

In 1932 a petition calling for the confirmation of the Treaty of Waitangi signed by more than 10,000 people was presented to Parliament by Ratana MPs. It gathered dust for 10 years. Nonetheless Maori people, notwithstanding the inevitable finding that would be delivered against them, continued to come to the courts and continued to argue their perception of customary rights in common law.

The Maori War Effort Organisation during the 1940s became a well structured and supported institution that cut across all tribes. After meeting and exceeding its original mandate to assist the war effort against Japan and Germany it too cast its scrutiny over the situation of Maoridom within Aotearoa New Zealand only to be dis-engaged by government. Post World War II saw the beginnings of the urban drift of rural Maori flowing into the cities. "The country itself just as suddenly discovered a hitherto untapped and apparently unheeded pool of Maori labour. Young men and women flocked to the towns, soon to be followed by their elders" (King, 1992, p. 96).

Increasing numbers of Maori academics became the next voice of protest. Educated and outspoken Maori achievers and others began to write academic papers, articles and dissertations to highlight injustice and wrongs inflicted by an oppressive colonial political system, denial of treaty rights, and racism that marginalised Maori land and resources for the benefit of non-Maori development.

> The emergence of Nga Tamatoa, and other Maori academic movements burst the bubble of monocultural New Zealand. Donna Awatere's articles in Broadsheet espoused Maori sovereignty. While

> revisionist historians attempted to balance the books by placing a Maori perspective of contact history into print, this particular article introduced a new brand of politics that blew the one New Zealander ethos and deficit theories out of the political waters. Awatere and colleagues built their analysis on debates about the effects of colonisation on the soul, mind, body and resources of tangata whenua by Tauiwi. (Ruwhiu, 1999, p. 249)

Section 3.

Decades Of Change

By 1980, New Zealand had already experienced the famous Land March of 1975, the renaissance of Maori culture, and heightened awareness of grievances dating back to 1840 that forced society to reappraise the Treaty. As part of the government response to those increased Maori demands for participation in the political process, particularly redress of grievances, the Labour Government loosened the lid of Pandora's Box and passed the Treaty of Waitangi Act in 1975. The preamble states: "An Act to provide for the observance, and confirmation of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty" (Manatu Maori, 1991, p. 11). In 1985, the Fourth Labour Government threw away the lid of Pandora's Box altogether when it amended the Act to allow the Tribunal to hear claims dating back to 1840.

The Tribunal has since reported its findings and recommendations on a number of claims, but under the Act, there is no obligation upon the government to implement them. Redress still relies upon the degree of 'good faith' and 'partnership', which the government of the day chooses to interpret from its own treaty perspective. Nevertheless, in 1987 the President of the Court of Appeal, the Hon. Mr Justice

Cook, expressed the view that the Treaty was a still-valid compact of mutual obligation.

> The duty of the Crown, he said, extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. He went on to say; for their part the Maori people have undertaken a duty and loyalty to the Queen, full acceptance of her government through her responsible Ministers and reasonable cooperation. (NZ Maori Council v Attorney General, 1987)

A century after Prendergast declared the treaty a legal nullity the judicial shift to interpret the Crown's treaty duty and obligations has drastically altered the political landscape. The Courts and the findings of the Waitangi Tribunal began to refer to treaty principles. The 1980s as the beginning of the period of so-called 'political correctness' where things Maori and the Treaty were concerned, is plausible as Maori rights gained significant political and judicial traction than at any other time in Maori - Pakeha history.

In response to the Tribunal's findings the government sought to redefine the role of the Crown as a treaty partner in 'Principles for Crown Action on the Treaty of Waitangi'. Prime Minister David Lange said in the introduction: "These principles are consistent with the Treaty of Waitangi and with observations made by the courts and the Waitangi Tribunal" (NZ Government, 1989).

The principles, as well as stating the Crown's interpretation of the three treaty articles, include the principle of redress. "The Government is responsible for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur" (Principle 5). It is against this backdrop that Maori went to the Courts with a renewed vigour on a range of historic and contemporary grievances. There was a sense of opportunity that after so long justice may finally prevail. Some Crown\Maori legal battles of the late 1980s were to culminate in

significant historical outcomes, in particular the Maori Fisheries Act 1989 and the Deed of Settlement agreement that instigated the Treaty of Waitangi Fisheries Settlement Act 1992. The "legal nullity" power pendulum had swung a few notches back towards tangata-whenua. In doing so it legitimised century old treaty grievances.

The Deed of Settlement

The 1986 Quota Management System (QMS) established individual transferable quota (ITQs), an individual property right for the commercial fishing sector. The ITQs are private property rights, and Maori saw the imposition of the QMS as an attempt to privatise the fisheries. From the point of view of Maori the fisheries were never the property of the Crown in the first place, so the Crown was not entitled to treat the fisheries as private property (McIlroy, 2000, p. 66). At the time the Waitangi Tribunal was hearing the Muriwhenua Fisheries Claim and asked the Minister of Fisheries to delay introducing the QMS until the tribunal had concluded its report. "In December 1986 the Tribunal reported to the government that adoption of the quota system should be deferred until the Maori interest had been settled" (Bourassa and Strong, 2000, p. 162).

The Director General of Fisheries responded that the request for delay could not be acceded to. Maori represented by Ngai Tahu, Muriwhenua, Tainui and the New Zealand Maori Council quickly responded with a High Court injunction on any further species being placed into the QMS. In capitulating to the fishing industry the Minister bought a lengthy legal battle with Maori and was acting against Tribunal conclusions that the QMS was in conflict with the Treaty by apportioning to non-Maori the full exclusive and undisturbed possession of the property of fishing that to Maori was guaranteed under clause two of the Treaty of Waitangi.

During 1987 a standoff occurred until the Tribunal ruled that although the QMS is fundamentally in conflict with the Treaty of Waitangi, Maori and the Crown could negotiate a settlement. Reinforcing the Tribunal's conclusions was the 1988 'Law

Commission Report' also acknowledging Government's lack of recognition of Maori fishing interests and that any solution should take the form of negotiated settlements ratified by legislation (Bourassa, 2000, p. 162). The opportunity to negotiate a settlement began, but the claimants Ngai Tahu, Tainui, Muriwhenua and the New Zealand Maori Council could not speak for all Maori. In June 1988, a national hui was held at Takapuwahia marae (Porirua) where Maori representatives were mandated to negotiate a settlement deal with the Crown and instructed not to settle for less than 50% of commercial quota (McIlroy, 2000).

By December 1988 the Waitangi Tribunal completed the report on the Muriwhenua Claim that assisted the 1989 negotiations and led to an interim settlement that gave 10% of commercial quota to Maori (as quota had already been allocated the Crown had to buy back quota to cover the 10% settlement), plus 10 million dollars cash, the formation of the Maori Fisheries Commission and the 1989 Maori Fisheries Act. In exchange the Maori negotiators allowed rock lobster to be entered into the QMS.

During 1990, Maori and the Crown discussed the development of the Quota Management System that would meet both conservation requirements and the principles of the Treaty of Waitangi (McIlroy, 2000). By 1991 the Waitangi Tribunal released the Ngai Tahu Fisheries Report that became a key document for Maori representatives negotiating a full and final settlement with the Crown. The Tribunal's report stated four principles embodied in the cession of Maori sovereignty under the Treaty; namely,

- Active protection by the Crown of Maori Treaty rights including fisheries rights;
- The tribal right to self regulation;
- The right of redress for past breaches of the Treaty of Waitangi;

- The duty of the Crown to consult with Maori, applicable with regard to management of fisheries resources.

The Deed of Settlement was reached in response to the Ngai Tahu Report and in accordance with the four principles, specified a range of legal obligations incumbent on the Crown with regards to fisheries.

In early 1992, Brierley Investments decided to sell their stake in the Sealords Fishing Company. When the Sealord Company was offered for sale the Crown and the Maori negotiators realized an opportunity to secure a large amount of quota. The Sealord Company owned 29% of quota and when added to the 10% pre-settlement agreement made a total of 39% of quota available for Maori. The negotiators were still aware of the 50% commercial quota mandate and considered the Sealord deal the best option to get as close to the 50% as possible.

For the negotiators to secure a deal they had to move swiftly and undertake urgent consultation with many iwi in a short timeframe. By September 1992 the Deed of Settlement was signed outlining the broad arrangements between Maori and the Crown that paved the way for the drafting of the Treaty of Waitangi Fisheries Settlement Act 1992. The settlement deal legally defined the once combined Maori fishing right and split that right into 'Maori commercial' and 'customary non-commercial' fishing rights. In addition to the pre-settlement arrangements, all future Crown and Maori commercial obligations were extinguished by a final post-settlement agreement that allocated Individual Transferable Quota (ITQ) to Maori, $150 million to purchase the Sealord company and 20% of all new quota species entering the QMS be allocated to Maori.

Shortly after, a number of hapu filed claims with the Waitangi Tribunal alleging that those who signed the fisheries settlement on their behalf lacked authority to do so.

Some asserted that the agreement had to be unanimous. The Tribunal made findings on three matters of representation: customary representation concerning which descent groups represent the holders of customary fishing rights; level of representation; and institutional representation (Waitangi Tribunal, 1992a).

As to who held customary fishing rights, the Tribunal found that it was mainly the hapu. However for the broad policy issues involved in effecting a national settlement with the government, it concluded that the iwi were the proper level of representation, with the iwi to determine which entity would represent them. There would be several possibilities for institutional representation: trust boards, Maori councils, local branches of the Federation of Maori Authorities, and runanga. The Tribunal added that any eventual scheme of allocation should not be based on Treaty principles alone but on broad considerations of what is tika, or fair.

As to the ratification process for the Deed of Settlement, the Tribunal concluded that, while there was no formal iwi ratification process in existence, the negotiators had held many hui throughout the country and had carried out as thorough a determination of the existence of majority support among the iwi as was possible (Bourassa and Strong, 2000, p. 63). A general consensus at the pan-iwi level was considered to be sufficient. Unanimous agreement was not necessary. The consent of all with an interest would be impracticable, and thus the political reality that in any society, the protection, enhancement or limitation of property rights may need to be settled for all through appropriate representative institutions (Waitangi Tribunal 1992a, Section 7.2).

Section 4.

Maori Fishing Interests

The Treaty of Waitangi Fisheries Settlement Act 1992 included a provision, against the objections of many Maori who desired only to settle commercial grievances, that non-commercial fishing rights would become legally unenforceable and that instead the Minister, acting in accordance with the principles of the treaty, shall consult with Maori and develop regulations to help recognise use and management practices of Maori in the exercise of non-commercial rights (Section 10 (b), TOWFSA 1992).

"Given that the settlement is commercially based, however, it may be asked why non-commercial aspects of traditional Maori fishing should ever have been included within it" (McHugh, 1992, p. 354). The reasons behind including non-commercial aspects into a commercial settlement may not be available short of speculating as to who would want to include that. Perhaps it was tangata whenua or perhaps it was the Crown negotiators aiming to extinguish section 88.2 and re-negotiate specific provisions to provide for customary fishing rights?

At the time the Deed was signed, the nature and effect of any future non-commercial customary regulations were unknown to Maori. According to Robinson 1994, "no guarantee was given in the Deed, nor in the Settlement Act, that the customary law regulations that were recognised in Te Weehi (6) would continue to be recognised by the Minister making the regulations. Both the Deed and the Settlement Act provided for nothing more than consultation with Maori" (Robinson, 1994, p. 565). Whatever the substance of the regulations were to be, the power to make controlling regulations had been removed from the tribal level and given to a governmental and non-Maori body.

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[6] The High Court found that Te Weehi had been fishing pursuant to a customary right that had never been expressly extinguished by statute nor could any legislation be found that clearly extinguished it. It was a right clearly still in existence.

Nonetheless the Deed and Settlement Act defined some pre-requisites to be developed in any future regulations. These included mätaitai provisions, by-laws and sustaining the functions of the marae. In addition, Maori negotiators were to be selected to draft and negotiate regulations with the Crown in respect to non-commercial fishing interests of Maori.

Regarding consultation, the principles contained in the 1987 judgement of the Court of Appeal in New Zealand Maori Council v Attorney General (1 NZLR, 641), speak of a partnership and consultation between Maori and the Crown. Under this decision both parties must act in good faith and with reasonableness, but the Crown has the right and duty to govern.

The non-commercial deal effectively ceded 'the last say' to the Minister of Fisheries, whereby the Crown's 'right to govern' can mean veto rights are an option if the going gets tough. The Maori language version of the treaty actually says that Maori retained tino rangatiratanga, the right to self-government. To some Maori, Section 10 of the 1992 Act is arguably a breach of the Treaty in itself because it gives to the Minister the right to make regulations governing Maori in the exercise of their customs regardless of Maori, although not unanimously, having signed the deal. If Maori wish to challenge the Minister's actions under the section, the only requirement that the Minister actually has to meet is to consult with Maori. The Court of Appeal has already found that the requirement of consultation is not open-ended and there is no necessity for the Minister to act on submissions from Maori. The Minister's ultimate defence is that the Crown has the right to govern. Maori are dependant on the good faith of the Minister.

Perhaps strategically an issue for Maoridom is to remove their fixation solely on the role of Maori Affairs Minister and to also promote a Maori candidate for the Minister of Fisheries position? Determining the extent of good faith is, no doubt, subjective. Nevertheless examination of the Deed of Settlement and events leading to the

creation of the customary regulations as shown in the preamble below should provide an overview.

> On 26 and 27 August 1992 representatives of the Crown and Maori met to discuss differences with a view to settling outstanding claims and Treaty grievances of Maori in relation to fisheries, and on 27 August 1992 agreed on a proposal for settlement. The settlement outlined the desire of the Crown and Maori to resolve their disputes in relation to fishing rights and the quota management system and seek a just and honourable solution in conformity with the Treaty of Waitangi. The Crown recognises that traditional fisheries are of importance to Maori and that the Crown's treaty duty is to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries. On 23 September 1992, the Crown and representatives of Maori entered into a deed to effect the settlement of outstanding Maori claims and Treaty grievances in relation to fisheries. Under the Deed of Settlement the Crown agreed, amongst other things, to introduce legislation empowering the making of regulations recognising and providing for customary food gathering and the special relationship between tangata whenua and places of importance for customary food gathering. (Preamble to the Kaimoana Customary Fishing Regulations 1998)

Drafting of the Treaty of Waitangi Fisheries Settlement Act included the requirement for the Minister of Fisheries to act in accordance with the principles of the Treaty of Waitangi and recommend to the Governor-General the making of regulations for non-commercial customary fishing. In addition was the requirement to consult with tangata whenua about the use and management practices of Maori in the exercise of non-commercial fishing rights, and to develop policies to help recognise those use and management practices (Section 10 TOWFSA 1992).

It is arguable how much 'crystal ball gazing' the Maori signatories were capable of prior to the signing of the settlement deed, nevertheless they did include some key provisions for traditional fishing as benchmarks for inclusion in any future regulations (see following bullet points). In exchange the Crown extinguished Section 88.2, "Nothing in this Act shall affect Maori fishing rights," from the 1983 Fisheries Act.

Regulation 27, (a system providing for customary food gathering for hui and tangi) would be the interim system for customary non-commercial fishing until the development and implementation of future customary fishing regulations. Regulation 27 is part of the Amateur Fishing Regulations 1986, is purely for taking fish and does not provide any management tools.

It should be noted that a customary fishing permit system had operated in the late 1970s to early 1980s when the Maori Affairs Department issued permits. The department eventually concluded that issuing permits was a compliance issue and handed the role over to the then Ministry of Agriculture and Fisheries. For a short time Fishery Officers issued permits however in some regions Maori were recruited to become volunteer Honorary Fishery Officers (HFO's) and the issuing of permits was placed with them. Eventually in 1986, Regulation 27 placed the responsibility of issuing permits with authorised representatives of marae committees, Maori committees, Trusts or Runanga.

Following the 1992 Settlement a national hui was convened by tangata whenua to nominate persons, amongst other things, to a joint working party with the Crown in order to develop draft customary fishing regulations as per section 10 of the TOWFSA 1992. A national hui appointed prominent Maori to draft and negotiate regulations with the Crown representatives. Those assigned to represent Maori were Rikihia Tau, (Kaumatua), Maui Solomon (Lawyer), Karen Wycliffe (Lawyer), and academic, Professor Margaret Mutu.

In order to safeguard future customary interests of Maori as negotiated through the Deed of Settlement, a number of provisions relating to the potential content of the soon to be drafted customary fishing regulations were specified in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 as amendments to the Fisheries Act 1983. Those provisions have been extended into the Fisheries Act 1996 that superseded the 1983 Fisheries Act and under the 1996 Act give rise to ongoing obligations by the Crown,

- Empower the Minister of Fisheries to declare any part of New Zealand fisheries waters to be a mätaitai reserve after consultation by the Minister and tangata whenua with the local community;
- Provide for the empowerment of kaitiaki of the tangata whenua to make bylaws restricting or prohibiting the taking of fish;
- Provide for the empowerment of kaitiaki of the tangata whenua to allow the taking of fish within mätaitai reserves to continue for purposes which sustain the functions of the marae concerned, notwithstanding any such bylaws;
- Stipulate that every restriction and every prohibition imposed on individuals by such laws shall apply generally to all individuals.

Section 186 of the 1996 Fisheries Act allowed for the making of customary seafood gathering regulations and the resultant Kaimoana Customary Fishing Regulations 1998 are regulations made under that section. It was recognised that the regulations would take several years of drafting, negotiation and consultation.

In 1998 the Kaimoana Customary Fishing Regulations were promulgated and provide for two things. Firstly they provide a framework for customary food gathering, managed by tangata whenua through the issuing of customary food gathering authorisations which can be given for fishing anywhere within the traditional boundaries of the tangata-whenua that has been legally gazetted under

the regulations.[7] Secondly, the regulations provide for the establishment of mätaitai reserves (traditional fishing areas) to help recognise the special relationship between tangata whenua and those places of traditional significance in respect of customary fishing. The mätaitai is a tool that better enables the kaitiaki on behalf of the tangata whenua to implement effective strategies through by-laws over areas of special and traditional significance to them. A mätaitai application must go through a rigorous process before it is approved.

Maori Commercial Entity

In 1989 the Crown established the Maori Fisheries Commission to administer Maori commercial fishery assets from the settlement deal and devise an allocation model (Waikato Law Review 2000, p. 76). However, the Commission had a contentious early life. "There was distrust of the Maori Fisheries Commission as this was seen as being controlled by Ngai Tahu interests" (Robinson 1994, p. 564). The Commissioners themselves were appointed by government, a fact that did not always sit well with some in Maoridom. From 1992 through to 2002 the Commission received numerous litigation challenges on its proposed asset allocation model. After ten years there was still disagreement on an appropriate allocation model.

Nonetheless the decade since 1992 has seen the value of the asset increase from 150 million dollars to approximately 1 billion dollars (He Kawai Amokura, 2003, p. 270). However, consequences for iwi and hapu was a vexatious scramble for a slice of the fisheries cake. After the 2002 Labour government appointed new commissioners to conclude the long drawn out allocation model dispute, a new allocation model, as set out in the 2004 Maori Fisheries Bill was proposed, agreed to and implemented in September 2005. Nga Puhi became the first tribe to receive their commercial fisheries assets.

[7] There is a public notification process to become gazetted and any submissions opposing a gazette will enact a dispute until such time as a resolution is achieved.

Provisions within the Maori Fisheries Act 2004 require an iwi organisation to have a constitution that provides for full participation by iwi members in a regular electoral process. Every iwi must provide for ongoing structural accountability through transparent separation of functions and must ensure that access to the benefits of the settlement are available to all their members wherever they may reside and regardless of the strength of their ties to the iwi (Maori Fisheries Act, 2004). In other words the iwi must be a body corporate. "The Commission is requiring that Maori give up their traditional ways of recognising hapu and iwi, and adopt Western methods in order to fit in with the Western corporate model which is being imposed with the settlement" (McIlroy, 2000, p. 77). In essence, iwi organisations with regards to fisheries assets will become managers of quasi-commercial fishing entities, whilst at the local hapu level their groups will as always manage the non-commercial kaitiakitanga aspects of preservation, enhancement and sustainable cultural use practices. The repercussions of this artificial split of Maori customary and Maori commercial fishing interests began to manifest itself from 1999 onwards as more and more rohe-moana become established under Customary and Kaimoana Fishing regulations (see appendix 3).

The tensions within Maoridom are being felt in a number of ways.

- Where tangata whenua and rohe-moana find it increasingly difficult to put fish on their own tables they see the large technologically efficient commercial extractions putting fish on overseas tables at their expense.

- The long drawn out Maori commercial allocation has yet to sufficiently benefit all Maori recipients let alone determine a system to support the customary non-commercial sector, kaitiaki and rohe-moana.

- The Maori Fisheries Bill is designed for commercial and economic improvement of Maori commercial fishing interests and raises conflicting philosophical issues between the intrinsic customary traditional imperative and the profit oriented commercial interest.

In addition, anecdotal evidence suggests most iwi structural distribution systems do not directly support tangata kaitiaki in their role as custodians of the customary non commercial sector. Usually iwi disperse dividends via marae but priority of marae funds does not place kaitiaki at the top of the list if on the list at all. Therefore the Crown is lobbied as the de-facto fund provider to customary non commercial.
It should be noted that "the Minister must provide to any tangata kaitiaki such information and assistance as may be necessary for the proper administration of the Kaimoana Regulations" (Kaimoana Customary Fishing Regulation 33). The Ministry of Fisheries does provide Regulation 33 assistance although it is limited to administration costs and purposes. Kaitiaki consider a wider range of assistance is required to function properly. However, Maori as a minority group and recipient of tax payer dollars risk becoming dependent on the government and when locked into a dependency situation are at risk to the fickle nature of politics that often, and at any time, reduces, re-directs or even curtails funding and resources to customary fisheries. The Maori commercial asset supporting the Maori non-commercial sector is one option toward a second funding source and semi-independence, assuming those controlling Maori commercial assets are willing to discuss the notion.

Global verse Customary Interests

During the 1970's almost all nations bordering the sea established 200 nautical mile fishery conservation zones also known as exclusive economic zones to conserve and protect their fish resources (World Encyclopedia Vol 7, 2000 p181). New Zealand for its size has a very large fishing area. At 1.3 million square nautical miles our exclusive economic zone (EEZ), according to the Ministry of Fisheries, is the fourth largest in the world (Ministry of Fisheries Statement of Intent, 2004). There are over 7,000 species found in our EEZ and about 130 species are fished commercially (90% of commercial landings are exported).

The coastline is approximately 113,000 kilometres and currently patrolled by 120 fulltime Fishery Officers. An estimated 800,000 recreational fishers utilise the

resource whilst commercial activity consists of 2500 seafood entities of varying sizes from small operator to fully integrated companies such as Sanfords, Talleys, Sealords, and aquaculture and marine fish farms where mussel and oyster are the primary species. Marine farming has scope for large scale expansion subject to approval by regional councils under new legislative frameworks. Licensed Fish Receivers (LFR's) receive fish from several thousand fishing vessels. The commercial sector is mainly an export industry with $1.3 billion (down slightly because of the high New Zealand dollar - 2005) in export revenue making the industry the fourth biggest export earner for the country. Within this web of commercial and recreational fisheries activity lies the customary non-commercial fisheries sector.

On a world scale New Zealand is small and fisheries here are not very productive compared to northern hemisphere fisheries. Hoki is New Zealand's biggest fishery, once as high as 250,000 tonnes per annum, it now stands at 100,000 tonnes. Maori commercial fisheries interests through international partnerships have become global and targeted development of iwi fishing aspirations aims to expand expertise and economic advantage. However, the difficulty in the maze of New Zealand fisheries is the place and role of customary non-commercial fishing with its traditions, purpose, ancient values and spiritual dynamics.

Added difficulties for customary fishing are already being manifest through public attack as has happened in the United States (see page 31). In early 2006, the National MP for Napier and the media portrayed the customary crayfish take in the Napier region as "going through the roof and the MP challenged the amount of fish allowed to be taken under the guise of customary fishing" (HB Today, Dominion, January 2006). According to Ngatï Kahungunu iwi, their customary fishery is allocated 4% but takes less than 2% of the annual crayfish harvest yet that is portrayed as excessive!

New Zealand Crayfish harvesting is split into 8 quota management areas (QMA's). Cray 4 QMA is from Wairoa down to Wellington and up to Levin on the west-coast (see Appendix 6 – Cray 4 Map page 130).

The Cray 4 quota management area annual Total Allowable Catch (TAC) is,

Commercial	**577 tonnes**
Recreational	**85 tonnes**
illegal take	**75 tonnes**
Customary	**35 tonnes**
Total annual take	**772 tones**

Note: allocation is made for poaching & mortalities. (Clements, 2006)

Conclusion

Maybe one could assume that high commercial fishing allocations are perceived as normal and due to global exports, jobs and income those amounts are acceptable yet the customary fishery with the lowest allocation and extraction amounts are scrutinised and slated. For whatever reasons perhaps the indigenous minority exercising their unique treaty and customary fishing rights are perceived as the greater threat.

Almost thirty years have passed since the advent of the Waitangi Tribunal, high profile treaty settlements and customary rights yet the debate has only intensified and opinion is divided. The 2004 Orewa speech by National party leader Don Brash, not only slammed the door shut on political correctness where the treaty is concerned, but also fostered a very open and public 'treaty backlash' that appears to have rattled many in Maoridom. Nonetheless, according to Spoonley et al, the only Act which mitigates the inequality and institutional discrimination resulting from legal imperialism is the Treaty of Waitangi Act 1975 (Spoonley et al, 1996, p. 32). In the following chapter the methodology used in this research is outlined and justified.

CHAPTER FOUR

METHODOLOGY

Introduction

In order to fully understand this post graduate research journey, it is important to focus on the key stone of this research as it unlocks an intense debate about the stewardship of fisheries resources. The topic of this thesis; "The Effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu" reflects an intense aspiration based on my whanau connections and roots to Kohupatiki marae which traditionally was renowned as a fishing village in early Kahungunu history. Tidal by nature, Kohupatiki was rich with fisheries resources. However, evidence today reinforced the view that this natural resource has since disappeared because of local government political and economic decisions. Hence my thesis research has an underlying focus on Maori customary traditional fisheries wellbeing.

In this chapter there are five main sections dealing with the effects of the Kaimoana Customary Fishing Regulations on hapu.

- The first section is an acknowledgement of the influence my roots at Kohupatiki Pa have had in the selection of my thesis subject and investigation.
- The second section will provide the reader with a critical analysis of qualitative and quantitative research, highlighting the decision I made for this masters thesis.
- Section three explores qualitative research and its links to kaupapa Maori research.
- Section four aligns the finding in section two to a qualitative research framework entitled "whakawhanaunga tänga' with an analytic framework to make sense of the research.

- Section five: examines the ethical aspects of this research and provides practical insight into the selection of the respondents for this research and their characteristics, including the practical steps taken and learning experienced in this journey.
- A conclusion draws together the overall learning.

Section 1.

Kohupatiki Pa – Flounder Village

Kohupatiki translates as, **"kohu"** - cloud' and **"patiki"** – flounder, and is a reference to the vigorous manner in which a flounder foraged for food. It means this hapu is very good at foraging for food so that their guests would never go hungry. Kohupatiki pa is a small community of approximately 16 homes, many of them related by whakapapa and historical connections. The Kohupatiki marae and wharenui, a remnant of the ancient 500 year old Tanenuiarangi Pa, on the banks of the Ngaruroro River is central to the small community where many a cultural occasion or celebration including tangihanga, were hosted. The Ngaruroro River mouth was a mile further down stream making the area tidal and the abundance of fish was a kapata-kai for the people of Kohupatiki as a source of nourishment and manaakitanga, including ability to exercise cultural values from a sacred fisheries resource. The giant black flounder was the delicacy of the marae as too were eel, herrings, kahawai, mullet, whitebait and smelt.

At Kohupatiki today, Kahawai, Mullet and Flounder are all gone. The few eels remaining are mostly juveniles, and Whitebait catches are lucky to provide a fritter or two. Having experienced the disappearance of our kapata-kai, and subsequent inability to provide manaakitanga with past resources provided an incentive to embark on a research journey to uncover the struggle to protect customary fishing rights and traditional Maori values of taonga, kaitiakitanga, tikanga and mauri in regard to fisheries management.

The task of researching the functioning of customary fishing and defining those fisheries management struggles firstly required consultation with my kaumätua to discuss the merits of such an undertaking. Armed with kaumätua support I then considered how best to capture the insight and understandings of tangata-kaitiaki in their fisheries stewardship role. This led towards a qualitative methodology to capture indigenous stories, beliefs and values regarding kaitiakitanga and contemporary struggles with fishing rights, other stakeholders and the Crown.

Section 2.

Qualitative Or Quantitative Research - A Critical Analysis

Introduction

This thesis seeks to strengthen hapu and iwi fisheries management and customary fisheries practices by raising awareness of the historical processes that alienated Maori fishing rights through to the modern day legal processes that have made some partial restorative redress to hapu and iwi. This chapter discusses and critiques qualitative and quantitative research and focuses on the qualitative data collection strategy used in this hapu focussed study.

That "Maori belief that research encompasses the past, present, and future" (Reid, 2000, p.112), influences how Maori researchers can work towards Maori control over policies, priorities and economic decisions, in this instance with relevance to fisheries management.

The research recipe

According to Davidson and Tolich (1990, p. 85), the beginning of research is the first of four generic steps.

- Step 1, for some people curiosity is the generator of their research topic whilst for others choosing what to research can be difficult.

- Research at the library is step 2. All research problems lead invariably to the local library and once the research topic begins to take shape the library is the first visit and the first question to be answered is, "What have others written on this topic". Library research provides a chance to review how others have problematised a topic, bearing in mind that a broad qualitative insight seeking research question may take more time to develop and gel than a quantitative question.

- Step 3 is the literature review that seeks to discover what others have said about the topic, what theories have informed their work, what research has been done previously and also should help to clarify what is already known and organise the research.

- Step 4 in this generic model is conceptualisation. This is where researchers define their topic of interest in detail. However, the paths of qualitative (inductive) research and quantitative (deductive) research diverge dramatically. Quantitative researchers define the concepts and then operationalise them by designing the appropriate measures. For qualitative researchers this step is much more involved.

Qualitative or Quantitative?

Quantitative research can be said to deal with number crunching whilst qualitative research deals with people's experience. The following descriptions outline the aim of both qualitative and quantitative research approaches that seek to increase our knowledge. There are a number of different categories of qualitative research; Holloway and Wheeler (1996, p. 43), suggest that most have the following basic principles in common:

- They take the point of view of the subjects of the research. This is called the insiders or emic perspective.

- Researchers immerse themselves in the setting and involve themselves with the subjects and the culture to which they belong.
- Data are not collected according to a predetermined theoretical framework, but the reverse; the data are used to develop a theory.
- The researcher provides thick description of the way the study was undertaken, this describes what took place in the study in sufficient depth for the reader to almost experience for themselves what it was like in that setting.
- The relationship between the researcher and those in the study is close and is one of equality and respect.
- Analysis takes place at the same time as data collection.

The above basic principles of qualitative research fit well with the aims of this thesis which concentrates on understanding and insight and is compatible with a Maori centred focus for investigating the effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu. The small number of tangata-kaitiaki and hapu operating under the Kaimoana Customary Fishing Regulations places this study at the micro hapu level rather than the macro iwi level. Accordingly, the investigation is focussed on in-depth inquiry of one particular tribe and specifically a small number of its hapu and tangata-kaitiaki.

> Qualitative research allows you to investigate small areas in a great deal of depth. In contrast, quantitative research allows you to investigate a great many areas but usually in less depth. This dimension is known as the texture of the data and qualitative research undoubtedly provides more texture than quantitative research. (Davidson, 1990, p.116)

Both qualitative and quantitative research has advantages and disadvantages depending on the various research situations and goals. It may well be that quantitative coverage may be more important than qualitative texture depending on the data being sought. According to Davidson (1999), qualitative research is more

appropriate where the research needs to grapple with complexity and pluralism. In this case customary traditional fisheries is a complex issue and becomes increasingly so when framed within modern legislative conditions.

A quantitative approach is very useful when you know a lot about your topic. Precise questions can be devised on the basis of other people's research. It could be said that quantitative data is more appropriate to explaining why something happened and in doing so, seeks patterns that can be generalised to a wider group. In contrast, qualitative research is interested in interpretation and contextualisation; however, while it generates many ideas that might be useful in studying others, its weakness is a difficulty to generalise to anyone outside the study in any systematic way.

The scientific method can be described as coming from positivist philosophy which is largely based on the scientific thinking that uses three basic elements:

1. Scepticism: The notion that any statement is open to doubt and analysis.
2. Determinism: The notion that events occur due to causes and laws, not due to demons or witches.
3. Empiricism: The notion that enquiry should be undertaken by observation and verified through experience (Polgar and Thomas, 2000, p .5)

Positivism and in particular determinism did not suit the intent within this research focus due to the kaitiakitanga foundation being linked to Maori Gods and Maori cosmology. Whilst quantitative research as a methodology has merits and strengths the choice for this thesis of a qualitative methodology was clear.

A matter of choice

Drawing from the qualitative verses quantitative research epistemology was the decision to use the qualitative research approach as a foundation for my journey in

this arena. One of the challenges I had was to make sure that this is the best approach for gathering data. In my sphere of interest the attraction to a qualitative research methodology was threefold;

- First and foremost the topic itself is biased towards the qualitative process.

- Second, the main reason for adopting a qualitative methodology was because there is very little literature on the traditional management of fisheries and that this topic deals with deep cultural issues. The research is exploratory and seeks to determine what the research parameters are for the wellbeing of tangata whenua customary fisheries. It should be noted that my theoretical conceptual understandings are not strong nor have I come from a particular theoretical paradigm to inform my work; rather the focus is on well-being within a Maori centred research approach.

- Thirdly, my past (health research) experience of using qualitative interview - questionnaire processes as my primary data collection tool gave me a preference for qualitative and that the research might empower the researched community to be active participants from the beginning to the end of the project. The complexity of researching effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu essentially influenced the decision and appropriateness of using a qualitative research framework.

  "Value free neutrality patterns of research had become outdated in this post modernistic search for uniqueness. This has also been supported by a refocus on empowerment and democratic processes that incorporate subjects into the affairs of research question construction, editing responses and dealing with issues about research ethics, ownership and dissemination of new information. Subjects were viewed as active participants, not just to be researched on and left in 'darkness', but to be part of that critical mass,

the enlightened many, the intuitive experts, the actual researchers of their own realities." (Ruwhiu, 1999, p. 54)

Past research on tangata whenua created a dis-trust of research and researchers and in particular of non-Maori researchers. The emergence of kaupapa Maori research and Maori centred research (see following section) supports empowerment and processes that incorporate subjects into the affairs of research construction, ownership and ethics. In regard to the choice of a qualitative research methodology that in itself is not enough. The qualitative methodology must also be Maori-centred and in this case to provide wellbeing for the hapu of Ngati Kahungunu.

Section 3.

Qualitative Research And Links To Kaupapa Maori Research

Introduction

Knowledge and awareness of the interface between social, cultural and economic circumstances for Maori, fosters a realisation of the importance of fisheries resources to Maori spiritually, physically and emotionally. In order to understand the effects on the wellbeing and cultural health of whanau, hapu and iwi, it is essential to start from the realities that exist for Maori. Salmond (1983, p. 32) argues that there are two major traditions for interpreting the Maori experience in Aotearoa. One based in Western scientific traditions has its origins in Europe and America. The other, Matauranga Maori, belongs to tangata whenua.

This section explores qualitative research and its links to Kaupapa Maori research that begins with the quest for validation and recognition of Maori-centred approaches to social research and the challenge to 'universal, one science' research thinking. A look at core values and principles behind Maori research as a specialty on its own then leads onto the notion of qualitative research and links to

Kaupapa Maori research. The section will highlight research issues of importance to tangata whenua wellbeing and should provide the reader with a perception of why a Maori-centred approach was chosen and that legitimising Maori knowledge through developing Maori models of research is a goal this thesis supports.

Validation and recognition

The history of research in Aotearoa is about the history of philosophical differences between tangata whenua and Tauiwi. It is also about the colonisation and dominance of one culture by another. One of the notable outcomes of this dominance was the academic legitimacy given solely to Western theories. For decade's non-Maori researchers investigated Te Ao Maori within western theoretical paradigms and for their own purposes. Resistance was inevitable.

> In the quest for validation and recognition of Maori methods of social research, it is no longer appropriate for non-Maori to define the needs and desires of Maori. (Kuka, 2000, p. 48)

Access to research funding and support was conditional on meeting valid western research standards. However, indigenous movements of the 1970s, 1980s and 1990s, including Maori, challenged both the appropriateness of western researcher's researching indigenous groups, and the legitimacy of dominant western research models.

> Durie (1994) identifies three developments that accelerated the move towards a Maori-centred approach. First, Maori were part of a world-wide move by indigenous peoples emphasising their own self determination. Second, New Zealand's reaffirmed commitment to the Treaty of Waitangi and its inclusion in the charters of all public institutions indicates a shift towards a Maori-centred approach in politics. Third, by the 1980s it was clearer than it had been that Maori world views and Maori understandings of knowledge were themselves distinctive and legitimate. (Kuka, 2000, p. 51)

In New Zealand the 1980s and 1990s was a time of liberation and assertion by Maori and indigenous researchers. Smith (1999), Ruwhiu (1999), Royal (1998), Durie (1996), Roa et al (1993), Jackson (1992), Reid (2000), amongst others, challenged ethnocentric western research hegemony as assimilationist and driven by western interests. Resistance took the form of legitimising Maori knowledge, tikanga and practices and development of Maori models of research.

Durie (1996, p. 10) asserted, Maori research is a specialty on its own and Maori health research should be conducted by Maori, for Maori. This challenges the contention that there is only one science and therefore research methods are universal. The one model of western thinking was under attack from indigenous groups, marginalised people, feminists, blacks and sharply shaken from its blinkered view of epistemology.

Kaupapa Maori Research

According to Kuka (2000, p. 49) different models of Maori research are underpinned by different theories and philosophies which in turn lead to different methodologies. For example, kaupapa Maori is the term used in Health and Disability sector to refer to a culturally derived philosophy underlying all aspects of health policy and service. Irwin (1994) characterises Kaupapa Maori as research which is culturally safe, which involves the mentorship of kaumätua, which is culturally relevant and appropriate whilst satisfying the rigours of research, and which is undertaken by a Maori researcher not a researcher who happens to be Maori. When working with tangata whenua, adherence to cultural values, protocols and tikanga is paramount. Even more important is understanding those concepts and knowing the intricacies, nuances and ways of behaving and interacting appropriately.

The hui whakapiripiri of Maori Health researchers held at Hongoeka Marae on 31 January to 1st February 1996 resulted in the drafting of the Hongoeka Declaration. As a result of the hui, Maori researchers declared that

- We endorse the Mataatua declaration on the rights of Indigenous People over their cultural and intellectual property;
- We believe Maori health research should be determined by Maori, working with Maori, for Maori;
- We recognise that there are diverse Maori realities.
- We assert the validity of Kaupapa Maori methodology and methods; and,
- We recognise the need to be accountable to whanau, hapu and iwi;
- We believe that research encompasses the past, present and the future;
- We will determine our own standards of Maori health and wellbeing;
- We will work towards Maori control over policies, priorities and funding decisions relevant to Maori research;
- We assert the right to monitor, critique, and publicly discuss all research impacting on Maori health;
- We are committed to strengthening the community of Maori health researchers and urge all relevant supporting organisations to urgently develop this workforce.

  (Hongoeka Declaration 1996)

Inherent within the overall aim of the Hongoeka Declaration appears to be a strong determination to validate and assert Maori wellbeing as a primary objective. Arguably, the health researcher's declaration is reactionary to oppressive western philosophy and likely institutional and systemic marginalisation. Nevertheless, what was declared is applicable to all fields of Maori social research; in particular the interpretative nature and contextualisation of qualitative research can be aligned to a primary objective of Maori wellbeing. There are links between this discussion of research methodology and kaupapa Maori research methodology that has an inherent Maori wellbeing insight. In 1984 the Hui Taumata launched the decade of Maori Development. Of particular significance was the conclusion that wellbeing could not be separated from other social, cultural and economic considerations

(Public Health 1994). Durie (1994) also saw the debate around Maori models as seeking to achieve a greater balance of input from Maori.

When considering research one of our main tasks is to acquire knowledge. For some researchers their task begins and ends there. Knowledge is viewed as cumulative, that by adding to some knowledge pool we will one day be able to put the component parts together and discover universal laws. However, according to Cram (1993) many researchers assume that the knowledge they have collected is objective, value-free and apolitical. A Maori view of knowledge is very different from this. For Maori the purpose of research knowledge, as with corporate research, is to uphold the interests and the mana of the group; where it differs to corporate research is how it serves the community. Researchers are not building up their own status; they are fighting against years of marginalisation for the betterment of their iwi and for Maori people in general.

Because of strong oral traditions in Maori society knowledge was never universally available. The tapu nature of knowledge also meant that when it was entrusted to individuals it was transmitted accurately and used appropriately. This ensured the survival of the group and maintained its mana (Smith, 1992). Colonisation has not eroded that tradition; however the dominance of Pakeha history and culture means that Maori forms are often seen to lack 'mainstream' legitimacy. Therefore qualitative research utilising a Maori centred approach can challenge that dominance.

Section 4.

Maori Centred Research

This discussion outlines working with Maori and the principles of using a Maori-centred research approach. Relationships are examined as a means of research being a lived experience and empathy with Maori development and legitimising Maori knowledge as being central to whäka whanaungatanga as a research strategy.

Principles

Kuka (2000) states that Maori-centred and kaupapa Maori research are evolving models that are not exclusive to Maori and often used by mainstream institutions. Various Maori-centred approaches to research have similar themes that place Maori people and Maori experience at the centre of the research.

Three principles applicable to Maori-centred research according to Durie (1996) are

1. Whakapiki Tangata, enablement, or enhancement, or empowerment.
2. Whakauranga, which recognises the holistic Maori view of health and the links which exist between health, culture, economics and social standing, as well as historical events.
3. Mana Maori, which draws on the concept of Tino Rangatiratanga, Maori self-determination, and places importance on Maori control over, research which involves Maori as subjects or which investigates aspects of Maori society, culture, or knowledge. This principle also includes the issues surrounding intellectual property, guardianship and exploitation of Maori by unscrupulous researchers. Essentially, this principle enforces Maori initiative and drive in research and rejects attitudes of superiority that in the past have resulted in Maori being regarded simply as passive subjects.

Working with Maori is mostly to work with a low socio-economic group with the after-effects of colonisation, marginalisation and dispossession. Hence the importance of the wellbeing concept whereby research is liberating and seeks improvement of some facet of Maori life no matter how small that may be.

Whaka whanaungatänga -relationships

The recognition and improvement of tangata-kaitiakitanga and customary fishing rights through this dissertation is aimed at hapu of Ngati Kahungunu by way of relationships with each other and the Crown. Recognition of Maori as indigenous people of Aotearoa, and the Crown's treaty partner, not merely another ethnic minority group in New Zealand, places an importance on the concept of whaka whanaungatänga (relationships).

According to Bishop (1996, p. 216) whäka whanaungatanga as a research strategy views researcher involvement as a lived experience. "Researchers are somatically involved in the research process; that is physically, ethically, morally and spiritually and not just as a researcher concerned with methodology".

Therefore cultural safety expectations should avoid research findings that portray negative connotations. Too often the framing of Maori as a minority promotes explanations of disproportionate demands, preferential treatment and favouritism that focus on Maori culture, traditions, use of treaty issues and socio-economic status as a problem. Kaupapa Maori research frames Maori and Maori knowledge as legitimate.

In order for research to be a lived experience using whäka whanaungatanga as a strategy, an empathy with Maori development and legitimising Maori knowledge or in other words, a framework of working with Maori for Maori should be inherent in the research goals. Only when a researcher places Maori people, culture,

knowledge and processes at the centre of their research, will that research be different from all other types of research into Te Ao Maori.

Although much of what has been written above is rooted in current Maori - Pakeha conflict, reality tells us there are also Maori - Maori conflicts. Nevertheless the latter is not as damaging as the history of non-Maori conflict neither are the echelons of political and academic institutions controlled or dominated by Maori.
The research analysis seeks to define and comprehend those conflicts through the eyes of Ngati Kahungunu kaitiaki.

Section 5.

Ethics

Considerations of Power

Massey University require ethical approval to be obtained prior to embarking on thesis research (see appendix seven). The need for ethical approval caused me to stop and think of any risks involved to both interviewee's and myself, to Maoridom in general and to iwi and hapu in particularly where customary fisheries and tikanga were concerned.

Although my age was considerably lower than the interviewees and the kaumätua consulted with prior to commencing this research journey, the generation gap did not appear to be an issue. Perhaps my advantage was prior acquaintance with all the interview participants and kaumätua. Ethical approval was granted and interview appointments were arranged directly with the participants.
My standing with these participants was already established through my role as a former Fisheries Surveillance Officer albeit now working in the Ministry of Fisheries policy group. What did exist within that standing was a two way issue of both being seen as a member of Ngati Kahungunu tribe but also as a representative of the Crown. As a tribal member access to and rapport with kaitiaki was considerably

easy yet, on the other hand, there appeared to be some uneasiness as to how far they should go in any venting and/or criticism of the Crown considering I was still a Crown employee albeit a brown faced one. Overall they still considered me more as one of them than as a Crown agent particularly with the off the record comment: "when you die it won't be the Ministry of Fisheries who buries you, it will be your marae and hapu".

The other issue I dealt with at the commencement of the interviews was to inform participants that I was not seeking compliance information of knowledge of fisheries offences that may or may not have occurred. What was noticeable, probably due to the fact that I was a former Fisheries Officer, were the participants careful choice of words and pauses around some statements. Nevertheless, the interviews were conducted in a forthright and open manner, known offences being mentioned was sporadic, generalised and none of the participants revealed compromising information. The questionnaire was a useful prompt in maintaining the flow of korero.

Participant selection

Within the rohe of Ngati Kahungunu as of 2008, were nine successful regions that have gone through the process to gazette their rohe-moana for management under the customary fishing regulations. Those areas have been legally set apart to operate under the Kaimoana Customary Fishing Regulations 1998 (See appendix 3 - page 117).

On December 2nd 1999, Napier was the first of two areas in the North Island to be gazetted. The Napier area is managed by Ngai Te Ruruku and the hapu of Tangoio. The defined boundary is from the middle of the Waikare river mouth, then southwards along the coastline to the Port of Napier and out seaward to 12 nautical miles. The two tangata-kaitiaki were publicly notified in local newspapers. They also use the name "Kaitiaki a Moremore", the name of the mythical guardian/kaitiaki of Pania Reef. For the interviews the Napier tangata kaitiaki, (Rangi Spooner) was selected; who along with Boyce Spooner are the longest serving kaitiaki under the Kaimoana Regulations.

In September 2001, the Kairakau Lands Trust representing several Central Hawkes Bay hapu were gazetted for the area from Huarau in the north to Ouepoto stream in the south and out to the 200 mile exclusive economic zone. They have four tangata-kaitiaki appointed. Libya Walker has been the chairman and spokesperson for the Kairakau Lands Trust tangata-kaitiaki and was selected for interviewing.

In April 2003, the hapu Te Hika a Papauma were gazetted for an area from Poroporo north of Cape Turnagain down to the Whareama river near Riversdale and out seaward 20 nautical miles. To date, in the North Island this area is the longest gazetted coastline, approximately 100 kilometres in length. They have five tangata-kaitiaki appointed. Matai Broughton who has been spokesperson for their group and has also been an Honorary Fishery Officer some years ago was selected to participate.

A fourth respondent was chosen who is not a tangata-kaitiaki, however, he has been frequently involved in the customary fishing regulations as the CEO of the Heretaunga Taiwhenua (representing marae of Hastings region - Kahungunu central). Marei Apatu has a good working knowledge of the processes involved in gazetting and has worked with hapu that are in discussions over shared management areas under the Kaimoana Regulations. In particular he was instrumental in assisting the fifth hapu area to gazette, Nga Hapu o Waimarama and Ngati Hawea who share an area near Cape Kidnappers. He has previous experience with commercial fishing operations for Heretaunga Taiwhenua and was a key instigator of the popular tribal wananga and whakawhanaunga tänga Hui that arose from hapu customary fishing rohe/moana management rights issues.

The chosen respondents covered areas from Wairarapa, Central Hawkes Bay, Hastings and Napier towards Wairoa. The issues confronting each respondent were both common and diverse. Although the ethics application form indicated 4 kaitiaki were to be interviewed, one iwi fisheries representative and one MFish staff member, the numbers were altered due to time constraints and limited availability of experienced kaitiaki. Three kaitiaki and one iwi fisheries representative participated. The idea of an MFish staff member being interviewed was dropped altogether on advice from the kaumätua who indicated that the aim and intent of the research was to capture the experiences of tangata whenua and impacts on their hapu under the customary fishing regulations.

Questionaire

The questionnaire focused on four distinct themes within the kaimoana regulations; these being the cultural, economic, political and philosophical aspects. The intent was to scope out the operational aspects of the Kaimoana Regulations and their systemic effects on hapu. The other was to understand cultural obligations and tikanga pertaining to hapu of Ngati Kahungunu within the scope of the regulations. The same questions were put to all respondents.

All but one respondent (although he was well versed in the regulations) were practitioners under the Kaimoana Regulations. Their experience allowed for direct questions to seek out responses that 'users of the regulations' could answer. Questions were aimed at the relationships between tangata whenua, stakeholders and the Crown (Ministry of Fisheries). Consultation, government bureaucracy, co-management with stakeholders, commercial fishing and economic hegemony questions sought responses on how kaitiaki viewed other user groups and what effects they had on hapu.

The questionnaires central themes of taonga, mauri, kaitiaki and tikanga provided insight into the epistemological leanings of each respondent and how that influenced their immediate or pressing fisheries management issues. (See Appendix 5 for the interview questions used).

Conclusion

I selected kaupapa Maori research with a Maori centred research style because my research journey required a methodology consistent with the thesis focus on Maori customary traditional fisheries wellbeing. The decision and appropriateness of using a qualitative research framework as outlined in the previous section "A matter of choice" suited wellbeing within a Maori centred research approach.

Awareness of Maori attitudes to research and researchers, history of that interaction, and perspectives and models to address research inadequacies for Maori steered me toward kaupapa Maori research as an overarching framework. Ethical considerations were also cognisant of Maori attitudes to research. Research by Maori for Maori, research that empowers Maori well being and provides opportunity for active participation in the research guided my research methodology.

CHAPTER FIVE

FINDINGS
REFLECTING ON WHAT KAITIAKI SAID

Introduction

These are the stories and experiences of individual tangata-kaitiaki appointed under the Kaimoana Regulations and managing their defined rohe-moana regions within the Ngati Kahungunu rohe. The effects of the Regulations on their hapu and how that legal appointment has impacted on their traditional role as a kaitiaki guide the analysis dynamics of this chapter.

Section one begins with the custom and obligations of kaitiaki towards their roles and hapu responsibilities. The respondents' views on the effectiveness of the regulations, the shortcomings and possible improvements are explored. Furthermore a critique of the state of tangata whenua fisheries management before the advent of the Kaimoana Regulations and whether there is any improvement or difference since 1998 also occurs.

Section two discusses input and participation issues affecting kaitiakitanga including the notion that consultation is largely all the customary provisions provide for. How consultation is interpreted and applied is also explored.

Section three considers commercial fishing impacts, and the polarised positions of Maori commercial fishing and non commercial fishing interests. The section explores the notion of ethnic elites.

Section four concludes the chapter with respondent's views on partnership perspectives and resourcing the kaitiaki role.

Section 1.

Customs And Obligations

Introduction

This section introduces the Ngati Kahungunu gazetted hapu regions (see appendix 3) and kaitiaki that participated in the qualitative research interviews. Each respondent identifies their reasons for undertaking the role and responsibility of managing rohe-moana on behalf of their hapu. Familiarity with their kaitiaki role is appraised here including identifying commonalities towards undertaking customary fishing duties. Respondent's views were also sought on the effectiveness of the Kaimoana Regulations in regard to sustaining the resource and supporting immediate concerns in their rohe-moana. The section concludes with an examination of traditional whänau seafood gathering practices since the advent of the regulations.

Regions, Roles and Responsibilities

Ngati Kahungunu hapu of Napier along with Ngati Kanohi of Gisborne were the first two areas in the North Island to gazette under the Kaimoana Regulations (December 1999). By April 2008, a total of nine areas in the Kahungunu, Rongomaiwahine region had gazetted their rohe-moana providing the Kahungunu region with the largest amount of North Island coastline operating under the Kaimoana Regulations. Napier has the longest serving tangata kaitiaki in the North Island and in August 2005, Napier achieved two mätaitai reserves within its gazetted rohe-moana. In 2003, Te Hika a Papauma and Ngati Kere shared the first overlap area under the Kaimoana Regulations. In addition Ngati Kere has a Taiapure within their gazetted region and a marine reserve. Kairakau currently have an application in process for three mätaitai reserves within their rohe-moana. In 2005, Ngati Hawea and Nga Hapu o Waimarama have also gazetted a shared management area. In 2006, Mahia in the north and Ngati Hinewaka in the southern Wairarapa gazetted. Early in 2008, in the mid Wairarapa Ngai Tumapuhiarangi

with the support of Ngati Hamua gazetted their area. Ngai te Ruruku o te Rangi, Ngati Hawea, Kairakau and Te Hika a Papauma are the four rohe-moana where the respondents reside. During the course of the interviews it was apparent that familiarity with the traditional and legal requirements of their roles as tangata-kaitiaki varied, however there were some universals.

Matai for instance focussed on a passed down conservation tradition within his whänau as he contended; "Well, I've been brought up with it. All my life I've lived on this place, at Aohanga Station, born there. My parents worked there when I was born and we've always had the conservation approach (Matai).

On the other hand Libya re-emphasised resource maintenance as a component of survival in stating,

> It was one of our main sources of food. Maori are mainly coastal people and when the migration of the waka's and the amount of time that they spent travelling from point (a) to point (b) was on the sea, so that we relied, I would say, they relied quite strongly on fish as a source of survival and that was still the same as when my ancestors landed and set up their marae. (Libya)

> Rangi directly conceded that; "fisheries are a taonga, it's a way of life, their taonga is their food" (Rangi). Marei articulated a general thread of responsibility by all;

> Well, I guess I've got a personal passion with regard to fishing, customary fishing just happens to be a part of that too. I've seen our fish stocks, our kaimoana stocks become threatened and I guess in my current role, which is to do with the local iwi authority, I've been asked to facilitate in amongst that and of course the sort of necessary discussions that need to go on with our local tangata whenua in terms of trying to contribute some kind of

regime, some management regime around our customary fishing development. (Marei)

All the respondents fully understood that there is no survival of the resource without sustainability and the duty of kaitiakitanga is to sustain the taonga for not only current but future utilisation.

Effectiveness

In regard to sustaining the resource (taonga), respondents views were sought as to how effective are the Kaimoana Customary Fishing Regulations?

> The effectiveness of the Kaimoana Regulations is now; we are not the only ones eating our food. Before it was only Maoridom that ate paua, kinas, mussels, crayfish, all the rest of it. Now you have all Asian factions here, they eat it. All Island factions, Tongans, Samoans or Cook Island, they all eat it and now you've got all the Pakeha's that didn't like it, they eat it. So now we're struggling ourselves just to eat our own food. So the Kaimoana Regulations came in at a time when, well at least it put a bit of a regulation on it and there was less fighting against the other nations that were coming in to live here now and whether they've been here two years, ten years, fifty years, they all head to the beach and its cutting our resource. Sooner or later it's going to get shorter and shorter because no-one's actually putting back. You're surviving on what Mother Nature gives to you. But we could survive like that because there was heaps there and it was only us eating it. But while you're competing with other people or peoples, you've got to use government help to stop the others from taking too much or stop something. (Rangi)

Rangi clarified government help to stop others via the Kaimoana Regulations;

> Under mätaitai rules, well the rules when put in, you can utilize the season and just close everything, which the majority of people living by the coast whether Maori or Pakeha or whatever will agree with. (Rangi)

Mataitai Reserves provide opportunity for local governance of their resources whereby kaitiaki may recommend fishing by-laws to the Minister of Fisheries. Rangi was asked what has improved in his area since they had been under the Kaimoana Regulations.

> Well yeah we shoot less boats now, (laugh), but now it's made it aware that if you get caught you're going to get prosecuted and half my relations get prosecuted so they're all aware. Even our crooks pay attention now and ask for a permit which is better than what it was before. Now we have our crooks stop the other crooks from coming over. Yeah, so now the crooks are working for us, they use the rules and now they ring up and ask for a permit or whatever, or when they need too. And that's the best change around in a long time. (Rangi)

This outlook describing the change in behavior by so-called crooks did not occur by accident. Rangi refers to his relations and others and although he does not state it, their raised awareness reflects the behind the scenes work at educating the grass roots level that he is part of and the efforts of kaitiaki informing their hapu whanau whänui of where their non-commercial fishing rights now reside (Kaimoana Regulations). It also highlights that people are more responsive when something is backed up by the law.

Matai Broughton viewed the effectiveness of the Kaimoana Regulations in his rohe as being a compliance issue regarding customary permits to gather kaimoana. Under the Kaimoana Regulations the appointment of specific kaitiaki to manage an area has left some people adamant that they will not go to those marae, hapu, iwi or tangata kaitiaki to ask for a customary permit. Anecdotal comments heard by

Fishery Officers and kaitiaki are the sorts of claims that "they (the fishers) have always gathered for hui or tangi, they can take whatever amounts they want to, that the treaty allows them to do so and no other hapu, marae, iwi, or kaitiaki has the right to stop that". Resistance to the regulating of customary fishing still exists as some individuals prefer the old way of a non-regulated yet exclusive article two fishing right.

> I believe that the regulations could be more effective on the people abusing, there's still that clicky up there that won't use them, they're still going without permits until they're caught then forced to use it. The thing is, I think it's a shame how people are too proud to ask but I believe they are a thing of the future that is necessary. You know we'll have nothing left unless they're enforced and I whole heartedly support it. (Matai)

Outside Matai's immediate whanau and hapu group there appears some reluctance to seek customary permits. Perceptions of autonomy and authority (tino rangatiratanga) may be the issue. Like the tribal areas allocated to hapu, whänau, or individuals in traditional times (see p. 14 - 15), the Kaimoana Regulations allow hapu to manage customary fishing in specified areas and control the issuing of customary permits.

Libya commented on the effectiveness of the Regulations in relation to compliance.

> I don't think there's anything really that has helped us to preserve or protect our Kaimoana. They've got a document that gives an indication of the intent but they really don't have a mechanism in there to carry out most of those functions. For example Fishery Officers, there's not enough Fishery Officers within any one area. What happens to the rest of New Zealand that doesn't have Fishery Officers. (Libya)

Libya manages a coastal area (Kairakau) that is two hours drive from the nearest Ministry of Fisheries Compliance Office in Napier. Regular enforcement patrols and presence is a concern for remote areas like Kairakau. Under the Kaimoana Regulations Kairakau have the opportunity to uptake other customary tools such as mätaitai reserves or 186A Temporary Closures that will increase their compliance needs. Libya's comments indicate cynicism of the current irregular enforcement presence not withstanding future requirements for enforcement capacity when additional customary tools or mätaitai by-laws come on stream.

Whanau Food Gathering

As was stated previously there was a time when Maori were sustained eating their traditional kaimoana, kai-roto, kai-awa and they could survive because it was plentiful. Maori families used to go to the beach in summer and gather enough kaimoana to last for a season and to also provide manaakitanga to those families who were unable to gather. However, now with so much competition for seafood resources, the rules and quantity limits on fish species has made it difficult, if not illegal for whänau groups to just go out and get what they believe they are entitled to. Perhaps, as was mentioned, some groups are too proud to ask for permits to gather how they used to and just go and do it anyway which nowadays contravenes the law.

Libya views the Kaimoana regulations as affecting whänau gathering more than poachers or poaching.

> We thought that by appointing Kaitiaki that would give us that mechanism of control as far as how much fish may be taken, but poachers don't abide by the law and so kaitiaki really hasn't curtailed poaching, all its done in reality has made it harder for some families to get what they were getting before the Customary Act. In other words people just went out and got what they believed they were entitled too and went home and that was it. Today you need a customary permit if you want to stay within the law. (Libya)

Some people have ceased traditional whänau gathering whilst others don't want to risk prosecution and nowadays request a permit. However, their request may or may not be granted depending on kaitiaki policy, circumstances, or the purpose for the kaimoana, nevertheless whänau seafood gathering practices may have declined but have not necessarily curtailed.

Marei was asked for his comments on the state of tangata whenua fisheries management before the regulations came along as opposed to now that it's here. His response discussed the Ministry imposed Regulation 27 regime (the Crowns first attempt at a system to process, regulate and control customary gathering). One of the flaws of Regulation 27 is that it fails to recognize traditional boundaries of whänau, hapu, iwi and allows issuers from elsewhere to grant access to gather fish in areas that had customarily been the jurisdiction of specified groups. In addition Regulation 27 is purely a system to take fish only; there are no management tools within it.

> If you reflect on the previous regime prior to the Kaimoana Regulations, operating under Regulation 27. That law was fettered with its own gaps and problems, mainly one, the issuing. The authorizing issuer could basically be a member of any marae committee inside this rohe or outside of the rohe and I think that certainly needed to change and of course the Kaimoana Regulations reflect that.
>
> We ought not to lose sight of the fact that the Treaty is said to be the original basis in terms of trying to provide you know a regulation type authority. We've tried to define that with some caution in terms of what the function for both Crown and of course what the responsibility in the action of Tangata whenua would be. I think Regulation 27 being left in its shape and form has not been the best type of cover that certain areas would want. There are certain people that would argue and also challenge both the current

> Kaimoana Regulations as well as Regulation 27 and go back to saying we already have the basis of that relationship but the problem is of course, it's not very clear in terms of what that interaction relationship would be between both ministry and with Tangata whenua. What I'm saying is that I'm currently dealing with the mind-set at the moment that are dis-acknowledging both Regulation 27 and the Kaimoana Regulations and they're saying they want to hinge everything back on our article two right which was never alienated in any way, but it doesn't set out specifically the types of regulations that we would regulate ourselves around and that's been a problem. (Marei)

Through his iwi role Marei has frequently experienced first hand the complex views, judgements, opinions and speculations of diverse tangata whenua groups and individuals. He has encountered claims and demands by individuals to exercise fishing rights in whatever manner they deem fit often without any structured regulatory processes or accountability mechanisms.

The paradox of fringe groups who continue to promote their own loose and un-defined interpretation of customary fishing rights is the risk of abuse by such groups or poachers or individuals seeking commercial advantage. The Kaimoana Regulations, drafted and negotiated by Maori representatives provide a regulatory regime for legitimate exercise of customary and traditional rights.

Section 2.

Input And Participation Issues

Introduction

Nettheim et al (2002) found recognition of Indigenous rights at a legislative level problematic for the following reasons. "Intellectually it is proving difficult for non-indigenous people to comprehend the vastly different concepts of relationships between Indigenous peoples and their territories, and amongst each other, and Indigenous people regard their rights as having continued to exist without need for recognition and in spite of Acts that the national legal system may regard as having extinguished such rights" (Nettheim, Meyers and Craig, 2002, p 482). The authors also found that the customary fishing provisions in New Zealand provided yet again a largely consultative role for Maori.

This section explores the assumption that consultation is largely all the customary provisions provide for. Tangata kaitiaki explain their views of consultation and the interpretation and application of it. Commercial fishing is also discussed to gain insight into how that impacts on customary fishing management and vice versa through the artificial split of the Maori commercial settlement from non-commercial customary fisheries interests. The analysis considers the modernisation debate (see p. 22), and if the Deed of Settlement will potentially benefit all Maori.

Consultation

Consultation or lack of it has long been a contentious issue from a tangata whenua perspective as they are often left out of decision making that affects their many interests. The wero to the Crown for more consultation with tangata whenua and preferably at the beginning not the end of a process has often been demanded. The Ngai Tahu report 1991 included "four principles" that directly led to consultation being placed in the 1992 Deed of Settlement that specified consultation as a legal obligation upon the Crown in regards to administering fisheries (see p. 54).

When asked how important is consultation to kaitiaki the answers varied slightly and covered information flows both ways from the Crown and Maori.

> To kaitiaki it's very important because they need to know what's happening for them to do their job properly. (Rangi)

> Very important. Consultation I refer to is talking to the partner, Ministry of Fisheries and no one else. It's important that our partner needs to understand and appreciate our tikanga and as kaitiaki what's been handed down and the methods of fishing and all that. (Libya)

An area of importance is that kaitiaki are made aware of fisheries management decisions being contemplated by the Ministry and that kaitiaki are informed and consulted with. Even so, tangata whenua complain of the Crown's lack of awareness of Maori philosophical values and environmental practices whereby consultation inevitably focuses on addressing government created policy measures. Consultation is a two-way thing and can be initiated by tangata whenua to inform ministry staff of their cultural aims and intentions. That can also provide ministry staff with contact, exposure and some understanding of Maori philosophy and tikanga, something that is often lacking in Crown interaction with tangata whenua. Consultation is one step, how consultation is interpreted and applied is the key.

> Usually its Maori with Maori having that consultation with each other, but when the MFISH staff come away and they've got to report back to their peers, I think there's an internal bureaucracy struggle on what the intention of what the Act was. (Marei)

Marei points out the risk of government bureaucrats subjectively translating consultation data and how the product of consultation may be processed to fit

departmental intentions rather than the original intent of the Act. Nevertheless interpreting the so-called "intent of the Act" is never easy for government agencies to decipher. In difficult situations agency staff always fall back on the letter of the law, where the regulations are black and white but in doing so may lose the spirit and essence of the Act's intent.

Section 3.

Commercial Impact

Background

The 1992 Settlement Act entered Maori into the commercial fishing industry. Since then Maori ownership and investment in commercial fishing assets has seen them become the largest owner of commercial fisheries quota. Although Maori own the majority of commercial fishing assets, control 100% of customary fishing and are frequent recreational fishers, Maori aims and goals are becoming polarized between their commercial and traditional interests. According to Cassidy (2000, p. 12), "although there is strong interest and motivation for customary fishing at a grass roots level, management of customary fishing does not generally enjoy a strategic or supported position within Maori organizations." Why that occurs within Maori organisations may be attributed to opposite functions of a non-economic, philanthropic, welfare orientated customary fishery as opposed to the business minded, maximizing investment, profit driven orientation of commercial fishing interests. Cassidy further added, "capacity for customary fisheries management is limited adding to the failure to utilize potential synergies of customary and commercial interests within Maori organizations." (ibid)

Well structured and financially sufficient iwi organisations direct the commercial fishing interest, whilst the less structured, usually financially insufficient hapu groups manage the customary interest. Schroder 2003, points out that tribes have

been dominated by new economic and bureaucratic elites that control access to tribal revenues. He adds that...

> although tribal capitalism provides for material benefits for all tribal members these benefits are not evenly distributed. In practice tribalism has been turned into a powerful instrument in the hands of tribal elites to manipulate the possibility of access to the benefits accorded to tribal members. (cited in Rata 2000, p 42)

The notion of keeping Maori commercial assets intact in order to grow the asset has seen 50% of all Maori commercial fishing shares retained by Aotearoa Fisheries Limited (AFL) on behalf of all Maori until 2015 when iwi vote on keeping AFL or to close it and distribute the 50%. Already anecdotal indications are manifest whereby the commercial fishing conglomerates of Aotearoa Fisheries Limited and Te Ohu Kaimoana are positioning themselves for a long term future.

Conflicts

The interview questions assumed the commercial sector to be an economically powerful and well organized fishery sector. Therefore respondents were asked if the commercial fishing sector in general has a monopoly hold over the fisheries resource and if so, are they or are they not prepared to let traditional fishing interests intrude upon their domain?

> Hell yeah! If it makes money they aint gonna let everybody in. As long as they get their money, when the stuff runs out, they just move and we're stuck here. The difference between us and commercial is they make their living out of it and they get paid. We survive on it and that's how we live. (Rangi)

> The answers yes, they've got an organisation and there's quite a few of them that have actually reaped and become financially well off. When you

> have access to something that you really don't own and you're reaping big bucks off it, you'll always find that they'll put mechanisms in there to protect what they believe are their rights and they go as far as getting the support of Parliament on a lot of it. (Libya)

The clear difference between customary and commercial fisheries is one of economies of scale and deriving benefits. The economic and export benefits to New Zealand create an obvious expectation of government support, perhaps bias, towards commercial fishing interests and a perception of customary non-commercial being the poor cousin. Therefore respondents were asked 'if that might change or not with iwi being or becoming the biggest commercial quota holders nowadays?

> It will change but not for the better. If Maori become a bigger quota owner, it's only a limited few Maoris'. (Libya)

The remark from Libya is highlighted in Rata and Openshaw (2000). Rata states...

> Malaysia, Fiji, New Zealand and the United States all provide examples of the process by which economic redistribution to foundational groups leads to elite emergence and to the exclusion of many of the people in whose name the redistribution is initially made. (Rata, and Openshaw, 2000, p. 42)

Schroder 2003 refers to American Indian tribes having been dominated by new economic and bureaucratic elites that control access to tribal revenues. New Zealand Maori commercial fishing interests are worth multi millions of dollars so if American trends are anything to go by then most tribal members will get nothing and, as Libya says, the limited few Maori's or the tribal elites who control those revenues will reap the most benefits.

> No, it's a myth if people think commercial was going to share with you. Even if it's 60% Maori owned because commercials have to make money. You don't go into business to lose or be nice to the next fella. For good or bad, commercial wise, if they start putting back as much as they're taking out, it will be miles better. In fact I'd even support commercial if the amount they were taking out, they were re-seeding or restocking areas again, all areas. (Rangi)

One could assume that some kaitiaki appear sadly resigned to the fact that those at the top will reap the greatest benefits from the commercial fisheries allocation. "In New Zealand, despite the pan–Maori nature of ethnic mobilisation, historical grievance settlements have established neo-tribal economies rather than improved the socio-economic circumstances of those Maori in whose name ethnic mobilisation was initially justified." (In E. Rata & R Openshaw (eds) The Politics of Ethnic Boundary Making, 2006, p.44)

The yawning gap between Maori customary and Maori commercial fishing interests appears as an 'us and them' perception of the economically powerful national Maori commercial fishing entities (AFL and Te Ohu Kaimoana) who represent the commercial interests of tribes or in other words are the tribal representatives cash cow. This so-called 'David and Goliath' position appears to be heading towards a major collision. If Rata is right and her theories that ethnic politics leads to the effective disempowerment of the majority of the very people that ethnic politics was ostensibly supposed to assist, then the Maori commercial fishing entities and tribal elites will survive any collisions but as for the customary non-commercial interest – that may not?

Section 4.

Partnership

Background

The partnership concept discusses resourcing issues in regards to managing customary fisheries under the Kaimoana Regulations. According to Cassidy (2002) two key factors in achieving success in any endeavour are having the passion to achieve success and the ability to put that passion to work. Undoubtedly there is passion aplenty in the field of customary fishing yet the ability to harness that passion and manage customary issues requires resourcing to support the work. Therefore running customary fishing issues on a voluntary and ad-hoc basis does not provide the necessary stability to effectively exercise the rights and responsibilities of customary fishers in the wider fisheries management system. Although kaitiaki are largely unpaid volunteers, they are still ministerial appointments under the Kaimoana Regulations and with this comes additional responsibilities; legislative commitments and statutory requirements add many more obligations to their traditional roles.

Priorities

When asked, what are the priorities in your area of customary fishing?

> Well, it would be to get the partner off their arse, off their butt and helping or working together to formulate a budget that covers or helps Reg 33, the Reg 33 to assist Maori or kaitiaki, but they're too frightened to financially assist, you know when you look at some of their wording and that, they're quite frightened, well they are making it harder for us to be a partner. (Libya)

Reference by Libya to the wording of Regulation 33 is about the ambiguous interpretation of the intent (see p.64 for Regulation 33 description).

> We're doing a job where they want it voluntary and that's acceptable to the Crown, Maori volunteering to do the mahi. Those days are gone for us, unless, and it can happen, if we're really passionate about it and the benefits are coming back to us as Maori. At the moment there isn't much benefit coming back under the treaty and Sealord and all that. (Libya)

Libya views the voluntary work and passion of tangata kaitiaki as only improving if both, the commercial settlement benefits or a portion of that can come back to support the non-commercial customary sector and the Crown increase and widen its Regulation 33 assistance.

When respondents were asked, "do the Kaimoana Regulations provide self-management, co-management, advisory management or all of these things", comments revolved around resourcing.

> It could involve all of those. But it would be and it could be quite expensive. It's really a self-management. It's at your discretion at the moment because there's no funding. (Libya)

Rangi replied that it is all three. All three things provide us with what we want but with

> limitations. For example, we don't have rangatiratanga over the sea any more because we still gotta ask the Pakeha or the Ministry for want of a better word, whether they can do this or that and how much we can do this or that. (Rangi)

When further asked if he now has to share rangatiratanga Rangi replied,

> Well no, rangatiratanga for us means that you make the first and the last say but we can't make the last say because the ministry which is government, has the last say. The second one with co-management that's also limited

because we are only able to do so much but if the ministry doesn't like that, they can change that. (Rangi)

On the same themes of co-management, advisory and self management Marei concluded that, "it's not very easy for our kaitiaki who have come from virtually a zero base of you know, non-resourced to kind of get up and salute the flag and continually be beckoned by the master sort of relationship. I think that at some stage there's got to be a better relationship in terms of master servant because we're working together on this." (Marei)

Conclusion

Evident in the above discussions are the inadequate resources to do a job and function that requires considerable resourcing. Assumptions that the Crown is solely responsible are debatable. Discussion and fair negotiation must occur as to what should be funded and what should not, and what is the government contribution and should there be a contribution from iwi considering iwi have a huge commercial fishing asset? Who and how that is addressed is the vexing question, and, as iwi entities or Crown agencies are unlikely to champion such a cause the matter would require the customary non-commercial interest to pursue funding issues. Recently the fourteen regional customary kaitiaki forums (chairpersons) held a national hui in November 2007, to organise a "National Council" for customary fisheries matters. The national customary council is ideally suited to develop a capacity strategy and enter negotiations with Crown and/or Iwi.

CHAPTER 6

DISCUSSION AND ANALYSIS

Chapter 6 provides analysis of the key themes of taonga, tikanga, mauri and kaitiakitanga and how the respondents view those traditional values within a fisheries management framework under Crown regulations. The analysis further explores how those traditional concepts are practiced within constraints of the administrative systems, policies and processes of the Ministry of Fisheries. Links are made between the role and expectations of kaitiaki under the regulations and the resource issues that affect those roles.

Background

This section explores the concepts of tikanga, mauri, kaitiakitanga and rangatiratanga. It explores the values base of the respondents in their role as kaitiaki. Their responses varied from general understanding to in-depth understandings. The first part of this section discusses the respondents understanding of tikanga and its scope and flexibility. The next subsection seeks their understanding of mauri including impediments to mauri by modern practices. Kaitiakitanga follows with how tangata kaitiaki view their obligation whilst the section concludes with a view of power and control (rangatiratanga) over their rights and obligations as kaitaiki and hapu of Ngati Kahungunu.

Tikanga

Respondents were asked if tikanga is at risk or not through application of the Kaimoana Regulations?

> Tikanga in the broad sense means right, the right way of doing things. If you're doing the right way in the Customary Regulations, some of it may be tikanga. Tikanga is just the right way of doing things, that's what it means in a sense. (Rangi)

(Question) So if you're doing the right things then tikanga is not at risk?

No it isn't, but you can't do everything to please everybody. (Rangi)

Tikanga (laws) set the framework for governance and shaped the form and operation of political authority. Tikanga defined, regulated, and protected the rights of whanau and hapu. There were also limits and obligations. (Marei)

Rangi was asked does tikanga have enough scope to change or be flexible when you're managing traditional fisheries?

If tikanga was to do seasons, like they use to. No-one use to have suits before the 60's. So everybody dived in season. When they were in communities or when they're in groups they all went to the beach. You know, they might all go shellfish diving this weekend, and come back and fin-fish the next weekend, but they're not getting any shellfish just fin-fish and then they'll all go away for three months and come back, just before the end of summer and do it again. You know, this whole pile of people feeding all their people, and when they went back they fed everybody else that wasn't able to go fishing with them. But those times have now changed cause now you have some people with suits they dive all year round. So what do we do? If the law can be changed, then they should change it to those seasons so there'd be no more diving year round. To Maoridom it won't make any difference because it's all skinny and its off. But generally talking if they put in the seasons when the food is right, then you close it down for the rest of the year and that's it. And everybody whether they like it or not will have to agree and you just go with the flow and then all of a sudden you're back to that cycle where you only dive when its fat and plentiful and you just go on those cycles. (Rangi)

Marei was asked if tikanga has enough scope to change or be flexible in managing fisheries?

> Yes, course it does, absolutely. From my understanding, tikanga was never a dormant thing. Tikanga is a forward going tool that needs to address the sorts of issues that we confront as we go through forward, forward thinking, forward planning, forward doing. So, yeah I think it's very adaptable. It's certainly a tool that I believe our ancestors left for us, to continually look at improving what's already there in place, that needs improving. It's a continual process. If we start to look at you know the sorts of processes of continuous improvement, I think that's what tikanga's all about. It's just that we don't have the opportunity to kind of get into enough forums, or enough processes to enable that kind of thinking to develop itself around, I mean, of course we do have forums, but very, very seldom do we allow ourselves to go into that kind of thinking. (Marei)

When asked if traditional values such as tikanga, taonga, and mauri are protected through the Kaimoana Regulations, Libya categorically states no and provides another dimension to the argument

> The answer's no. Tikanga is how we see it, what is our Maori law. I think one of the things the customary regulations could be is a legal regulation that could have helped us in the foreshore and seabed if it was done properly. So the answer to your question is no. None of it really looks after the interests of Maori. (Libya)

When further asked if he thought Kaitiaki do or do not have more Rangatiratanga under the Kaimoana Regulations Libya stated that;

> It only had that recognition within the hapu. If one can go that far. Cause to Joe Bob out on the street who has no whakapapa loop, if he mentions

rangatiratanga and all that sort of korero then he's only looking for an advantage to get what he's after. So yeah all that only belongs to your hapu member that recognition. Outside of your rohe, it really means nothing. (Libya)

Mauri

This subsection discusses the concept of mauri (see p. 4) and how respondents understand and view mauri in their role as kaitiaki including any effects people have on the environment and the mauri of the natural world. Within the dialogue are issues of modern practices impeding and clashing with traditional values and beliefs.

Understanding

Respondents were asked for their understanding of the concept of mauri and why kaitiaki concern themselves with the mauri of fisheries. The answers varied from in-depth to general understanding yet all either subconsciously or consciously viewed protection through kaitiakitanga as supporting mauri.

Question: What is your understanding of the concept Mauri?

> Mauri yeah, that's actually a hard one for me, but it has more mana than most anything else apart from our God. It has a presence in more things, you know the Mauri in water, fish, rocks, you can actually feel that sort of thing, but it affects us and it comes to us in different shapes and forms. Yeah, that's a bit hard. (Libya)

For Matai, understanding of Mauri was expressed through a description of actions. Rather than provide an explanation of the meaning of mauri he gave a practical example.

Question: How do you view the concept of Mauri in regard to the fisheries when you look after your area?

> Yeah. I sort of explained it there when, when we were set up as Kaitaiki. We have sanding up of our paua and things like that, a lot of our beaches are sanding up and I was telling the fisheries that we move the paua. They told us we're not suppose to, we're just to leave them. Are we supposed to leave them on the rocks there to die. You know when they're half out of the water and that. Cause we will collect six or seven sacks of them, we take away and put back in the water in other places and a lot of undersize ones, but this happens every year round about this time actually. It just sands up in the bays, when the sands there they just seem to come and sit on the top of the rocks just out of the water. It's unreal. Well we've been doing it anyway, despite we can't move anything and without permission. The mauri or well-being of those stocks is important to us. (Matai)

Clearly the practical and common sense approach taken by Matai in regards to his role may be contrary to the law however, whether or not it achieves sustainability is beside the point. It is being seen to act and try to do something to assist the environment he is charged with looking after. For some it was the core requisite of kaitiakitanga!

> Mauri concerns itself from both animate and inanimate life-force in that we contribute the mauri of both the area and the area in terms of its natural taonga. I think, without mauri you've got nothing and that human impact and effect can create a negative hit towards mauri. Well, I mean rape and pillaging of your natural stocks that will take away and damage the mauri. Water quality in terms of sewerage outfalls effects the mauri. I mean those would be probably the two greatest human failings in terms of mauri. Now think about this, start to kinda think about mauri, what a great marketing thing. I mean you've got this green/blue image out there, but protecting our

mauri, for example, we went through the waste management discharge for Hastings District Council and it was really based on that whole effect of mauri. At the end of the day discharge where, you know, the international, here again, the international rule is, in terms of pollution, polluted water, or the standard quality of water is safe if it's got 25 parts per hundred.. That's the international standard, and you go 25 bloody parts. One part is paru, one part affects our mauri. You know when you work toward just getting down to zero tolerance, then you're talking about sustaining mauri. You know, maybe it's kind of a measure that we ought to be with now, but that comes with some huge difficulties because you've also got rivers that discharge after big storms and the run-off that comes off land is so great in terms of the water standard quality, increasing itself and we're talking about practices on land, now discharging back out to sea. Huge issues in terms of mauri start to come up here. Now mauri is something that kinda goes up and down in terms of the types of effects and impacts that it can have and I'm talking about quality that is. And the way by which poor old Tangaroa has been swarted with what's coming off Papatuanuku as a result of 'he tangata' so to me we've got to be both mindful of what we do on mauri on both Tangaroa and Papatuanuku, You've got to find a real balance in terms of how one contributes to the other. We talk about balance here. I think that's probably the way by which kaitiaki need to look at how, when we do set up regimes, need to understand these sorts of dynamics. I just think that's all part of tikanga learning and getting to grips or conversant with things such as mauri. What does mauri mean when I go out there and undertake my job? Well, I guess, it's about insuring that there's balance out there. Balance in terms of relationships by having both water quality and having sustainable stocks, all part of the mauri. I mean there's got to be a checklist actually. Of what contributes towards the specific role and if you agree that mauri is very much at the forefront of this effort, you need to get to that point first. Then you'll understand it. (Marei)

Marei highlights key areas for protecting mauri and the need for striking balances however he also provides a reality check on the huge difficulties of land issues impinging on the rivers and sea. A major difficulty or perhaps hindrance for the holistic approach of kaitiakitanga is dealing with a myriad of different local and central government institutions all with varying types of involvement such as Department of Conservation, Ministry for Environment, Ministry of Fisheries, District Councils, and Regional Councils each with differing systems, policies, processes and resource management obligations.

Kaitiakitanga

Part of the framework for understanding Maori environmental values is kaitiakitanga. It denotes the burden incumbent on tangata whenua to be guardians of a resource or taonga for future generations. The act of guardianship, kaitiakitanga, requires clear lines of accountability to whanau, hapu or iwi and is more frequently associated with obligation than authority. Transfer of the ownership of a resource away from tribal ownership does not release tangata whenua from exercising a protective role to the environment, although it does make the task more difficult since others will also have an interest. In environmental terms the kaitiaki approach is holistic and provides for restoration of damaged ecological systems, restoration of ecological harmony, increased usefulness of resources and reduced risk to present and future generations (Matunga, 1994; Walker, 1987; Kawharu, 1989).

Responses

The respondents expressed their views of kaitiakitanga and why it's so vital for them and their hapu. Libya explained that we all have a guardianship responsibility regardless of whether there is appointed kaitiaki or not.

> We are kaitiaki the day we are born but how far do we take that? What I mean by that is if I believe I'm a kaitiaki by birth do I keep potting everybody

else and hope that no ones sees what I take. Our people are passionate about these things. (Libya)

According to Libya accountability and being a good example is paramount in fulfilling the kaitiaki role.

Being a guardian of an area is to be a guardian of a food source for the people. If your area runs out of food you cannot blame anyone else but you, your heads on the chopping block. It's an identity being Kaitaki and being Kaitaki of our own hapu, it's the mana and the identity of it. (Rangi)

Respondents were probed as to where they think kaitiakitanga stems from?
For Matai it was as simple as being appointed to the role.

By the appointment and the people they've appointed because by our lore we're all tanga whenua, we've all lived on the coast, most of our lives. We still live there, you know, we're all born there. (Matai)

For Rangi the origins stem from the beginning of the creation story.

It's from the beginning of Tangaroa, at the beginning when Papa and Rangi were together and they split them apart. They all divided up and went their separate ways, all the gods. But in all the places that they went to they had to have people to look after the resource. So not everybody stayed by the sea. Not everybody stayed in the mountains. However, if anybody else came along they just went back and got all their other mates to protect what was there. So it was there for every generation. No Kaitaiki owns anything, they just guard them. Yeah everything comes from our Gods. They have to guard their area for their people. In the old days you could start wars on that. (Rangi)

Marei also referred back to Maori cosmology.

> When you think about the realms of the deities, the gods that are associated with guardianship over such realms and the connection that it has back to the people,
>
> I think that to be a very important point of distinction in terms of maintaining our connectedness and our linkages back to that particular process because it's really talking about the children of both Tane and the children of Tangaroa so I think from my perspective there's that first clear interest in terms of our guardianship type role and how we perceive that in our day to day running and operations.
> What that is, well that is certainly an issue that we're confronted with and how we talk that through getting some clarity and definition as to what our priorities ought to be in terms of sustaining those types of resources but quite clearly if we didn't have that connectedness back to that realm, or in other words we're talking about the children of Tangaroa about our own personification of our own ethos connected back to Tangaroa and I think those for me that's where my passion lies. So when it comes to a role a function or responsibility it's incumbent upon those directly around those particular resources to take on the responsibility, that they must endure in taking it on and what a great basis when you consider the linkages back in terms of genealogy and whakapapa. (Marei)

For respondents dominion from God to man to be kaitiaki over the sea and its resources is sacred and inspiring.

Rangatiratanga

The following dialogue was held with Rangi Spooner.

Question: Do kaitiaki or hapu have more rangatiratanga under the Kaimoana Regulations?

Reply:

> No, not really, because again you have to co-share, if you have rangatiratanga you have the first and the last say, and for the Kaimoana Regulations, you have to share so it's like, it's more of a partnership than anything else. If the laws for the Ministry, says you have to do this and tikanga wise you think, no, that's wrong, you'll do the bit that you think is right. It doesn't necessarily follow that you have to bow to Pakeha law, you do what's best thing for your area to save your stocks and how to re-build them.

Question: In the Kaimoana Regulations, it states that the Crown must provide protection for and scope for, the exercise of rangatiratanga in respect to traditional fisheries. Do you think the Crown can live up to that or make that happen?

Reply:

> Hell no, that means we are in control. And if we're in control and they're watching they're not going to give you rangatiratanga or nothing. If they said in this office that you were the rangatiratanga of this office of everything that happens in here and your boss rings you up for something and you say no, you'd get sacked. Your rangatiratanga is with your boss, or the last one that has the say in the thing. No one will take for granted that the Ministry is their boss.

Question: So if the Crown can't actually provide protection for that, is it because it doesn't know what it is?

Reply:

If they get the partnership right, everything falls into place. Rangatiratanga is your own chieftainship of your area. That doesn't mean you become chief if you've got to answer to somebody else, you are the chief. You make the decision and you live by it. What they're talking about I think has rangatiratanga and governorship mixed up. One is, we support one another. The other one is I'm the boss and I'll make the last say. Thing is the government wants us to be the boss and they have the last say.

Question: The Minister of Fisheries is the one who signs off the Mätaitai. He's the one who signs off the gazetted area or he's the one who signs off a bylaw, so it seems he holds the rangatiratanga essentially. Do you think that's appropriate?

Reply:

Well he holds his Pakeha law where he says he's the Minister. He'd never hold rangatiratanga over Maoridom. We're from here. Over here in Kahungunu not even the Queen of Tainui should tell you what to do over here and she's the Maori Queen.

Question: Do you think his power and control is merely a legal signing off process?

Reply:

> Yes, after his Indians go around and set it up and he signs his process off, he and his people who work for him have done their job so he's able to do that because essentially he makes his decision to help the kaitaiki that's there. The Kaitaiki is like an intermediary person, he's between the Government and his people. Yeah that's the tough thing. You know its limited responsibility, but it's the only option we have. (Rangi)

CHAPTER SEVEN

CONCLUSIONS

Key Learnings Summary

Since 1866 the Crown had been stripping Maoridom of their fishing rights. One hundred and twenty years later the courts in New Zealand finally determined that Maori never surrendered their rights to the fisheries resource. Throughout the 1980s fisheries rights litigation process it was Maori who led the charge and actively engaged a reluctant Crown. Through negotiation and settlement with the Crown, Maori have been able to more clearly define those fishing rights in today's terms. The Treaty of Waitangi Fisheries Claims Settlement Act 1992 split the once unified customary fishing right into commercial and non-commercial components.

Post 1992, mandated Maori representative's drafted customary fishing regulations then negotiated the content of the regulations with the Crown. In 1997 and 1998, the South Island Customary Fishing Regulations and the Kaimoana Customary Fishing Regulations were implemented. After ten years tangata whenua are only just coming to grips with the effects of the regulations. For good or bad, in the fast track world of change and evolution, old traditions and values are being replaced by modern techniques and processes. These final conclusions address the central research question that sought explanations on how Ngati Kahungunu hapu have responded, adapted, challenged, or adjusted to Crown law and customary fisheries legislation, and to find out if contemporary Westminster originating laws engender difficulties for Maori traditional hapu lore when it comes to managing customary fishing.

Tradition

Since inception of the Kaimoana Regulations in 1998 there has been a lot of goodwill from tangata whenua in seeking to adopt the customary fishing regulations and to implement options within the regulations that benefit the hapu customary fishery. Despite all the attention and resources residing with the ministry, tangata whenua have continued to undertake their kaitiaki responsibilities with little or no resourcing.

Although the customary fishing framework is largely dominated by the government's perspective of the world, given that legislation can only be passed by an act of parliament, establishment of the customary fishing regulations provides an opportunity to merge law and lore with potential for the Crown and Maori to embark on new and unique customary policies. Tangata whenua and particularly tangata kaitiaki are cautiously adjusting customary fishing practices and traditions to align with the contemporary reshaping of customary fishing rights into a regulatory regime. One of the greatest struggles for tangata kaitiaki is to protect the resource whilst simultaneously preserving tradition and the intrinsic philosophical values of hapu and tipuna within a regulatory framework.

Fitting philosophical traditional values into contemporary fisheries management is not easy. Government agencies like Mfish blend a number of elements in the western knowledge based scientific ethos which have combined to serve päkehä culture well but which, although sometimes well meaning, have been destructive of the traditional values of Maori. Where those destructive flashpoints occur or potentially may occur the korero of the respondents demonstrate that tangata kaitiaki of Ngati Kahungunu consider their traditional practices and responsibilities as being continuous and sacrosanct despite Acts and regulations. Where the regulations support those roles all is well, yet where and when necessary the need to take action contrary to the regulations but according to tradition can and will take precedence. As stated in the previous chapter 'tikanga is just the right way of doing things' especially in traditional circumstances.

Tangata whenua tend to view kaitiaki issues holistically and therefore a whole range of concerns involving rivers, sea, land and environment are considered inseparably connected and therefore indicative of the way kaitiaki desire management of their fishery. Unfortunately those wide ranging issues to the hindrance of tangata whenua are not holistically managed by the Crown and involve interaction with a number of very different ministries and local government agencies each with its own systems, processes and timelines.

In fulfilling their role and function, tangata kaitiaki mostly intercede with the Ministry of Fisheries. The overwhelming influence of Ministry of Fisheries policies, practices, processes and staff saturate the management of New Zealand fisheries and dominate interaction with tangata whenua and customary fishing. Hence Maori are expected to adapt to the LAW but the Crown are not expected to adapt to LORE. On this uneven playing field the quandary for tangata whenua is how to encapsulate their views and values into government processes, particularly those government processes that all too often align closer to economic commercial fishing objectives. Until there is a balance the Crown cannot meet its specific obligation of making policies that provide for the use and management practices of Maori and the dilemma remains as to how much credence is given to the intrinsic values of tangata whenua? Not until those values are recognised and understood will hapu then know the mauri of Tangaroa can be assured.

Fisheries plans are the ministries recent approach to fisheries management. However, whilst getting stakeholders, government officials and tangata whenua around the planning table is a good start where fisheries plans are concerned the same dilemma remains; will tangata whenua values be given credence or recognition by an even less sympathetic group of commercial and/or recreational stakeholders, and whose priorities will take precedence? With regards to the recreational fisheries sector through the wider scope of the Kaimoana Regulations tangata kaitiaki are guardians of the sea resources on behalf of their hapu, a

function that also benefits the non-Maori community only the latter are yet to realise or accept that and some never will.

Expectations

All respondents in this study have an underlying philosophy of enhancing the resource, the fundamental aim of kaitiakitanga. The current hands on management, planning, intervention, intermediary role and genuine hard work of tangata kaitiaki should not be underestimated.

Nor should understating the list of comprehensive skills required for the role of kaitiaki - relationship skills to liaise/negotiate/deal with a wide range of individuals, community groups, stakeholders, government agencies and other hapu/iwi, time management, knowledge of the Fisheries (Kaimoana Customary Fishing) Regulations 1998, relevant parts of the Fisheries Act 1996, Treaty of Waitangi Fisheries Settlement Act 1992, Maori Fisheries Act 1989, Resource Management Act 1991, Amateur Fishing Regulations 1986, Regulation 27, Quota Management System, also knowledge of Ministry of Fisheries structures, processes and business groups, knowledge of other Fisheries Stakeholders, (industry and recreational), awareness of customary traditional fishing practices and rights, whakapapa and tikanga, and kawa of iwi/ hapu/ marae groups.

In addition, tangata kaitiaki are routinely expected to be available and accessible to tangata whenua at all times, provide permits (get threats for refusals), liaise with local Ministry of Fisheries staff plus other central and local government officials, peruse draft documents and provide submissions, network with fisheries stakeholders, front public meetings - occasionally with hostile groups, report to marae/hapu/iwi, and occasionally testify in Courts of Law on behalf of Mfish (possibly against whänau or friends).

Although there is currently little resource support, costs incurred by kaitiaki may include communications, travel assistance/fuel, training and up-skilling, seminar

attendance fees, capacity requirements to monitor fish stocks i.e - survey research, meetings, feedback and legal reporting requirements. The day's of pat's on the back for the voluntary kaitiaki role must change and remuneration be sourced. As gazetted areas come online marae and hapu involved in the process and in particular kaitiaki will begin to realise the scope of managing an area. It is likely to be a greater workload than they envisage and most will not realise the significant amount of work and personal financial costs involved in managing an area.

Operational capacity

According to Cassidy (2002, p. 13), "running customary fishing issues on a voluntary and ad-hoc basis does not provide the necessary stability to effectively exercise the rights and responsibilities of customary fishers in the wider fisheries management system". The result is a top heavy Ministry of Fisheries relationship that has Maori responding rather than participating.

Successful relationships have all parties equally and actively participating in the process of relating whereby the parties have equal ability to assert their needs and discuss issues to the point where all needs can be addressed. Tangata kaitiaki of Ngati Kahungunu and the Ministry of Fisheries have substantive work to do internally before they are ready to participate in an equal and effective relationship. Kaitiaki need to organise themselves in some way that enables planned management of customary fishing and ensure the structures are supported by ongoing funding. They also need to build capacity in fisheries management generally, understand how to give effect to their customary fishing needs and how the Ministry of Fisheries works. The ministry need to better coordinate the activities and outcomes of their business groups and up-skill generally on the Maori worldview of fisheries management. If that does not occur the ways of the past will continue. "The do's and don'ts and musts of the central state are thus enforced by an array of strangers who, in their ignorance and arrogance compromise traditional law and local custom" (Pu Ao te Atatu, 1988. p. 57).

Finally the korero of tangata kaitiaki on the operational effectiveness of the Kaimoana Customary Fishing Regulations can be summarized by the following;

- There is support for the Kaimoana Regulations as a mechanism to control other peoples and users;
- Regulation 27 is replaced by a more robust customary fishing regulation system where local management and ahi-kaa status is a priority.
- The Kaimoana Regulations are the only option available short of re-negotiating new regulations.
- Tangata whenua are cynical about the Ministry of Fisheries ability to adequately support the administration and management of rohe-moana under the Kaimoana Regulations.
- The culture within the Ministry of Fisheries is yet to grasp traditional values or incorporate those concepts within its business groups.
- The changing economic directions of government, government priorities and bureaucratic interpretation of the Deed of Settlement eventually trickles down to policies that contribute towards shifting goal posts and unpredictable fisheries management for tangata whenua.
- The relationship between the commercial sector and the Kaimoana Customary Fishing Regulations and tangata kaitiaki is volatile.
- The need for adequate financial and administrative support for tangata kaitiaki from the Ministry of Fisheries and the commercial sector.
- The Kaimoana Regulations 1998 provides opportunity for tangata kaitiaki to become better organised at the local level (through gazetted rohe-moana), at the regional level (via regional kaitiaki forums) and, as of late 2007, kaitiaki began organising themselves nationally.

As to whether or not Westminster originating laws have engendered difficulties for traditional hapu lore when managing customary fisheries one thing is for certain. The most significant difficulty is the clear lack of resourcing for kaitiaki to adequately undertake their role and function. Furthermore a lack of ministry understanding of traditional lore and perspectives is an impediment to meeting the

Crowns Treaty duty to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries.

In conclusion the Kaimoana Customary Fishing Regulations 1998 are at a stage where hapu of Ngati Kahungunu have a majority of their coastline gazetted under the regulations. Although hapu are adjusting to the regulations they are yet to fully adapt and become accustomed to customary fishing within a regulatory framework. Where there are conflicting concerns (lore verse law) kaitiaki respond with challenges and resistance. Responses differ according to circumstances and priorities within each hapu rohe-moana. Nevertheless there is concurrence that the Kaimoana Customary Fishing Regulations 1998, although not perfect, is still an improvement for the customary fishery.

"It's not a perfect world but it's better than before. We need to coexist together, to work it out better. There isn't a better plan than this. So this is a better option really for everybody. (Rangi Spooner)

Recommendations:

Any future research might consider the following

1. Study the effectiveness of management measures in particular mätaitai and by-laws and if that enables Mäori to provide for traditional and customary well-being;

2. Assess if the Deed of Settlement legal obligations are / are not being met and if Maori are sufficiently utilising their customary rights.

3. In regard to Maori commercial fisheries assets explore the view that economic re-distribution to foundational groups leads to elite emergence and to the exclusion of many of the people in whose name the redistribution is initially made, and design an equitable distribution model.

GLOSSARY

APPENDIX ONE

Ahikaa	-	occupation rights
Ao	-	world
Aotearoa	-	New Zealand
Ara	-	Pathway, system
Atua	-	god
Hapu	-	sub-tribe
Hauora	-	health or health nest
Heretaunga	-	Hastings & Napier region of Ngati Kahungungu
Hui	-	meeting
Ika	-	fish
Iwi	-	tribe or people, collective of hapu groups
Kai-awa	-	river food
Kaimoana	-	seafood
Kai-roto	-	lake food
Karakia	-	prayer/s
Kaupapa	-	strategy, theme
Kiaora	-	greetings, hello, thankyou.
Kaitiaki	-	guardian, usually refers to a spiritual nature or demi god.
Kaitiakitanga	-	guardianship
Kaumatua	-	elder/s, held in respect for their knowledge and experience
Kawa	-	protocol
Kawanatanga	-	governing, government
Koha	-	gift
Kohanga reo	-	pre school - language nest
Korero	-	discussion, speak, speech
Koroua	-	male elder
Kotahitanga	-	unity, oneness
Kuia	-	female elder
Mana	-	integrity, charisma, prestige
Manaakitanga	-	care for, hospitality, show respect
Mana moana	-	jurisdiction/guardianship over an area of the sea
Mana whenua	-	jurisdiction/guardianship over an area of land
Maori	-	indigenous people of New Zealand
Marae	-	Maori communal place/buildings
Mataitai	-	fishing area/reserve
Matauranga	-	knowledge
Mauri	-	life principle/essence found in inanimate and animate objects, a physical and spiritual co-existence
Moana	-	sea, ocean
Muriwhenua	-	northern part of North Island
Ngati Kahungunu	-	large tribe of Wairoa, Hawkes Bay, Wairarapa region
Ngai Tahu	-	large South Island tribe
Nga ropu	-	groups
Nga Tama Toa-	-	1980's academic student movement meaning young warriors

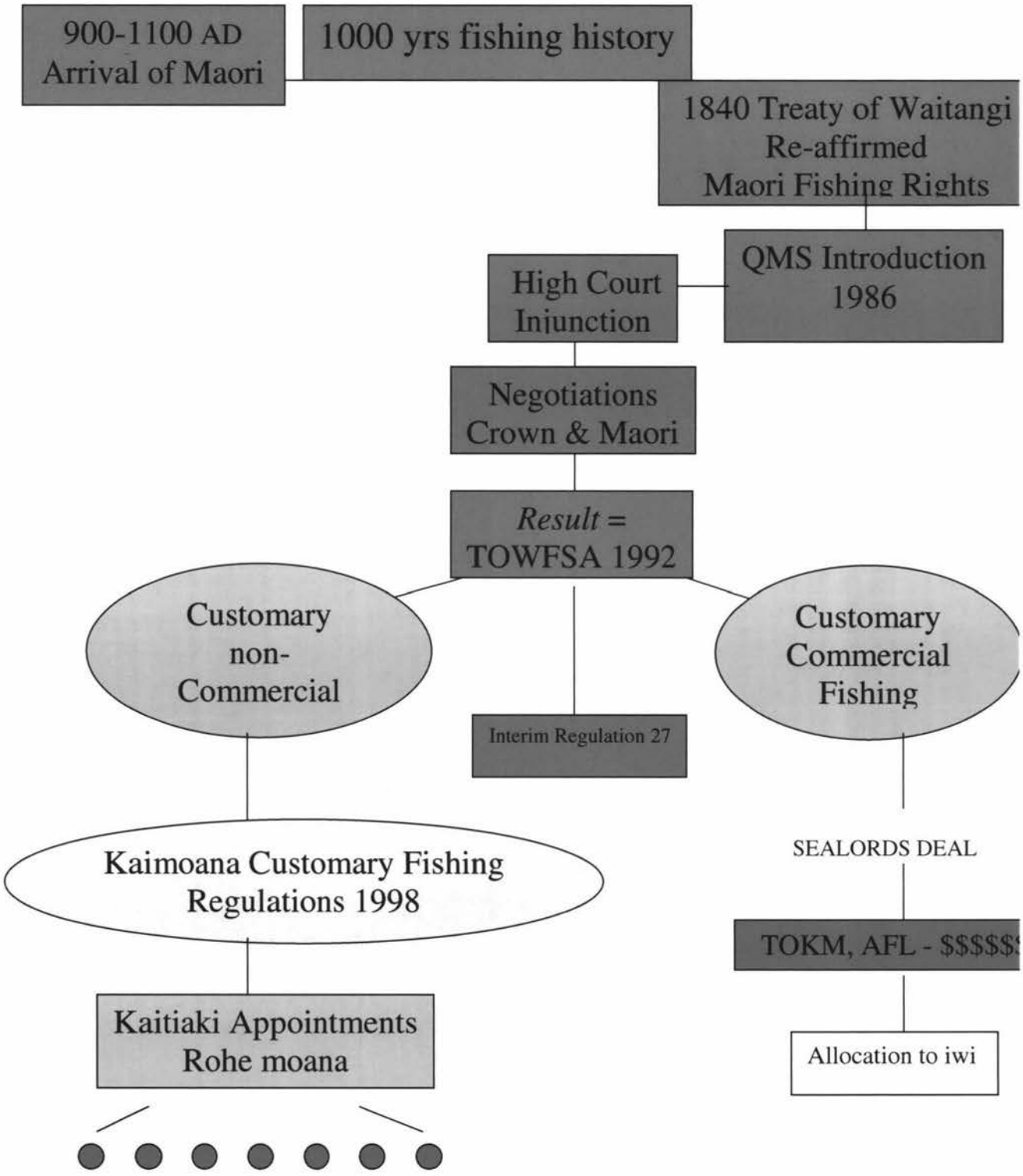
Noa	-	common
Orewa	-	small coastal town north of Auckland
Pakeha	-	European/s
Pataka	-	traditional storehouse
Rahui	-	embargo, quarantine; usually a period of 'no take' of fisheries resources placed on a particular area.
Rangatiratanga	-	sovereignty, customary authority
Ratana	-	Maori religious group named after founder Wiremu Ratana
Riri	-	anger, angry
Ritenga	-	custom, meaning, similarity
Runanga	-	assembly, council
Taake	-	issue
Taha Maori	-	Maori side
Taiapure	-	sea reserve implemented in 1989 Maori Fisheries Act
Taiwhenua	-	one of six regional branch's of Ngati Kahungunu tribe meaning a takiwä or geographical area
Takiwa	-	area/place
Tangaroa	-	god of the sea
Tangata	-	person/ people
Tangata kaitiaki	-	guardian (Tangata denotes a human guardian)
Tangata whenua	-	indigenous people of New Zealand
Tangi	-	funeral, cry
Taonga	-	treasure, valued item of importance
Tapu	-	sacred, holy
Tauiwi	-	european New Zealanders
Te Ao Maori	-	the Maori world
Te Kore	-	the void, the nothingness
Te Po	-	the darkness, night
Tikanga	-	rule/method/custom/criteria/ obligations & conditions
Tinorangatiratanga	-	chieftainship, self-determination/autonomy
Tipuna	-	ancestor
Tiriti	-	treaty
Wairua	-	spirit, soul, mood
Wairuatanga	-	sprituality
Wero	-	challenge
Whakaaro	-	thought/s
Whakapapa	-	genealogy
Whakawhanaungatanga		relationships kinship
Whanau	-	family
Whanaunga	-	relative
Whanau whanui	-	wider family
Whenua	-	land

Key Terms

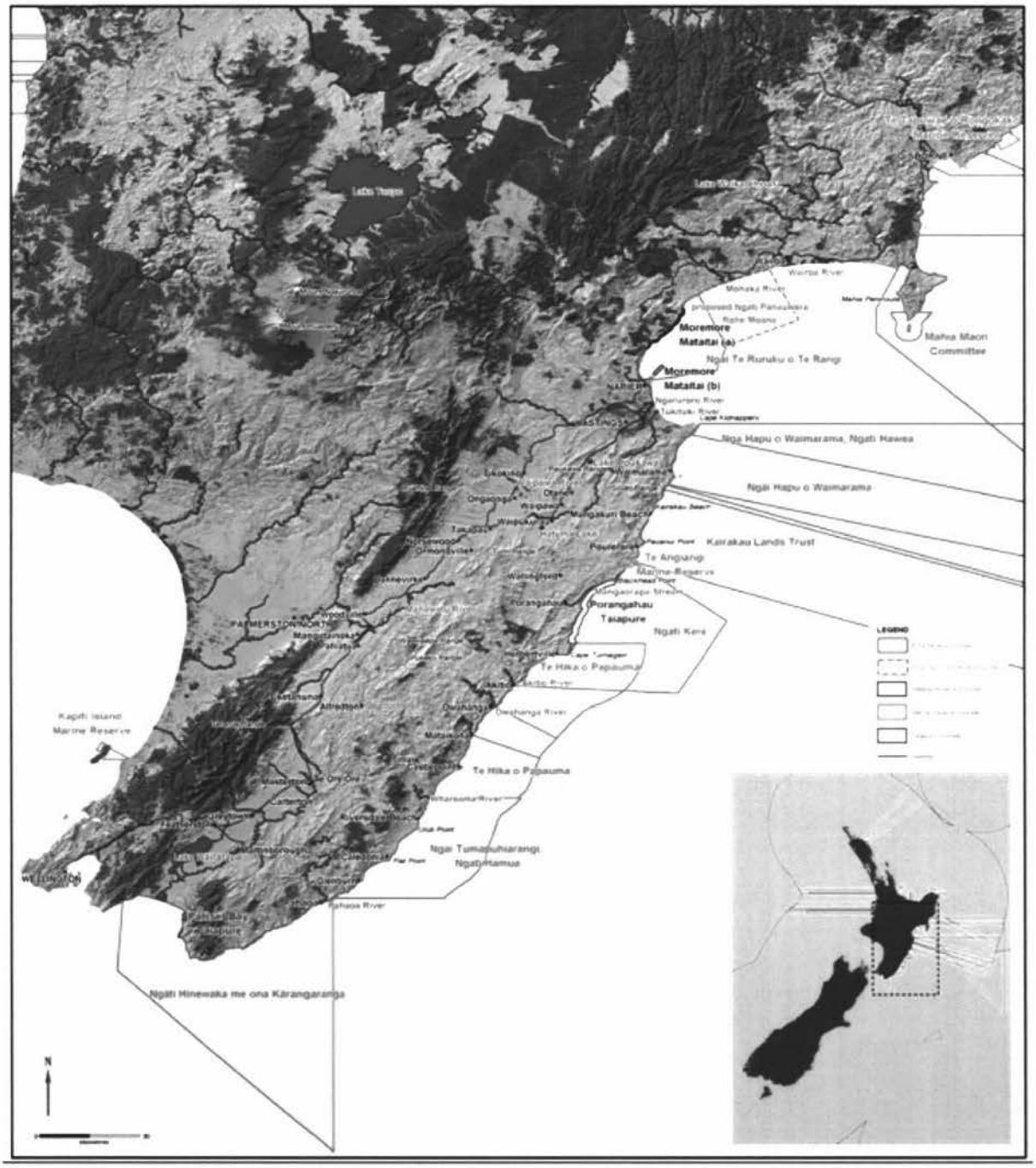
Customary fishing	- traditional fishing practices, gathering fish for cultural events and purposes
Gazette	- legally set aside, legal notice in govt gazette publication

APPENDIX TWO:

The following diagram outlines a simplified pathway of customary fishing history.



Tensions rise from philosophical and local values verse economic and global market values



Nine gazetted areas in the Ngati Kahungunu/Rongomaiwahine rohe are from top Mahia under the Mahia Maori Committee; Ngati Pahauwera-pending; Ngai Te Rurūku and the hapu of Tangoio; Ngati Hawea shared area with Waimarama; Nga Hapu o Waimarama; Kairakau Lands Trust; Ngati Kere; Te Hika a Papauma; Tumapuhiarangi Maori Marae Committee, Ngati Hinewaka, (80% of rohe gazetted as of April 2008).

APPENDIX FOUR

Ngati Kahungunu Iwi rohe and its six Taiwhenua regions

Map provided by Ngati Kahungunu Iwi Incorporated

APPENDIX FIVE

Interview Questions

The effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu.

Background information

- What is your position or interest in fisheries management or a fisheries related arena?
- Why are fisheries a taonga to kaitiaki and Maori?

Kaimoana Regulations – legislative queries

- What are your views on the effectiveness of the Kaimoana Regulations, what can be improved and what is not working?
- What in your view was the state of tangata whenua fisheries management before the advent of the Kaimoana Regulations and is there any marked improvement or difference since 1998?
- Are your traditional values of kaitiakitanga, tikanga, taonga and mauri protected through the Kaimoana Regulations, how/why/why not?
- Does the Kaimoana Regulations provide self management, co-management, advisory management, or all of these and how?
- Does the customary fishing regulations merely provide Maori with nothing more than a consultative role?

Rangatiratanga – to gauge where their political realities lie

- Do you believe tangata kaitiaki or hapu have more rangatiratanga under the Kaimoana Regulations?
- How does the Crown provide protection for and scope for the exercise of rangatiratanga in respect to traditional fisheries? How do you think it should be done?
- Do you think Government bureaucracy including co-management with other stakeholders, diminish Maori traditional values?

- Do you think it is appropriate for the Minister to hold the overarching scrutiny or rangatiratanga, to approve/sign off tangata whenua gazette applications, bylaws and the like? Why/why not?
- Do you think the commercial fishing sector maintain a staunch hold over the fisheries resource and are not prepared to let traditional fishing interests intrude upon this domain?

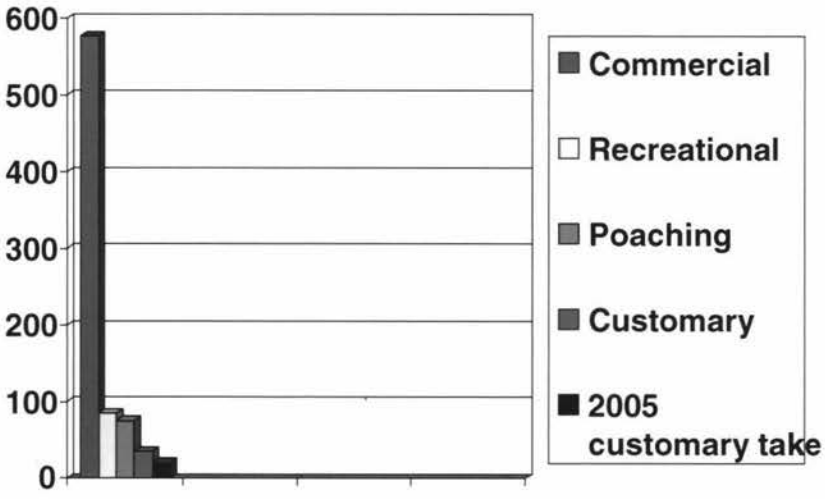
Tikanga, mauri, kaitiakitanga – test their application of?

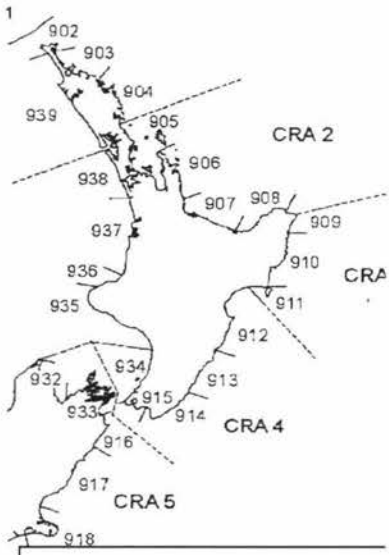
- Is tikanga at risk or not through the Kaimoana Regulations, how, why, why not?
- Does tikanga change or remain the same when managing traditional fisheries, how?
- Should there be a tikanga checklist for those groups applying for gazetted areas – i.e. must undertake tikanga hikoi, kanohi ki kanohi, consult, etc.
- Why is kaitiakitanga so important for hapu and iwi?
- Where does it stem from?
- Do you and your hapu acknowledge Tangaroa as a real spiritual presence or just a myth, how/why/why not?
- What is your understanding of mauri?
- Why do kaitiaki concern themselves with the mauri of the fishery?

Future aspirations

- What are your priorities in your area of customary fishing, if any?
- Do you have a vision for customary fisheries development – for your hapu, iwi in next 5 – 10 years?
- Any other comments?

Cray 4 Area - Annual Harvest Allocation





Cray 4 QMA and statistical area

Cray 4 commercial allocation = 577 tonnes

Recreational allocation = 85 tonnes

Customary annual allocation is 35 tonnes = 4% of the annual harvest

2005 customary actual take was 20 tonnes or 2% of the annual harvest

Human Ethics Committee

APPLICATION FOR APPROVAL OF PROPOSED RESEARCH/TEACHING/EVALUATION

INVOLVING HUMAN PARTICIPANTS

(All applications are to be typed and presented using language that is free from jargon and comprehensible to lay people)

SECTION A

1. **Project Title** A Customary Right or Wrong

Projected start date 1 August 2004 **Projected end date** 30 October 2004

2. **Applicant Details** *(Select the appropriate box and complete details)*

ACADEMIC STAFF APPLICATION

Full Name of Staff Applicant/s

School/Department/Institute

Region *(mark one only)* **Albany** ☐ **Palmerston North** ☐ **Wellington** ☐

Telephone **Email Address**

STUDENT APPLICATION

Full Name of Student Applicant Wayne Ormsby

Employer (if applicable)

Telephone [redacted] **Email Address** [redacted]

Postal Address **80 RD2 Farndon Road Hastings**

Full Name of Supervisor(s) Leland Ruwhiu

School/Department/Institute School of Social Policy, Massey University,

Region *(mark one only)* **Albany** ☐ **Palmerston North** ✔ **Wellington** ☐

Telephone [redacted] **Email Address** [redacted]

GENERAL STAFF APPLICATION

Full Name of Applicant

Section

Region *(mark one only)* **Albany** ☐ **Palmerston North** ☐ **Wellington** ☐

Telephone ..... **Email Address** .....

Full Name of Line Manager .....

Section .....

Telephone ..... **Email Address** .....

3. **Type of Project** *(mark one only)*

Staff Research ☐

Student Research:

PhD Research ☐

Master's Research ✔

Honours Research ☐

Undergraduate Research ☐
(individual project)

Evaluation Programme

Undergraduate Teaching Programme ☐

Other

If Other, specify: .....

4. **Summary of Project**
Please outline in no more than 200 words in lay language why you have chosen this project, what yo intend to do and the methods you will use.
(Note: all the information provided in the application is potentially available if a request is made under th Official Information Act. In the event that a request is made, the University, in the first instance, woul endeavour to satisfy that request by providing this summary. Please ensure that the language used i comprehensible to all)

During the course of Fisheries legislation reform, Ngati Kahungunu iwi and hapu fishing rights have been substantially redefined under numerous new laws, amendments and regulations including; the Maori Fisheries Act 1989, the Treaty of Waitangi Fisheries Claims Settlement Act 1992, the Fisheries Act 1996, multiple amendments to Regulation 27 of the Amateur Fishing Regulations 1986, and the recent Kaimoana Customary Fishing Regulations 1998.

The purpose of this thesis is to identify the issues affecting hapu from the introduction of the Kaimoana Regulations 1998. It will explore new and old (resurfacing) issues affecting the traditional practice and management of customary fishing in the rohe of Ngati Kahungunu, and explore if the introduction of the Fisheries Kaimoana Customary Fishing Regulations 1998 does or does not assist those ancient and esoteric traditional fishing practices. The investigation will gauge social relationships within hapu and amongst hapu that have accepted the Kaimoana Fishing Regulations.

5. **List of Attachments** (tick boxes)

Completed "Screening Questionnaire to Determine the Approval Procedure" (compulsory)	✔	Advertisement	
Information Sheet/s *(indicate how many)*	✔	Health Checklist	
Translated copies of Information Sheet/s		Questionnaire	✔
Consent Form/s *(indicate how many)*	✔6	Interview Schedule	✔
Translated copies of Consent Form/s		Evidence of Consultation	✔
Transcriber Confidentiality Agreement		Letter requesting access to an institution	
Confidentiality Agreement *(for persons other than the researcher / participants who have access to project data)*		Letter requesting approval for use of database	
Authority for Release of Tape Transcripts	✔		

Applications that are incomplete or lacking the appropriate signatures will be returned to the applicant for completion. This could mean delays for the project.

Please refer to the Human Ethics website (http://humanethics.massey.ac.nz) for details of where to submit your application and the number of copies required.

SECTION B: PROJECT INFORMATION

General

6 **I/we wish the protocol to be heard in a closed meeting (Part II).** **Yes** ☐ **No** ✔
(If yes, state the reason in a covering letter)

7 **Does this project have any links to other approved Massey University Human Ethics Committee application/s?** **Yes** ☐ **No** ✔

If yes, list HEC protocol number/s and relationship/s.

8 **Is approval from other Ethics Committees being sought for the project?** **Yes** ☐ **No** ✔

If yes, list the other Ethics Committees.

9 For staff research, is the applicant the only researcher? **Yes** ☐ **No** ☐

If no, list the names and addresses of all members of the research team.

Project Details

10 **State concisely the aims of the project.**

To explore the extent of the Crowns treaty duty – "to help recognise use and management practices, and provide protection for and scope for exercise of rangatiratanga in respect to traditional fisheries" (Kaimoana Regulations) – from a tangata whenua perspective

11 **Give a brief background to the project to place it in perspective and to allow the project's significance to be assessed.** *(No more than 200 words in lay language)*

What is not widely known or highly regarded about the Treaty of Waitangi Fisheries Settlement Act 1992 is the customary non-commercial component of that settlement deal. That component, after settling the commercial fishing interests, required the Crown and iwi to negotiate and define an agreement for the customary fishing (non-commercial) and traditional aspects of Maori fisheries. The result was the development of the Kaimoana (Customary Fishing) Regulations 1998. Those regulations legally recognise the importance of traditional fisheries to Maori and that the Crowns treaty duty is to help recognise use and management practices and provide protection for and scope for rangatiratanga in respect to traditional fisheries. The aim of the study is to gauge the extent of the Crowns delivery on recognising use and management practices and how it provides protection for and scope for the exercise of rangatiratanga from a tangata whenua perspective. It will also explore the implications for tangata whenua in the application of the 'Fisheries (Kaimoana Customary Fishing) Regulations 1998' by analysing those groups already using the regulations.

12 **Outline the research procedures to be used, including approach/procedures for collecting data. Use a flow chart if necessary.**

Initial contact has already been completed, and dates for interviews to be arranged post ethics approval. Interviews will be audio taped. An interview questionaire will be used.

13 **Where will the project be conducted? Include information about the physical location/setting. If the study is based overseas, specify which countries are involved.**

Within the tribal rohe of Ngati Kahungunu Iwi. Interviews will be at the residence of participants or at marae if they desire.

14 **What experience does the researcher/s have in this type of project activity?**

I was a former research assistant working for the Eru Pomare Maori Health Research Centre for two years.

Participants

15 **Describe the intended participants.**

4 appointed tangata kaitiaki that have been gazetted under the Kaimoana Regulations.
1 Ngati Kahungunu Iwi Incorporated fisheries representative
1 Ministry of Fisheries representative

16 **How many participants will be involved?**

6

What is the reason for selecting this number?

(Where relevant, attach a copy of the Statistical Justification to the application form)

There is a limited number of appointed tangata kaitiaki with experience of the new regulations. Managing time constraints and workloads is also a factor.

17 **Describe how potential participants will be identified and recruited?**

Kanohi ki kanohi, (face to face) approaches already completed. One tangata kaitiaki from each of the four different gazetted areas in Kahungunu rohe. 1 Iwi fisheries rep from their Tangaroa board that handles their fishing interests – (chairman or commercial rep)
The local Mfish District Manager

18 **Does the project involve recruitment through advertising?** **Yes** ☐ **No** ☑

(If yes, attach a copy of the advertisement to the application form)

19 **Does the project require permission of an organisation (e.g. a school or a business) to access participants or information?** **Yes** ☐ **No** ☑

(If yes, attach a copy of the request letter/s, e.g. letter to Board of Trustees/Principal, CEO etc to the application form. Note that some educational institutions may require the researcher to submit a Police Security Clearance)

20 **Who will make the initial approach to potential participants?**

Wayne Ormsby

21 **Describe criteria (if used) to select participants from the pool of potential participants.**

N/A

22 **How much time will participants have to give to the project?**

Approximately ½ hour interviews

Data Collection

23 **Does the project include the use of participant questionnaire/s?** **Yes** ☐ **No** ☑

(If yes, attach a copy of the Questionnaire/s to the application form)

If yes: i) will the participants be anonymous? **Yes** ☐ **No** ☐

ii) **describe how the questionnaire will be distributed and collected.**

(If distributing electronically through Massey IT, attach a copy of the request letter to the Director, Information Technology Services to the application form)

24 **Does the project include the use of focus group/s?** **Yes** ☐ **No** ☑

(If yes, attach a copy of the Confidentiality Agreement for the focus group to the application form)

25 **Does the project include the use of participant interview/s?** **Yes** ☑ **No** ☐

(If yes, attach a copy of the Interview Questions/Schedule to the application form)

26 **Does the project involve audiotaping?** **Yes** ☑ **No** ☐

27 **Does the project involve videotaping?** **Yes** ☐ **No** ☑

(If agreement for taping is optional for participation, ensure there is explicit consent on the Consent Form)

If yes, state what will happen to the tapes at the completion of the project.

(e.g .destroyed, returned, stored by the researcher, archived in an official archive)

Returned to participants

28 **If audiotaping is used, will the tape be transcribed?** Yes [✔] No [ ]

If yes, state who will do the transcribing.

(If not the researcher, a Transcriber's Confidentiality Agreement is required – attach a copy to the application form. Normally, transcripts of interviews should be provided to participants for editing, therefore an Authority For Use Of Participants' Tape is required – attach a copy to the application form. However, if the researcher considers that the right of the participant to edit is inappropriate, a justification should be provided below)

Wayne Ormsby (researcher)

29 **Does the project require permission to access databases?** Yes [ ] No [✔]

(If yes, attach a copy of the request letter/s to the application form)

30 **Who will carry out the data collection?**

N/A

SECTION C: BENEFITS / RISK OF HARM TO PARTICIPANTS

31 **What are the possible benefits (if any) of the project to the participants?**

Determine risk factors for tikanga Maori and rangatiratanga from new fisheries legislation

32 **What discomfort (physical, psychological, social), incapacity or other risk of harm are participants likely to experience as a result of participation?**

(Consider the risk of harm to individuals and also to groups/communities and institutions to which they belong)

Raising awareness of impacts on tikanga may dis-illusion participants towards new legislation. Raised awareness may result in demand for changes to legislation, also to pressure on tangata kaitiaki to not work with Crown agencies.

33 **Describe the strategies the researcher will use to deal with any of the situations identified in Q32.**

Outline to participants that the focus of the study is not to resolve issues with the Crown or to raise political issues, rather it is to highlight the best parts of the legislation for fisheries development.

34 **What is the risk of harm (if any) of the project to:**

i) **Researcher/s**

Backlash over perceived fisheries impacts, unloading of pent up/long standing frustrations during interviews

ii) **Any other persons/groups/organisations affected by the research.**

Backlash from Mfish if they are criticised, other groups if the same happens to them.

35 **How do you propose to manage the risk of harm for points i) and ii) above?**

Seek Kaumatua support for project, keep aims focussed, minimise and manage backlash potential through advice and support of kaumatua

36 **Is ethnicity data being collected as part of the project?** Yes [ ] No [✔]

(Note that harm can be done through an analysis based on insufficient numbers)

If yes: i) will the data be used as a basis for analysis? Yes ☐ No ☐

ii) **justify this use in terms of the number of participants.**

37 **If participants are children/students in a pre-school/school/tertiary setting, describe the arrangements you will make for children/students who are not taking part in the research.**

(Note that no child/student should be disadvantaged through the research)

N/A

SECTION D: INFORMED AND VOLUNTARY CONSENT

38 **By whom and how, will information about the research be given to participants?**

By Wayne Ormsby in a one page summary of key findings and common themes

39 **Will consent to participate be given in writing?** Yes ✔ No ☐

(Attach copies of Consent Form/s to the application form)

If no, justify the use of oral consent.

40 **Will participants include persons under the age of 16?** Yes ☐ No ✔

If yes, indicate the age group and competency for giving consent.

(Note that parental/caregiver consent for school-based research may be required by the school even when children are competent. Ensure Information Sheets and Consent Forms are in a style and language appropriate for the age group)

41 **Will participants include persons who are vulnerable or whose capacity to give informed consent may be compromised?** Yes ☐ No ✔

If yes, describe the consent process you will use.

42 **Will the participants be proficient in English?** Yes ✔ No ☐

If no, all documentation for participants (Information Sheets/Consent Forms/Questionnaire etc) must be translated into the participants' first-language

(Attach copies of the translated Information Sheet/Consent Form etc to the application form)

SECTION E: PRIVACY/CONFIDENTIALITY ISSUES

43 **Will information about participants be obtained from third parties?** Yes ☐ No ✔

If yes, describe how and from whom.

44 **Will any identifiable information on the participants be given to third parties?** Yes ☐ No ☑

If yes, describe how.

45 **Will the participants be anonymous (i.e. their identity unknown to the researcher?)** Yes ☐ No ☑

If no: i) will the participants be given a unique identifier? Yes ☐ No ☑

ii) **will the participants' identity be disclosed in publication of the research?** Yes ☐ No ☑

46 **Will an institution (e.g. school) to which participants belong be named or be able to be identified?** Yes ☐ No ☑

(Ensure that institutions have been informed of this in your request to access them)

47 **Outline how and where the data (including tapes/transcripts) and Consent Forms will be stored.**
(Note that Consent Forms should be stored separately from data)
Ministry of Fisheries Safe - Napier

48 i) **Who will have access to the data/Consent Forms?**
Wayne Ormsby

ii) **How will the data/Consent Forms be protected from unauthorised access?**
Sealed in envelopes and placed in safe

49 **Who will be responsible for disposal of the data/Consent Forms when the five-year storage period is up?**
(The Massey University HOD Institute/School/Section / Supervisor / or nominee should be responsible for the eventual disposal of data)
Supervisor – L Ruwhiu

50 **Will participants be given the option of having the data (particularly tapes) transferred to an official archive?** *(This option may apply when data collected is of historical significance)* Yes ☐ No ☑
(If yes, include this option in the Consent Form)

51 **Will participants be given the option of having their tapes returned to them?** *(If yes, include this option in the Consent Form)* Yes ☑ No ☐

SECTION F: DECEPTION

52 **Is deception involved at any stage of the project?** Yes ☐ No ☑

If yes, justify its use and describe the debriefing procedures.

SECTION G: CONFLICT OF INTEREST

53 **Is the project to be funded in any way from sources external to Massey University?** **Yes** ☐ **No** ☑

If yes: **i)** **state the source.**

ii) **does the source of the funding present any conflict of interest with regard to the research topic?**

54 **Does the researcher/s have a financial interest in the outcome of the project?** **Yes** ☐ **No** ☑

If yes, explain how the conflict of interest situation will be dealt with.

55 **Is there any professional or other relationship (e.g. employer/employee, lecturer/student, practitioner/patient, researcher/family member) to the researcher?** **Yes** ☐ **No** ☑

If yes, describe the relationship and indicate how the resulting conflict of interest situation will be dealt with.

SECTION H: COMPENSATION TO PARTICIPANTS

56 **Will any payments or other compensation be given to participants?** **Yes** ☐ **No** ☑

If yes, describe what, how and why.

(Note that compensation (if provided) should be given to all participants and not constitute an inducement. Details of any compensation provided must be included in the Information Sheet)

SECTION I: TREATY OF WAITANGI

57 **Does the proposed research impact on Maori persons as Maori?** **Yes** ☑ **No** ☐

If yes describe how.

Deals with rangatiratanga, tikanga and traditional fisheries knowledge that may be of a personal or confidential nature

58 **Are Maori the primary focus of the project?** **Yes** ☑ **No** ☐

(If yes, complete Section I, otherwise proceed to Question 63)

59 **Is the researcher competent in te reo Maori and tikanga Maori?** **Yes** ☑ **No** ☐

If no, outline the processes in place for the provision of cultural advice.

60 **Identify the group/s with whom consultation has taken place or is planned and describe the consultation process.**

(Where consultation has already taken place, attach a copy of the supporting documentation to the application form, e.g. a letter from an iwi authority)

Ngati Kahungunu chairperson has been informed. Iwi support for thesis was in the form a scholarship in 2003. Kaitiaki a Moremore have also been informed.

61 **Describe any ongoing involvement of the group/s consulted in the project.**

A copy of finished thesis requested by Ngati Kahungunu Iwi Incorporated

62 **Describe how information resulting from the project will be shared with the group/s consulted?**

Oral discussion to reconfirm findings, and updates.

63 **If Maori are not the focus of the project, outline what Maori involvement there may be and how this will be managed.**

N/A

SECTION J: OTHER CULTURAL ISSUES

64 **Are there any aspects of the project that might raise specific cultural issues, other than those covered in Section I?** **Yes** ☐ **No** ☑

If yes, explain. Otherwise, proceed to Section K.

65 **What ethnic or social group/s (other than Maori) does the project involve?**

nil

66 **Does the researcher speak the language of the target population?** **Yes** ☑ **No** ☐

If no, specify how communication with participants will be managed.

67 **Describe the cultural competence of the researcher for carrying out the project.**

(Note that where the researcher is not a member of the cultural group being researched, a cultural advisor may be necessary)

I am Maori and of Kahungunu descent

68 **Identify the group/s with whom consultation has taken place or is planned.**

(Where consultation has already taken place, attach a copy of the supporting documentation to the application form)

Ngati Kahungunu Iwi Incorporated, and Kaitiaki a Moremore

69 **Describe any ongoing involvement of the group/s consulted in the project.**

Participant from kaitiaki a Moremore and participant from iwi organisation fisheries committee

70 **Describe how information resulting from the project will be shared with the group/s consulted.**

Updates and copy of thesis.

71 **If the research is to be conducted overseas, describe the arrangements you will make for local participants to express concerns regarding the research.**

N/A

SECTION K: SHARING RESEARCH FINDINGS

72 **Describe how information resulting from the project will be shared with participants.**

Summary of findings. Thesis availability through iwi organisation

SECTION L: INVASIVE PROCEDURES/PHYSIOLOGICAL TESTS

73 **Does the project involve the collection of tissues, blood, other body fluids or physiological tests?** **Yes** ☐ **No** ☑

(If yes, complete Section L, otherwise proceed to Section M)

74 **Describe the material to be taken and the method used to obtain it. Include information about the training of those taking the samples and the safety of all persons involved. If blood is taken, specify the volume and number of collections.**

75 **Will the material be stored?** **Yes** ☐ **No** ☐

If yes, describe how, where and for how long.

If no, describe how the material will be destroyed.

(Note that the wishes of relevant cultural groups must be taken into account)

76 **Will material collected for another purpose (e.g. diagnostic use) be used?** **Yes** ☐ **No** ☐

If yes, did the donors give permission for use of their samples in this project? *(Attach evidence of this to the application form)* **Yes** ☐ **No** ☐

If no, describe how consent will be obtained. Where the samples have been anonymised and consent cannot be obtained, provide justification for the use of these samples.

77 **Will any samples be imported into New Zealand?** **Yes** ☐ **No** ☐

If yes, provide evidence of permission of the donors for their material to be used in this research.

78 **Will any samples go out of New Zealand?** **Yes** ☐ **No** ☐

If yes, state where.

(Note this information must be included in the Information Sheet)

79 **Describe any physiological tests/procedures that will be used.**

80 **Will participants be given a health-screening test prior to participation?** **Yes** ☐ **No** ☐
(If yes, attach a copy of the health checklist)

SECTION M: DECLARATION *(Complete appropriate box)*

ACADEMIC STAFF RESEARCH

Declaration for Academic Staff Applicant

I have read the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants. I understand my obligations and the rights of the participants. I agree to undertake the research as set out in the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants. My Head of Department/School/Institute knows that I am undertaking this research. The information contained in this application is to the very best of my knowledge accurate and not misleading.

Staff Applicant's Signature _____ Date: _____

STUDENT RESEARCH

Declaration for Student Applicant

I have read the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants and discussed the ethical analysis with my Supervisor. I understand my obligations and the rights of the participants. I agree to undertake the research as set out in the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants.

The information contained in this application is to the very best of my knowledge accurate and not misleading.

Student Applicant's Signature _____ Date: 16 June 2004

Declaration for Supervisor

I have assisted the student in the ethical analysis of this project. As supervisor of this research I will ensure that the research is carried out according to the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants.

Supervisor's Signature _____ Date: _____

Print Name Leland Ruwhiu

GENERAL STAFF RESEARCH/EVALUATIONS

Declaration for General Staff Applicant

I have read the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants and discussed the ethical analysis with my Line Manager. I understand my obligations and the rights of the participants. I agree to undertake the research as set out in the Code of Ethical Conduct for Research, Teaching and Evaluations involving

Human Participants. The information contained in this application is to the very best of my knowledge accurate and not misleading.

General Staff Applicant's Signature ..... Date: .....

Declaration for Line Manager

I declare that to the best of my knowledge, this application complies with the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants and that I have approved its content and agreed that it can be submitted.

Line Manager's Signature ..... Date: .....

Print Name .....

TEACHING PROGRAMME

Declaration for Paper Controller

I have read the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants. I understand my obligations and the rights of the participants. I agree to undertake the teaching programme as set out in the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants. My Head of Department/School/Institute knows that I am undertaking this teaching programme. The information contained in this application is to the very best of my knowledge accurate and not misleading.

Paper Controller's Signature ..... Date: .....

Declaration for Head of Department/School/Institute

I declare that to the best of my knowledge, this application complies with the Code of Ethical Conduct for Research, Teaching and Evaluations involving Human Participants and that I have approved its content and agreed that it can be submitted.

Head of Dept/School/Inst Signature ..... Date: .....

Print Name .....

11 November 2004

APPENDIX EIGHT

Wayne Ormsby
[redacted]

Dear Wayne

Re: HEC: PN Application 04/132 - A Customary Right or Wrong: The effects of the Kaimoana Customary Fishing Regulations on hapu of Ngati Kahungunu

Thank you for your letter dated 11 November 2004 and the amended application.

The amendments you have made now meet the requirements of the Massey University Human Ethics Committee: Palmerston North and the ethics of your application are approved. Approval is for three years. If this project has not been completed within three years from the date of this letter, reapproval must be requested.

If the nature, content, location, procedures or personnel of your approved application change, please advise the Secretary of the Committee.

A reminder to include the following statement on all public documents "This project has been reviewed and approved by the Massey University Human Ethics Committee, Palmerston North Application 04/132. If you have any concerns about the ethics of this research, please contact Professor Sylvia Rumball, Chair, Massey University Campus Human Ethics Committee: PN, telephone [redacted] email humanethicspn@massey.ac.nz"

Yours sincerely

Dr John G O'Neill, Acting Chair
Massey University Campus Human Ethics Committee: Palmerston North

cc Dr Leland Ruwhiu & Associate Professor Brian Ponter
School of Sociology, Social Policy & Social Work
PN371

Professor Robyn Munford
HoS, School of Sociology, Social Policy & Social Work
PN371

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List of Emendations

Page/paragraph	Typo/Fault	Recommended correction
p.4, first line 5th para.	'duel'	dual
p.6, first line 3rd para.	'north island'	North Island
p.7, 2nd para.	'colonization'	colonisation
"	'globalization'	globalisation [consistency needed, as both versions appear throughout text]
p.7	"Chapter three steps back…"	One sentence paragraph; join with following para.
p.8	"…and presents the key learning's…"	"…and presents the key insights…" [also a one sentence para.; extend or join?]
p.9, first line, 1st para.	'focussed'	focused
p.20 first line	'American Indian nation's'	perhaps: American First Nations'
p.22	"People sympathetic too the colonial power …" etc.	I agree! But it is such a powerful statement it needs referencing.
p. 22, 4th line from bottom.	Article three	Article Three
p.23, 2nd line, 2nd para.	(Smith 1999)	(Smith, 1999) [there are other instances of this; again consistency is required]
p.23, 2nd line, 3rd para.	"…draft Declaration on the rights of indigenous peoples"	Capitalise: on the Rights of Indigenous Peoples
p.23, last line	Aotearoa, New Zealand	Aotearoa/New Zealand [otherwise it denotes that 'Aotearoa' is a smaller part of NZ, as opposed to an alternative name]
p.24, 3rd line of conclusion	'eludes'	excludes
p.26, 7th line of Conclusions	Colonial	colonial
p.29, 3rd sentence, 3rd para.	"At the U.N. world stage etc."	Awkward sentence, reword.
p.30, last para.	"experiences compatible"	"experiences comparable"
p. 33, 2nd to last para.	'tyranny of the majority'	Reference this.
p. 38	Missing reference: He Kawai Amokura, 2003.	
p. 41, 3rd line fr bottom	article 2	Article Two
p. 43 last line	Durie 1995, missing from references	
p. 44, 2nd para.	"According to Ross (1966)	Confuses later reference; delete.