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Maori Fishing Rights

Ideological Developments and Practical Impacts

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ABSTRACT Fishing rights have emerged as a key issue in New Zealand ethnic politics in recent years. The Maori people have launched successful legal assaults against the Ministry of Agriculture and Fisheries' quota management system and now stand to gain ownership of 50% of New Zealand's fish stocks. This represents a sudden reversal of a sad history of indigenous fishing rights cases that were lost in the courts over the last 100 years. This paper attempts to account for this turn in fortune by examining interactions between changes in fisheries management and attitudes towards the Treaty of Waitangi. It concentrates on the development and impact of ideological statements about fishing rights made by the Waitangi Tribunal, a governmental body established to hear Maori grievances in regard to the treaty. The way in which the problem of Maori fishing rights is framed by the tribunal is shown to be a crucial ingredient in a wider sociocultural process which has fundamentally changed the role New Zealand's autochthonous people will play in the fishing industry.

The New Zealand Maori are currently involved in a major ethnic revival. A key element of this social movement involves the articulation of an ideology which calls for the state to become bicultural, by officially incorporating Maori culture into the public sector (Levine 1987). While political action has been taken on a number of fronts simultaneously, the one which has been the most contentious and prominent concerns claims to ownership and control of New Zealand's fisheries. These have been articulated recently at the first gathering of representatives of all New Zealand's tribes (*Te Runanga a Tangaroa* in Porirua 1985), by the New Zealand Maori Council, and before the Waitangi Tribunal.¹ They are at least in part a response to changes in fishery management, particularly the institution of a quota system in 1986.

In September 1988, the government proposed controversial legislation, the Maori Fisheries Bill, that would give the Maori people annual increments of 2.5% of the national fishing quota for a period of twenty years to total 50% of the national quota. The legislation was drafted after the failure of Crown and Maori representatives to reach agreement about the ownership of New Zealand's fish stock. These negotiations had been set in motion by a High Court action taken by the Maori Council to stop the issuing of fishing quotas in northern New Zealand.

While the Maori Council case was being heard, the Waitangi Tribunal was independently considering a claim about fishing rights made on behalf of the Muriwhenua tribes of the northern part of the North Island; Ngati Kuri, Te Aupouri, Te Rarawa, Ngai Takoto and Ngai Kahu. This region of New Zealand is a long isthmus which has a large ratio of sea to land area. The Maori there have

consequently retained a greater dependence on the sea than people of most other tribes, one which has also been reinforced by a lack of viable economic alternatives (Waitangi Tribunal Reports 1987). Although tourism and forestry provide some jobs and potential for development, Northland is generally depressed economically, with high unemployment, outmigration and dependence on the state.

Although many families own small farms these often yield only subsistence crops, as the soil is poor. Fishing provides an additional dietary resource and ceremonial food as well as much needed cash. Most Muriwhenua fishers were quintessential 'part-timers' and became essentially frozen out of the industry by the implementation of the new government policy. Quota management, which grants fishers a percentage of their previous catch of targeted species, particularly discriminates against small scale operators who can neither accept a cut in their catch nor afford to purchase more quota. Although part-time fishers are essentially powerless, unorganized and ignored as much by industry organizations as government, Maori rights are recognized in the Fisheries Act as emanating from the Treaty of Waitangi.

Representatives of the various tribes, associated tribal bodies and the Maori Council took action to protect their interests. The council went to the courts against quota management, while the Muriwhenua tribes presented a case to the Waitangi Tribunal. (The relationships between these bodies will become clear below.)

A memorandum from the tribunal to the Ministry of Fisheries on September 30, 1987, which expressed the opinion that the further issuing of fishing quotas in the Muriwhenua tribal area was contrary to the principles of the Treaty of Waitangi, seems to have resulted in the restraining order which was issued by the High Court later that day. This local injunction was soon followed by a more general one stopping the government from issuing any further quotas. The new Maori Fishery Bill seeks to rescue fishery management and the fishing industry from the uncertainties about future commercial operations made manifest by the court order.

The proposal to grant a quota to tribal authorities is both an historic and dramatic development, because prior to 1986 Maori fishing claims were consistently rejected by the courts. In many cases over the years, the Crown successfully asserted that "when title to land has passed to the Crown, any pre-existing Maori fishing rights are extinguished" (Department of Justice 1985:5). National sovereignty over the foreshore has precluded any indigenous ownership of off-shore resources, and rights to inshore waters lapsed with the sale of land along the banks of lakes and rivers.

This paper has two interrelated aims. One is to account for the success and influence of the Muriwhenua claim, which has caused the government to rethink its position on both Maori fishing rights and national fishery management policy. The other is to elucidate the sociocultural dynamics of the emerging indigenous resource claims-making process in New Zealand.

Background to Muriwhenua

The Muriwhenua claim is the fourth fishing rights case to have been heard by the Waitangi Tribunal. Despite the fact that it represents a considerable departure from the others, one cannot fully appreciate the implications of Muriwhenua without some awareness of the nature of the tribunal and the petitions it has heard.

The Waitangi Tribunal was created in 1976, by an act of the New Zealand Parliament, to inquire into any claims made by Maori people that some action of the Crown violated the principles of the Treaty of Waitangi, principles which the tribunal was also obliged by statute to interpret.

The treaty is an agreement which was made between the British and a number of Maori leaders in 1840. Its provisions established the right of the Crown to govern New Zealand and guaranteed full legal rights and protection of resources for the Maori. Although this might sound straightforward, the treaty itself is filled with ambiguities that have led to competing interpretations of its provisions, almost from the very signing (Colenso 1890, Adams 1977). However, before these are discussed, it is important to note that prior to 1985 the Treaty of Waitangi "has never been regarded as having any direct effect in our law (and) no legal rights to fishing grounds can be derived from that source" (Department of Justice 1985:5). The brief of the tribunal is only to make recommendations and interpretations and apply 'the principles' of the treaty to grievances brought by Maori, so that these may inform future policy or departmental initiatives. Even this is a challenging task.

Perhaps the most important difficulty with the treaty as a document is the existence of both English and Maori texts which are not strict translations of one another (Ross 1972). In Article One in the English version, the Maori cede "sovereignty absolutely and without reservation" to the Queen while in Maori they cede *kawanatanga* or "governorship." The second article in English gives the Maori "the full, exclusive and undisturbed possession of their lands and estates, forests and fisheries" for as long as they wish to retain them, but in Maori guarantees chiefly prerogatives over lands, possessions and all things of value. The central problem is that "chiefly prerogatives," *rangatiratanga* in Maori, connotes much of what "sovereignty" does in English. The issue is further clouded by the fact that some chiefs had signed the Maori document, which specifies fisheries, and others the English that does not. (Some did not sign at all.) The difficulties that imprecise and inconsistent language cause those who interpret the treaty are magnified immensely by the requirement in law that the tribunal give due consideration to the meaning of English and Maori texts and relate them to the understandings of the signatories of 1840.

I have already taken the position (in Levine 1987) that these provisions provide a charter for ideological development, because the treaty is inherently ambiguous and it is impossible to be sure of how it was received by the members of different tribes 150 years ago. The tribunal, then, is a place where "the principles of the treaty" are being reconstructed. This continues a process which has a pedi-

gree as long as New Zealand's history (Orange 1987).

The Maori have looked upon the treaty as a covenant which guarantees their rights of resource ownership and have long called for the implementation of its provisions. Successive governments have, on the other hand, maintained that Maori consent to British sovereignty and citizenship made land sales and the consequent transfers of control of inland waters and the foreshore consistent with the treaty's principles. The tribunal provides an official forum for the sanctioning and further development of the Maori interpretation and appears to signal a shift away from a strictly legalistic approach to Maori interests and the treaty.

Hearings are held in the meeting house of the group making the claim, and court-room formality is avoided. There is no cross-examination of witnesses as hearings proceed in accordance with tribal protocol. The tribunal's findings are not binding, however, as it is more a commission of inquiry than a court. It passes recommendations on to government, which has no specifically established procedure for dealing with them.

If we view the tribunal as a forum for advancing and developing the Maori position, the fishing claims can be seen as the foundation upon which a wider edifice of political action is being constructed. The reason that fishing issues occupy a pivotal position in shaping the tribunal's conceptualization of New Zealand's ethnic politics (the first three cases the tribunal heard all involved fishing) can be accounted for by the initial provision that it confine itself to hearing grievances occurring subsequent to the passage of the Waitangi Tribunal Act, in 1976. By that time, the Maori had been divested of almost all tribal land, but could still claim some residual interest in the sea. Fish remained common property, under the sovereignty of the Crown, and successive versions of the Fisheries Act included acknowledgement that the Maori had some residual fishing rights, although these were never specified.

In analysing the first three cases (Motunui, Kaituna and Manukau), I noted that there was a distinct tendency to de-emphasize both material deprivation and calls for exclusive Maori control. The Motunui case, heard in 1982, was brought by Te Ati Awa of Taranaki after the government granted a right of discharge to Petro-Chemical Industries into the seas off Waitara at Motunui. This waste would further pollute shellfish collecting grounds used by the tribe, which had already been adversely affected by the Waitara town sewerage system, which allowed excrement and meat company and mortuary waste, to flow over the reefs. Although Te Ati Awa initially claimed monetary loss, the tribunal established the principle in Motunui that the reefs were in fact a cultural resource and that such resources were protected by the second article in the Maori text of the treaty, which as we have seen, guarantees all things "highly valued" (*taonga katoa*). The line of argument pursued was that seafood itself is prized in Maori culture, as were the reefs, and that any assault on them was a cultural affront. Since their culture is precious, these things are *taonga* and fall within the orbit of that clause (Waitangi Tribunal Reports 1983). This tactic was elaborated further in the Kaituna River, 1984, and Manukau Harbour 1984, hearings, also cases involving water

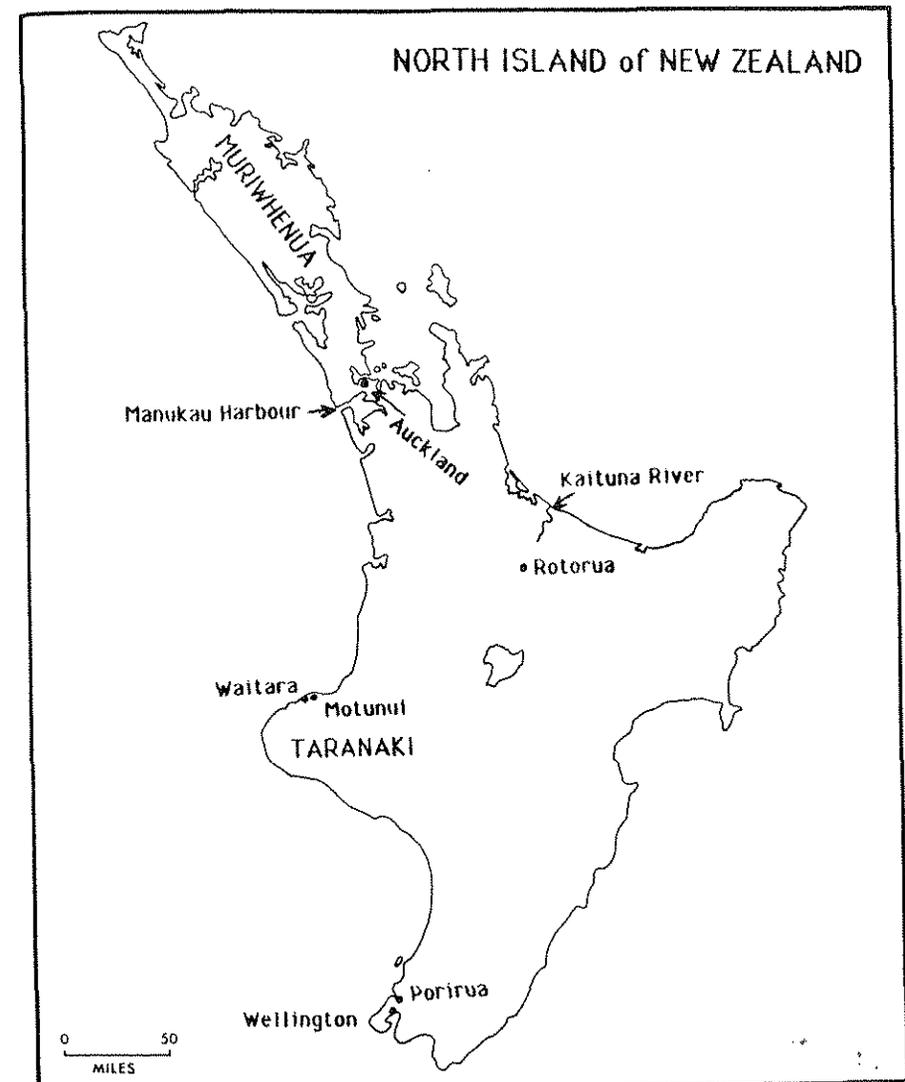


Figure 1. The North Island of New Zealand.

pollution. In both of these the tribunal recommended that pollution be stopped because *taonga* (again seafood and areas of great symbolic value to the respective tribes) were being destroyed, but did not advance any claim for an exclusive Maori right. The government was rather called upon to recognize that Maori interests in the aquatic environment are not just that of another minority or user group, because of the treaty (Waitangi Tribunal Reports 1984, 1985). By not specifying damages or recompense, the tribunal was able to avoid the precedents

established in the epic court-room struggles of the past which, by 1965 (see Haughey 1966), seemed to have disposed of all possible Maori claims to rivers, lakes and the sea.

But the practical import of these cases for the claimants was slight, as there was no specific governmental mechanism to translate the recommendations of the tribunal into policy. The synthetic petrol plant in Taranaki went ahead, and pollution of the Manukau remained unaffected. However, the Kaituna river, into which the town of Rotorua was planning to pump its sewage, seems to have gained a reprieve.

The most interesting developments were ideological, particularly the way in which an ambiguous text was used as a charter for constructing the definition of Maori fishing rights. The constructivist paradigm in the sociology of social problems (Spector and Kisuse 1987) is relevant. This perspective focuses on how the assertion of grievances constitutes the definition of an issue, and how this can be more influential in structuring the outcome than are the objective conditions. In other words, 'constructivists' see social problems not as objective conditions that become noticed by people who then take appropriate action to rectify them, but as the social creations of people who presume to act upon them. The paradigm is useful here because the nature and extent of Maori fishing rights and practices is (as admitted by all the parties) largely unknown. The way in which the issues become defined will then determine how they are perceived, researched and ultimately acted upon.

If we pay attention to such conceptual matters, rather than the unimpressive immediate results of the first three cases, we see a powerful rhetoric of presentation developing in the fishing claims progressively, precedent by precedent, structuring subsequent debate. This is an aspect of "claims making" which Best (1987) feels has received little attention in the literature.

By downplaying compensation, while establishing the principle that cultural guarantees were made in the treaty provision relating to *taonga*, a key ideological resource was created. Maori claims could now be seen as calls for "partnership with mutual responsibilities" (Waitangi Tribunal Reports 1988:xii) in the management of resources. This provides a charter for extending the range of cases which can be heard by the tribunal, and increasing the influence of its interpretation of treaty principles.

The fishing rights issues are best understood as a medium for achieving a workable ideology, in an official forum, which could further the aims of Maori ethnic revival on a wider front. Indeed, when Maori fishing cases now come before the courts, as in the Maori Council case mentioned above, the treaty actually gets insinuated into domestic law. This first happened when the High Court in Christchurch quashed a conviction against T. TeWeehi for taking undersized paua (*haliotis iris*) in August 1986. TeWeehi claimed that he collected the shellfish in accordance with treaty rights. A North Island Maori living in the South, he asked permission of a local elder to gather the shellfish for his own consumption. The judge ruled that rights guaranteed by the treaty applied in this case, and that they overruled any management regulations. The Maori Council case in-

volves extending this reasoning to cover commercial operations as well, a development which relied upon the coincidence of the Muriwhenua hearings and shifts in fisheries management policy.

The impact of Muriwhenua seems to signal a fundamental strategic advance. The possible gain of 50% of the fishery shows that the tribunal's rhetorical constructions now have a practical impact, especially when taken into other forums by Maori organizations.

The Muriwhenua Case

In July 1986, the membership of the Waitangi Tribunal was expanded along with its terms of reference, which presently allow for the hearing of claims dating from the signing of the treaty in 1840. Consequently, the questions raised now appear to have wider import than those which arose from earlier cases.

The Muriwhenua Fishing Report begins by asking how a people that early observers credited with remarkable fishing skill, and who dominated the colonial fishing industry until 1870, could come to be perceived as mere collectors of shellfish for ceremonial purposes. The view that Maori fishing had no commercial component, which has dominated governmental interpretation of the Fisheries Act since then, was vigorously disputed. Ethnographic accounts of species fished, gear used, the organization of expeditions, trade and traditional ownership rights, was combined in the hearings with archaeological and historical evidence to present a picture of "substantial exchange of merchandise" (Waitangi Tribunal Reports 1988:45) in pre-colonial times.

Lawyers for the Muriwhenua showed how rapidly barter and sale of fish to settlers developed. Although the tribunal was convinced that this demonstrated a "commercial component" in pre-treaty fishing, they delved further into the nature of traditional Maori exchange to find evidence of principles consistent with business practice. The work of Raymond Firth was influential in this regard.

Firth is, of course, an anthropologist who has consistently taken the formalist position that "primitive exchange" can be viewed in terms of neo-classical economic concepts. The tribunal distanced itself from those aspects of his "Economics of the New Zealand Maori" (Firth 1929) which stressed the prospects for Maori assimilation into the Western economy, but accepted his explanation of gift exchange.

Firth made a distinction between local and longer distance trade, and provided a number of examples of the movement of natural products such as fish, shellfish, seaweed, shark oil and shells from the coast in return for preserved birds, rats, eels, feathers and other things from the inland forests. The tribunal discussed these along with other accounts of such trade to establish that the Maori did more with aquatic resources than just consume them directly or at ceremonial occasions. They placed considerable emphasis on Firth's explanation of the mechanisms underlying such exchange. The Report (1988:52-52) contains an almost textbook account of the meaning of reciprocity, emphasizing the obligations to give, receive and repay and its role in effecting alliances as well as the

movement of goods and services.

The point of this section of the Report is to demonstrate that the Maori principle of "utu" (compensation) and delayed, incremental reciprocity, were parallel to and contain the prerequisites for adaptation to barter and trade in the Western sense. A picture of continuity from traditional to Western practices was drawn, which belied the simpler notion of a fundamental gap between them.

It was the monocultural nature of New Zealand's fishing industry, rather than Maori culture, which was found to have both alienated and actively discouraged indigenous participation in the development process. The tribunal also found that inclusion in the "business and activity in fishing" (Waitangi Tribunal Reports 1988:xix) was guaranteed by the treaty. Any commercial fishing on the continental shelf of their traditional territory which took place without the prior agreement of the Muriwhenua tribes also contradicted its principles.

A deep vein of discontent was tapped by the hearings. Complaints were aired about the activities of trawlers which entered the area from the South, despoiled the sea bed and dumped untargeted fish. Management laws were attacked for completely ignoring local knowledge of fishing grounds and fish habits. People reported that they were made to feel like beggars when being forced to ask bureaucrats for permission to collect fish from ancestral grounds in sufficient amounts for tribal gatherings. But Maori people have endured such insensitivities for a long time. It was the implementation of the quota management system, particularly the way in which it altered fishing tenure, that provided the tribunal and the Maori Council with the opportunity of posing questions that led to the re-assertion of property rights.

Quota Management and the Treaty

It has been apparent since the 1970s that New Zealand's inshore waters have been seriously overfished. (See Levine and Levine 1987, for an example from the cray-fishery). Moratoria on the granting of new licenses in the late seventies have given way in the eighties, to a different resource management strategy: individual transferable quotas (ITQs). The purpose of quota management is to conserve the resource by setting absolute limits to the catch. The total quota for each commercially important species is set by the Ministry of Agriculture and Fisheries. Fishermen are allocated rights to a proportion of the total (their ITQ) which is based on their previous landings. Fishermen are free to use, sell or lease these rights.

Those fishermen left with extremely small quotas (such as the part-timers mentioned previously) were compulsorily bought out of fishing by the government. Other small operators were encouraged by circumstance to sell to larger operators, often companies, who have been favoured by quota management. Since most Maori holders of governmental licenses lack the capital to buy large boats they have been greatly disadvantaged by the new regime.

Some allowance was made for Maori interests under a provision in the management plan that recognized four user categories: "recreational", "com-

mercial", "Maori" and "traditional" fishers.² These were apparently conceived of as discrete classifications, but as we have seen, the tribunal disputes the notion that Maori interests are wholly non-commercial. Instead, it claims that Maori fishing encompasses all four categories (Waitangi Tribunal Reports 1988:153). The Muriwhenua tribes themselves maintain that the treaty guarantees the northern fishery to them, while the Ministry has taken the position that the quota system is democratic and applies equally to all New Zealanders. The Ministry argues that it is not the proper role of fisheries management to identify Maori fishing rights.

The confusion and lack of consultation and agreement, between Maori and the Crown, that have characterized New Zealand commercial fishing for over one hundred years, seem to have been wholly incorporated into the new management procedures. There is, however, one crucial difference. Quota management creates a property right in the fishery for the holders of ITQs. The Maori and tribunal interpretation of the principles of the treaty is directly opposed to this.

If Maori fisheries covered the whole of the inshore seas, as past records suggest, the policy was effectively guaranteeing to non-Maori, the full exclusive and undisturbed possession of the property right in fishing, that the Crown had already guaranteed to Maori (Waitangi Tribunal Reports 1988:149).

All the vagaries of the situation outlined above are rhetorically swept aside and the historic legal framing of the Maori fishing problem now becomes inverted. No specific rights need be claimed beforehand. Newer but nevertheless fundamental questions raised by the Maori demands, such as who will qualify to exercise rights, how they can be administered today and who will be negatively affected, all become problems secondary to the fact that quota management alienates something from the Maori people that is provided for (however vaguely) in the Fisheries Act 1983.

Reactions

An unintended consequence of the government's attempt to apply a new management tool to New Zealand fish stocks is that by changing tenure and basic access, it has greatly strengthened the position of the Treaty of Waitangi and Maori grievances against the Crown.

The injunction suspending ITQs, mentioned at the beginning of this paper, was issued along with a recommendation that the Maori and Crown define Maori fishing rights by June 30, 1988. In order to accomplish this, a working party was established. Its Maori members claimed rights to the entire New Zealand fishery, but declared their willingness to share 50 per cent with their treaty partner (Walker 1988:78). Stimulated by Muriwhenua, various tribes undertook research into traditional fishing in case the need to go to court arose. The working party failed to reach agreement by the date specified and the

government approached its Maori members directly with the proposal to grant 2.5% of the quota per annum for twenty years. The Maori Fishery Bill, introduced to parliament on September 2, 1988, contains two clauses which prompted thirty-eight tribes to file cases in the High Court against it. One clause removes the right of the Maori to make fishing claims before the Waitangi Tribunal for twenty years; the other prevents such claims, under the cloak of the treaty, from being heard by the courts. It was in anticipation of the bill becoming law that the various tribes introduced their court cases, a reaction that would seem to have defeated the intention of the controversial clauses.

Walker (ibid.), a prominent Maori spokesman and academic, attributes these two clauses to "a knee-jerk response to opposition from the fishing industry" and "an unseemly white backlash which creates the social climate that allows government to give expression to the tyranny of the majority through parliamentary legislation such as the bill now before the house."

These comments illustrate how controversial Maori fishing has become since Muriwhenua. They also show how the fishing problem has become a key issue in ethnic politics with wider ramifications for New Zealand society. This became readily apparent on the day that the Muriwhenua findings were released. A front page story in *The Dominion* (a Wellington daily newspaper) on June 13, 1988 quoted the opposition spokesman on Maori Affairs predicting that the implications of the report would start a crisis in race relations. These comments seem mild in light of what was to follow.

The headline the next day read, "Fisheries decision 'legalized apartheid'". This led to a report on Fishing Industry Association, Fishing Industry Board, and Federation of Commercial Fishermen reactions to the finding that the Northland tribes were owners of their coastal fisheries. It also included comments by parliamentarians from Northland who described the Muriwhenua report as legalized racism, and predicted racial violence over fishing rights. Industry leaders for their part, spoke of widespread developmental problems in lucrative export markets as investors become unsure of their rights to the resource. A special debate in Parliament was held on the 15th in which the leader of the National Party (now in opposition but ahead of the ruling Labour Party in opinion polls), called for a halt to the work of the tribunal. The Prime Minister assured individuals that their activities would not be adversely affected by any official response to the tribunal's findings.

Since then, the fishing industry has put itself at the forefront of the anti-treaty backlash. The president of the Federation of Commercial Fishermen took out ads in New Zealand's major newspapers calling for a referendum on the future of the Waitangi Tribunal and its "separatist policies". On July 19th, he was reported to have found a third version of the treaty which made no reference to fisheries, which prompted him to consider taking legal action. These developments lend credence to Walker's assertion that the new bill was influenced by a backlash, specifically aimed at the tribunal's interpretation of the treaty.

But although the industry has succeeded in making their opposition known to government, their position is not powerful as they are merely reacting to the

actions of the primary participants in negotiations about Maori fishing rights. The treaty is, after all, between the Maori and the Crown. The present government's policy of defining and eventually implementing the principles of the treaty (via the tribunal) cannot be de-railed by organizations whose purposes, experience, and expertise are confined to one primary industry. There briefly seemed to be some danger that the fishing organizations would spearhead a wider backlash which could end the work of the tribunal. This would involve sustained political action until the next election, over 18 months away, which is unlikely given the nature of the fishing groups.

The Maori council has objected strenuously to the provisions in the proposed legislation which would remove the basic legal right of access to the courts from Maori people. Now they use the term "apartheid" and make dire predictions of racial tension in reference to fishing rights. This led to the introduction of a compromise version of the bill proposed in late October, which appears to have the approval of some of the Maori negotiators and the fishing industry. The Deputy Prime Minister announced a plan to give Maori 10% of the quota and 10 million dollars over the next four years while the courts decide on Maori entitlements to the resource. This gives the tribes something with which they can begin to establish themselves commercially, and preserves their legal rights, while allowing the industry to face the short term future with assurance. Although the issues are by no means solved, the heat appears to have dissipated considerably as a long drawn out series of further negotiations is anticipated.

Conclusions

The proceedings of the Waitangi Tribunal provide an instance where "claimsmakers initial demands are for interpretive change" (Best 1987:115). The rapid escalation of the Maori fishing rights issue is part of a political process where contending interests "vie for control of the definition of a problem" (Spector and Kitsuse 1987:8) as a first step in seeking to influence solutions.

Some interesting role reversals have occurred in the course of working out the framing of indigenous fishing rights in New Zealand. Firstly the Maori interpretation has been given official endorsement by the creation of the tribunal, while the view that the treaty grants nothing more to the Maori than they already have (historically the settler and legal position) is left as a dissenting opinion with no official foundation. Demands for recognition of cultural and spiritual rights to resources have been successfully translated into the material claims that failed in the past. These developments were clearly contingent on political processes that were not directly part of the Maori fishing claims as the tribunal was able to capitalize on the changes of access to the means of production in fishing that were made by quota management.

Although it seems that the courts must now decide what fishing rights actually exist, the tribunal has, by creating an ideological framework for insinuating the principles of the Treaty of Waitangi into the legal system, greatly increased the chances that real material gains will be made. By establishing the Waitangi

Tribunal as an official forum for continually interpreting the principles of the treaty, New Zealand has adopted a unique approach to indigenous resource claims. Its status as an official, but not narrowly legal, body insures that the tribunal's findings will continue to have a primary impact upon the shape of New Zealand's ethnic politics, regardless of the way in which they ultimately become applied.

Acknowledgement

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Notes

1. Metge (1976:129-136) provides a list, with map, of the 42 commonly recognized Maori tribal groups.
2. Although the differences between recreational, commercial and Maori categories are readily apparent the distinction between Maori and traditional is problematic. The tribunal maintains that no-one could explain what 'traditional' meant to them.

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