

## **Iwi Chairs Hui – Wellington 2-4<sup>th</sup> March 2006.**

### **Introduction**

Thomas Jefferson, the third American president and an architect by trade, reminded us that “*the price of freedom is eternal vigilance.*” Why then have we been so silent when armies of bureaucrats are regulating our freedoms away for nothing in return? We are indeed fortunate that some individuals and organisations are keeping a watchful eye on the antics of some in Government. Maori need to be ever vigilant if we are ever to hold onto what our Tupuna fought so hard to retain.

At the inaugural National iwi chairs hui in Kaikoura, iwi put their hands up to report back on issues we together saw as critical to moving Maori forward. Ngapuhi was tasked with reporting on Fisheries matters, AMA’s and Marine Reserves. After hearing Te Pare Hauraki present at the Ngati Kahungunu fisheries conference on AMA’s, Ngapuhi bows to Te Pare Hauraki’s superior knowledge in this area and leave that to them.

I will then be speaking on two subjects, Fisheries matters and Marine Reserves. Within those two subjects are many streams of korero that are critical as we move this Maori Nation forward. I will give a summary of these subjects and have put together a package of reference material that I will refer you to as we go through my korero. This information is the result of many hours of collective effort by people whose drive and wairua are commendable.

Please study these documents and ensure the information is circulated widely.

### **History of our Fisheries Rights**

Access to fisheries, particularly commercial access, has been a contentious issue for Maori since the mid 1800s. The first fisheries legislation, the Oyster Fisheries Act 1866, did not include provision for Maori despite clear evidence that Maori had a major trade in sales of oysters to the towns. Fisheries legislation contained provisions supposedly protecting the fisheries guaranteed to Maori under Te Tiriti O Waitangi, but these protections were never effective.

Maori fisheries were pushed into a box labelled “non-commercial”. Even though many Maori made part or all of their income from the fishing industry, in the main they were not able to access the various state support programmes which existed from time to time, nor were they able to get access to capital required to build large enterprises.

Throughout the late 1800s and up until the 1960s, fisheries policy in New Zealand was characterised by boom-bust cycles relating to particular species such as rock lobster, stuttering efforts to create export markets and continued pressure to provide enough fish for the domestic market.

As the 1987-88 fishing season approached, the Ministry prepared to unilaterally introduce further species into the quota management system. The Muriwhenua claimants objected, asking the Waitangi Tribunal to make some preliminary findings on their rights. The tribunal issued a memorandum to the Minister of Fisheries on its preliminary opinions: *“that Muriwhenua iwi made extensive fishing use of the sea to 12 miles and occasionally fished further out, that they had existing practices and laws to regulate use of the fisheries, that there was a commercial component to fishing that was capable of adapting to commercial uses in western terms, and that the sea was property in the same way as land.”* *“The evidence is that Maori did not prevent non-Maori use of the seas for their own domestic purposes but considered themselves, and must be considered, as retaining the authority over them.”*

Presented with these findings, Justice Greig in the High Court halted the issue of new quota.

Te Tiriti O Waitangi (Fisheries Settlement) Act 1992 then settled all Maori commercial and non-commercial fisheries claims. It replaced the Maori Fisheries Commission with Te Tiriti O Waitangi Fisheries Commission, which as well as continuing to lease quota, was required to come up with allocation models for the eventual distribution of quota accumulated between 1988 and 1992 (known as Pre-settlement assets, or PRESA) and the shares in Sealord and other companies (known as post-settlement assets, or POSA). They also oversaw negotiations with the Ministry of Fisheries on developing a management regime for *customary fisheries*.

Maori Commercial Fishing interests are clearly taken care of under the various pieces of legislation which now litter the fisheries landscape. They are very clear in their direction with the only threat to Maori holding the value of our iwi fishing assets up, is uncertainty around the sustainable management of fish stocks.

The thrust then of this paper is to inform us about threats we face in preserving our continued ability to catch fish to feed our tamariki in the first instance, customary next with commercial bringing up the rear.

## **The Law**

### **Purpose of the Fisheries Act 1996**

#### **Section 8**

(1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.

(2) In this Act – “Ensuring sustainability” means:

(a) maintaining the potential of fisheries resources to meet the reasonable foreseeable needs of future generations, and

(b) avoiding, remedying, or mitigating any adverse effect of fishing on the aquatic environment.

Utilisation means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic and cultural wellbeing.

I argue that this is not the case in many fisheries in this country. That overfishing in many of the commercial only fisheries has led to major problems in those fisheries - orange roughy, hoki and others. When this kind of mismanagement occurs in shared fisheries the repercussions are felt by the entire community.

## **Maori Fisheries Rights**

I begin my reporting back to you around Maori Fisheries rights and their impediments facing Maori.

Unfortunately the news I bring is bad. I believe we have allowed ourselves to be hoodwinked and are only just realising that fact.

Most Maori believe that all Maori fishing interests are well catered for under the deed of settlement. While it is true that the commercial settlement is certainly a valuable asset, it is the customary aspect of the settlement that makes me very, very uneasy.

I believe that many Maori do not fully understand what customary fishing means under the present law. From 23<sup>rd</sup> September 1992, fishing as Maori understood it, changed forever. Before this date when Maori went fishing we were fishing as we customarily did for centuries. Once Te Tiriti O Waitangi (Fisheries Settlement) Act 1992 was passed into law, fishing to feed the whanau became re-categorised as recreational fishing.

The Ministry of Fisheries has acknowledged this point in the Shared Fisheries Policy Development report to the Minister dated 16 December 2005. They say:

***“Much, if not most, of their [Maori] day to day non-commercial fishing is carried out under the amateur, rather than customary, fishing regulations. In this context, improvements in the management of recreational fisheries can contribute to Maori interests in fishing.”***

Also of note is the discussion on customary fishing. MFish refer to the obligation to provide for the “*full extent of customary non-commercial take*” as required by section 21 of the Fisheries Act 1996 and section 10 of the Settlement Act.<sup>1</sup>

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<sup>1</sup> Treaty of Waitangi (Fisheries Claims) Settlement Act 1992  
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The impact low biomass levels have had on the quality of fishing for the non-commercial sector is only mentioned briefly in the customary fishing section in relation to spatial management and localised depletion of important customary food sources.

My concern is our customary rights have been chopped into two sections by the customary part of our settlement. The smaller part, the right which deals with Marae functions and other hui, are well protected by the customary settlement, but it is only of any value if there are sufficient fish to catch.

Our other customary rights, the ones we use to feed our whanau, to manaaki-manuhiri, to provide fish, from our catch, to those unable to catch it for themselves. All of this, has been forgotten in the rush for maximum advantage in the allocation of our settlement asset.

There is no doubt that fish are not as plentiful as they used to be, many of our people return with little or no catch when they go fishing for kai, most know things are getting worse rather than better.

We are often told by the Ministry of Fisheries and those working on behalf of our commercial interests, that recreational fishing is the cause of this reduction. That if recreational fishing was better constrained things would be better for all concerned.

Many of our customary representatives have bought into this view and continue to condemn recreational fishing.

I have to say in hindsight that we have been making some pretty wild assumptions about recreational fishing without having all the facts before us. So, when we condemn recreational fishing, we are in fact, arguing against ourselves. Maori have the greatest participation rates in recreational fishing, and, our population is growing 4 times faster than any other group.

I believe it is only because we have been so focused on resolving our customary and commercial settlement as described in statute, that we have been unable to see the forest for the trees

It is with some embarrassment I have to say that while we have argued against other recreational fishers, they have argued strongly in our favour.

Pakeha started six years ago with a submission to the Soundings process, I have reviewed much of the prodigious amount of work they have done since then and their work consistently reflects what Maori most desire from their fisheries.

They strive for healthy fish stocks so all people can have a reasonable chance to catch a reasonable kete of fish.

Over the past year and a half we have work very closely with their leaders, both inside and outside of the Hokianga Accord. The Hokianga Accord being an organisation setup by Maori and other non-commercial fishing interests in answer to the segregated forums that Ministry have set up all over the country to address non-commercial fishing activities. Through them, I believe us in the North now have a greater knowledge as to why our people are often not able to fulfil their customary needs under the current fisheries management structure.

It started when the Government broke promises to all non-commercial fishers, including customary, when the Quota Management System was introduced. The Promise was made by the then Minister of Fisheries, Colin Moyle, his policy statement said, *“where a species of fish is insufficiently abundant to provide for both commercial and non-commercial use, preference will be given to non-commercial use.”* Reneging on this promise created the first injustice and made our fishing for kai, subservient to commercial fishing.

As time has progressed the Ministry of Fisheries further altered it’s interpretation of the Fisheries Act and invented, without any consultation, a Proportional Allocation Model.

Proportional Allocation is a blatant attempt to **integrate** all non-commercial fishing into the QMS. An inevitable consequence of this policy invention is that it further penalises those fishing for kai. Recent decisions like those made for kahawai and west coast snapper are frightening examples for Maori. Both our customary catch from the Settlement and our customary catch which is classified as “recreational” has been slashed.

Let me reflect for a moment on the insightful definition of integration offered by Norman Kirk in 1974 when he said in answer to a question in Parliament

*“I think the member for Remuera meant well when he said that we are one people, but we are not one people; we are one nation. The idea of one people grew out of the days when fashionable folk talked about integration. So far as the majority and the minority are concerned, integration is precisely what cats do to mice. They integrate them. The majority swallows up the minority; makes it sacrifice its culture and traditions and often its belongings to conform to the traditions and culture of the majority. I think the member for Remuera did not mean that when he talked about one people. We are one nation in which all have equal rights, but we are two peoples and in no circumstances should we by any law or Act demand that any part of the New Zealand community should have to give up its inheritance, its culture, or its identity to play its part in this nation.”*

The Ministry are consulting now on how fisheries should be allocated between commercial and non-commercial interests. How many of you here today have been briefed on this most fundamental piece of policy development – few I suspect – we must

ask why we are being kept in the dark. Dr Robin Connor has been engaged by the Ministry solely for the purpose of getting this policy in place, whatever the cost.

Achieving Proportional Allocation in the Fisheries Act is likely to be extremely high on their list of objectives.

We hold very significant portions of all fisheries rights. We have about 40% of all commercial quota, 100% of the customary rights and a fast growing portion of the recreational catch. Because of this, I am certain Maori are perfectly placed to determine how fisheries are best managed and allocated to maximise the benefits we want most.

But I warn you that if you want to achieve the best outcome, we need to carefully examine **ALL** of our rights before we decide.

The booklet I will be handing out includes a section on Proportional Allocation and how our “recreational rights,” the very rights we now depend on to feed our families have been eroded. It is our duty to read it carefully as it is the right our people most depend on and use in their daily lives.

This issue is, in my view, equal to the foreshore and seabed confiscation if Ministry succeed in capping the non-commercial take. For example, if the limit of that allowance is reached early in a given fishing season, we would have to wait until the next season to take care of our basic needs of fish to feed our whanau with the only alternatives being, to buy quota of commercial operators or buy kai direct from them.

As a matter of interest I went to the supermarket last Tuesday night in Kaikohe to see first hand what prices they were asking for kaimoana so I could report accurately to this hui. Kutai was \$4-65c a kg and pipi were at \$5-75 a kg. Fish heads were \$5-80c per kg with snapper fillets at \$29-75c per kg. If proportional allocation was introduced, as soon as the non-commercial cap has been reached, those prices will likely increase making this kai even more unaffordable.

## Customary Tools

The customary tools we have available to us are just being rolled out and are already under severe attack from industry. Mataitai-the God send for looking after local tauranga ika, are subject to a “*race for space*” with DoC who is pouring millions of dollars into securing “*no take forever marine reserves*” at the expense of hapu having opportunity to deliver Kaitiakitanga. Some of these reserves are over our best traditional hapu fishing grounds. I will address this subject later.

Even worse, those hapu who *do* get their act together and apply for mataitai come up against a wall of ignorance. The public have not been kept informed and draw all sorts of conclusions about the intent of Maori to manage important traditional fisheries. There is more – we now realise the threat of legal action which hangs over the roll out of mataitai

– not from the public but from commercial fishing interests, including Maori. Again, we find ourselves getting kicked around – this political football must be kicked into touch, NOW.

Ministry have created a powerful property right for commercial operators around quota, which they will defend with whatever they have at their disposal. Challenges by anyone who gets in the road of these rights, usually end up in court. Our own AFL is using arguments with Government that could undermine these customary tools. I wonder if they have spoken to other iwi about their concerns, they have certainly not sought feedback from Ngapuhi on the matter of customary tools. They should be worrying about maximising returns to iwi with what is available to them rather than getting involved in iwi politics. A dividend back to iwi will be nice.

All iwi chairs hooked into our chairmen e-mail network would have received a copy of the letter sent to the Minister by industry, aided by a very senior employee of AFL. The letter outlined concerns they had with the implementation of Mataitai. We own that company, why are we not informed about their concerns? Their concerns strike at the very heart of our Treaty of Waitangi Settlement, especially the customary tools section and have the potential to erode these rights. I said at the Ngati Kahungunu conference that I will bring this matter to the attention of this forum. What are we to do about this? It is about time we as chairs of our respective iwi meet collectively with industry and talk through the issues.

Maori in turn must rigorously defend these customary tools. I am sure that MFish will assist us in this area.

### **Conflicts of interests**

Ministry are quick to highlight the conflict that exists between commercial and recreational fishers. While this does exist in some fisheries, the true conflict for Maori is in:

- a. the mismanagement of our fisheries by the Ministry
- b. the mis-allocation of those fisheries resources between each sector  
*and*
- c. the interpretations of the Fisheries Act.

Until these problems are addressed the needs of our future generations will not be met, as per the purpose of the Fisheries Act. Ngapuhi, being the largest iwi in the country and growing, want to ensure our tamariki have kaimoana on their tables to feed our mokopuna and especially to manaaki our Manuhiri. As we all know, kaimoana is one of the highest mana enhancing mechanism known to the Maori psyche.

## Marine Reserves

The Government has its many executive arms and many departments. Of these the Ministry of Fisheries and the Department of Conservation affect us most when we go fishing.

Understandingly, there has to be some constraint around fishing to retain the mauri, or lifeblood of the Tangaroa, particularly when we have the power to destroy it. But the question I ask is, what is DoC doing there? What are these tree hugging landlubbers doing at sea? And why do they want ten, twenty and even thirty percent of our coastline locked up forever? They must have some good reasons to deny our tamariki their piece forever.

The Marine Reserves Act, which is a completely unnecessary piece of legislation, was intended to protect one bit of sea around Goat Island for scientists to study - fair enough, but the Fisheries Act could have done the same. Then it grew and grew totally out of proportion. Then the Rogernomic's administration shuffled all land reserves to a new organisation, DoC, and with it marine reserves.

Marine reserves are places in the sea which, when undisturbed, may return to a more pristine state, which could benefit scientific study, tourism, education, biodiversity and perhaps even fishing. So, naturally where they benefit society, we should have more of these. At the moment around 150 square kilometres is in marine reserves, and we already have 3000 square kilometres in de-facto protection. These are the cable ways and ammunition dumps, where trawling and other forms of fishing is prohibited. Do these provide for scientific study, tourism, education and benefits for fishing? Do we find huge stocks of fish there? No we don't. So why should marine reserves, which are no different, suddenly provide these perceived benefits? Well, they don't either.

A marine scientist, Floor Anthoni said, *"We now have some twenty fully protected marine reserves around our coasts, and none of these is working to save the environment, biodiversity or increase fish stock. Why not? Because in as little as twenty years, a new threat has become dominant: sick seas. Sick seas affect all marine organisms, particularly in their larval stages. So the fish live shorter, spawn less, and their offspring is murdered by voracious bacteria before they are big enough to leave the plankton. The mauri of Tangaroa is sick. Because the baby fish are not arriving, it looks as if we are overfishing, and we are blaming one another for this. So, we have a big problem."*

He went on, "the problem begins on the land. We are losing our precious soils as at the same time this is killing our nutritious fish and also taking our beloved beaches away. How can we be so stupid three times over? How can we be so blind"?

Now DoC is taking the sea by stealth. They have cleverly devised a new Marine Protected Areas Implementation Policy that unites all government departments and local government while dividing those who use the sea. It is a tool used by world dictators, to gain and remain in control. Now it has descended upon us, a plan to fast-track marine

reserves while smothering opposition and democratic debate as well as honest consultation. Is this what we want? Is this the way forward? Is this how we wish to be remembered by our tamariki? I don't think so.

I believe there is room for Marine reserves in certain areas but let us be clear here, Marine reserves do not conserve fish. Fish do not survey their own particular areas and stay there. When they did a survey in the north, within a boat length they caught two snapper, one was tagged at Tutukaka in the north and the other wore a tag from Tauranga so fish don't stay in the one place.

Let us agree on one thing. We don't really want marine reserves if these do not help to save the sea. But we do need to take remedial action now. We really need to be smarter.

With the race for space I spoke about earlier in my korero, Marine reserves are the biggest threat to whanau and hapu implementing Mataitai or Taiapure, the only tools we have to preserve those tauranga ika enjoyed by our Matua, Tupuna. When Ministry were quizzed on whether Taiapure and Mataitai were counted within the coastal space DoC are trying to lock down.

## Conclusion

I want to close by leaving you with a summary of points I have raised in the body of my korero as points for us to ponder as we seek to better understand and provide Kaitiakitanga ki nga tamariki a Tangaroa.

1. The law is clear; **Section 8(1)**-The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability. *In many fisheries this is not the case. SNA8, GMU1.*
  - (i) An interest in the effects of fishing on the aquatic environment in the area concerned – and have particular regard to Kaitiakitanga. ***Have Ministry provided for real input and participation to any iwi in Aotearoa? I don't think so.***
2. Section 13, clearly the law directs that fisheries be managed at or above Bmsy. SNA8, GMU1
3. Maori have substantial interests in all three categories of fishing. Commercial, customary and most of all recreational. On the 23 September 1992, the introduction of Te Tiriti O Waitangi (Fisheries Settlement) Act 1992, fishing as Maori knew it, changed forever *There is no debate here!*
4. Maori commercial fishing interests have been addressed through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. *Unlike pakeha, Maori are strapped in to their commercial fishing interests.*

5. 99.99% of the time Maori go fishing to feed the whanau, they are categorised as recreational fishers. *Let us protect this most important aspect of our fishing interests.*
6. Ministry have introduced a Proportional Allocation process which will kick off in June. They have met with Pakeha over the preparation of this paper but I am unaware of any approaches to Maori. If this passes into legislation-the impact will be huge as the Foreshore and Seabed legislation we witnessed last year. Not only for Maori, but for the public at large.
7. Marine Reserves are not conducive to increasing the number of fish left in the water and this is a major threat to the implementation of our customary tools.

Not surprisingly, when Ngapuhi are quizzed about the priority placed on the three categories of our fishing interests, commercial interests inevitably come last. One typical comment is, *“we want kai on our tables before any Chinese, Japanese or anyone else. Certainly before exporting for crayfish bait to Australia.”* Hands up those of us here who think commercial should take priority over everything else? Or customary for that matter?

We need to wake up before all that is meaningful to us as Maori are consumed into the mainstream and we lose our status as Tangata Whenua. Our people are so supportive, feeding them with the right information and following good process will ensure they continue to follow and support us as their leaders.

## **Mauri Ora**

***Raniera T (Sonny) Tau***  
**Chairman Te Runanga A Iwi O Ngapuhi.**