



ANALYSIS

- | | |
|--|--|
| <p>Title</p> <p>Preamble</p> <p>1. Short Title and commencement</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">PROVISIONS RELATING TO SETTLEMENT OF
MAORI FISHERIES CLAIMS AGAINST THE
CROWN</p> <p>2. Interpretation</p> <p>3. Interpretation of Act generally</p> <p>4. Act to bind the Crown</p> <p>5. Purchase of Sealords by Maori BIL Joint Venture</p> <p>6. Crown to indemnify Treaty of Waitangi Fisheries Commission against certain liability for goods and services tax</p> <p>7. Payment of \$150,000,000 to Maori</p> <p>8. Payment of special dividend by Aotearoa Fisheries Limited</p> <p>9. Effect of Settlement on commercial Maori fishing rights and interests</p> <p>10. Effect of Settlement on non-commercial Maori fishing rights and interests</p> <p>11. Provisions relating to certain civil proceedings</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">AMENDMENTS TO OTHER ENACTMENTS</p> <p style="text-align: center;"><i>Maori Fisheries</i></p> <p>12. Sections to be read with Maori Fisheries Act 1989</p> <p>13. Interpretation</p> <p>14. Change of name of Commission</p> <p>15. Additional functions</p> <p>16. Membership of Commission</p> <p>17. Powers</p> <p>18. New Schedule 1A inserted</p> <p>19. Repeals</p> <p>20. Provisions relating to settlement of Maori claims relating to commercial fisheries</p> <p style="text-align: center;"><i>Fisheries</i></p> <p>21. Sections to be read with Fisheries Act 1983</p> | <p>22. Interpretation</p> <p>23. Declaration that species or class of fish subject to quota fishing</p> <p>24. Matters to be taken into account in determining or varying any total allowable commercial catch</p> <p>25. Interpretation</p> <p>26. Minimum holdings of quota and interests in quota</p> <p>27. Power of Crown to acquire, hold, transfer, lease, or cancel quotas</p> <p>28. Restriction on amount of quota that may be held by any one person</p> <p>29. Assessment of deemed value of fish</p> <p>30. Declaration of controlled fisheries</p> <p>31. Restrictions on licences in certain cases</p> <p>32. Closed season in exclusive economic zone</p> <p>33. Limitation of Act</p> <p>34. Regulations</p> <p>35. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale</p> <p>36. Variation of resource rentals by Order in Council</p> <p>37. Fisheries (Amateur Fishing) Regulations 1986</p> <p style="padding-left: 2em;">27. Fish taken for hui, tangi, or other approved purpose</p> <p>38. First Schedule amended</p> <p style="text-align: center;"><i>Treaty of Waitangi</i></p> <p>39. Sections to be read with Treaty of Waitangi Act 1975</p> <p>40. Jurisdiction of Tribunal to consider claims</p> <p style="text-align: center;"><i>Fishing Industry Board</i></p> <p>41. Sections to be read with Fishing Industry Board Act 1963</p> <p>42. Establishment of New Zealand Fishing Industry Board</p> <p>43. Committees</p> |
|--|--|

Conservation
44. Sections to be read with Conservation
Act 1987

45. Guardians of Lakes Manapouri,
Monowai, and Te Anau
Schedule

1992, No. 121

An Act—

- (a) To give effect to the settlement of claims relating to Maori fishing rights; and**
- (b) To make better provision for Maori non-commercial traditional and customary fishing rights and interests; and**
- (c) To make better provision for Maori participation in the management and conservation of New Zealand's fisheries** *[14 December 1992]*

WHEREAS—

- (a) By the Treaty of Waitangi the Crown confirms and guarantees to the Chiefs, tribes, and individual Maori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries; and
- (b) Section 88 (2) of the Fisheries Act 1983 provides that nothing in that Act shall affect any Maori fishing rights; and
- (c) There has been uncertainty and dispute between the Crown and Maori as to the nature and extent of Maori fishing rights in the modern context and as to whether they derive from the Treaty or common law or both (such as by customary law or aboriginal title or otherwise) and as to the import of section 88 (2) of the Fisheries Act 1983 and its predecessors; and
- (d) Maori have claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the quota management system introduced by the Fisheries Amendment Act 1986 is unlawful and in breach of the principles of the Treaty of Waitangi, or has no application to Maori fisheries (including commercial fisheries), and have obtained from the High Court and Court of Appeal, by way of interim relief, a declaration declaring that the Crown ought not take further steps to bring the fisheries within the quota management system; and
- (e) At a national hui held at Wellington in June 1988 the Maori principals were given a mandate by Maori claiming rights and interests in the fisheries of New Zealand to secure a just and honourable settlement of their claims with the Crown; and

- (f) The Maori Fisheries Act 1989, an Act “to make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi” (which came into force on the 20th day of December 1989) provides for the transfer from the Crown to the Maori Fisheries Commission of quota totalling 10 percent of the total allowable commercial catches for all species then subject to the quota management system (which transfer was required to be effected in instalments over the period ending with the close of the 31st day of October 1992); and
- (g) On the 27th day of February 1990, the Crown and Maori agreed that there should be discussions between them to ensure that the evolution of the quota management system, including the term of quota, met both conservation requirements and the principles of the Treaty of Waitangi and further agreed that all substantive court proceedings should stand adjourned *sine die* to allow discussions to continue, and the Crown agreed that no further species would be brought within the quota management system pending agreement or court resolution; and
- (h) There remain disputes between the Crown and Maori as to the nature and extent of Maori fishing rights and interests and their status, and the litigation between the plaintiffs and the Crown is still outstanding with interim declarations in relation to squid and paua and the Crown undertaking not to bring further species within the quota management system still in force; and
- (i) On the 26th and 27th days of August 1992, representatives of the Crown and Maori met to discuss their differences with a view to settling outstanding claims and Treaty grievances of Maori in relation to fisheries, and, therefore, the outstanding litigation; and, on the 27th day of August 1992, agreement was reached on a proposal for settlement; and
- (j) The Crown and Maori wish to resolve their disputes in relation to the fishing rights and interests and the quota management system and seek a just and honourable solution in conformity with the principles of the Treaty of Waitangi; and

- (k) The Crown recognises that traditional fisheries are of importance to Maori and that the Crown's Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries; and
- (l) A deed dated the 23rd day of September 1992 was entered into between the Crown and Sir Graham Latimer, the Honourable Matiu Rata, Richard Dargaville, Tipene O'Regan, Cletus Maanu Paul, and Whatarangi Winiata, together with other persons who have negotiated with the Crown on behalf of iwi, the New Zealand Maori Council, the National Maori Congress, and other representatives of iwi, whereby it was agreed between the parties that—
- (i) Maori would enter into a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company; and
 - (ii) The Crown would pay to Maori a sum of \$150 million to be used for the development and involvement of Maori in the New Zealand fishing industry, including participation in the acquisition of Sealord Products Limited; and
 - (iii) The Crown would introduce legislation to ensure that Maori were allocated 20 percent of all quota for species henceforth brought within the quota management system; and
 - (iv) The Crown would introduce legislation empowering the making of regulations recognising and providing for customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is not commercial in any way nor involves commercial gain or trade; and
 - (v) The Crown would introduce legislation to reconstitute the Maori Fisheries Commission as the Treaty of Waitangi Fisheries Commission; and
 - (vi) The Treaty of Waitangi Fisheries Commission would consider the resolutions in respect of the assets held by the Commission at the settlement date specified in the deed, as adopted by the Annual General Meeting of the Commission on the 25th day of July 1992, and consider how best to give effect to

the resolutions, and would be empowered to allocate those assets; and

(vii) Following consultation with Maori, the Treaty of Waitangi Fisheries Commission would devise and report to the Crown on a scheme for the distribution of the Commission's assets other than those referred to in subparagraph (vi) of this paragraph; and

(viii) The implementation of the deed through legislation and the continuing relationship between the Crown and Maori would constitute a full and final settlement of all Maori claims to commercial fishing rights and would change the status of non-commercial fishing rights so that they no longer give rise to rights in Maori or obligations on the Crown having legal effect but would continue to be subject to the principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and one or more Orders in Council may be made bringing different sections into force on different dates.

(3) Section 8 of this Act shall come into force on the day on which this Act receives the Royal assent.

PART I

PROVISIONS RELATING TO SETTLEMENT OF MAORI FISHERIES CLAIMS AGAINST THE CROWN

2. Interpretation—In this Act, unless the context otherwise requires,—

“BIL” means Brierley Investments Limited, a duly incorporated company having its registered office at Wellington; and includes any wholly-owned subsidiaries for the time being of that company:

“Director-General” means the Director-General of Agriculture and Fisheries:

“Maori BIL Joint Venture” means the joint venture (including any company formed to act as the joint venture entity) established by and between the Treaty of Waitangi Fisheries Commission (through Te Waka Unua Limited) and BIL to purchase Sealords:

“Maori Fisheries Negotiators” means Sir Graham Latimer, Robert Mahuta, the Honourable Matiu Rata, Richard Dargaville, Tipene O’Regan, Cletus Maanu Paul, David Higgins, and Whatarangi Winiata:

“Minister” means the Minister of Fisheries:

“Sealords” means Sealord Products Limited, a duly incorporated company having its registered office at Manukau City; and includes the entirety of the business and undertaking of that company; and also includes any wholly-owned subsidiaries for the time being of that company.

3. Interpretation of Act generally—It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the Deed of Settlement referred to in the Preamble to this Act.

4. Act to bind the Crown—This Act binds the Crown.

5. Purchase of Sealords by Maori BIL Joint Venture—Notwithstanding any other enactment or rule of law,—

- (a) The Director-General may issue to Sealords a permit under section 63 of the Fisheries Act 1983 authorising it to continue to undertake the fishing activities previously conducted by Sealord Suisan Limited and Fish Packers Limited, so long as those 2 last-mentioned companies surrender to the Director-General their existing permits under that section and undertake not to seek further permits under that section:
- (b) The Minister or the Director-General, as the case may be, may exercise the powers conferred by section 28w (3) or section 28z (9) of the Fisheries Act 1983 (or both) for the purpose of giving effect to the acquisition of Sealords by the Maori BIL Joint Venture.

6. Crown to indemnify Treaty of Waitangi Fisheries Commission against certain liability for goods and services tax—The Crown shall indemnify the Treaty of

Waitangi Fisheries Commission against any liability to pay goods and services tax under the Goods and Services Tax Act 1985 in respect of payments referred to in clause 3.1 of the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992.

7. Payment of \$150,000,000 to Maori—The Crown shall pay out of money appropriated by Parliament, in accordance with clause 3.1 of the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992, the sum of \$150,000,000.

8. Payment of special dividend by Aotearoa Fisheries Limited—(1) The board of directors of Aotearoa Fisheries Limited is hereby deemed to have declared a special dividend of \$17,500,000 in favour of the Maori Fisheries Commission, which special dividend shall be payable to the Commission not later than 5 days after receipt by Aotearoa Fisheries Limited of a notice from the Commission requesting payment of that amount.

(2) For the avoidance of doubt, it is hereby declared that no person shall be liable either civilly or criminally by reason only of the company's payment to the Commission of the amount specified in subsection (1) of this section.

9. Effect of Settlement on commercial Maori fishing rights and interests—It is hereby declared that—

(a) All claims (current and future) by Maori in respect of commercial fishing—

(i) Whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise; and

(ii) Whether in respect of sea, coastal, or inland fisheries, including any commercial aspect of traditional fishing; and

(iii) Whether or not such claims have been the subject of adjudication by the courts or any recommendation from the Waitangi Tribunal,—having been acknowledged, and having been satisfied by the benefits provided to Maori by the Crown under the Maori Fisheries Act 1989, this Act, and the Deed of Settlement referred to in the Preamble to this Act, are hereby finally settled; and accordingly

- (b) The obligations of the Crown to Maori in respect of commercial fishing are hereby fulfilled, satisfied, and discharged; and no court or tribunal shall have jurisdiction to inquire into the validity of such claims, the existence of rights and interests of Maori in commercial fishing, or the quantification thereof, the validity of the Deed of Settlement referred to in the Preamble to this Act, or the adequacy of the benefits to Maori referred to in paragraph (a) of this section; and
- (c) All claims (current and future) in respect of, or directly or indirectly based on, rights and interest of Maori in commercial fishing are hereby fully and finally settled, satisfied, and discharged.

10. Effect of Settlement on non-commercial Maori fishing rights and interests—It is hereby declared that claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983—

- (a) Shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance thereto
- (b) The Minister, acting in accordance with the principles of the Treaty of Waitangi, shall—
 - (i) Consult with tangata whenua about; and
 - (ii) Develop policies to help recognise—
use and management practices of Maori in the exercise of non-commercial fishing rights; and
- (c) The Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but
- (d) The rights or interests of Maori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the

Treaty of Waitangi, statute, or otherwise, shall henceforth have no legal effect, and accordingly—

- (i) Are not enforceable in civil proceedings; and
 - (ii) Shall not provide a defence to any criminal, regulatory, or other proceeding,—
- except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

11. Provisions relating to certain civil proceedings—

(1) The proceedings referred to in subsection (2) of this section that have not been discontinued before the commencement of this Act are hereby discontinued.

(2) The proceedings to which subsection (1) of this section applies are the following:

- (a) *Te Runanga o Muriwhenua Inc v Attorney-General and others* (C.P. No. 553/87);
- (b) *H.R. Tau, the Ngai Tahu Maori Trust Board v Attorney-General and others* (C.P. No. 559/87);
- (c) *The New Zealand Maori Council and others v Attorney-General and others* (C.P. No. 610/87);
- (d) *Robert Te Kotahi Mahuta and others v Attorney-General and others* (C.P. No. 614/87);
- (e) *The Hon. Matiu Rata and others v Attorney-General and others* (C.P. No. 743/88);
- (f) *Robert Te Kotahi Mahuta and another v Attorney-General and others* (C.P. No. 744/88);
- (g) *J. Henare and others v Attorney-General and others* (C.P. No. 746/88);
- (h) *T. or S. G. O'Regan and another v Attorney-General and others* (C.P. No. 747/88);
- (i) *J. Henare and others v Attorney-General and others* (C.P. No. 762/88);
- (j) *C.J. Pile v Attorney-General* (C.P. No. 110/88).

(3) All interim orders made and all undertakings given by the parties, in respect of any proceedings referred to in subsection (2) of this section, being orders and undertakings in force immediately before the commencement of this Act, are hereby cancelled.

(4) Every declaration made before the commencement of this Act under section 28B of the Fisheries Act 1983, being a declaration that any species or class of fish in any quota management area shall be subject to the quota management

system established under Part IIA of that Act, is hereby declared to be and always to have been valid.

PART II

AMENDMENTS TO OTHER ENACTMENTS

Maori Fisheries

12. Sections to be read with Maori Fisheries Act 1989—This section and the next 8 succeeding sections shall be read together with and deemed part of the Maori Fisheries Act 1989 (in those sections referred to as the principal Act).

13. Interpretation—Section 2 of the principal Act is hereby amended by omitting from the definition of the term “Commission” the word “Maori”, and substituting the words “Treaty of Waitangi”.

14. Change of name of Commission—(1) Section 4 (1) of the principal Act is hereby amended by omitting the word “Maori”, and substituting the words “Treaty of Waitangi”.

(2) Unless the context otherwise requires, every reference in any other enactment or document to the Maori Fisheries Commission shall hereafter be read as a reference to the Treaty of Waitangi Fisheries Commission.

15. Additional functions—Section 6 of the principal Act is hereby amended by adding the following paragraph:

“(e) In relation to the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992,—

“(i) To consider how best to give effect to the resolutions in respect of the Commission’s assets, as set out in Schedule 1A to this Act:

“(ii) To develop, after full consultation with Maori, proposals for a new Maori Fisheries Act that is consistent with the Deed of Settlement and makes provision for—

“(A) The appointment, composition, and powers of any body succeeding the Commission; and

“(B) The development of a procedure for identifying the beneficiaries and their interests under the Deed of Settlement, in accordance with the Treaty of Waitangi,

and a procedure for allocating to them, in accordance with the principles of the Treaty, the benefits from the Deed of Settlement:

“(iii) Within 90 days after the commencement of this paragraph, to propose for consideration by Maori provisions and a process for the Commission’s accountability to Maori:

“(iv) To report to the Minister on the matters referred to in this paragraph.”

16. Membership of Commission—(1) The principal Act is hereby amended by repealing section 29, and substituting the following section:

“29. (1) The Commission shall consist of not more than 13 members to be appointed by the Governor-General on the advice of the Minister of Maori Affairs given after consulting the persons and Maori specified in subsection (2) of this section.

“(2) Before advising the Governor-General to make any appointment under subsection (1) of this section, the Minister shall—

“(a) Unless it is impracticable to do so by reason of absence, illness, or otherwise, consult the Maori Fisheries Negotiators jointly; and

“(b) Consult such persons who are, in the Minister’s opinion, representatives of Maori who are or may be beneficiaries of the Commission’s assets.”

(2) Every member of the Commission in office immediately before the commencement of this Act shall be deemed to have vacated his or her office on the commencement of this Act.

(3) The principal Act is hereby amended by repealing sections 19 (b) and 30.

17. Powers—(1) Section 9 (2) of the principal Act is hereby amended by adding the following paragraph:

“(l) After giving consideration to the matters referred to in section 6 (e) (i) of this Act and reporting to the Minister on those matters under section 6 (e) (iv) of this Act, and subject to subsection (4) of this section, to give effect to the scheme (if any) included in the report furnished to the Minister under the said section 6 (e) (iv) (being the scheme providing for the distribution of the assets held by the Commission before the Settlement Date defined in the Deed of

Settlement and being the assets referred to in clause 4.5.2 of that deed).”

(2) Section 9 of the principal Act is hereby amended by adding the following subsection:

“(4) The Minister may, at any time and from time to time, but not later than 30 days after the date of the receipt of the Commission’s report under subsection (2) (1) of this section, request the Commission to reconsider all or any part of the proposed distribution under that subsection; and the Commission shall reconsider its proposed distribution of assets, amend the proposal, and report further to the Minister accordingly.”

18. New Schedule 1A inserted—The principal Act is hereby amended by inserting, after the First Schedule, the Schedule 1A set out in the Schedule to this Act.

19. Repeals—(1) Sections 7 (4), 7 (7), 18, 20, and 21 of the principal Act are hereby repealed.

(2) Notwithstanding the expiry of the transition period specified in the principal Act, subsections (1), (2), (3), (5), and (6) of section 7 of the principal Act shall be deemed to continue to have effect until the Commission effects the distribution of assets under section 9 (2) (1) of the principal Act (as added by section 17 (1) of this Act).

20. Provisions relating to settlement of Maori claims relating to commercial fisheries—(1) Notwithstanding anything in the principal Act or any other enactment, the following provisions shall apply in relation to the Maori BIL Joint Venture:

- (a) During the settlement period, the Treaty of Waitangi Fisheries Commission shall not, without the prior written consent of the Minister of Fisheries, sell or transfer or otherwise dispose of the 50 percent interest or any part thereof held in Sealords by the Commission or any subsidiary of the Commission on behalf of Maori through the Maori BIL Joint Venture:
- (b) During the said settlement period, the Maori BIL Joint Venture shall not, and shall take such steps as are practicable to procure that Sealords shall not, without the prior written consent of the Minister of Fisheries, voluntarily sell, transfer, or otherwise dispose of any

quota under the quota management system established under Part II of the Fisheries Act 1983, being quota held by Sealords or on behalf of the Maori BIL Joint Venture (including any part of such quota that may be transferred to or vested in the Commission or any subsidiary of the Commission on behalf of Maori under the Joint Venture arrangement).

(2) The Commission's acquisition, by purchase, subscription, or otherwise, of equity securities in Te Kupenga Limited, Te Waka Unua Limited, and Te Waka Unua Finance Limited is hereby declared to be and always to have been lawful.

(3) For the purposes of this section, "settlement period" means the period commencing on the 23rd day of September 1992 and ending with the earlier of the following:

- (a) The expiry of the Payment Period as defined in the Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992 (being the period commencing on the Settlement Date and ending with the close of the Third Instalment Payment Date as defined in the said Deed of Settlement);
- (b) The date on which the scheme for the distribution of the benefits of the settlement provided for in the said Deed of Settlement (as referred to in clause 4.5.4.2 of that deed) takes effect.

Fisheries

21. Sections to be read with Fisheries Act 1983—This section and the next 17 succeeding sections shall be read together with and deemed part of the Fisheries Act 1983 (in those sections referred to as the principal Act).

22. Interpretation—Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term "commercial fishing", the following definition:

"'Commission' means the Treaty of Waitangi Fisheries Commission established by section 4 of the Maori Fisheries Act 1989:".

23. Declaration that species or class of fish subject to quota fishing—Section 28B(1) of the principal Act (as inserted by section 10 of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words "after consultation with", the words "the Commission and".

24. Matters to be taken into account in determining or varying any total allowable commercial catch—(1) Section 28D (1) (a) of the principal Act (as substituted by section 5 (1) of the Fisheries Amendment Act 1990) is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) Non-commercial interests in the fishery; and”.

(2) Section 28D (2) of the principal Act (as so substituted) is hereby amended by inserting, after the words “shall consult with”, the words “the Commission and”.

25. Interpretation—Section 28OF (1) of the principal Act (as inserted by section 15 of the Fisheries Amendment Act 1990) is hereby amended by repealing the definition of the term “Commission”.

26. Minimum holdings of quota and interests in quota—Section 28s (3) (a) of the principal Act (as substituted by section 15 of the Fisheries Amendment Act 1991) is hereby amended by omitting the words “(as defined in section 28OF of this Act)”.

27. Power of Crown to acquire, hold, transfer, lease, or cancel quotas—Section 28U (1) of the principal Act (as substituted by section 65 of the Maori Fisheries Act 1989) is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Transfer to the Commission any individual transferable quota or transferable term quota held by or on behalf of the Crown.”

28. Restriction on amount of quota that may be held by any one person—Section 28w (3) of the principal Act (as substituted by section 23 (3) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the words “after consultation with”, the words “the Commission and”.

29. Assessment of deemed value of fish—Section 28ZE (3) of the principal Act (as inserted by section 29 (1) of the Fisheries Amendment Act 1990) is hereby amended by inserting, after the words “consult with”, the words “the Commission and”.

30. Declaration of controlled fisheries—Section 30 (1) of the principal Act is hereby amended by omitting the words

“New Zealand”, and substituting the words “Commission and the”.

31. Restrictions on licences in certain cases—Section 47 (1) of the principal Act is hereby amended by inserting, after the words “after consultation with”, the words “the Commission and”.

32. Closed season in exclusive economic zone—Section 86 of the principal Act is hereby amended by inserting, after the words “prior consultation with”, the words “the Commission and”.

33. Limitation of Act—Section 88 of the principal Act is hereby amended by repealing subsection (2).

34. Regulations—(1) Section 89 (1) of the principal Act is hereby amended by inserting, after paragraph (ma) (as inserted by section 42 (4) of the Fisheries Amendment Act 1990), the following paragraph:

“(mb) Recognising and providing for customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade:”

(2) Section 89 of the principal Act is hereby amended by inserting, after subsection (1b) (as inserted by section 16 (5) of the Fisheries Amendment Act (No. 2) 1992), the following subsection:

“(1c) Without limiting the generality of subsection (1) (mb) of this section, regulations made under that provision may—

“(a) Declare the relationship between such regulations and general fishing regulations made under this Act and regulations relating to taiapure-local fisheries; and declare that the first-mentioned regulations shall prevail over such other regulations:

“(b) Empower the Minister to declare any part of New Zealand fisheries waters to be a mataitai reserve, by notice in the *Gazette* given after consultation by the Minister and the tangata whenua with the local community and having regard to the sustainable

management of the fish, aquatic life, and seaweed in the reserve:

“(c) Provide for such matters as may be necessary or desirable for the sustainable management of the fish, aquatic life, and seaweed in mataitai reserves, including general restrictions and prohibitions in respect of the taking of fish, aquatic life, or seaweed:

“(d) Empower any Maori Committee constituted by or under the Maori Community Development Act 1962, any marae committee, or any kaitiaki of the tangata whenua to make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed:

“(e) Empower any such Maori Committee, marae committee, or kaitiaki to allow the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of the marae concerned, notwithstanding any such bylaws.”

(3) Section 89 (3) (b) of the principal Act is hereby amended by inserting, before the word “fishing”, the word “non-commercial”.

(4) Section 89 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections:

“(3A) No regulation made under subsection (1) (mb) or subsection (3) (b) of this section shall be invalid by reason only that it conflicts with section 28B (5) of this Act.

“(3B) The following provisions shall apply in respect of bylaws made under regulations made under subsection (1c) (d) of this section:

“(a) Every restriction and every prohibition imposed on individuals by such bylaws shall apply generally to all individuals:

“(b) Bylaws shall not come into force until they have been approved by the Minister and have been gazetted:

“(c) The publication in the *Gazette* of bylaws purporting to have been approved by the Minister under this subsection shall be conclusive evidence that the bylaws have been duly made and approved under this section.”

35. Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale—

(1) Section 103A of the principal Act (as inserted by section 49 of the Fisheries Amendment Act 1990) is hereby amended by

omitting the word “For”, and substituting the words “Except as provided in subsection (2) of this section, for”.

(2) Section 103A of the principal Act (as so inserted) is hereby amended by adding, as subsection (2), the following subsection:

“(2) Nothing in subsection (1) of this section applies to any person who is in possession of fish taken under the authority of regulations made under subsection (1) (mb) or subsection (3) (b) of section 89 of this Act.”

36. Variation of resource rentals by Order in Council—Section 107G (6) of the principal Act (as inserted by section 28 (1) of the Fisheries Amendment Act 1986) is hereby amended by inserting, after the words “the Minister shall advise”, the words “the Commission and”.

37. Fisheries (Amateur Fishing) Regulations 1986—(1) The Fisheries (Amateur Fishing) Regulations 1986 (S.R. 1986/221) are hereby amended by revoking regulation 27, and substituting the following regulation:

“27. Fish taken for hui, tangi, or other approved purpose—(1) Nothing in these regulations or in any other regulations made pursuant to the Act relating to amateur fishing and imposing any restriction on the taking of fish, aquatic life, or seaweed shall apply where—

“(a) The fish, aquatic life, or seaweed is or are taken for the purposes of a hui, tangi, or traditional non-commercial fishing use approved by the Director-General; and

“(b) The fish are taken in accordance with any conditions considered by the Director-General to be necessary for the overall conservation and management of the fishery.

“(2) The Director-General may, in writing, delegate to one or more of the following, namely,—

“(a) Any Maori Committee constituted by or under the Maori Community Development Act 1962; or

“(b) Any marae committee that is an incorporated society under the Incorporated Societies Act 1908; or

“(c) Any kaitiaki of the tangata whenua,—
the power to approve a hui, tangi, or traditional non-commercial fishing use under subclause (1)(a) of this regulation.”

(2) The regulation substituted by subsection (1) of this section may be amended or revoked as if it had been made by regulations and not by this Act.

38. First Schedule amended—Clause 1 of the First Schedule to the principal Act (as substituted by section 5 (3) of the Fisheries Amendment Act 1986) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Commercial and non-commercial interests in the fishery:”.

Treaty of Waitangi

39. Sections to be read with Treaty of Waitangi Act 1975—This section and the next succeeding section shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (in that section referred to as the principal Act).

40. Jurisdiction of Tribunal to consider claims—Section 6 of the principal Act is hereby amended by adding the following subsection:

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

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

“(b) The Deed of Settlement between the Crown and Maori dated the 23rd day of September 1992; or

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

Fishing Industry Board

41. Sections to be read with Fishing Industry Board Act 1963—This section and the next 2 succeeding sections shall be read together with and deemed part of the Fishing Industry Board Act 1963 (in those sections referred to as the principal Act).

42. Establishment of New Zealand Fishing Industry Board—(1) Section 3 (3) of the principal Act (as substituted by section 3 (1) of the Fishing Industry Board Amendment Act

1978) is hereby amended by omitting the expression “7”, and substituting the expression “9”.

(2) Section 3 (3) of the principal Act (as so substituted) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Two members nominated by the Treaty of Waitangi Fisheries Commission:”.

43. Committees—Section 9 of the principal Act is hereby amended by adding the following subsection:

“(4) Every committee appointed under this section shall include a person nominated by the Treaty of Waitangi Fisheries Commission, unless the Commission has declined to appoint a person to be a member of that committee.”

Conservation

44. Sections to be read with Conservation Act 1987—This section and the next succeeding section shall be read together with and deemed part of the Conservation Act 1987 (in that section referred to as the principal Act).

45. Guardians of Lakes Manapouri, Monowai, and Te Anau—Section 6x (1) of the principal Act (as inserted by section 5 of the Conservation Law Reform Act 1990) is hereby amended by inserting, after the words “appoint suitable persons”, the words “(who shall include representatives of Maori)”.

Section 18

SCHEDULE

NEW SCHEDULE 1A INSERTED INTO MAORI FISHERIES ACT 1989

"SCHEDULE 1A

RESOLUTIONS ADOPTED AT HUI-A-TAU ON 25 JULY 1992

ALLOCATION*AUTHORITY*

1. That the hui endorse the decision made by the Commission to seek legislative authority to further secure the Commission's intention to allocate its assets to iwi.

METHOD

2. That MFC examine the alternative methods to allocate, consult with iwi, and have prepared discussion material to enable agreement to be reached on the optimum method for allocation.

LEGAL RIGHTS: 50%

3. That MFC ensure that no allocation of the 10% be made before the position of the pursuit of the legal rights of iwi to secure the complete 50% is secure.

EVENT OF DELAY

4. That the hui agree that, in the event of significant delay to the implementation of the allocation strategy, the MFC hold a further tender of MFC/AFL quota for the 1992/93 fishing year only.

AOTEAROA FISHERIES LIMITED (AFL)

5. That MFC allocate the assets of AFL as part of the allocation strategy.

AFL CASH & OTHER ASSETS

6. That MFC allocate the assets of AFL, cash, and other assets on the same basis as the quota is allocated.

MAORI FISHERY NEGOTIATORS (MFN)*BUDGET (6)*

7. That this hui supports the continued funding of the MFN up to \$350,000 for the next year on terms to be agreed by the MFC/MFN.

MANDATE

8. That this hui affirms the fact that the negotiators represent all the interests of all iwi in the negotiations with and litigation against the Crown.

MAORI FISHERIES COMMISSION*FUTURE*

9. That the future of the MFC be subject to further consideration by MFC/iwi and a position paper be circulated to iwi by October 1992.

SCHEDULE—continuedNEW SCHEDULE 1A INSERTED INTO MAORI FISHERIES ACT 1989—*continued***“SCHEDULE 1A—continued**RESOLUTIONS ADOPTED AT HUI-A-TAU ON 25 JULY 1992—*continued***MAORI CONGRESS****BUDGET**

10. That the Congress and the negotiators meet with the Commission to discuss the servicing and financial requirements of the negotiating process.

(Signed)
Tipene O'Regan CHAIRMAN”.

This Act is administered in the Ministry of Agriculture and Fisheries.
