



Reviewing the Foreshore and Seabed Act 2004

Justine Inns, Partner
Oceanlaw New Zealand

1A of the Fisheries Act 1983. This section refers to the new sections inserted in part 11A:

the minister, after consulting the Fishing Industry Board, may specify the management areas and areas to be subject to the quota management system (QMS) established under part 11A as from 1 October 1986 (s28B);

the minister, after allowing for the Maori traditional recreational and other non-commercial interests in the fishery, may specify the total allowable catch (TAC) for an area of fishery and management areas (s28C);

the TAC for any area in respect of any species shall be the amount of fish that will produce from that fishery the maximum sustainable yield as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any other generally recommended sub-regional or regional or global standards (s2);

the minister, after consulting the Fishing Industry Board, may reduce or increase any TAC for any area in respect of any species where the fish stock has fallen significantly below the level that can sustain the TAC. This reduction may be achieved by reducing all TQOs on a proportionate basis, in which case compensation is payable by the Crown for the loss of the value of the TQOs that would otherwise be available to the fishery.



The Crown Proposals

1. Repeal 2004 Act

- The Act to be repealed & the rights it extinguished restored

2. Crown Ownership

- The preferred model is a 'no ownership' regime - "public domain/takiwā iwi whānui"

1A of the Fisheries Act 1983. This section refers to the new sections inserted in part 11A:

the minister, after consulting the Fishing Industry Board, may specify the management areas and areas to be subject to the quota management system (QMS) established under part 11A as from 1 October 1986 (s28B);

the minister, after allowing for the Maori traditional recreational and other non-commercial interests in the fishery, may specify the total allowable catch (TAC) for an area of fishery and management areas (s28C);

the TAC for any area in respect of any species shall be the amount of fish that will produce from that fishery the maximum sustainable yield as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish, and any other generally recommended sub-regional or regional or global standards (s2);

the minister, after consulting the Fishing Industry Board, may reduce or increase any TAC for any area in respect of any species where the fish stock has fallen significantly below the level that can sustain the TAC. This reduction may be achieved by reducing all TQOs on a proportionate basis, in which case compensation is payable by the Crown for the loss of the value of the TQOs that would otherwise be available to the fishery.



The Crown Proposals (cont.)

3. Nature of Iwi/Hapū Rights:

- Title/Territorial Rights – property rights akin to customary or aboriginal title
- Use/Non-Territorial Rights – customary practices/uses

4. How Iwi/Hapū Rights are Recognised

- Negotiations between the Crown & Iwi/hapū, with Court tests/awards influential
- Litigation through the courts (preference expressed for the High Court over the MLC)



The Crown Proposal (cont.)

5. Non-territorial rights:

- Test: Tikanga & common law – continuity of use/practices since 1840 & not extinguished
- Awards:
 - Protection of customary activities under RMA
 - Rāhui over wāhi tapu
 - Planning document (enhanced Iwi Plan) under RMA & other legislation



The Crown Proposal (cont.)

6. Territorial rights

- Test: tikanga & common law; exclusive use & occupation since 1840; not extinguished
- Awards:
 - Inalienable & public access
 - Permission right – for activities requiring resource consent
 - Input to conservation processes, e.g. marine reserves & concessions
 - Planning document (further enhanced)

Assessment

- What was the question?
- Why did the iwi of Te Tau Ihu resort to the Māori Land Court in the 1990s?
- What would it take to address the big questions?
 - Integrated management:
 - Coastal Commission & Oceans Policy/Act?
 - Effective iwi/hapū input to management:
 - Co-governance?