

# Marine and Coastal Area (Takutai Moana) Bill

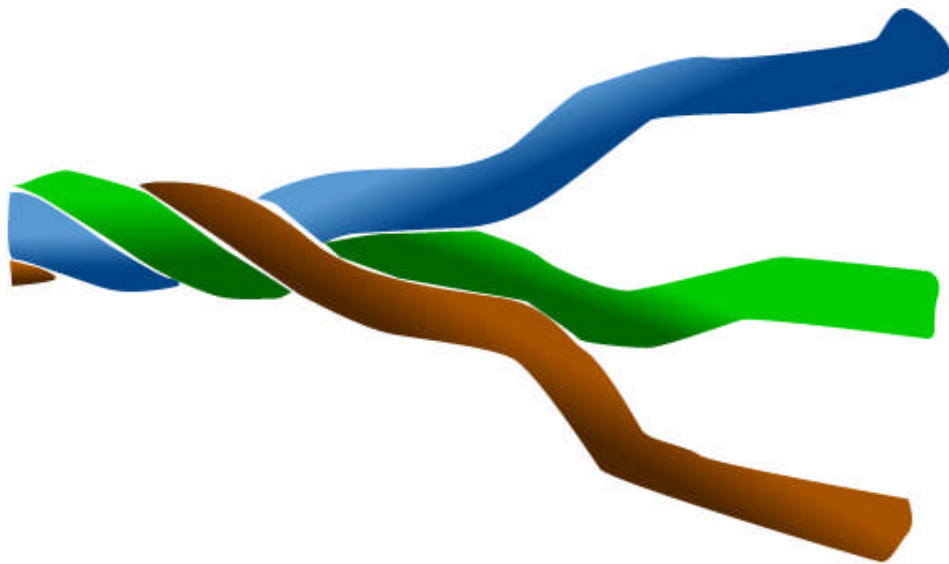
Presentation to the Maori Affairs Select Committee

8 December 2010



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# Maori Customary Rights in Takutai Moana



## **Fisheries**

- Commercial
- Non-commercial

## **Aquaculture**

## **Marine and Coastal Area**

## Bringing Maori customary rights together

Conditions needed to bring together the different “strands” rely in part on integrated governance arrangements within iwi, including:

- clear mandates at different levels
- clear relationships between each.

*Boundaries should not be overstressed.*

*The key to Maori ownership is not survey definitions but kinship.*

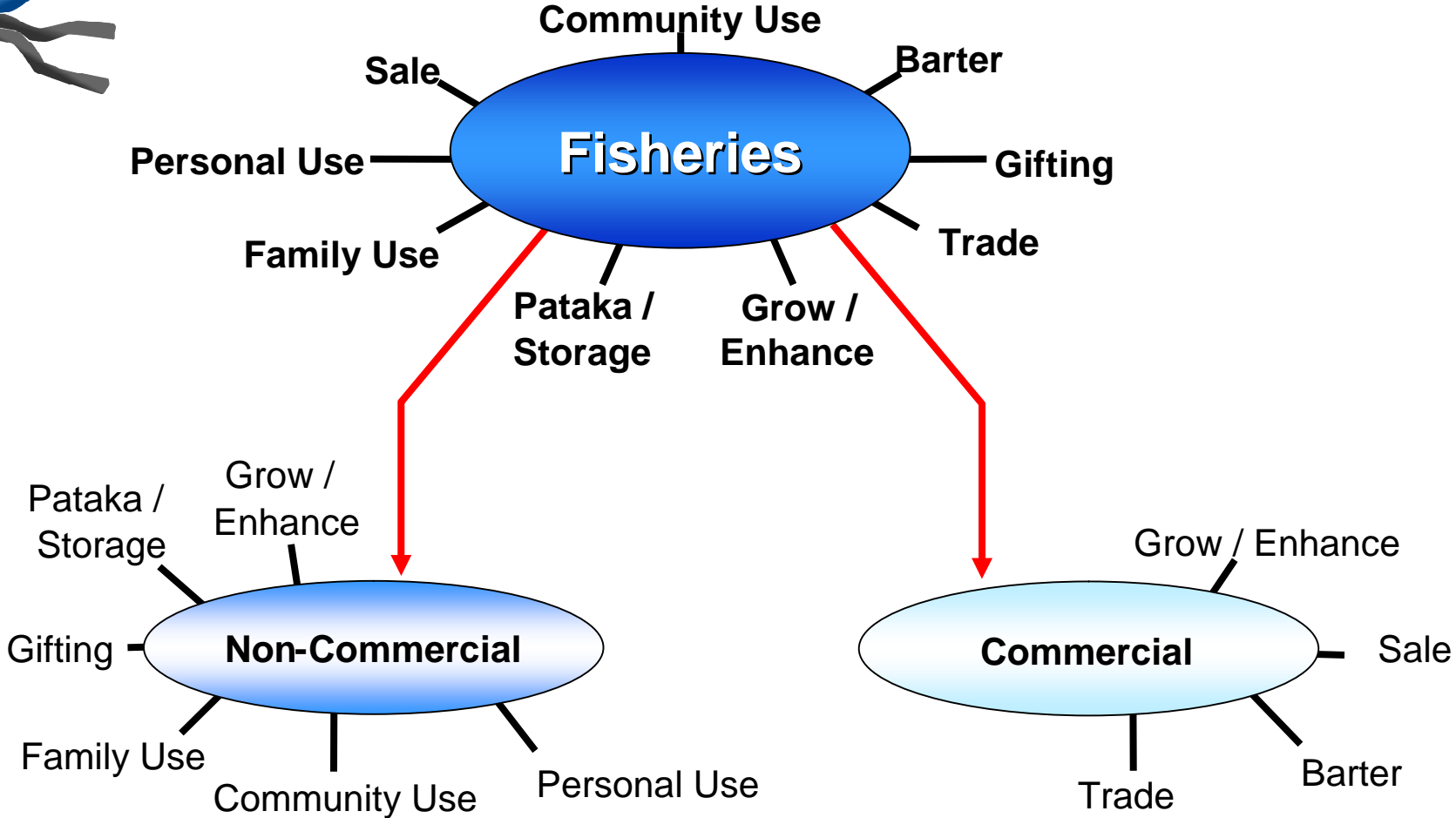
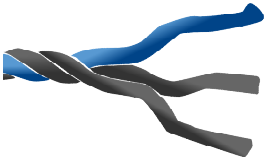
[WAI 22, p 198]

# Fisheries: different strands - unrelated entities



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# Maori Customary Rights in Takutai Moana Fisheries



## Same people – different actors

- Commercial – iwi represented by Mandated Iwi Organisations and Asset Holding Companies
- Non-commercial - kaitiaki nominated by “tangata whenua”
- “tangata whenua” can be iwi, hapu, whanau or marae committee, land trust or group of individuals

# What are iwi/hapu wrestling with in fisheries?

Disjointed governance arrangements mean:

- tribal relationships undermined
- a strong Maori voice in management is frustrated
- government makes decisions for iwi and hapu
- little incentive for other sectors to engage constructively

We are working with iwi/hapu to foster greater collaboration

# The Bill could complicate the situation further



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# Three customary interests under the Bill

- Mana tuku iho – exercised by iwi and hapu listed under Schedule 4 of the Maori Fisheries Act
- Provides iwi and hapu with rights to participate in conservation processes:
  - marine reserves
  - marine mammal sanctuaries
  - marine mammal watching
  - conservation protected areas
  - Concessions
- Decision-makers to “have particular regard” to views of affected iwi and hapu

# Protected Customary Rights and Customary Marine Title



- Each exercised by applicant groups who satisfy the court process or reach agreement with the Crown.
- Rights include customary uses and/or RMA and conservation permission rights
- Applicant groups can be iwi, hapu and whanau who are not defined with reference to the Maori Fisheries Act leading to potential tension with fisheries and aquaculture settlements

## Primary recommendations

- Link iwi hapu and whanau to Mandated Iwi Organisations under the Maori Fisheries Act for all sets of customary interests
- Refer to Schedule 3 of the Maori Fisheries Act to ensure all iwi identified
- Don't limit reference to hapu to those included in their iwi's constitution – constitutions are not uniform

# Primary recommendations

To create a more proactive approach to applications, ensure that Mandated Iwi Organisations have a formal role in coordinating and facilitating resolution of applications for protected customary rights and title.

## Primary recommendations

- As a minimum, consult Te Ohu Kaimoana before agreements made to identify potentially affected fisheries and the iwi and hapu who have an interest in those fisheries
- Make sure the agreement process for customary rights and title enables overlapping interests to be identified early
- Provide opportunities for affected iwi and hapu (through their MIO) to comment on draft agreements so that overlapping interests can be resolved

TE OHU  
KAIMOANA



# Relationship with the Aquaculture Settlement



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## What the Settlement does

- Settles claims to commercial aquaculture established on or after 21 September 1992
- All iwi with coastline benefit from aquaculture established in their region after this date
- Claims relating to aquaculture established before 21 September 1992 to be addressed in individual Treaty settlements

## Issues: permission right

What are the grounds on which customary title holders might refuse permission for aquaculture consents in customary title areas?

- *Commercial benefit*: exercise of permission right for commercial benefit could be seen to duplicate the Aquaculture Settlement, but
- *Managing environmental effects*: exercise of this right to manage adverse environmental effects of aquaculture on a customary title area would not.

## Issues: non-commercial aquaculture?

- Claims to non-commercial aquaculture are not generally settled
- In principle non-commercial aquaculture could be recognised as a protected customary right
- If so, the activity would need to be well defined otherwise the ability to derive a commercial benefit (provided for in clause 54 (c)) could duplicate the Aquaculture Settlement

# Where to from here?

- Recommend further scrutiny of the interface between this Bill and the Aquaculture Settlement
- Note delivery of the Aquaculture Settlement being revised in consultation with iwi leaders
- Recommend further consultation with iwi leaders and their technical team.

# Other matters



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# From application to confirmation of title

## Issue:

- permission rights only apply once rights confirmed
- Creates incentives for a rush of proposals
- Potential consequences of multiple conservation proposals on Maori fisheries interests

## We recommend:

- Ensure applicant groups whose rights or title are not yet confirmed are consulted by proponents of Conservation proposals
- Make sure their views are taken into account

# From application to confirmation of title

A potential option to reduce the incentive for a rush of applications for marine reserves and other conservation proposals (which are permanent):

- provide customary title holders with the right to review the need for Marine Reserves and other conservation measures in their customary title area

## Issue

- Effects on fishing should be treated consistently across regimes

## We recommend

- Make the test consistent with others
- Ensure that in the court or agreement process there is opportunity to clarify real issues
- Ultimately – Crown could provide compensation to commercial fishers where significant effects on fishing necessary to protect wahi tapu

# Concessions

## Issue:

- Concessions attract a permission right
- Concessions can involve commercial fishing – which could involve iwi settlement interests

## We recommend:

- The views of the customary title group should be recognised and provided for

# Marine Mammal Watching

## Issue:

- The views of a customary title group must be recognised and provided for

## We recommend:

- Marine mammal watching should have a permission right

# Minister of Conservation powers

## Issue:

- Minister can override permission right for conservation proposals.
- Minister can implement regulations and bylaws that duplicate RMA

## We recommend:

- Tighten the “override” provisions to ensure proposals are genuinely about environmental protection
- Powers to regulate appear inappropriate and need further scrutiny

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