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ADVANCING THE CUSTOMARY USE DEBATE IN NEW ZEALAND

Some policy considerations from a Pakeha perspective - a case study of the kuaka.

Presented in partial fulfilment of the requirements for Master Of Science (Resource Management) Centre For Resource Management Lincoln University Canterbury

by

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ABSTRACT

There has been increasing efforts, in recent years, by Maori to further restore customary use decision making rights. This has resulted in a continuing, and sometimes antagonistic, debate in New Zealand between 'preservationists and pro-harvesters'. However, the interested parties all have one key concern in common - a concern for the future well-being of the species. Maori express this concern in terms of providing the conditions for and maintaining a sustainable harvest while preservation lobby groups want this dealt with via the preservation ethic. Existing legislation such as the *Wildlife Act 1953*, is mostly interpreted so as to exclude Maori from decision making processes. Further, conservation legislation is interpreted from a preservationist perspective. However, New Zealand is signatory to, and has ratified, the Convention on Biological Diversity (CBD), which supports the development of sustainable use. I examined the issue of customary use decision making rights from the Pakeha perspective of national and international policy. I argue that government, in order to act consistently with the CBD and Article II of the Treaty of Waitangi, will need to involve Maori in the decision making process. Development of a national biodiversity strategy, the responsibility of the Department of Conservation, is seen as one vehicle for advancing policy and understanding in this area. It is recommended that the Crown and Iwi construct a process for the development of this strategy. Concurrently, government needs to facilitate a process to improve understanding between Maori and key preservation groups. I argue that unless some initiatives are taken soon many species' populations will continue to decline.
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I would also like to extend my thanks to all of those people who helped me with information throughout the year. So thanks to Henrick Moller, Kevin Smith, Bryce Johnson, Vic Ormand, Keith Owen, Rhonda Cooper, Guy Salmon, Chris Laidlaw, Ray Pierce, James Holloway, Janet Owen and Ian Govey.

Thanks to my fellow second years at CRM especially to those who helped make these last agonising hours more enjoyably. And remember, there is life after CRM.

Finally, it what has at many times been a difficult year, I would like to extend a big thanks to my family and friends for their support and encouragement and for reminding me that the end was just around the corner.
AUTHOR'S NOTE

It is important to note at the beginning of this project that I am a Pakeha. I cannot and do not attempt to speak for Maori. However, having said this I would like to note that at times in this project the boundaries have not always been easy to identify or stick within.

I have approached the customary use debate from the perspective that it is essentially a Pakeha problem. I have chosen to take this approach because I think that one of the main problems is that currently the Crown holds all of the decision making power. In exercising this power it has excluded and alienated Maori from decision making processes with regard to the availability of materials for customary use. Further, DOC in its interpretation and administration of the Conservation Act 1987 has failed to give effect to the principles of the Treaty of Waitangi to the extent necessary to satisfy many Maori lobbyists.

I have reviewed the work of Moller who has focused on the ecological side of the customary use debate and am aware of current research by Manaaki Whenua into Maori perspectives on this issue. I hope that my work will be able to complement the work of these researchers and help advance the political side of the debate a little further. Although I have tackled the problem from a Pakeha perspective I hope that the project will still be of interest to Maori and to others with an interest in the customary use debate.
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CHAPTER ONE

INTRODUCTION

1.1 Background

Since their arrival in Aotearoa New Zealand, Maori have harvested indigenous plants and animals. Article II of the Treaty of Waitangi guaranteed Maori the right to continue to decide on the availability of indigenous species for harvest. However, since European colonisation many of these harvest rights have been withdrawn and Maori have been excluded from decision making processes. In recent years some Maori have sought to further existing decision making rights to use some species of flora and fauna\(^1\). Desire by Maori to renew this long standing practice has come to be known by Pakeha as customary use. Customary use in this context is “the harvest of wild animals and plants by Maori for spiritual, social and cultural reasons” (Moller, 1995b).

The kuaka [bar tailed godwit; *Limosa lapponica baveria*] is a transmigratory bird which spends Northern Hemisphere winters on Southern Hemisphere harbours. Traditionally the flesh of the kuaka was an important article of food for Maori. However, beside its importance for survival, harvest of the bird was also important for spiritual and cultural reasons. It is no longer necessary for Maori to harvest as a means of essential sustenance. However, it is argued by some such as King (1994) that the right to decide on the availability of species for harvest is a key of ensuring that the traditional culture lives on.

\(^1\)For example, the historic practice of harvesting titi [muttonbird; *Puffinus griseus* Gmelin] from the Titi Island in Fouveaux Strait is a legally recognised customary use. Harvesting is carried out by some Ngai Tahu who have ancestral birding rights.
The Department of Conservation (DOC) currently holds all of the decision making power on the availability of materials for customary use. Despite the need to ‘give effect to the principles of the Treaty of Waitangi’, DOC’s interpretation of both the Wildlife Act and the Conservation Act 1987, have been largely interpreted so as to exclude Maori from customary use decision making. Further, existing legislation is being interpreted from a preservationist perspective. This is occurring in a political environment in which the need to recognise and provide for the Treaty and embody Maori values in conservation management has been accorded little weight.

Efforts by Maori to further restore customary use decision making rights has developed into an emotional and sometimes antagonistic debate between ‘pro-harvesters’ and ‘preservationists’. The first group, made up of both Maori and Pakeha, calls for a greater recognition of Maori to be involved in customary use decision making processes. The second group, made up of conservationists, such as the Royal Forest and Bird Protection Society (RFPBS), argues that native birds should remain “absolutely protected” and that DOC should continue to hold exclusive decision making rights on materials available for customary use.

The issue has now been formally referred to the New Zealand Conservation Authority (NZCA). The NZCA have been asked by the Minister of Conservation to look at ways of achieving conservation objectives which also recognise the concerns of Maori for natural taonga.

1The RFPBS is a strong political conservation group. The society’s objectives are to preserve and protect the indigenous flora and fauna and natural features of New Zealand for their intrinsic worth and for the benefit of all people.
Underlying the debate the various parties have a common goal which is the sustainability of the kuaka. This is important with regard to New Zealand’s international obligations. New Zealand is signatory to the Convention on Biological Diversity (CBD), which promotes among other things, the sustainable use of biological resources. New Zealand is currently in the process of developing a national biodiversity strategy, which to be consistent with the obligations imposed by the CBD, should lend weight to Maori initiatives to further their customary use decision making rights.

1.2 Problem Statement

Article II of the Treaty of Waitangi guaranteed Maori the “full, exclusive and undisturbed possession of their possessions (taonga) so long as it is their wish and desire to retain the same in their possession”. However, since 1840 the Crown has enacted legislation which has extinguished Maori customary use decision making rights.

Customary use is a long standing practice and some Maori are now lobbying to have decision making rights further restored. This has met with strong opposition from preservationists who oppose these Maori initiatives. They in turn are lobbying DOC to ensure that Maori customary use decision making rights are not restored. International agreements like the Convention on Biological Diversity, which encourages sustainable use, lend weight to Maori initiatives.

Current management practices are not working and in many areas are leading to some species’ decline. Existing national and international legislation is largely interpreted so as to exclude Maori from customary use decision making. It is argued by pro-harvesters such as
Moller (1995) that further restoring Maori customary use decision making rights will have significant conservation benefits.

The problem for government is that positive responses to these initiatives will likely incur the wrath of preservationists and will therefore be politically risky. Nevertheless, Maori have Treaty rights and the need to take this into account is being supported in New Zealand's courts. The problem lies therefore in developing a relationship between the Crown and preservationists which will provide the basis for negotiating a successful outcome with Maori.

I will explore the customary use debate from the point of view that it is essentially a Pakeha problem. This is because currently the Crown holds all of the decision making power. I argue that in the administration of this power, they are failing to accord enough weighting to the Treaty of Waitangi and hence to involving Maori in customary use decision making. Reference will be made to the kuaka because, as a transmigratory species, it brings an important international perspective to the debate. This is because it is unlikely that New Zealand can manage the kuaka as part of its indigenous fauna independently of international considerations, including the harvesting and other human impacts suffered by them away from New Zealand (New Zealand Ecological Society, 1995).

1.3 Objectives

The main aim of this report is to investigate the legal and institutional framework of the customary use debate in New Zealand, from a Pakeha perspective, with a view to progressing the current impasse. The debate will be amplified by the case of the kuaka. Within this aim are the following objectives:
• to examine the background to the customary use decision making debate;
• to analyse the arguments ‘for’ and ‘against’ the further restoration of Maori customary use decision making rights, and to identify any common ground between preservationists and pro-harvesters;
• to analyse the political and institutional framework governing customary use decision making;
• to look at the integration of these ideas and see what implications this has for customary use decision making and policy;
• to identify directions for future research and management considerations.

1.4 Methodology

This section describes the research approach adopted and the reasons for the selection of that approach. This project takes a practical approach to the customary use debate. A more theoretical approach was possible, however, it was considered that a practical approach allowed for a clearer picture of the main issues to be painted. It is also hoped that by taking this approach I have developed a project that is useful to both academics and non-academics interested in the customary use debate.

A case study approach was taken to provide a fuller portrayal of the issue being investigated. The question of customary use covers a diverse range of flora and fauna. By focusing on only one species, kuaka, I was able to highlight relevant legislation and political institutions with respect to a practical scenario. The kuaka was selected as a case study because it is part of a wider claim by tangata whenua. Further, because kuaka are a trans-migratory species, it
allows an interesting look at wider issues, particularly those involving international agreements such as the Convention on Biological Diversity.

Multiple methods were used in this case study. The techniques selected were, a literature search, analysis of other relevant documentation and personal interviews. The latter two methods were seen as providing the best resource base because the small amount of literature available on the subject and the specific nature of my research meant this was the only way to get some of the necessary information on the topic.

1.4.1 Documentation, and Literature Search

The research process began with a broad examination of the literature on customary use. The search was limited by two main factors. Firstly, there was little formal literature on the topic. The issue of customary use appears to have only been discussed in any great depth after the release of the NZCA discussion paper *Maori Customary Use of Birds, Plants and other Traditional Materials*. Secondly, the primary sources of written information were from Forest and Bird Magazine and Maori Newspaper Publications. The literature presented by these two sources can usefully be divided into 'preservation' and 'pro-harvest' perspectives. Neither source had much room for a reasoned debate on the issue with predominantly only one side of the debate being focused on. Other literature examined included submissions on the NZCA discussion paper and case law. A full list of sources is contained in the reference list.

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1.4.2 Personal Correspondence

Due to the lack of literature and the nature of the issue, personal correspondence was considered necessary. This provided specific information on areas such as the position of interest groups, the legal advice given to DOC, and the applicability of international agreements to New Zealand. This also allowed for the collection of recent information (ie. submissions), clarification and amplification of the ideas gained from other sources and some personal insight into the issue.

Ten people were contacted by mail in order to gain specific information. An introductory letter was sent along with a set of individualised questions. A proposal was included with the letter enabling those contacted to better understand the nature of my research. The people selected were key individuals in relevant organisations such as DOC, the RFBPS, World Wide Fund for Nature-New Zealand (WWF-NZ), the New Zealand Fish and Game Council, the Maruia Society and the NZCA. They were selected because of the information they could provide and in order to obtain institutional positions, insights and opinions.

1.5 Chapter Outline

Chapter 2 provides an introduction to the kuaka and its importance to both Maori and Pakeha over time. It examines the legislative history with regard to the kuaka and outlines current policy. Finally it introduces international agreements including the Convention on Biological Diversity and the Convention on the Conservation of Migratory Species.

Chapter 3 outlines the arguments presented by pro-harvesters and preservationists regarding efforts by Maori to further restore customary use decision making rights. It provides a brief
analysis of the debate before concluding with an identification of the common ground between the two parties.

Chapter 4 is an analysis of political and institutional processes. It begins with an examination of DOC. It then looks at the legal debate surrounding the customary use decision making issue focusing on the relationship between the *Wildlife Act* and section 4 of the *Conservation Act*. Finally, it examines how the administration of national legislation fits with New Zealand's obligations as outlined by the Convention on Biological Diversity.

Chapter 5 represents an integration of these ideas. It begins by evaluating possible management options that could be employed in response to the customary use debate. It concludes with a recommendation on the best management option and a possible mechanism for developing and implementing this.

Chapter 6 presents the conclusions and recommendations of the project. It begins by outlining the findings of this report. It then looks at the implications of this on future wildlife management and concludes with what this all means for the kuaka.
CHAPTER TWO

BACKGROUND

2.1 The Kuaka

The kuaka breeds in Siberia and Alaska. When the northern nesting season is over, the bird flies south on migration, migrating through South East Asia and the Western Pacific Islands to Australasia. It is the most common of the migratory waders to reach New Zealand with between 80,000-100,000 arriving annually in the 1980s and 1990s (Sagar, OSNZ Wader Counts)\(^5\). It can be seen on wetlands and coastal margins the length of the country and regularly reaches the Chatham Islands. Most kuaka arrive in New Zealand in October/November and depart again in March/April. The birds arrive here undernourished and fatigued but after six months resting and feeding are in prime condition by the time they leave. Some non-breeding birds (mostly juveniles) remain to spend the winter in New Zealand.

The kuaka is of medium size (approximately 40cm) and can be distinguished by a slightly upturned bill and its long legs. The birds can be found in small groups of 6 to 12 but are usually found in substantial numbers, often in thousands. The birds act almost in unison as they move from one feeding ground to another, feeding and resting being their only concern.

Kuaka feed around mudflats, harbours and estuaries.

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\(^4\)Unless otherwise referenced, 2.1 has been summarised from Soper, 1984.

\(^5\)As the bulk of the population winters in Australasia, it has been worked out that the total World population of this sub-species is probably less than 150,000 (Crossland, 1993, p36).
Kuaka are protected in both their wintering and breeding grounds. However, they have lost a
lot of habitat through the drainage and modification of their breeding grounds, and the
pollution, disturbance, and development of estuaries in their wintering grounds. The birds are
also still hunted in some Asian countries such as, Hong Kong and Thailand (National
Archives; Govey I, pers. comm.).

2.2 A Maori Claim

Tangata whenua have traditionally used indigenous natural resources for many centuries.
These resources are intrinsic to Maori culture. Traditionally the flesh of the kuaka was an
important article of food for Maori. A kuaka’s puta or resting place, when discovered, was
regarded as the property of the finder and trespass might be followed by severe punishment or
even bloodshed (Oliver, 1930).

In pre-pakeha times there were two main ways of catching kuaka:

1. The birds were caught with long flax nets, stretching hundreds of yards, not unlike
modern fishing net. At low tide, before the birds arrived, nets would be laid out on the
sandbars where the birds fed. Nets were covered with a film of sand to disguise their
presence. As the birds fed and walked over the net, their feet became entangled. This
could mean a harvest of hundreds from just one session;

2. A net was placed across the flight paths kuaka used. They were easy victims at times
because of their routine of flying close to the ground on windy days (adapted from Fox,
1994).
When the Europeans arrived the gun superseded the snare and net technology. The kuaka was considered fine eating when in good condition and as well as being shot by Maori kuaka were shot as a game bird by Europeans, until their legal protection in 1941.

In New Zealand kuaka are the main wader traditionally taken by Maori and are among several native birds which are ‘illegally hunted’ for food and sometimes for profit:

...taking birds for profit is, and has been, rife for years. They and anything else that can be taken are a common source for pub raffles (Ormand V, pers. comm.).

‘Illegal hunting’ continues and because of the government’s inability to adequately address Treaty issues, decision making in some key conservation areas throughout the country is being challenged by Maori (Mutu, 1994). For example, Crown ownership and management of indigenous flora and fauna has been challenged by representatives of several iwi in the Waitangi Tribunal Claim Wai 262. Among other things they claim that “te tino rangatiratanga o te iwi Maori incorporated and incorporates decision-making authority over the conservation, control of, and proprietorial interests in natural resources, including indigenous flora and fauna” (Waitangi Tribunal, 1992, p1).

2.3 A Legal History

The road to protection for kuaka has been fraught with debate. Kuaka shooting became controversial with the passage of the Animals Protection Act 1908, which totally protected

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While the Crown, its agents and preservationists refer to current use by Maori as ‘illegal’ many Maori claim that they are in fact only exercising their customary use rights as guaranteed to them under the Treaty of Waitangi (Mason M, pers. comm.).

Vic Ormand is a former Tauranga Acclimatisation Society Ranger.

All points unless otherwise referenced are from the National Archives; Govey Ian, pers. comm.
the bird. The Acclimatisation Societies objected and the Minister of Internal Affairs agreed that protection was not justified, conceding that it had, "...probably been included in the protected list by mistake," and further, he even thought there was no reason, "...why the closed season every third year should not be abolished".

Under the *Animals Protection and Game Act 1921-22*, kuaka was listed as native game. An open season of a maximum three months was specified. No bag limit was imposed, and kuaka could be taken under a general game licence or a special licence at a reduced fee. Very few of those special licences were ever sold⁹. In 1934, as the result of a RFBPS campaign, the game season for kuaka in any district was reduced to 2 months and a bag limit of 20 birds was imposed. In 1938, the season was reduced to two weeks at the beginning of February.

Various groups again encouraged the protection of kuaka, in particular, the RFBPS, the Akarana Maori Association, and the Department of Internal Affairs, but the Societies still thought this a backward and ill-advised move (McDowall, 1994; RFBPS, 1995).

From the beginning of the 1930s, there was a general move toward the protection of migratory waders in New Zealand, by including them with the protected native birds resident here all year round. It was known that the method of shooting kuaka and other waders in large flocks as they came to roost led to the injury of many birds. It was noted that many other birds flocked with kuaka, including other protected species and possibly rare visiting birds to this country. Shooting into such flocks also meant that there was little skill or sport involved as individual targets could not be picked out. The remarkable migration of kuaka

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⁹The Nelson Society, for instance, only sold between four and eight godwit shooting licences per year during the 1920s.
from Siberia was also recognised as a factor that should be taken into account in offering them protection in New Zealand.

In 1940, the Minister of Internal Affairs announced the proposal to protect kuaka as a Centennial gesture, and asked sportspeople to forego hunting them that year. The growing movement to protect them internationally was noted, and the Minister stated that he would not like New Zealand to lag behind other countries in this.

In the 1950s the Acclimatisation Societies sought to have kuaka relisted on the game schedule. They failed after a careful study into their biology and conservation status by several scientists of the day, including eminent ornithologists Falla and Turbott (RFBPS, 1995). For this migratory bird, it was considered the stresses of long distance migration, natural predation in their breeding grounds from skua [Stercorarius parasiticus] and Arctic fox [Alopex lagopus], loss of habitat, pollution and disturbance meant that protection from hunting in New Zealand was essential for their ongoing survival.

In New Zealand kuaka have been totally protected since 1941 and are currently "absolutely protected" under the Wildlife Act 1953. Schedules to the Act dictate the type of protection afforded to wildlife. This then indicates the availability of the species for harvest. For example, any wildlife not on a Schedule are fully protected (this includes kuaka), wildlife on Schedule 3 can be killed subject to the Minister's notification and wildlife on Schedule 1 are considered to be game. In summary the Act makes it an offence, unless otherwise permitted, to kill, move, liberate, hold or disturb any protected species.

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10 Even though the bird is afforded "absolute protection" section 53 of the Wildlife Act states that the Director-General can still permit the bird to be killed for certain purposes, see Appendix One.
In addition, section 4 of the *Conservation Act 1987*, requires the Department of Conservation to give effect to the principles of the Treaty of Waitangi. Historically, legal advice to DOC has been that this provision should not be read into the implementation of the *Wildlife Act*. However, based on the 1995 Court of Appeal decision in the Kaikoura Whalewatch case, it appears that DOC has been viewing its responsibilities with regard to section 4 of the *Conservation Act* too narrowly. As a result of the Court of Appeal decision, I argue that section 4 of the *Conservation Act* must now be applied to any decision made under the *Wildlife Act*. This is likely to have far reaching consequences with regard to the way DOC carries out its decision making responsibilities.

So far DOC, which has the primary decision making responsibility for customary use, has no official national framework or policy on this issue. Some regional conservancies have tried to address customary use decision making issues in their Conservation Management Strategies\(^\text{11}\). For example, the Northland Conservancy set up a "cultural materials committee (Te Pataka O Te Taitokerau) whose role is to assist the Regional Conservator in reaching a decision on how legitimate requests for cultural materials can be met" (DOC, 1995, p147). Other conservancies have chosen to be silent on this key issue and prefer to leave it up to the Director-General of Conservation to decide on any new customary use applications.

DOC actively protects kuaka and has attempted prosecutions for 'illegal harvesting' under the *Wildlife Act*. For example, in Tauranga, DOC have had several successful prosecutions\(^\text{12}\) (Ormand V, and Owen K, pers. comm.). However, in Northland, until recently most of those

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\(^{11}\) A Conservation Management Strategy is a statutory document which implements general policies and establishes objectives for the integrated management of natural resources (including land and species) and historic resources. These strategies have not yet been approved for all regions.

\(^{12}\) These have involved confiscations of guns, boats, etc. (Owen K, pers. comm.).
prosecuted for hunting the kukupa have been discharged without penalties, making enforcement of the law difficult, if not impossible. A shortage of funds means that DOC has handed the responsibility for prosecutions to the police. The police have tended not to emphasise scientific evidence relating to the birds' survival, nor have they shown any inclination to contest evidence given by defendants on the cultural reasons for their expeditions. In these circumstances judges have been unwilling to convict (King, 1994, p28).

Further, Owen K (pers. comm.), states that with Tauranga Harbour being such a vast (21,800ha) and expansive area it is difficult to apprehend poachers. Ormand V (pers. comm.) also notes that at Matakana Island, areas used by kuaka for roosting and loafing are close to marae. Unless caught by surprise, harvesters quickly head for the protection of the marae, where it is not possible for enforcement officers to enter on. This makes it difficult for enforcement officers working on poaching matters to apprehend the people concerned.

For Maori, kuaka have a traditional and cultural significance over and above their importance as a food source. This has led to an increasing amount of Maori lobbying for the return of customary use decision making rights. This has been supported by developments in international legislation recognising the important role indigenous peoples play in environmental management. From this, comes the recognition that New Zealand needs to address customary use issues and further involve Maori in decision making processes. As a result the issue of customary use has been formally referred to the NZCA.
2.4 The NZCA - Working Towards a National Policy

In 1993 the Minister of Conservation asked the NZCA to develop policy regulating the way Maori could use native flora and fauna for customary purposes. The NZCA is a quango of community and sectional interests set up by the Conservation Law Reform Act 1990 to advise the Minister of Conservation on the management of New Zealand’s natural heritage\textsuperscript{13}. It is serviced by the Department of Conservation and has a wide range of tasks and statutory responsibilities as set out under sections 6B and 6C of the Conservation Act. The customary use initiative is one of the more high profile areas the NZCA is involved in.

In May 1994, the NZCA released its draft discussion paper. They received over 360 submissions and the responses, both in written submissions and in various statements made in the public media, indicate a wide range of opinion.

In response to considerable public interest and concern, the Authority decided to invite all of the major conservation and recreation groups, along with various other non-governmental organisations peripherally interested in this matter, to take part in an open discussion with Authority members. From this discussion three key points emerged:

1. The extent to which the Authority has led a public debate, through a structured consultation process, was considered to be grossly inadequate in relation to the significance of the matter in question for all New Zealanders;

2. The discussion paper was considered to be shallow, with some discussion group participants indicating it lacked adequate historical perspective and analysis of the present

\textsuperscript{13}Of the twelve member body, two Maori members were appointed on the recommendation of the Minister of Maori Affairs. The local authority representative on the Authority was also Maori. Other members represent various non-governmental interest groups such as the tourism and farming industries and environmental and recreational lobby groups (Mutu, 1994).
situation, and of possible future options. The majority of participants clearly felt the paper had been written as an attempt to justify a pre-determined outcome, rather than as an ‘issues and options’ paper more appropriate for the purpose of constructive public discussion;

3. The participants agreed the Authority should nonetheless continue to receive the public submissions sought by 31 March, but for no more than the purpose of enabling it to prepare a more comprehensive ‘issues and options’ discussion paper for a more formally structured public consultation process (New Zealand Fish and Game Council, 1995).

This feedback is now being analysed, before the NZCA working group re-convene to assess the responses and consider a range of options. Another discussion paper (or papers) incorporating the major concerns, priorities and themes arising from the first stage of consultation, will then be developed to lead a second phase of public debate planned for late 1995.

In due course the NZCA will report to the Minister of Conservation on this issue. The Department of Conservation will also provide advice directly to the Minister. The Minister will then consult with his cabinet colleagues and decide whether changes are desirable.

2.5 International Obligations

As well as gaining importance in New Zealand the need for international co-operation with regard to protecting wildlife has been emerging. In the last 35 years there has been a dramatic increase both in the numbers of treaties designed to protect wildlife and in their
importance as a force for conservation. This can be seen through the development of international agreements such as the Convention on International Trade of Endangered Species (CITES), the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and the Convention on Biological Diversity.

Further, the rights of indigenous people are also being supported internationally. For example, Principle 22 of the Rio Declaration and Chapter 26 of Agenda 21 both deal specifically with the way governments should co-operate with indigenous peoples (Pearce, 1994). The CBD also contains several articles recognising indigenous peoples' rights.

New Zealand ratified the CBD in September 1993 and it became international law in December 1993 (DOC, 1994, p4). The CBD marks an historic commitment by the nations of the world to conserve biological diversity, to ensure that biological resources are used sustainably and that the benefits of such use are shared equitably. The Convention is the first international agreement to cover all genes, species and ecosystems (IUCN, 1993, p.iv).

The Convention contains a series of far-reaching obligations related to the conservation of biodiversity and the sustainable use of its components. Obligations on the sustainable use of biological resources are interwoven into several articles, and are also the specific subject of Article 10. Parties undertake to regulate or manage biological resources for conservation and sustainable use and to encourage the development of methods for sustainable use (ibid. p4).

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14 International agreements, or treaties, are a primary source of international law and create binding rights and obligations between the states that are parties to them in accordance with their terms (Wells, 1984, p143).
The Convention is an instrument of soft law, an expression of principles or intentions that countries share. It does not contain legal obligations that could be enforced in a court of law in the event of non-compliance. However, the moral value of this instrument may be very high, especially as the CBD can be considered a manifestation of a broad consensus on the part of the world community (de Klemm and Shine, 1993). This means that as a signatory to the CBD New Zealand has agreed in principle to take upon itself an effort to conserve biodiversity and promote sustainable use. To achieve this, New Zealand needs to formally develop a national biodiversity strategy and incorporate this into the country's legal framework.

de Klemm and Shine (1993) state “Treaties are essential where the species or population to be preserved or harvested is international” (p13). As kuaka are a trans-migratory species, it is worthwhile looking briefly at the Convention on the Conservation of Migratory Species, even though New Zealand is not a signatory to it. Migratory species “have long been subjected to shooting and trapping on their migratory routes, but in the last two or three decades invidious threats of pesticide use and habitat degradation have become so serious as to make international co-operation to protect migratory species a vital necessity” (Lyster, 1985, p.xxii). The CMS was adopted in June, 1979 and entered into force on 1 November, 1983. It is designed to protect species which cross national boundaries. However, the CMS has “suffered from the lack of sufficient Parties to cover the majority of species included in the Appendices and their migration routes” (de Klemm and Shine, 1993, p13).

15The godwit comes into consideration in the CMS as it is listed in Appendix II, migratory species whose conservation status requires, or would benefit from, the implementation of international co-operative Agreements. Given that godwits are absolutely protected in this country, DOC considers that New Zealand would gain very little from membership of this Convention (Govey I, pers. comm.).
2.6 Conclusion

Kuaka are a trans-migratory bird which spends Northern Hemisphere winters on Southern Hemisphere harbours. The kuaka was traditionally an important food source for Maori but due to lobbying from conservation groups is currently "absolutely protected" under the *Wildlife Act 1953*.

For Maori, kuaka have a cultural and spiritual significance beyond their value as a food source. Due to this there has been an increasing amount of Maori lobbying to further restore their customary use decision making rights. Their initiatives are supported by the CBD in which the sustainable use of natural resources is recognised as an integral part of biodiversity conservation.

Maori initiatives to restore customary use decision making rights has led to conflict between preservationists who want species which are "absolutely protected" to remain so and Maori who wish to become involved in customary use decision making. The report turns now to the two sides of the debate.
3.1 Introduction

Many species and their supporting ecosystems are under increasing human pressure. This is due to factors such as loss of habitat, predation from introduced species such as rats [*Rattus sp*], possums [*Trichosurus vulpecula*], stoats [*M.erminea*] and other pests and 'illegal harvesting' which have all helped to reduce New Zealand's indigenous biodiversity. Today, many species are only small fragments of their earlier populations and are continuing to decline. It has been argued by pro-harvesters that a way of halting this decline would be to involve Maori in wildlife management, in this instance, by further restoring Maori decision making rights to use kuaka.

In New Zealand, conservation issues have figured prominently on the public agenda and since the 1980s there has been considerable growth in the support given to environmental groups\(^{16}\) (Buhrs and Bartlett, 1993). This has allowed the conservation movement to develop professional and politically skilled organisations\(^{17}\) (ibid). Among some of these groups there is powerful opposition to the further restoration of Maori customary use decision making rights. As a result, lobbyists, including the RFBPS, an internationally regarded conservation group, and often referred to as the preservation lobby, continue to place political pressure on government agencies such as DOC to put conservation first.

\(^{16}\) For example, the RFBPS currently has over 60 000 members.

\(^{17}\) For example, in 1985 the RFBPS had 9 people on their pay-role. In 1992, this had grown to 20.
The “natural resources of New Zealand, particularly the native plants and animals, have traditionally formed an important cultural and spiritual part of the Maori way of life” (DOC, 1995b, p309). As a result, some Maori wish to further assert their traditional right to make decisions regarding customary use of wildlife that has come under government-regulated protection. The debate has revolved largely around protected birds, especially kereru [kukupa; woodpigeon; *Hemiphaga novaseelandae* Gmelin], parea [*Hemiphaga novaseelandiae chathamensis*], toroa [Northern Royal albatross; *Diomedea epomophora sanfordi*] and kuaka (King, 1994). Unfortunately, the issue has become clouded by the debate between ‘preservationists’ and ‘pro-harvesters’.

Most preservationists agree that the right to use native plants and animals forms an integral part of Maori culture. However, they argue that this right does not extend to the harvest of “absolutely protected” species such as the kuaka. They further argue that customary use decision making rights should not be further restored to Maori but should remain the sole responsibility of the Department of Conservation. The lobbying efforts of these groups represents one of the main constraints on DOC performing in relation to their Treaty obligations, as outlined in section 4 of the Conservation Act.

The debate between preservationists and pro-harvesters has tended to focus on whether harvesting could be ecologically sustainable. I do not wish to become embroiled in this debate. I have reviewed the submissions of Moller (1995), the Maruia Society (1995) and Wright *et al.* (1995) and adopt their conclusion that customary use can be sustainable. In this chapter I will focus on the debate between preservationists and pro-harvesters regarding

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18 It is important to note that this is not a debate between Maori and Pakeha. There are many Pakeha who already practice “customary use” and others who support Maori in their stand for greater involvement in management and decision-making.
further restoration of customary use decision making powers to Maori. I will then provide a
brief analysis of the debate before examining any common ground and the implications of this
for future policy on the customary use issue.

3.2 An Inherent Right

3.2.1 A Question of Intrinsic Value

In the inherent right argument, preservationists claim that a kuaka's right to exist overrides a
Maori right to make decisions on customary use. This view is based on the belief that we
should be protecting indigenous flora and fauna for its intrinsic worth, and has often been
referred to as the 'European conservation ethic'. For example, Buhrs and Bartlett (1993)
state: "being a New Zealander has as much to do with the country's physical environment as
it has with history and culture. Conservation of New Zealand's scenic and natural qualities
thus has a cultural as well as an ecological significance" (p55).

The need to protect kuaka because of their intrinsic value forms the basis of the preservation
perspective which is:

...centred on valuing ecosystems in a non-hierarchical way. In this sense, it does not place humans
above everything else. It recognises an intrinsic value in each component of ecological communities.
It is central to this point of view that each component has a right to exist for its own sake, in this case
as an element of New Zealand's remarkable heritage. This right is derived from the contribution made
by each to the stability and diversity of its community. Thus, the right to exist overrides the human

Based on this, preservationists argue that any Maori right to determine the availability of a
species for customary use, conflicts with the view that the bird has a right to exist
independent of any value placed on it by humans and because of their contribution to
diversity. This right is considered to transcend the human right to harvest or even to disturb.

This view is further supported by Smith (1994) who states:

The simplicity of absolute protection, the comparative ease of enforcement, and the living success of wildlife refuges, sanctuaries and national parks suggest human societies are better suited to being the protectors of wildlife than the consumers (p32).

However, arguing that the restoration of customary use decision making rights conflicts with the inherent right of the kuaka to exist is based on a preservationist interpretation of 'intrinsic value'. I do not believe that desire by Maori to have their customary use decision making rights restored means that they do not have an appreciation of 'intrinsic values'. As Buhrs and Bartlett (1993) state: “for Maori, everything in the natural world possesses life force or mauri. People are interdependent with the natural world and, as its descendants, are obliged to pay it respect and to protect its integrity” (p55). It could be argued that this view also recognises a right of the bird to exist for its own sake.

I believe that the issue raised by this argument is that a preservationist interpretation of intrinsic value involves protecting the intrinsic value of each individual kuaka within the population. In contrast, I believe a Maori interpretation of intrinsic value involves protecting the intrinsic value of the kuaka population rather than each individual within it.

3.2.2 A Treaty Right

Pro-harvesters see customary use as a traditional activity. They argue that Article II of the Treaty of Waitangi contains an inherent right of Maori to be involved in customary use decision making. This right has been largely extinguished through the imposition of protective legislation by the Crown, who justified it on ecological grounds as necessary to safeguard species. However, “the methods by which these legislative changes were wrought
did not honour the Treaty because they did not involve a substantive Maori input into the decision making” (Moller, 1995, p2).

Currently, the Crown holds all of the decision making power and is imposing their conservation values upon Maori. This is being supported by preservationists who are pushing for the continuation of this type of management. I argue that both the Crown and preservationists are denying Maori an ‘inherent’ right of rangatiratanga over their resources, then reflected in the right to be further involved in decisions on customary use

3.3 A Conservation Ethic

3.3.1 A Traditional Conservation Ethic

Preservationists argue that Maori should not have their customary use decision making rights restored because they disagree that Maori have a traditional conservation ethic. As Smith (1994) states, “Maori are not natural conservationists and amongst some the denial of ecological realities is common” (p30). His argument has support from the works of Diamond (1991) and Flannery (1995) who argue that the spread of Polynesians across the islands of the Pacific was followed by a wave of extinctions. They state that nowhere was this impact greater than in New Zealand where Maori seriously depleted natural food resources in their first 600 years:

...within a short time, much of the community had collapsed in a biological holocaust and some of the remaining community collapsed in a second holocaust following the arrival of the Europeans. The end result is that New Zealand today has about half the bird species that greeted the Maori and many of the survivors are either now at risk to extinction or else confined to islands with few introduced

19To put this in a comparable context, would you go to India and impose your dominant culture, ie. the notion that cattle should be killed and eaten, on their culture, and as a Pakeha would you want Indians to come here and say we cannot eat cattle (Hughey, 1994).
mammalian pests. A few centuries of hunting had sufficed to end millions of years of moa history (Diamond, 1991, p135).

In response to arguments that Maori do not have a 'conservation ethic', pro-harvesters argue that the "lessons of history have been learnt" (in Smith, 1994, p30). Today, a desire for the restoration of further customary use decision making rights is firmly grounded in the principle of sustainability. With the help of scientific knowledge Maori now understand far more about the dynamics of wildlife populations and pro-harvesters conclude that decisions on "modern day harvests will be sustainable" (ibid.). As Sir Tipene O'Regan points out:

...under tikanga, Maori wildlife was not excluded from use under abstract principles. "It is the preservation for use. Conservation by Maori is the wise use of the reproductive capacity of the resource" (in Keene, 1994, p14).

Pro-harvesters have also acknowledged that limitations may be imperative to preserve a species. As Moller (1995b) points out, restoring further decision making rights to Maori does not mean that they have to be exercised:

Preservationists have tacitly portrayed customary use to imply that a species would be harvested at all times and places...In many instances it may boil down to who has the right to say no to harvesting, more than there being frequent or wide scale harvests being authorised by iwi.

Again, this highlights that preservationists believe decision making rights should not be restored because it is necessary to protect every individual within the population, whereas Maori believe that it is the over-all sustainability of the population they needs protecting.

3.3.2 An 'Illegal Harvest'?

Preservationists argue that Maori have no conservation ethic, because despite legal protection, 'illegal harvesting' is still being carried out. Although the number of 'illegal harvesters' is not known, Ormand V (pers. comm.) believes that they would be numerous.
Harvests are mainly at night when there is a full moon. The shotgun and netting are the most common methods used (ibid.). As a result there are significant non-target impacts on other waders, including threatened species:

In 1991, it became apparent that large numbers of birds were carrying injuries apparently sustained from gunshots. About 4% of godwits seen at Rangaunu and about 2% on Parengarenga and Houhora had leg injuries\(^\text{20}\). Enquires to several of the locals revealed that shooting and possibly netting was occurring on these harbours. The numbers of visibly injured godwits on these harbours at the end of March was approximately 300. Many more would have died through damaged wings and internal injuries. Injured birds are effectively lost from the population because of their inability to breed, in spite of migrating in some instances. Shooting godwits is not a selective way of obtaining birds for food, it involves injuring other birds including species that may be threatened. Several species of birds are affected either directly through sustaining losses or injury or indirectly through disturbance (Pierce, 1991).

I argue that if Maori customary use rights were further provided for, it is likely that there would be less non-target impact on other birds as harvesters, if there were any, would likely use more appropriate methods. It could also be argued that there would be less impact on other species because a regulated Maori harvest may be smaller than current ‘illegal’ takes. Further, Maori may choose not to harvest any kuaka at all.

Preservationists further argue, that iwi should take responsibility for their people, by placing restrictions on the harvesting of birds. However, preservationists have disregarded the fact that Maori have been excluded from any involvement in decision making. As a result, I argue that it is therefore the responsibility of the Crown to protect birds from these ‘illegal harvesters’. It can further be concluded that iwi would be more likely to place restrictions on the harvest of birds if they a personal or tribal incentive to do so. Further restoring Maori customary use decision making rights is likely to provide this incentive.

\(^{20}\)Natural injuries are in the order of 10 times less than these figures.
For example, some Maori argue that rahui or other customary restrictions within a traditional Maori ethic of conservation, are more acceptable constraints than bureaucratic impositions by an official Crown agency. It could be argued that rahui and tapu are not that different from the kinds of restrictions used by Fish and Game Councils such as bag limits and restricted seasons (Wright et al., 1995). As with Maori their focus is on managing species at the population level, rather than managing each individual within a population.

This view is supported by some Maori pro-harvesters (Kirikiri and Nugent, in press) who have stated that more stringent attempts to prevent poaching might occur if iwi were given control of the resource because poaching would be more clearly seen to interfere with the tikanga philosophy and success of legitimate and sustainable customary use (in Moller, 1995, p15).

3.4 A Question of Survival

The International Council for Bird Preservation (ICBP) accepts the killing of protected species only where essential for the sustenance of indigenous people and where the kill is sustainable. RFBPS (who believe their position to be in line with that of the ICBP) argue that customary use of kuaka is not essential for Maori survival. However, this is only looking at the issue as a question of survival being equated with a ‘full tummy’. In my view, it is necessary to look at survival in a much broader sense.

Traditionally, as well as providing the essentials of life, the harvest provided spiritual nourishment to the tribes (Keene, 1994, p12). For Maori it is a part of mahinga kai, the practice of gathering from the wild. It is no longer necessary for Maori to harvest as a means
of essential sustenance, but as an assertion of ‘Maoriness’, and as a means of ensuring the
traditional culture lives on (ibid.). This is comparable to a Pakeha “customary use” of many
species. For example, many Pakeha go fishing and hunting, not because they need the food,
but because it is a part of their culture. Therefore, I argue that to further restore the ability of
Maori to make customary use decisions represents a key way of meeting Maori aspirations.

King (1994), argues that this idea fits into a wider context:

Maori are now a minority in their own country, and their cult is a minority cult. This means that they
frequently feel a need to deliberately assert mana Maori and to consciously celebrate their identity as
Maori. This has become a necessary strategy for spiritual and mental health, especially in view of the
experience of colonisation which suggested to many Maori that their culture was inferior to that of the
coloniser (p27).

Taking this approach, it could be concluded that the RFBPS are interpreting the policy of the
ICBP too conservatively and with too much of a preservationist perspective. I believe that by
taking a less conservative view restoring Maori customary use decision making rights is also
in line with the view of the ICBP.

3.5 An Analysis of the Debate

The debate between pro-harvesters and preservationists has mainly focused on whether a
harvest of native bird species can be ecologically sustainable. Although this is important, I
believe that the main issue is that the Crown currently holds all of the customary use decision
making power. Pro-harvesters argue that Maori should further be given the right to decide
on the customary use of species and that this was in fact promised to them under Article II of
the Treaty of Waitangi. Preservationists concede that Maori values must be provided for and
that this calls for some compromise on their part. However, they believe that DOC should
still exclusively hold the decision making power and that the right to customary use should not extend to the killing or taking of “absolutely protected” species.

To understand the preservationist perspective one needs to go back and look at their beliefs on what has happened to Maori rights since the signing of the Treaty. Preservationists believe that Maori rights have been surrendered over the passage of time for the benefit of species conservation. However, chapter two showed that Maori did not surrender their rights and that they were extinguished (or legislatively crushed) by the Crown who enacted legislation without adequate consultation with Maori. This legislation failed to honour the Treaty and its promises of Article II and as such present management structures are in conflict with the partnership promised.

Further, preservationists argue that customary use rights cannot be further restored to Maori because it will lead to species decline. However, it can be concluded that current management is not working toward conserving many native bird species and that involving Maori in wildlife management and customary use decision making would actually enhance species’ conservation. Yet while preservationists acknowledge the importance of resources to Maori and the need to return some rights to them, they stand in the way of the Crown transferring any rights by arguing that use by Maori will not be sustainable. This conclusion does not seem to follow. It has been acknowledged by both sides that these resources are taonga and it seems unlikely that Maori would wish to destroy their treasures through unsustainable use.
3.6 Common Ground - The Road Ahead

While initially the two perspectives on customary use appear to be polarised a closer look at the debate reveals that the arguments share some common ground. The most important area of commonality is that both parties recognise the importance of sustainability. Preservationists have approached this issue from the perspective that to ensure sustainability we need to ensure the absolute protection of each individual of each species' population is maintained. Pro-harvesters in turn believe that an ethic of sustainability leaves room for a regulated harvest of birds to the extent that the overall viability of the population is not jeopardised. They believe in the absolute protection of the population rather than each individual bird within it. This is the same principle applied by Fish and Game Councils in their management.

Although there is disagreement on how the species should be protected what is important is that both sides agree that a bottom line exists. Translating this into policy I argue that both sides have a case. For some threatened species it may be that the population can only be protected by protecting each individual. For other non-threatened species it may be that only populations need to be regulated. The challenge from this observation is to take this shared ecological ground and formulate a policy. This will be explored in chapter 5.

Both sides agree that there should be recognition of some form of Maori customary use rights under the Treaty of Waitangi. The main argument is whether or not this right should extend to the harvest of "absolutely protected" species and the right of Maori to be involved in deciding on the availability of materials. For Maori, customary use is not just about food, it is about 'cultural preservation'. Preservationists argue that 'cultural preservation' through the
right to customary use of native birds is in conflict with sustainability. However, pro-harvesters argue that the two goals are in fact compatible and that you cannot achieve ‘cultural preservation’ if harvests, if they are exercised, are not sustainable. Therefore, I conclude that allowing Maori the right to decide on the customary use of species will enhance the Maori culture and lead to the improved conservation status of many of our native species. The challenge is for the Crown to develop processes to convince preservationists of this.

3.7 Conclusion

As stated in chapter one Maori wish to have the right to legitimately harvest kuaka if they desire, but essentially cannot. This is because there is some tension between the legal and ecological requirement to protect species and the requirement to uphold rangatiratanga of Maori for their taonga guaranteed by the Treaty of Waitangi. This chapter has explored the role that preservationist lobbyists play in this debate. In conclusion it has shown that involving Maori in customary use decision making is likely to have a range of conservation benefits. It further identified that the parties share a common goal of sustainability and that this goes hand in hand with ‘cultural preservation’. Thus, contrary to the preservation argument ecological sustainability, ‘cultural preservation’ and customary use appear to be complimentary. The following chapter will move on to look at the tension between the legal requirement to protect species and the requirement to honour the Treaty by examining the role institutions and legislation play in this debate.
4.1 Introduction

The Treaty of Waitangi (Te Tiriti o Waitangi) was negotiated in 1840 between the Crown and the leaders of many Maori tribes. Article II of the Treaty guaranteed Maori rangatiratanga over their taonga, including species of indigenous flora and fauna. Despite this guarantee there has been a great reluctance by the Crown both to acknowledge and to comply with the undertakings and promises outlined in the Treaty’s three articles.\(^\text{21}\) Instead, acts and omissions by the Crown and its agents, have divested Maori of their rangatiratanga and deprived them of their rights to exercise it in relation to indigenous flora and fauna (Waitangi Tribunal, 1992). This has resulted in a constant struggle over the rights to use and manage resources between Maori and the Crown over the ensuing 150 years.

Acts such as the *Wildlife Act*, the *Native Plants Protection Act 1934* and the *Marine Mammals Protection Act 1978* claim ownership rights over resources for the Crown, and are testimony to the failure of successive governments in New Zealand to honour the Treaty. This is reflective of New Zealand’s style of conservation management which is predominantly Pakeha in approach. For example, legislative practice allows the killing and taking of indigenous wildlife for certain purposes. These purposes have largely been those of predominantly Pakeha constituencies, whitebaiters, duckshooters, scientists, farmers and horticulturists promoting and protecting their investments (Maruia Society, 1995). Further, Fish and Game Councils

\(^{21}\) see Appendix Two
manage both indigenous and introduced gamebirds for recreational harvest. They are responsible for the maintenance, management and enhancement of these species for the recreational interests of anglers and hunters; 'anglers and hunters who are undeniably "customary users".

Although the Treaty of Waitangi has never been made law, it is the founding document of our nation. One of the reasons Maori signed the Treaty was to preserve their ability to live sustainably. Article II of the Treaty guaranteed the protection of taonga for what they were used for at that time. In the case of the kuaka, this meant protecting Maori customary use decision making rights (Mason M, pers. comm.). Based on their understanding of the law, some Maori now want to exercise their Treaty rights and argue that customary use decision making rights need to be formally recognised and provided for by the Crown.

In this chapter I will analyse the political and institutional framework which sets out New Zealand’s wildlife and conservation law. I will begin by examining the body currently responsible for administering customary use, the Department of Conservation. I will then examine the legal issues, with particular emphasis on the Wildlife Act and section 4 of the Conservation Act. Finally I will look at how this national debate fits with New Zealand’s international obligations as outlined by the Convention on Biological Diversity.

4.2 The Department of Conservation

From 1984 to 1990 the Labour government initiated a large scale reform of environmental legislation and administration. In 1987, as part of the restructuring, the agencies that formerly had responsibility for conservation management were abolished or modified and the
Department of Conservation was formed under the Conservation Act 1987 (Memon, 1993, p49).

In the initial years of its operation, DOC experienced major hurdles in developing a unified structure and philosophy. It brought together a wide range of conservation activities and people with different experiences and values. DOC was staffed almost entirely from the pre-existing departments, including the Department of Lands and Survey, the Forest Service and the Wildlife Service. Each agency had generally followed different ethics in relation to resource management and conservation (ibid.). This has led to internal friction within DOC especially amongst inherited staff from departments that traditionally were competitive. For example, ex Wildlife Service staff have a strong tendency toward preservation while many ex Forest Service staff tend toward sustainable use.

This gives an indication of the hindrances faced by policy initiatives aimed toward customary use. For example, the majority of staff working in the Protected Species area of the Department of Conservation are ex Wildlife Service. Some of these people are saying “no” to customary use while those working in the Estate Protection Policy area tend toward sustainable use. This is reflective of the internal debate within DOC on the customary use issue. With internal division such as this, it is difficult for DOC to come up with a unified stance on customary use, or to develop any national guidelines.

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22 Many former Wildlife Service staff are working with endangered species and quite naturally expound a strong preservationist stance. Conversely many ex New Zealand Forest Service staff are involved in ungulate control and management - they seek sustainable outcomes through strict control. Sometimes this control is through “customary use”, for example, the Himalyn thar (Hughey K, pers. Comm.).

23 For example, Kennedy E (1994) made a strong “preservationist” submission to the Southland Conservation Board regarding negotiations with Ngai Tahu over the Crown Titi Islands (Hughey K, pers. comm.).
Partly as a reflection of such difficulties, the Department was reorganised three times between 1987 and 1991 and had four Director-Generals within this period. These kinds of problems have raised fundamental questions about whether there is any coherent view about the appropriate role for DOC (Memon, 1993).

DOC was established as a resource management agency with a conservation advocacy role. In early drafts of the Conservation Bill the term 'conservation' included utilisation. However, the Bill was subject to major debate. As a result of the lobbying and submissions made by various interest groups it was subsequently changed during the enactment process (Memon, 1993). As a result the Conservation Act defines conservation as:

...the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations (Part I, Section 2).

While the Conservation Bill initially gave equal priorities to utilisation, preservation and protection the final Act places emphasis on the management of protected resources for their intrinsic worth. This places preservation as a higher priority than utilisation on DOC's agenda (Airey et al, 1995, p16-17). As the Act takes a preservationist and protectionist stance, the establishment of DOC has been interpreted as a major victory for environmentalists (Buhrs and Bartlett, 1993). This has led to one of the fundamental problems of the customary use debate. Environmental groups see DOC as an advocate for conservation and they constantly focus their lobbying at this preservationist position. For example, the RFBPS has criticised DOC staff who have publicly supported Maori customary use initiatives.

DOC gains revenue from central government and resource user charges. Both of these sources are limited. The former, by the current government philosophy of limited national government
intervention and their support for a user pays system, and the latter by resentment from the public at having to pay for the use of public resources (Memon, 1993). As well as dealing with budgetary constraints, DOC has been hampered by a continual reduction in staff numbers. This has affected DOC's ability to take an integrated approach to conservation management.

For example, in the 1995 Budget DOC got a financial boost for possum control and threatened species management. However, this was offset by reductions in other areas. This has resulted in a department with more funding for endangered species rescue programmes but less for the conservation advocacy needed to prevent the habitat loss and degradation that helps push species towards extinction (RFBPS, 1995b).

This highlights the difficulties DOC is facing in maintaining New Zealand's biodiversity. A combination of habitat loss, predation and occasional 'illegal harvesting' is resulting in the populations of many species declining both regionally and nationally. It follows that politically we need to address these issues and arrest this decline. This calls for an integrated approach to conservation management where advocacy, habitat protection, predator control, threatened species protection and cultural values are all provided for. For example:

In most circumstances sustainable harvests will have to be coupled with restoration effort that either enhances habitat quality and reproductive success or controls predation and competition from the introduced species (Moller, 1995, p14).

4.3 Section 4 of the Conservation Act

The Department of Conservation operates under a legislative mandate set out in the Conservation Act 1987. Section 4 of the Conservation Act states that:

_This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi._
DOC has tried a range of techniques to give effect to the Treaty. For example, the Kaupapa Atawhai Unit was formed in 1989 to address Maori issues within the Department and to aid in fulfilling DOC's obligations under section 4 of the Conservation Act. However, the Kaupapa Atawhai Division is a "small and relatively powerless group within an enormous organisation. Recruitment of more Maori conservation officers and scientists at all levels is long overdue and will lead to a more bi-cultural approach to conservation" (Moller, 1995b).

The Wildlife Act, the Reserves Act 1977, the National Parks Act 1980, the Marine Mammals Protection Act, and the Conservation Act make provision, subject to conditions, for the customary use of native plants and animals. However, in the absence of national policy on customary use there is variation between regional conservancies and for requests for different species. Decisions at the national level are largely made on a case by case basis. DOC's primary source of information when considering an application comes from its scientists and legal advisors. Legal advice to DOC has taken a very conservative line with regard to applying section 4 of the Conservation Act and as a result has traditionally paid little homage to the Treaty. This has meant that there have been few applications for the permitted take of animals and even fewer examples of DOC approved use rights for any animal species.

DOC further argues that it is in an administrative and legal bind on the issue of customary use. While the Wildlife Act obliges it to prosecute any unauthorised taking of protected species, the Conservation Act obliges it to "give effect to the principles of the Treaty of Waitangi". From

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24 Currently less than 1.5 percent of DOC's staff are employed for their Maori expertise (Mutu, 1994).

25 s53(1) Wildlife Act - flora and fauna
s49 Reserves Act - flora and fauna
s5(3) National Parks Act - plants (where provided for in the relevant management plans).
 s4(1) Marine Mammals Protection Act - marine mammal parts
s30(2) Conservation Act - plants (DOC, 1995b, p311).
this conflict has developed an ongoing debate as to how much weighting section 4 of the *Conservation Act* should be accorded in the implementation of the *Wildlife Act*. This weighting has, by default, been left up to the Courts to decide.

### 4.4 The *Conservation Act* v The *Wildlife Act* - The Courts

It has been noted that since 1840 there has been a reluctance of the Crown and its agents such as DOC to recognise and provide for Maori values in managing kuaka. However, the Crown through the enactment of the *Treaty of Waitangi Act 1975* and the subsequent inclusion of section 4 in the *Conservation Act 1987* has implied the need for DOC to actively protect Maori values with regard to wildlife management. Parliament has been reluctant to further the debate and it has therefore been left to the Courts to determine the extent of these Maori rights (Mason M, pers. comm.).

Historically, legal advice to DOC has been that “the Department in its administration of the *Wildlife Act* should not consider giving effect to the principles of the Treaty” (Mansfield, 1989). This was based on decisions such as in *The Police v Whetu Marama Mark Mareikura* (1989). The defendant in the case had taken some kereru but pleaded the Treaty of Waitangi and section 4 of the *Conservation Act 1987*. Although this case dealt with kereru it was considered that the thrust of the decision was of general application.

The District Court Judge did not uphold the defence, finding that any right which the Treaty may have given in respect of kereru had been extinguished over the years by Parliament in protecting kereru through various legislation culminating in the *Wildlife Act 1953*. The Judge held, although the Department of Conservation is bound by the *Conservation Act* to ‘give
effect to the principles of the Treaty’ when administering that Act, it is not correct to read the
Treaty principles into the *Wildlife Act*:

It may well be that the right to hunt kereru for special occasions was a tribal tradition at the time of the
signing of the Treaty. It may well be that Article II of the Treaty of Waitangi preserved the hunting of
kereru as one of the treasures over which the Maori would have rangatiratanga. But the clear
implication is that since 1922, Parliament has passed laws extinguishing that right, in the overriding
national interest...The Treaty may have preserved the rights of Maori tribes to hunt kereru but in my
view, the *Wildlife Act* and its predecessors have extinguished such rights (reserved decision of his
Honour Judge E.W. Unwin).

However, on the 22 September 1995 the Court of Appeal decision in the Ngai Tahu
Whalewatch Case was released. This decision is important because it potentially overturns a
lot of what was previously practised. The four appellants, who may conveniently be referred
to collectively as Ngai Tahu, challenged on Treaty of Waitangi and legitimate expectation
grounds the Director-General of Conservation’s intention to issue a further permit for
commercial whale-watching by boats off the Kaikoura coast.

Judge Cooke stated that statutory provisions for giving effect to the principles of the Treaty of
Waitangi in matters of interpretation and administration should not be narrowly construed.
Therefore, even when emphasis is on protection of species from harm or disturbance there is
nothing to prevent the Director-General from taking into account Treaty considerations in
exercising his ultimate discretion.

He ruled that by s.6 of the *Conservation Act*, the functions of DOC are to administer the Act
and the enactments specified in its First Schedule, which includes the *Marine Mammals
Protection Act 1978* [and the *Wildlife Act 1953*]. Taking these provisions together, Neazor J.
held that s.4 was a sufficient direction to make it a requirement that the Director-General
administer the *Marine Mammals Protection Act* so as to give effect to the principles of the Treaty. Such issues are not to be approached narrowly and the Crown is not right in trying to limit those principles to consultation. Recognition of the Treaty principles requires active protection of Maori interests. To restrict this to consultation would be hollow.

The judgement under appeal was vacated. It was replaced with a reference back to the Director-General and a declaration that, subject to the primary consideration of the preservation and protection of the whales, the Director-General of Conservation should take into account, among the factors relevant to whether or not he should grant any further permit for commercial whale-watching off the Kaikoura coast, protection of the interests of Ngai Tahu in accordance with Treaty of Waitangi principles.

This decision is likely to have far reaching consequences with regard to the way DOC has been viewing its responsibilities with regard to Section 4 of the *Conservation Act*. Possible ways of applying the direction of this decision will be discussed in chapter 5.

### 4.5 Interpretation of the Court of Appeal Decision on DOC’s Implementation of the *Wildlife Act*

Although there are provisions for customary use in the *Wildlife Act*, DOC has traditionally taken a very precautionary approach to its interpretation. For example, kuaka could be harvested if it was specifically transferred to the Third Schedule of the *Wildlife Act*, wildlife that may be hunted or killed subject to the Ministers notification. This would give kuaka the
same status as, for example, muttonbird. To date this section has been little used to provide for Maori customary use of species, although allowing this, could have conservation benefits.\(^{26}\)

Further, under section 44A of the *Wildlife Act* there are provisions for the Director-General to delegate his or her decision making powers\(^{27}\). This means that a body consisting of both Maori and Crown representatives could be established to decide on customary use applications. This provision has not been used but represents a means of involving Maori in wildlife management and customary use decision making. This would be more likely to result in decisions that reflected Maori values because under current practices the Director-General has too much power in the decision making process:

1. There are no legislative directions regarding how the Director-General should consider each application and he or she has the power to allow, reject or impose conditions on any permits issued for customary use. This does not constitute a representative or adequate decision making body and a better bureaucratic body would consist of both Maori and Crown representatives;
2. Who the Director-General consults regarding this decision depends on his or her own discretion. This makes it too easy for DOC scientists to be given prominence over traditional Maori knowledge and social values;
3. The Director-General has the power to classify and declassify protected species at his or her own discretion. This does not offer enough protection to Maori as it implies that their customary use rights could be revoked at any time.

\(^{26}\)As it is accepted that customary use rights will only be exercised in a sustainable manner this would still be consistent DOC's precautionary principle approach.

\(^{27}\) See Appendix Three.
The *Wildlife Act* makes no reference to the Treaty of Waitangi, and due to their interpretation of the *Conservation Act*, managers have accorded more weighting to protection than to cultural values or sustainable use. However, this interpretation has meant that DOC has taken a preservationist stance and this has been at the expense of DOC’s obligation to ‘give effect to the principles of the Treaty of Waitangi’. I conclude that the Court of Appeal decision calls for a precautionary (ie. where conservation is still the over-riding priority) but positive approach (ie. DOC recognises it’s statutory duty to actively give effect to the principles of the Treaty) to customary use. For example, the mechanisms are there for DOC to provide opportunities for expression of rangatiratanga in aspects of use, management, and control of resources. In the case of further restoring customary use decision making rights it is argued that using these mechanisms would lead to better conservation of species such as the kuaka.

Further this would overcome the problems of current legislation treating Maori as just another interest group rather than as a partner to the Crown. Elements of good faith, reasonable cooperation and compromise are fundamental to the concept of partnership inherent within the Treaty. A serious commitment to take the principles of the Treaty of Waitangi into account in the area of wildlife administration must extend to an effort towards a bi-cultural approach to procedures where appropriate.

### 4.6 An International Perspective

Suggestions for greater power sharing with iwi in conservation management are in line with international trends. For example, moves to greater power sharing with indigenous peoples in conservation management have been underway in the USA and Canada for two decades, in Africa over the last decade, and currently in Australia. This is part of a wider shift from a
strategy of imposition of a totally preservationist approach for conservation, to one of conservation for present and future use (Moller, 1995b).

Several conservation gains have emerged from this approach, including active community involvement in conservation, a decrease in poaching, reduction in harvests to ensure sustainability, and especially in joint political liaisons to protect or enhance habitats (ibid.). It is concluded that similar conservation gains could result in New Zealand if moves toward power sharing were made.

Governments are encouraged to fulfil their domestic responsibilities and enter into international agreements that will assist them to do so. New Zealand is a signatory to the Convention on Biological Diversity. The Department of Conservation is the lead agency for biodiversity in New Zealand and has been given the responsibility of implementing the CBD. So far progress has been slow but the underlying assumption is that New Zealand does not have to put in place new laws or agencies in order to develop and implement a national strategy (Buhrs, 1995).

The CBD lends weight to Maori initiatives to further restore customary use rights. Article 10(c) of the CBD states:

Each Contracting Party shall, as far as possible and as appropriate:

...Protect and encourage customary use of biological resources in accordance with the traditional cultural practices that are compatible with conservation or sustainable use requirements.

As part of the national biodiversity strategy New Zealand will have to find ways of including customary use initiatives. The strategy could therefore, potentially represent a good opportunity for the Crown to take on board Maori initiatives in formulating the policy.
The implementation of the Convention will require co-ordination and co-operation between existing agencies administering statutes and strategies concerned. To effectively develop and implement a national strategy requires common goals and principles, and agreed priorities such as those mentioned by the Department of Conservation (1994) and presented in the general form of policy similar to the Environment 2010 Strategy. For this to lead to conservation gains, honour the Treaty and remain consistent with the intentions of the CBD it is important that the Crown ensures Iwi become involved from the outset at a national level and be given power in the decision making process. If this does not happen then the Convention runs the risks of being picked up by Crown dominated management and falling into the same traps as current legislation. This could mean that certain Articles of the Convention, particularly Article 8(j), which deals with indigenous peoples rights, and Article 10(c) which deals with sustainable use, are not given enough weighting.

4.7 Conclusion

This chapter has examined the current political environment within which Maori are seeking to have their customary use decision making rights restored. It has shown how DOC, the body responsible for administering applications for customary use has been hampered by political pressure, internal friction, budgetary constraints and staff cuts. It outlined how historically DOC has been viewing its responsibilities with regard to the interpretation and implementation of section 4 of the Conservation Act to the Wildlife Act too narrowly. Based on the Court of Appeal decision and the need for DOC to develop and implement a national biodiversity strategy, which makes provision for the sustainable use of resources, it can be concluded that the time is ripe for advancing policy and understanding in this area. Possible ways of doing this are the subject of chapter 5.
5.1 Introduction

This project began with a brief historical account of the events leading up to the "absolute protection" of the kuaka and the extinguishment of Maori decision making powers regarding customary use. Chapter 3 then looked at the debate that has evolved since Maori have tried to further restore customary use rights and called for a greater role in decision making processes. Finally, chapter 4 examined the institutions responsible for administering customary use and the legal requirements of current wildlife policy with regard to this issue. The aim of this chapter is to integrate the key ideas raised in the previous chapters and examine the implications for future policy. I will suggest some possible strategies for progressing the customary use debate and in conclusion will recommend what I think is the best strategy and how I see this evolving.

5.2 The Debate So Far - A Road to Build On

It is important to briefly recap on the project so far, to outline the assumptions that will be made in this chapter based on my initial findings and arguments.

Under Article II of the Treaty of Waitangi, customary use decision making rights were guaranteed to Maori. These rights have since been extinguished by the Crown. Currently,
Maori have little but want much more involvement in species management, including the right to decide on customary use of kuaka.

Efforts by Maori to further restore these rights has met with powerful opposition both within DOC and from preservation lobby groups. Together this opposition has proved formidable and led to DOC taking an extremely conservative stance on customary use.

The current management regime is failing to deliver durable and improved conservation outcomes, especially for mainland wildlife. A policy shift which provides for greater input into customary use decision making practices is seen as an effective way of addressing this problem.

New Zealand is a signatory to and has ratified the Convention on Biological Diversity. Under the CBD New Zealand is required to develop and implement a national biodiversity strategy. It is assumed in this project, that New Zealand’s support of the CBD and DOC’s lead role in its development, should provide an impetus to developing a strategy that recognises and provides for further Maori customary use decision making rights.

5.3 Some Management Suggestions

Based on the above assumptions, I have come up for four possible management options for addressing the customary use debate. Each of the suggestions will be examined and the advantages and disadvantages of each outlined. In conclusion, I will suggest which management option I think offers the best starting point for addressing the customary use debate.
5.3.1. Preservation Strategy

It is argued by Wright et al. (1995) that there is no clear universal rationale for the present mixture of use and harvest prohibition. They state that the distinction between species available for use and those afforded protection is not to do with species conservation status but rather the division is one of cultural preference. For example, in New Zealand there are many fish species such as snapper \textit{[Chrysophrys auratus Forster]} and orange roughy \textit{[Hoplostethus atlanticus]} that are rapidly declining. Although harvests (including commercial harvests) of these two fish species are shown to be unsustainable they are still not afforded "absolute protection". In comparison, nearly all native bird species on which Maori customary use rights are focused are "absolutely protected" under the \textit{Wildlife Act}. Further, while it is argued that it is not possible for Maori to harvest native species because of their conservation status, this rule does not seem to apply to predominantly Pakeha harvests. Even when species populations are declining, regulations are tightened, rather than absolute protection called for.

Thus, it appears that "Maori as a minority have tended to be ill-served by the prevailing biases in management emphasis" (Wright et al., 1995, p8). Further, Maori have incurred the wrath of preservationists for attempting to restore traditional rights to be involved in customary use decision making processes. In comparison, preservationists have not strongly opposed a Pakeha "customary use" of native species, even when it has been shown that these harvests are unsustainable.

Moller (1995) further states that Fish and Game Councils base their environmental management and regulation of sports harvests on a sustainable use ethic, that is in its general philosophy, no different from that of sustainable customary use of indigenous wildlife (p8).
The irony of Maori not being afforded these same harvest rights is captured well by Moller who states:

It seems ironic from a social justice standpoint that the harvesting of New Zealand's indigenous species by Maori is seen by some as unethical and a threat, whereas the same activities are not only tolerated, but legislated for and even facilitated, to enable a predominantly Pakeha society to harvest introduced species (p9).

This raises many interesting issues. If we accept the preservation argument that to ensure sustainability we need to ensure the absolute protection of each individual of each species' population is maintained, then we must accept that this applies to all native species. This means that to be consistent, we would not only need to prevent customary use, we would also need to prevent the use of all native species by all ethnic groups in New Zealand. Further, if Maori cultural values and Treaty rights cannot be taken into account when considering customary use applications, it should follow, that neither should Pakeha commercial or recreational interests be accorded any weighting in decision making processes.

Therefore, if a preservation strategy were to be introduced as a means of conserving the kuaka, it would mean that all native species, including those currently administered by Fish and Game Councils, must be totally protected. This is likely to have negative effects for conservation. For example, Fish and Game Councils might not be interested in continuing their protection of wetland habitats, which currently benefits a wide range of species.

5.3.2. Status Quo

Wildlife conservation management on land, is largely guided by an almost exclusively preservationist approach, especially where native birds such as the kuaka are concerned (Moller, 1995). However, it is only within the Conservation Act and the Wildlife Act that
preservation rather than sustainable use still predominates as the guiding philosophy. In contrast, sustainable use is the philosophy upon which much of the environmental planning and regulation of resource use, including animal harvests from the sea, is based by the wider New Zealand community (ibid. p7).

For example, DOC allocates some areas and resources to use and prohibits the use of other areas and species. Regulations and legal mechanisms are used to enforce the distinction between what is able to be used and what is protected. In comparison traditional Maori values emphasise "sustainable use" over all lands (DOC, 1995b, p14). In order to retain customary title to the land and resources, use must occur. When conservation is needed the imposition of traditional controls such as rahui and tapu are used. This would seem to be in line with wider sustainable use practices.

Further, existing national legislation such as the Wildlife Act 1953, is generally interpreted so as to exclude any Maori involvement in customary use decision making practices. This is contrary to the intentions of the Treaty of Waitangi, and therefore contrary to DOC's guiding legislation, the Conservation Act. This has been acknowledged by the Court of Appeal in the Whalewatch case. Judge Cooke stated that provision must be made by DOC to actively protect the principles of the Treaty when this did not jeopardise conservation. Based on the Court of Appeal decision, I argue that it is no longer correct for DOC to take a preservationist interpretation of its responsibilities. Instead, DOC should take a precautionary but positive approach to involving Maori in customary use decision making.

The status quo option would mean carrying on in our current manner. This includes excluding Maori from management and ownership considerations and placing the interests of
lobbying preservation groups ahead of DOC's responsibility to honour the Treaty of Waitangi. It could also mean the continuing 'illegal' and non-sustainable harvest of some species, for example, the kukupa.

5.3.3. Total Iwi Control

Although it could be argued that Iwi should be returned full control over their resources, I do not think this is the best strategy. Under Article I of the Treaty of Waitangi, Maori ceded kawanatanga or the right of government to make laws, including the right to impose conservation laws. I argue that this calls for a balance and that there is a role for an agent of the Crown to be involved in conservation management, remembering that customary use is only one aspect of any conservation strategy.

I do not believe that conservation lobby groups or the general public would accept Maori being offered full ownership and decision making rights. Therefore, instead of offering a possible solution to the customary use debate I believe that total iwi control would further inflame the debate. This is because it would be difficult to convince preservationists that it is in their conservation interest for this to occur. As such, there would be a lot of incentive for these groups to challenge this management through the courts.

Further, total iwi control would require legislative change to the Wildlife Act, the Reserves Act, the Native Plants Protection Act, the Marine Mammals Protection Act and the Conservation Act. The difficulty with changing legislation, in this significant way, is getting it onto the government agenda. I argue that this is not a government priority and that it is likely to take a long time for these changes to be implemented. During this process there is likely to
be further species decline. Therefore, I think that a better solution would be one which restored further customary use decision making rights now.

5.3.4. A Joint management Regime

One of the most fundamental issues of the customary use debate is that the Crown holds all of the decision making power. An alternative approach would be for the Crown to work with Iwi, its Treaty partner, to develop and implement a joint management regime.

Under a joint management regime, ownership and decision making rights with regard to customary use would be shared between Maori and the Crown. This would mean involving Maori at national, regional and local levels in management practices and customary use decision making. I believe that this type of management addresses the principle of redress. This principle states that the government is responsible for providing effective processes for the resolution of grievances, in the expectation that reconciliation can occur.

A joint management practice might recognise both kawanatanga and rangatiratanga. It could bring together the conservation philosophy that some species need protection, alongside the need to incorporate Maori rights and values into management practices, rather than absolutely restrict the use of all species. This would be consistent with the directions implied by the Court of Appeal decision, where the Minister of Conservation was told that decisions involving Maori must provide for an appreciation of their values.

A joint management approach has support from many conservation organisations. For example, WWF-NZ (1995) recognises that the desire of iwi to decide how best to meet the obligations that are inherent in the continued take of species for customary use is one that
must form part of the solution. Also, there is general acceptance by the New Zealand Ecological Society (1995) that a partnership approach by the Crown and Iwi to the conservation and protection of the New Zealand environment and its fauna and flora is required under the Treaty, and is very much to be applauded.

It has been shown that there is no evidence of good faith consultation of Iwi, before legislative enactments such as the *Wildlife Act*, expropriating Maori taonga, were passed into law. It is most likely, therefore, that the Waitangi Tribunal will find on claims such as Wai:262 that the requirements of the Treaty were not met, and that the moral basis of the Crown’s ownership claim is dubious. Anticipating such an outcome it would seem sensible to explore possibilities for starting afresh in a manner which gives balanced consideration to all the Articles of the Treaty (Maruia Society, 1995).

Joint management leads to equal involvement of Maori in the decision making process and is a good starting point for addressing the principles of the Treaty of Waitangi. Further, under a joint management regime, well managed customary use will lead to improved conservation prospects for many species, and therefore, be in both DOCs and preservationists interests. This creates a win:win situation for all of the people involved:

> Partnership and real power sharing offers the best chance for turning a lose:lose situation into a win:win situation for conservation and race relations (Moller, 1995, p11).

### 5.4 An Evaluation of the Four Management Options

The previous section outlined the four management options. This section aims to evaluate each of these options on the following criteria:
• widespread political acceptability;
• institutional acceptability;
• conservation improvement;
• international obligations.

An evaluation of the four possible management options is presented in Table 1. The table is not supposed to be an exhaustive list. Rather, it aims to provide a brief summary of how each of the management options weighs up against the evaluative criteria.
<table>
<thead>
<tr>
<th>Management Option</th>
<th>Widespread Public Acceptability</th>
<th>Institutional and Political Acceptability</th>
<th>Conservation Improvement</th>
<th>Consistent with the CBD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preservation Strategy</strong></td>
<td>Likely to be opposition from Maori and other Pakeha “customary users”.</td>
<td>Not likely to be accepted by DOC. Inconsistent with the Courts ruling that DOC actively protects the principles of the Treaty. Not acceptable to Fish and Game Councils.</td>
<td>Continuation of present ‘illegal harvesting’ and likely to increase the number of species illegal harvested. Removal of habitat restoration by Fish and Game Councils.</td>
<td>Inconsistent with the CBD which tends toward sustainable use rather than absolute protection.</td>
</tr>
<tr>
<td><strong>Status Quo</strong></td>
<td>Not acceptable to pro-harvesters and some conservation groups, e.g. Maruia Society.</td>
<td>Acceptable to some DOC staff but Courts have ruled in Whalewatch Case that the current interpretation of legislation by DOC is inadequate.</td>
<td>Further mainland species habitat and species decline. Continued ‘illegal harvesting’.</td>
<td>Is not consistent with Article 10(c) or 8(j).</td>
</tr>
<tr>
<td><strong>Total Iwi Control</strong></td>
<td>Not acceptable to the preservation lobby or many Pakeha.</td>
<td>Not likely to be accepted by DOC staff. Courts have ruled that Article II of the Treaty must be balanced with Article I. Not likely to be accepted by Fish and Game Councils.</td>
<td>Unknown. This would depend on how iwi managed species populations and ecosystems. Could result in illegal use by Pakeha and hence to further species decline.</td>
<td>I believe the CBD aims more for recognising indigenous peoples as partners rather than full controllers. It is unknown if management practices would be consistent.</td>
</tr>
<tr>
<td><strong>A Joint Management Regime</strong></td>
<td>Acceptable to the wider general public. Likely to be accepted by Maori. Supported by the majority of conservation groups.</td>
<td>Acceptable to some DOC staff. Consistent with the Court of Appeal Whalewatch decision. Acceptable to Fish and Game Councils.</td>
<td>Help to halt current species decline. Lead to improved conservation through integrated management approaches. Likely to result in more species research.</td>
<td>Yes is consistent with articles 10(c) and 8(j) and also recognises that sustainable use must be balanced with protection.</td>
</tr>
</tbody>
</table>
It is argued by DOC (1995b) that "the issue associated with the customary use of species is how to provide for the expectations of Maori people while protecting species populations so that populations are sustained within the framework of the relevant legislation" (p311). Based on this, it can be concluded from table 1 that the best strategy is the joint management option. This is because it is the most likely to allow for restoration of Maori customary use decision making rights while yielding conservation improvements, and working within existing legislative frameworks. Therefore, I argue that a joint management strategy should be developed between Crown and Iwi.

5.5 One Way of Developing and Implementing a Joint Management Regime - The National Biodiversity Strategy.

To further advance the idea of a joint management strategy, I suggest that a possible mechanism for developing an effective partnership is the national biodiversity strategy. I believe that the national strategy has the potential to be an effective joint management regime for the following reasons:

- recognition of the need to incorporate indigenous peoples, ie. Maori;
- recognition of the importance of biodiversity through both protection and sustainable use;
- the strategy is the responsibility of DOC which I argue has a lot to gain both financially and in a conservation sense by the development of this partnership.

Fundamental to the process of developing a joint management strategy is the role of Maori people:

When we are all involved in conservation, we will all get a greater understanding and appreciation of our natural, historic and cultural surroundings, and there will be a far better conservation and social result (DOC, 1995b, p23).
This is a fact which has been recognised by the CBD which states for the "potential of indigenous communities to be realised, the cultural, social, economic and physical well-being of indigenous peoples must be fostered and protected" (Te Puni Kokori, 1994). Mechanisms are available in existing national legislation to delegate customary use decision making to a body consisting of both Maori and Pakeha representatives. I argue that the biodiversity strategy could effectively advance this provision by establishing the framework and guidelines for how this joint body will be developed and managed.

The sustainability of species is the common goal of both 'preservationists' and 'pro-harvesters'. Also, while the CBD encourages the sustainable use of resources, this is to be balanced with protection, and with the setting aside of protected areas. I argue that under the biodiversity strategy it would be possible for Maori and the Crown to work together in order to balance customary use with protection. This compliments the provisions of the CBD, the principles of the Treaty of Waitangi and the conservation criteria of protection legislation in New Zealand.

I believe that DOC also has a lot to gain from the development of a partnership under the biodiversity strategy. Well managed customary use will lead to improved conservation prospects for many species and therefore be in DOC's interests both in a conservation and a financial sense. Therefore, I conclude that customary use is not only affordable, it is beneficial.

Currently management practices exist for the delegation of rights to another decision making body. I argue these mechanisms should be used to delegate customary use decision making
rights to a body made up of both Crown and Maori representatives. The national biodiversity strategy is still in the early stages. It is important that Maori be included in its development and implementation at a national level now. If this happens the strategy should be reflective of the partnership agreement between Maori and the Crown, as was the intention of the Treaty. It should also lead to the improved conservation status of many of New Zealand's native species such as the kuaka.

5.6 Where do Preservationists Fit Into This?

It has been identified that one of the main constraints on DOC performing in relation to their Treaty obligations is the opposition of some preservationists. Despite the potential conservation gains and areas of common ground in the customary use debate this group has maintained strident public opposition to current customary use proposals. The role of these groups in policy has important implications for the process, content and outcomes of decision making. For example, David Alexander (1994) states:

We [RFBPS] have developed a cosy relationship with government in Wellington where we win more often that we lose in the campaigns we take up.

However, it can be argued that the pre-occupation of environmentalists in New Zealand with the national environment is a weakness, as they tend to overlook the social, historical, and political aspects of the environmental problematique. Consequently their approach to developing solutions can be described as narrow, pragmatic, anti-ideological, and failing in terms of addressing the need for change in the social, economic, and political context in which environmental problems exist (Tester, 1987., in Buhrs and Bartlett, 1993).
In a joint management regime conservation groups will still have an important role to play. However, the focus of their debate needs to be shifted. To begin, they should be “focusing on ensuring species’ population preservation, rather than the preservation of each individual of each species of native plant and animal”. Secondly, they “need to recognise hierarchies of importance. The areas where preservationists need to be most defensive about the taking of native plants and animals are those areas where the survival of the species might be placed at risk, or where the habitat has a high level of statutory protection intended to secure ‘pristineness’ values” (Maruia Society, 1995).

The biodiversity strategy needs to provide mechanisms for developing a relationship between the Crown and preservationists for negotiating successful conservation outcomes under a joint management regime. I argue that as part of this it would be useful for preservationists to form a direct relationship with iwi where I believe a lot of their concerns can be dealt with.

5.7 Conclusion

This chapter began by outlining four possible management options with regard to addressing the customary use debate. An evaluation of these four options found that the best option was a joint management strategy. This is because this had the most potential to recognise and provide for Maori input into decision making practices and was likely to result in the most improved conservation outcome for species. The national biodiversity strategy was then suggested as a possible mechanism for advancing the customary use debate further. It was concluded that preservationists needed to form a relationship with iwi where they could discuss their concerns. The final chapter of this report will look at the conclusions and recommendations that can be made for this project.
CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Revisiting the Problem

It was stated at the beginning of this report that Article II of the Treaty of Waitangi guaranteed Maori the “full, exclusive and undisturbed possession of their taonga so long as it is their wish and desire to retain the same in their possession”. However, since 1840 government agencies acting for the Crown, have enacted legislation which has removed much of this authority including Maori customary use decision making rights.

There is increasing lobbying by some Maori for these rights to now be restored. They have found many supporters among the Pakeha community. Further, international agreements such as the Convention on Biological Diversity, which encourages the sustainable use of resources, lends weight to these initiatives. The problem for government, is that positive responses to these initiatives will likely incur the wrath of a strong preservation oriented lobby. However, Maori have Treaty rights and recognition of these is now being supported in the courts.

The problem was explored from a Pakeha perspective. This is because the Crown currently holds all of the customary use decision making power and has largely excluded Maori from management decision making processes. It is argued that this form of management is contributing to some species' further decline. It was argued, that a way of helping halt this
decline would be for the Crown to provide for greater Maori input into wildlife management, in this instance, through restoring further customary use decision making rights.

The main aim of this report, was to investigate the legal and institutional framework of the customary use debate in New Zealand from a Pakeha perspective, with a view to progressing the current impasse. The conclusions and recommendations that follow demonstrate that the problem, as defined, was appropriate. Within this aim there were 5 objectives. This chapter briefly examines the conclusions that can be drawn from the findings of each of these objectives and their implications for future management. Areas for future research will be identified and in conclusion I will look at what this means for our trans-migratory bird visitor, the kuaka.

6.2 The Key Findings - Objectives Revisited

Customary use of indigenous species of flora and fauna by Maori is a long standing practice. Under Article II of the Treaty of Waitangi Maori were promised that their customary use decision making rights would be retained. However, since 1840 the Crown has enacted legislation which has extinguished many of these rights. The imposition of this protective legislation was carried out with little consultation with Maori and as such is considered to be in breach of the partnership implied. There is now increasing lobbying by Maori who want their right to decide on the customary use of species restored. Further, New Zealand has ratified the Convention on Biological Diversity which aims to conserve biological diversity, ensure resources are used sustainably and that the benefits of such use are shared equitably.
It was concluded that the current management regime is failing to deliver durable and improved conservation outcomes, especially for mainland wildlife. Pro-harvesters argue that a way of helping to halt the decline is to involve Maori in wildlife management, in this instance by restoring their customary use decision making rights. They argue that the ability to make decisions is a right guaranteed to Maori under the Treaty. They further argue that customary use can be sustainable, and will actually have conservation benefits for many species.

There is powerful opposition to this idea and one of the main constraints on DOC performing in relation to their Treaty obligations is the external opposition from some preservation lobbyists, particularly the RFBPS. They argue that DOC should retain decision making power on materials available for customary use and that customary use rights should not extend to "absolutely protected" species in any circumstances.

However, it can be concluded that these groups wrongly assume that Maori customary use decision making rights were surrendered over the passage of time for the benefit of species conservation. Maori decision making rights, were in fact, legislatively crushed by the Crown without adequate consultation with Maori. As such, existing legislation is in breach of the Treaty and the Crown's ownership and management of indigenous flora and fauna is dubious.

Wildlife management in New Zealand has been predominantly Pakeha in its approach. For example, legislative practice allows the killing and taking of indigenous wildlife for certain purposes. These have largely been those of predominantly Pakeha constituencies. While the
exercising of these Pakeha “customary use” rights is both tolerated and legislated for, the same
harvesting by Maori is seen by some as unethical and a threat to species conservation.

There is strong internal opposition within some areas of DOC regarding efforts by Maori to
further assert their customary use decision making rights. Together with the preservation lobby
this opposition has proved formidable and led to DOC take an extremely conservative stance on
customary use.

DOC’s conservative approach to wildlife management is evident in the preservationist
interpretation of its governing legislation, the Conservation Act. Section 4 of the Conservation
Act requires DOC to give effect to the principles of the Treaty of Waitangi. However, arguing
that it is acting in the best interests of conservation DOC has failed to read this provision into its
administration of the Wildlife Act 1953. This interpretation has resulted in a failure of DOC to
recognise the principles of the Treaty, to the extent necessary to actually giving effect to them to
the satisfaction of key Maori lobby groups.

The debate between section 4 of the Conservation Act and its application to the Wildlife Act has
now been determined by the Court of Appeal Kaikoura Whalewatch decision (1995). This
decision potentially overturns much of DOC’s interpretation of the legislation and concurrently
the management practices they have employed. It was concluded that DOC was viewing its
responsibilities with regard to section 4 too narrowly and that recognition of the Treaty principles
requires active protection of Maori interests. As a result, DOC must act in accordance with the
principles of the Treaty and apply them to the administration of other legislation in the First Schedule.

From this, it can be concluded that DOC needs to take a precautionary but positive approach to the restoration of customary use decision making rights. DOC should, therefore, use the opportunities that exist under s53 and 44a of the *Wildlife Act* to provide opportunities for the expression of rangatiratanga in aspects of use, management and control of resources by Maori.

It was concluded that the time is ripe for advancing this debate politically in New Zealand. Four possible management options were examined. These were then evaluated on how well they provided for Maori customary use decision making rights while protecting species populations so that populations are sustained. It was concluded that a joint management regime, where ownership and decision making rights with regard to customary use would be shared between Maori and the Crown, was the best strategy. This was based on the findings that this strategy had the most positive outcomes for both species conservation and the recognition of indigenous peoples’ rights. Further, as well as being compatible with national legislation and the Treaty, it was also consistent with New Zealand's international obligations under the CBD.

The national biodiversity strategy was proposed as a vehicle for further progressing the idea of a joint management strategy. It was concluded that the strategy, if developed and implemented in a partnership manner by the Crown and Maori, could potentially fulfil the criteria of an effective joint management regime. Firstly, it recognises the need to incorporate Maori values into customary use decision making practices making it consistent with the principles of the Treaty of
Waitangi. Secondly, the over-riding goal of the strategy is the sustainability of species. This makes it consistent with existing national legislation and international obligations under the CBD. Finally, the strategy is the responsibility of the Department of Conservation who currently has provisions for involving Maori in decision making processes and restoring customary use decision making rights to Maori.

6.3 Implications for Future Management

It can be concluded that the right to establish and maintain customary use comes from the ability to participate in the decision making process as guaranteed to Maori in Article II of the Treaty of Waitangi. So far enactment of protective legislation by the Crown, since the signing of the Treaty, has extinguished Maori involvement in decision making processes, and thus the right to decide on the customary use of certain species of flora and fauna. This problem has been exacerbated by the preservationist interpretation of the *Wildlife Act* by DOC and its failure to satisfactorily implement the principles of the Treaty.

It is concluded that this situation cannot be allowed to continue and that it is no longer appropriate for the Crown to hold all of the decision making power on the availability of materials for customary use. Article II must be balanced with Article I of the Treaty. The effects on future management of this approach are as follows.

Delegation of customary use decision making rights to another body, made up of Maori and Crown representatives will have positive implications for species management. To begin, it will
help to halt current species decline. For example, it is likely that there will be less ‘illegal 
harvesting’. Secondly, it will lead to a more integrated approach to conservation management 
because exercise of any customary use rights will go hand in hand with areas such as habitat 
restoration and predation control. Finally, it will lead to increasing current knowledge on 
indigenous species of flora and fauna. This is because it is likely that joint management will 
encourage the sharing of scientific and traditional Maori knowledge on species’ populations.

Sharing of decision making rights between Maori and the Crown is likely to result in better 
management structures for providing for the protection of species. While DOC management is 
mainly focused at a national level, iwi management is largely based at the local level. The 
combination of these two management approaches is likely to result in a greater enforcement and 
monitoring of species than currently exists. For example, currently DOC has insufficient staff 
numbers to successfully enforce harvest prohibitions. Under a joint management regime it is 
considered that some iwi may be in a better position to enforce prohibitions. More active 
enforcement is likely to ensure that decisions made under a joint management regime help to halt 
species’ decline.

A joint management regime will mean that species are managed at a local, regional, national and 
international level. This should enable New Zealand to actively implement management practices 
that are consistent with both international and national obligations while addressing the power 
imbalances that have plagued conservation management.
Understanding cultural differences is a crucial first step towards a bi-cultural approach to conservation management and research (Moller, 1995, p1). It is therefore imperative that the Crown seeks to involve iwi in the development of any strategy and the ongoing empowerment processes from the outset. If the Crown fails to do this, it is likely that the strategy will not adequately provide for Maori interests. This will mean a continuation of the status quo situation. This will result in continuing species decline and the on-going lobbying of Maori to have their rights restored.

6.4 Identification of Future Research Considerations

DOC needs to initiate research into the sustainable use of native species. This includes looking into population numbers, habitat conditions, breeding patterns and possible use thresholds. For this research to be useful to both the Crown and Maori, I argue that Maori, if they desire, should be asked to help in this research. For example, Maori may be better able to determine the extent of "illegal harvesting" occurring. Further, iwi research could be focused at a local level while Crown research could be concentrated at a national level.

I recommend that research be undertaken to determine the benefits to conservation of a more bi-cultural approach to conservation management. As part of this research, I argue that possible mechanisms for providing greater recognition of Maori values within current conservation institutions needs to be looked into. For example, it could be possible that there should be a move toward employing more Maori within DOC. It is argued that this would most likely lead to a more bi-cultural approach to species conservation being taken.
Finally, research needs to be undertaken to determine the extent of Maori desires to resume harvesting. For example, which species are iwi interested in, are there any species which it might be possible for them to harvest now and are they prepared to stop current ‘illegal harvests’ if these are shown to be unsustainable.

6.5 Implications for Management of the Kuaka

It was stated at the beginning of this project that as part of the practice of customary use Maori wished to have their decision making rights to legitimately harvest kuaka restored. This final section of my report turns to this ‘claim’ to determine what my findings and their implication for management mean for the kuaka.

The kuaka is a trans-migratory bird species. I argue that if a joint management strategy is applied to the management of this bird it is likely to have significant benefits. To begin, New Zealand would be represented at international forums, such as the United Nations, by Crown representatives. The bird will further be managed nationally at local, regional and national levels. This management is likely to lead to more conservation improvements that current management which is primarily focused on a national and regional scale.

A joint management regime allows for the gathering of both scientific knowledge and traditional Maori knowledge on the kuaka. The more we know about a species the better we are able to manage it. Therefore, the application of both of these sources of knowledge is likely to have positive outcomes for the kuaka.
A joint management regime is likely to provide incentive for Maori to participate in conservation lobbying. For example, Maori might lobby for the increased protection of our estuaries if they have a vested interest in maintaining and enhancing kuaka populations. This would have significant benefits for the kuaka who is currently facing habitat losses in both their wintering and breeding grounds.

Therefore, I recommend that customary use decision making rights be restored to a joint body consisting of both Maori and the Crown and that they engage in on-going joint management practices. I further recommend that research is carried out determining what happens to the kuaka away for New Zealand waters.
REFERENCES


Sagar, P. OSNZ Wader Counts.

Smith, K. 1994. To Harvest or Not to Harvest? Forest and Bird. 274: 28-34.


The Animals Protection Act 1908
The Animals Protection and Game Act 1921-22
The Conservation Act 1987
The Conservation Law Reform Act 1990
The Marine Mammals Protection Act 1978
The National Parks Act 1980
The Native Plants Protection Act 1934
The Reserves Act 1977
The Treaty of Waitangi Act 1975
The Wildlife Act 1953


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Mahinga Kai: traditional places for food-gathering and other resources.

Rangatiratanga, te tino rangatiratanga: rights of autonomous self-regulation, iwi to make decisions and control resources.

Tangata Whenua: In relation to a particular area, means the iwi, or hapu that holds mana whenua over that area (Resource Management Act 1991).

Taonga: valued resources, treasures.


ACRONYMS

CBD: Convention on Biological Diversity

DOC: Department of Conservation

ICBP: International Council for Bird Preservation

IUCN: International Union for the Conservation of Nature and Natural Resources

NZCA: New Zealand Conservation Authority

RFBPS: Royal Forest and Bird Protection Society
APPENDIX ONE

SECT. 53. DIRECTOR-GENERAL MAY AUTHORISE TAKING OR KILLING OF WILDLIFE FOR CERTAIN PURPOSES--

(1) The Director-General may from time to time in writing authorise any specified person to catch alive or kill for any purpose approved by the Director-General any absolutely protected or partially protected wildlife or any game or any other species of wildlife the hunting or killing of which is not for the time being permitted.

(2) The Director-General may from time to time in writing authorise any specified person--
(a) To catch alive or otherwise obtain alive any absolutely protected or partially protected wildlife or any game or any other species of wildlife the taking of which is not for the time being permitted; or
(b) To take or otherwise obtain the eggs of any such wildlife or game, for the purpose of distributing or exchanging the same in any other country or in some other part of New Zealand, or for any scientific or other purpose approved by the Director-General, or for the purpose of rearing any such wildlife or game, or for the purpose of hatching any such eggs and of rearing any progeny arising from that hatching;--
and may in any such authority authorise the holder to have any such wildlife or game or eggs or progeny in his or her or its possession for any of the purposes specified in this subsection, and may in any such authority authorise the holder to liberate any such wildlife or game or progeny in such area and during such period as may be specified in the authority.

(3) The Director-General may give to any Fish and Game Council any written authority that may be given under subsection (1) or subsection (2) of this section in respect of game.

(4) Where any such authority is given to a Fish and Game Council, the powers that may be exercised by the Council pursuant to that authority may be exercised on its behalf by any officer or employee of the Council or by any other person authorised in writing by the Council.

(5) Any authority granted under any of the foregoing provisions of this section may contain such conditions as the Director-General may impose. Without limiting the general power of the Director-General to impose any conditions, the Director-General may in any such authority impose all or any of the following conditions:
(a) Prescribing the means by which any such wildlife or game or eggs may be caught or killed or taken:
(b) Prescribing the areas in which any such wildlife or game or eggs may be caught or killed or taken:

(c) Providing for the sale or other disposal of any such wildlife or game or eggs:

(d) Prescribing the duration of the authority:

(e) Providing for the revocation of the authority and for the issue of any other authority in its place:

(f) Providing for the furnishing of returns of the numbers of any such wildlife or game or eggs caught, killed, or taken:

(g) In respect of any authority issued pursuant to subsection (2) or subsection (3) of this section—

(i) Prescribing the areas in which any such wildlife or game may be kept or any such eggs may be hatched and any such progeny reared:

(ii) Prescribing the types of cages, runs, or other enclosures in which any such wildlife or game or progeny may be kept:

(iii) Providing for the planting of any plants or of any specified kind of plants in or adjacent to any such cage, run, or other enclosure:

(iv) Prescribing the areas where any such wildlife or game or progeny may be liberated:

(v) Providing for inspection by officers or servants of the Department at all reasonable times.

(6) Notwithstanding anything in any other provision of this Act, any authority issued under this section may contain conditions authorising the holder to use, for the purpose of catching alive or killing any wildlife or game, any live decoys or any net or noose or trap or any firearm or any other method the use of which is otherwise expressly prohibited by this Act or by any regulations made under this Act.

(7) Every person to whom any authority is granted under or pursuant to this section or, where the authority is given to a Fish and Game Council, the Council and every officer or employee of the Council or other person exercising the powers of the Council pursuant to that authority who commits a breach of or fails to comply with any condition on which the authority was granted commits an offence against this Act.]
APPENDIX TWO

Text of the Treaty of Waitangi

ENGLISH VERSION

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British subjects.

MAORI VERSION

KO TE TUATAHI
Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki kihai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

KO TE TUARUA
Ko te Kuini o Ingarani ka wakarite ka wakaee ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

KO TE TUATORU
Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

TRANSLATION OF MAORI VERSION

(Professor Sir Hugh Kawharu)

THE FIRST
The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

THE SECOND
The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

THE THIRD
For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

[SECT. 44A. DELEGATION OF POWERS BY [DIRECTOR-GENERAL]--

(1) The [Director-General] may from time to time, either generally or particularly, delegate to such officer or officers or employee or employees of the Department as he thinks fit all or any of the powers exercisable by him under this Act, including the power of delegation conferred by this section, but, except as provided in section 44 of this Act, not including any powers delegated to him under any other provision of this Act.

(2) Subject to any general or special directions given or conditions attached by the [Director-General], the officer or employee to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified officer or employee or to officers or employees of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Any delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the [Director-General].

(6) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the [Director-General] by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that [Director-General].]