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Taiapure - recognition of Rangatiratanga?

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ABSTRACT

The right of control and access to New Zealand's fisheries resource has long been a subject of debate between Maori and Pakeha. Under Article II of the Maori version of the Treaty of Waitangi, te iwi Maori were promised te tino rangatiratanga or chieftainship over their taonga, which included the fisheries resource. Subsequent legislative and government action since the signing of the Treaty has undermined and in some cases denied this fishing right. The Taiapure provisions legislated by Part IIIA of the Maori Fisheries Act 1989 appear as an attempt to rectify previous policy decisions. They wish to recognise rangatiratanga and secure the fishing rights in relation to Article II of the Treaty.

This study assesses whether the Taiapure provisions do in fact fulfill this objective, in policy terms and in terms of a te iwi Maori perspective. By applying an analytical framework, which exposes the underlying structural logic of the provisions and its inability to link with the surrounding context, and by taking a case study approach, which reflects te iwi Maori perspectives, the Taiapure provisions are shown to fall short of fulfilling their objective. Recommendations for rectifying this shortfall are then offered, and a practical option for the future is suggested as an 'ideal' for which to aim.
Many people have offered ideas, guidance and support. Without them, the study would not have been possible and I wish to thank them all.

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This study evolved from an interest in the sea and the fisheries resource, and an interest in the utilisation and management of this resource. The author has grown up near the coast and has developed an appreciation of the diversity of interest for the fisheries resource. She undertook a study on rock lobster to further these interests and in the process, became acutely aware of the integral importance of Maori rights in fisheries management. This study is an effort to assess the present treatment of Maori rights in a particular fishery: provision. It also offers some thoughts for future management policies.
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GLOSSARY

Maori words and phrases utilised in the text are translated in this glossary. The translation has drawn upon the works of Ryan, P (1983), Tau, T et al (1990) and Williams, H (1985).

hapu - sub-tribe, section of a large tribe
iwi - tribe, people
kaimoana - food from the sea
kaitiaki - guardians, protector, caretaker
kohanga - nest, maternity house
mana - authority, influence, prestige
mahinga kai - food and other resources, and the areas that they are sourced from
manuhiri - visitors
rangatira - chief
rohe - boundary, district
runanga - local representative groups. A Maori equivalent of local government formed to protect and defend the rangatiratanga, the tuurangawaewae, and the cultural and social values of their members
Tangaroa - deity of the sea and fish and other marine life
tangata whenua - people of the land, the people who hold
the tuurangawaewae and the manawhenua
in an area, according to tribal and hapu
custom

taonga - treasured possessions, includes both tangible and
intangible treasures

te iwi Maori - (a term used to denote the tribal aspect of
Maori people)

tikanga Maori - Maori traditions, customs, lore or law, the
correct Maori way

tuurangawaewae - a person's right to stand on a particular
piece of land or in a certain place and
to speak and be heard on matters affecting
them and their relationships to that land
and its resources

urupa - places where Maori bury their dead, often enclosed

waa hi mahinga kai - food gathering places of extreme importance

waa hi tapu - places of sacred and extreme importance

whakapapa - genealogy, genealogical relationship
CHAPTER ONE - INTRODUCTION

This study seeks to examine the Taiapure provisions, legislated by Part IIIA of the Maori Fisheries Act 1989, which later became an amendment to the Fisheries Act 1983. The study is concerned with firstly, whether the provisions work in terms of their written objective, secondly, whether they work for iwi/hapu and thirdly, should they be shown to not work, what changes can be recommended.

1.1 BACKGROUND

For the largest part of 152 years since the signing of the Treaty of Waitangi, the question of ownership and control of NZ's fisheries has been a subject of bitter argument between Maori and Pakeha. Historically, much of this argument stems from the promises that were made in the Treaty. The second article of the Maori version of the Treaty guaranteed to Maori 'te tino rangatiratanga' over their 'taonga'. This right has been denied to Maori through legislative and government action from the early years after the signing of the Treaty until more recent years. The early legislation contained assumptions that were to permeate subsequent fishing laws.

"The assumptions were basically that Maori fisheries were restricted, both as to the area of sea used and the species caught, that Maori fishing should be limited to supplying for personal needs, and that fisheries could be managed by the state as though Maori had no systems of their own." (Waitangi Tribunal, 1988 p.xvi)

In 1983, a major restructuring exercise for fisheries was undertaken with the Fisheries Act. The Act was to "consolidate and reform the law relating to fisheries and fishery resources within NZ." It did not, however, provide greater provision
for Maori interests. Section 77(2) of the 1908 Act became section 88(2) of the 1983 Act and read; "nothing in this act shall affect any Maori fishing rights." Before the Fisheries Bill was passed, Section 88(2) was debated at length in parliament. The recognition that was once given to the Treaty of Waitangi in the Fish Protection Act, 1987 was emphasised and the protection that section 14 of the 1903 Fisheries Amendment Act and consequently the 1908 Fisheries Act had offered Maori was questioned. Several Maori members demanded that the Bill go back to select committee so that the Treaty could be a part of it. However, despite the protests, the bill was passed with no mention of the Treaty.

The Fisheries Act 1983, not only neglected the Treaty of Waitangi, but it also stated that only 'commercial operators' could take fish for sale. Commercial operators were defined by the Director General of MAF as those who earned more than $10,000 a year or 80% of their total income from fishing. The result was that approximately half the number of fishers, something like 1500-1800 went out of business. Many who lost their licenses were Maori. (Law Commission, 1989:17)

Following the 1983 Act, the Fisheries department of the Ministry of Agriculture and Fisheries (MAF Fisheries) proposed the Quota Management System (QMS) as a method of conserving the seriously depleted fish stocks. At the core of this system was the concept of an Individual Transferable Quota (ITQ). A quota is a property right that can be bought or sold on the market and in addition will attract a rental to the Crown.

Maori tribes objected to these proposals as a matter of principle. Although the general conservation principles of the QMS were agreeable, the property rights aspect of the ITQ system was in general contrary to the guarantees in the Treaty. Despite a warning from the Maori tribes via the Waitangi Tribunal, the QMS was introduced in the Fisheries
Amendment Act 1986.

Following the 1986 legislation, four Maori parties, the Ngai Tahu Maori Trust Board, Muriwhenua Incorporated, Tainui Maori Trust Board, and the New Zealand Maori Council (Aotearoa Fisheries Limited June 1991:22) sought a High Court declaration and injunction claiming that the QMS breached section 88(2) of the Fisheries Act 1983. The Maori case relied on both Treaty rights and common law 'aboriginal rights'. Greig, J on behalf of the Court issued an injunction preventing the inclusion of certain species in the quota system. His judgement made it clear that Maori fishing rights extend to commercial activity, but it did not determine whether section 88(2) refers to aboriginal title or Treaty rights. This was left to be determined by future High Court cases. The Court also ordered the Crown to negotiate a fisheries agreement with the Maori applicants.

In response to the court decision, the government set up a "Joint Working Group on Maori Fisheries". The working group failed to reach an agreement. Despite this, a Maori Fisheries Bill was introduced in Parliament later that year. The Bill was amended several times before being passed in December 1989 as the Maori Fisheries Act.

Parallel to the developments of the Bill were legal proceedings in the High court, seeking to resolve the basic question of 'nature and extent' of the Maori fishing right. These proceedings were eventually reduced to two cases - those of Ngai Tahu and Muriwhenua. The hearings for these cases were adjourned "sine die" on the basis of an arrangement with the Crown.

"The arrangement was that both the Crown and Maori parties would step back from the litigation and give the provisions of the Maori Fisheries Act an opportunity to be put into
The purpose of the Maori Fisheries Act, as set out in its long title includes "the recognition of Maori fishing rights secured by the Treaty of Waitangi." The provisions of the Act can be found in four main parts.

Part one of the Act establishes a Maori Fisheries Commission to "facilitate the entry of Maori into, and the development by Maori of the business and activity of fishing". The Maori Fisheries Commission receives a package of the Total Allowable Catch from the Crown over a transition period. At least 50% of this quota must be transferred to Aotearoa Fisheries Limited. Aotearoa Fisheries Limited, set up in Part 2 of the Act, is a private company required to operate on "commercial principles".

Part IIIa of the Act provides for 'Taiapure-Local fisheries' to be established where such areas have been of special significance to any iwi or hapu either as a source of food or for spiritual and cultural reasons. The written objective of the Taiapure provisions is to "provide for better recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi." The fourth part of the Act is concerned with the obligations of the Crown under the legislation.

1.2 CURRENT CLIMATE

In the three years since the Maori Fisheries Act was passed, several matters relevant to the recognition and practical realisation of the Maori fishing right have been undertaken.

The Maori Fisheries Commission and its subsidiary company Aotearoa Fisheries Ltd, were duly set up and they have receive
7.5% of fishing quota from the government, with the final instalment of 2.5% coming in October of this year. Maori interests have acquired a further 12% of quota on the open market. The transfer of this quota to iwi is scheduled to take place after October 1992. The Maori Fisheries Commission after consultation with the various tribes has laid out a plan or formula for the transference of the quota. The Commission thinks that tikanga Maori, the customs and rules that govern Maori, should be the basis for sharing the quota to the tribes. (MFC Newsletter, 1992:2)

In August of 1991, the Minister of Fisheries appointed an independent Task Force to make recommendations on the future development of fisheries legislation and associated structures in New Zealand. Drafting of a new Fisheries Bill begins after final submissions on the Task Force's recommendations. The Bill should be ready for a first reading in Parliament by late October before it goes to a select committee. Fisher Minister Doug Kidd intends to have the new legislation in place by October 1993.

In August of 1992 the Waitangi Tribunal released its findings on the Ngai Tahu Sea Fisheries claim, saying that Ngai Tahu should be compensated for the loss of its 12-mile zone around most of the South Island and given rights to develop a "reasonable share" of the 200-mile economic zone.

Following the release of the Waitangi report on the Ngai Tahu claim, the Crown and the Maori negotiators announced a deal to resolve the question of the Maori fishing right, that had been adjourned sine die to allow the Maori Fisheries Act to take effect. The deal, announced on the 27th August 1992 and known as a 'memorandum of understanding' or 'Deed of Settlement', comprises the government putting up money allowing Maori to buy half of New Zealand's biggest fishing company, Sealord Products Ltd. In return for this government
money, which will give Maori control of 40% of the $1.2 billion fishing industry, the Maori negotiators have agreed to extinguish in law their statutory rights. That does not apply to traditional fishing rights which are not a commercial proposition. However phrased, this deal will be seen to have extensive ramifications for the area of Maori Fisheries, should it go ahead. If the deal cannot be made, the case to define Maori fishing rights will go back to court after the October 31 deadline.

The current state of the Maori Fisheries equation is one of change and uncertainty, with the existing legislation being subject to reform and with deals such as the Deed of Settlement being made. Within this state of flux, the Taiapū provisions remain as they stand in the Fisheries Act 1983, for the time being at least. It is these provisions with which this study is concerned, and it addresses them with an awareness of the changes taking place in the Maori Fisheries context, yet undertakes an analysis with the situation as it stands in September 1992.

1.3 PROBLEM AND STUDY OBJECTIVES

Given the treatment of Maori fishing rights and rangatiratanga with fisheries law, this study seeks to examine a piece of legislation concerning traditional fishing rights - the Taiapū provisions. The study considers the sufficiency of the Taiapū provisions' design in relation to the problem of non-recognition of rangatiratanga. Do they, unlike previous legislative provisions, recognise rangatiratanga and thus achieve their written objective?
The objectives of the study are to examine the following questions:

1) Are the Taiapure provisions designed to achieve their objective?

2) Do the Taiapure provisions recognise rangatiratanga from a te iwi Maori perspective?

3) Should the Taiapure provisions be shown to not fulfill their objective, what recommendations might be made for change?

1.4 STUDY APPROACH

The first objective is met by applying an analytical framework to the Taiapure provisions, which exist in a highly complex context. This context shall be considered and discussed at some length in Chapter Two. Chapter Three follows with a description of the Taiapure provisions and then Chapter Four introduces the analytical framework to be utilised, discussing why this particular framework was chosen and how it is applied.

It should be mentioned here that the criteria of a study such as this, in a university setting with an academic goal, required the researcher to adopt an analytical framework. It is recognised that this framework, devised in a particular cultural context could be considered inappropriate for the unique New Zealand cultural context. The most appropriate assessment of these provisions would be that undertaken from a Maori perspective. However, the researcher as a Pakeha woman does not have the ability to do this and thus regards the framework chosen as the most appropriate tool under the circumstances.
Chapter Five then undertakes the assessment of the Taiapure provisions, fulfilling objective One and offering tentative conclusions for objective Two.

Chapter Six, taking a case study approach, tests these tentative conclusions by talking to iwi and hapu involved with the Taiapure provisions, and thus fulfills objective Two.

Finally Chapter Seven, building on the previous chapters, fulfills Objective Three by offering conclusions and recommendations for the future.
CHAPTER TWO - CONTEXTUAL FRAMEWORK

2.1 INTRODUCTION

This chapter considers and discusses the context in which the Taiapure provisions are being implemented. It attempts to gain an understanding of the complex relations which make up New Zealand's particular cultural context. Such a discussion must start with a consideration of the founding constitutional document of our nation, the Treaty of Waitangi. It then moves from the historical perspective to a current focus, considering the diversity in grouping and perception both between and within the Treaty partners. A brief summary statement ends the chapter.

2.2 HISTORICAL CONTEXT

2.2.1 Treaty of Waitangi

The Treaty was an agreement between the British Crown and te iwi Maori. The Treaty formalizes the right of government to make laws, but this is balanced with the right of iwi to organize as iwi and control their own resources. There are two versions of the Treaty, with it being first written in English and then translated into Maori. The Treaty has a preamble followed by three articles which acknowledge respectively; Kawanatanga or governorship in the Maori version and Crown sovereignty in the English version (Article I), rangatiratanga or tribal control of Maori resources in the Maori version and full, exclusive possession of the resources in the English version (Article II) and the inclusion of Maori in citizen rights (Article III). Copies of the Treaty are found in Appendix One.

There has been some debate about which version of the Treaty
is the 'right' version, with many writers taking one version as their primary point of reference. The Waitangi Tribunal adopts such a position in its interpretation of the Treaty, according the Maori text priority where there exists any ambiguity between the two texts. This study also regards the Maori text as taking primacy with the emphasis of the study being on the recognition of the Maori version of Article II - rangatiratanga.

There were difficulties with the translation of the two versions of the Treaty. Ngata covers these problems with his understatement; "The English expressions in the Treaty were not adequately rendered into Maori." (Ngata, 1922:2) As Biggs (1989:303 in Kawharu, 1989) points out, it is difficult to translate exactly what one language has said to another especially when the languages concerned are those of very different cultures. Not only this but the concepts embraced in the Treaty were often complicated legal terms such as sovereignty and pre-emption, which require lawyers whole books to define. The result of these difficulties in translation was two very different, in fact some say conflicting versions of the treaty.

Article I of the English version gave sovereignty to the Crown, sovereignty involving the right to exercise a jurisdiction at international level as well as within national boundaries. The word chosen by the missionaries to reflect sovereignty - kawanatanga - covered significant differences of meaning and was not likely to convey to Maori a precise definition of sovereignty.

Far better to convey this meaning was the word chosen for Article II of the Maori version - rangatiratanga. Rangatiratanga was of Maori derivation and had connotations of chiefly power that were familiar to Maori. Kawanatanga on the other hand, derived from kawana (governor) had
associations with the far off governors of New South Wales. It tended to imply authority in an abstract rather than a concrete sense.

The words of Nopera Panakareo, a chief of the Rarawa combine the words of the first and second articles and convey the meaning Maori took from the provisions.

"It is the shadow of the land which had been given to the Queen while the soil remains."

From this, we see that Maori saw their authority as being confirmed and entrenched by the Treaty and the authority of the Queen was something important but less than that held by themselves.

In 1860, these perceptions were further ratified at the Kohimarama Conference held at Mission Bay in Auckland. Article II was expanded upon in the conference with the Maori version giving 'tino rangatiratanga' over their lands, villages and all things valued by them, 'o ratuou taonga katoa'. The English version guaranteed the 'full exclusive and undisturbed possession of the Lands and Estates, Forests, Fisheries, and other properties they may...possess'. It was understood that Maori were secure in their mana and rangatiratanga and the transfer of sovereignty was submerged beneath these rights.

In other sections of the Treaty there were further translation and interpretation difficulties, yet it is the assertions in Article I and II being the 'essential bargain' of the Treaty that are of main interest to this study.

The conflict between the two articles is visibly engaged in fisheries law, where early legislation virtually ignored the Treaty. What recognition was given amounted to little more than a symbolic gesture. For example, the 1877 Fish Protection Act

"...recognised the Treaty of Waitangi but the manner in
which it did illustrates a recurring theme...that Maori concerns for the recognition of Treaty interests could be met by mentioning the Treaty in the Act, in a general way, and although everything else in the Act might be contrary to Treaty principles." (Muriwhenua Report, 1988:85)

In more recent years, the emphasis has moved to the rights conferred by Article II of the Treaty in an acknowledgment of the essential bargain struck between the Treaty partners.

It seems evident that there was a divergence in perceptions, interpretations, expectations and understandings of the Treaty. The settlers believed that New Zealand was now British in name and authority, while te iwi Maori had no such perception. The ensuing years brought about struggles as the parties to the Treaty attempted to enforce their rights. European sovereignty was pursued with a vengeance while the rangatira o te iwi did their very best to maintain their existence let alone enforce their authority. The Treaty was pushed to one side for Pakeha New Zealanders in their rush to assert their authority. In more recent years there has been a rediscovery of the Treaty by Pakeha and a continuing and more articulate assertion of their Treaty rights by te iwi Maori.

2.3 CURRENT CONTEXT

When speaking of the Treaty it is obvious that there is a diversity of interest and many levels of understanding between and within the Treaty partners. This section explores these variables, with sub-sections 2.3.1 and 2.3.2 addressing who is involved and sub-section 2.3.3 discussing what these people think. Together the sections attempt to outline the 'tirititanga' or the current state of knowledge about the Treaty. As Ritchie (1992:134) says, it is essential to have a reasonably detailed knowledge of the Treaty, "though not
of what you think the Treaty says but of what is currently the state of tirititanga."

2.3.1 Resource User Groups

When discussing the surrounding context of a natural resource issue, it is vital to identify the various resource user groups involved and their relations with each other. In the context surrounding the Maori Fisheries issue and more specifically the Taiapure issue, there are several resource user groups entangled. These groups are commonly (perhaps incorrectly) identified as commercial, recreational, conservation, and Maori.

The commercial interest group is a powerful sector involved in the fisheries resource. Access and use of the resource is monitored by the Quota Management System where certain amounts of quota are transferred to fishers who then have the responsibility of managing that quota and getting the best possible return on it. The Fishing Industry Board (FIB) is the national body which supports commercial fishing interests, dealing with promotion, marketing and acts as an effective data base. The Fishing Industry Association (FIA) and the Fishing Federation are agencies which also advance the commercial fishing interests.

The recreational fishers are a disparate interest group who maintain that the fisheries resource is one for everyone. It is a common or public good that is universally accessible and usable. With the advent of the QMS and other fisheries policy modifications, the recreational interests have realised the need for an advocacy body representing their views. Thus their national body, the New Zealand Recreational Fishing Council has adjusted its structure and management process. Now, there are representative bodies at regional and national levels minding the recreational interests.
The conservation interests regard the fisheries resource as one to be looked after and maintained by ecological principles. Various bodies represent conservation interests but the one most directly involved with the fisheries resource would be the Department of Conservation which is an advocate of marine reserves.

The resource user group labeled 'Maori' is as diverse, if not more than the recreational user group. The commercial interests of Maori fishers are represented by the Maori Fisheries Commission and Aotearoa Fisheries Limited. Other interests of this group do not have a easily recognisable national representative body.

The Treaty was signed between the Crown and te iwi Maori, two parties with multifaceted parts. As was shown in the preceding discussion the Maori interest in the fisheries resource is represented, but only as one of many resource user groups, a position not indicative of their role as one of the Treaty partners. This representation is also lacking in its true reflection of the te iwi Maori. As Blackford and Matunga say, "Diversity of interest is more likely to be recognised in non-Maori rather than Maori concerns." (1991:vii) Maori concerns regarding the fisheries resource or any resource in New Zealand can not be found by referring to one homogenous body, instead the massive inter and intra-iwi diversity must be addressed.

The following section, which is particularly relevant to Objective Two of the study, considers this iwi diversity with a discussion of the tribal system.
2.3.2 Tribal System

From the outset the Treaty set tribal agendas.
"The treaty recognised rangatiratanga and that to Maori meant and means recognition of the authority, the sovereignty, of tribal systems personified in the authority of their chiefs." (Ritchie, 1992:115-116)

The Treaty was not signed by an homogenous entity called Maori but was signed with te iwi Maori. The concept of tribe and of tribal authority has been debilitated in the years since the signing of the Treaty, both by conscious policy actions and by the growing urbanization of Maori people. Maori people moving to towns and cities and bringing up other generations who are born in these places can lose their sense of tribe. Policies which emphasize the entity 'Maori' rather than iwi add to this undermining of the tribal system. Because of such reasons, many people, Maori and Pakeha, think the concept of the tribe is redundant, however, there is presently a resurgence of the tribal system throughout the country.

The use of the term tribe is for want of a better word. To be tribal can refer to any of the levels in tribal hierarchy.
Here, there is the whanau which is a basic social unit consisting of the extended family. Linked to the whanau is the hapu, consisting of a number of whanau all with a common ancestor. The term iwi is then adopted to include all the hapu descended from common ancestors. Ritchie describe an iwi as "an aggregation of interlinked family lineages or hapu." (1992:114) Waka, which literally means canoe signifies the largest grouping within Maori society. Ritchie goes on to describe what it is to be tribal.
"Being tribal is to own a history; to be located in a network of kinships, to inherit a mythology which includes a sense of place, a story of origin, possibly a waka; to acknowledge all this as your own culture, which in turn owns you." (1992:123)
With the resurgence of tribal systems, the government realised the need to recognise tribal authorities. However, rather than being content to let tribes undertake their own identification process, the government proposed to set up its own procedures for recognising tribal authorities under its own criteria and processes. To look at tribal authorities in this way is essentially subsuming a fundamental Maori system into a governmental and thus Pakeha framework. "Maori rejected the idea, and in 1990 the Runanga Iwi Bill was dumped. (Ritchie, 1992:118) It is the right of iwi and hapu, as kinsfolk, to determine internally where their authority resides.

The Treaty debate places some emphasis on the importance of recognising the tribal system. For example, the principles of the Treaty that were developed by Maori interests imply several rights: the right of each iwi to speak for itself; the right of each iwi to determine its own preferences without recourse to anyone else, and; the right of each iwi to be diverse. They also imply the right of each iwi to be involved (at the very least) in resource management issues that affect their interests in a manner which acknowledges that the iwi's authority flows from the Treaty and/or its sovereignty as an iwi, rather than from the much lesser status of 'resource user group'.(Blackford and Matunga, 1991:8)

A question to be asked when discussing tribal systems, is how capable are the tribal authorities of controlling their resources? The strength of the tribal authorities lies in their management processes.

"Their leadership cannot go far beyond the flax roots without being called to account. They operate on a set of principle of political action and accountability that is far more people responsive than are say, regional councils or even the elected membership of local bodies, because the open process of accountability on the marae is constant."
(Ritchie, 1992:127)
Conversely, a weakness lies in their under-resourced state. Theoretically, tribes are wholly capable of controlling their resources and exercising their rangatiratanga, yet practically the skills and other resources necessary to do so, are lacking. Recognition of tribal authority without back-up in resources, in the form of management and information systems and financial capital, is likely to result in failure.

The above discussion has shown the immense diversity in the groupings of the Treaty partners surrounding a policy such as the Taiapure provisions. There is diversity both within and between the Treaty partners, te iwi Maori and Pakeha New Zealanders. Maori are more than just another resource user group.

2.3.3 Differing Perceptions

The previous section has shown that the Treaty partners involved in a policy such as the Taiapure provisions are diverse. This section aims to look at the level of understanding held by these groups.

"The Treaty has given rise to continual debate not only between Maori and Pakeha, Maori and Crown, but within the various parties themselves." (Blackford and Matunga,1991:8)

Yet, "while levels of interest and tension with respect to Treaty issues are high, understanding of them so far remains low." (Kawharu,1989:xv)

The Treaty has taken a place in the consciousness of all New Zealanders, both Maori and Pakeha. Awareness of the Treaty and its implications is high, yet an associated understanding of the issues surrounding the Treaty is not. As shown in the discussion of the Treaty in section 2.2.1, there was a gap between Maori and Pakeha viewpoints and
understandings on the Treaty and there is still a gap today.

In the last two decades Maori confidence in their own future has become manifest in a new political assertiveness to challenge for a renegotiation of their rights in New Zealand. This assertiveness is based upon the rights guaranteed in the Treaty.

Maori in general are well aware of the Treaty and what it says. They understand the articles and their implications and wish to translate them into actions benefiting their people today. The assertiveness is articulated on a tribal level, a level capable of effectively controlling and managing the tribal resources. Maori are moving with the changes taking place over the Treaty. Furthermore, they are pushing the changes and asserting their authority.

In contrast, the majority of Pakeha in New Zealand have little understanding of the issues other than an awareness of the uncomfortable feelings produced by the Treaty debate. As Peter Elworthy, a Pakeha farmer, has noted;

"there must be few issues, within the context of social change which have produced such tensions and negativism as the debate about the Treaty of Waitangi." (Planning Council,1988:13)

The Treaty debate is disconcerting for many Pakeha as it confronts and challenges much of our history. It is unpalatable to realise the extent of Maori oppression both past and present surely it is easier to pretend it did not and is not happening. Mitzi Nairn is an example of a Pakeha who is learning of the oppression in our country and her words speak of the struggle going on for Pakeha facing their past and hence their future.

"Our ignorance and confusion were genuine. Our collective ignorance as Pakeha was staggering. We expressed disbelief
in the face of new statistical information and case studies. We were amazed by the historical information we uncovered. We struggled and squirmed and rejected the definitions. Yet all the time we were learning, and the ideas and the movement were broadening." (Yensen et al, 1989:85)

The issues being raised with the Treaty debate are difficult issues which bring forth feelings of hostility and bewilderment. The result of this is as stated by Ritchie (1992:193).

"The issues of race relations has produced a gap in which events are far ahead of public understanding."

This reality is amply illustrated with events such as the Waitangi Tribunal's report on the Ngai Tahu claim and the Sealord fisheries deal receiving radically different receptions according to people's understanding and expectations.

"That lack of understanding of the Treaty and its implications is the single largest impediment to a successful accord. Because most New Zealanders, if they have a sound basis of knowledge and thorough understanding, will deliver attitudes based on goodwill." (NZ Planning Council, 1988)

2.4 SUMMARY

The Treaty of Waitangi sets the basis for our nation's cultural context. It was signed in a climate of misunderstanding, misperceptions and varying expectations. These variables have persisted until the present day, permeating all activities dealing with the nation's resources. Implementation of the Taiapure provisions must contend with the diversity of resource user groups, the diversity of the tribal system and the differing perceptions held for Treaty related issues in its bid to be successful. The next chapter describes the Taiapure provisions which are to be implemented in the context just discussed.
CHAPTER THREE - TAIAPURE PROVISIONS

3.1 INTRODUCTION

This chapter provides a description of the subject of the study, the Taiapure provisions. The boundaries of these provisions are set by detailing their objectives, written and perceived, their implementation process and the agencies involved in this process. A brief discussion of the current outcome of the provisions is then undertaken leading to a summarising comment.

3.2 WHAT IS A TAIAPURE?

When analysing the design of the Taiapure provisions the first question to ask is 'what are Taiapure?' Depending on the source used, the definition of a Taiapure varies. For example, a Taiapure is:

"an estuarine or littoral coastal area which is traditionally important to iwi or hapu."  
(Dept of Conservation and MAF Fisheries, August 1991)

"a form of reserve designed to protect marine areas of traditional importance to Maori." (Webber, C 1992:18)

"a legislative provision allowing Maori tribes to take control of coastal fishing grounds." (HB Herald Tribune, 1991)

"Taiapure" is derived from "tai" coastal and "apure" (a patch or circumscribed area). In the context of the Fisheries Act, Taiapure means a local fishery area in estuarine or littoral waters. There is, unfortunately no one precise definition of estuarine or littoral coastal waters, thus the terms are open to debate as to what they actually mean.
No legal document states that the Taiapure area should be limited in size but its smallness is implied with supporting documents, such as letters by the Minister of Fisheries and appears to be a commonly held view by other groups with an interest in the fisheries resource.

Yet, it is not the view of many of the people involved in putting forward Taiapure proposals. For example, the Manakau Harbour proposal covers a large area of water, estuarine water though it is, and has the potential of limiting commercial fishing in the area. Tainui, the iwi behind the proposal, have plans for the harbour, such as transplanting kai onto sandbanks around the harbour to correct the imbalance of the ecosystem, that will require the entire harbour area to implement. (MFC Newsletter, March 1991:5)

3.3 OBJECTIVES OF THE TAIAPURE PROVISIONS

Not only is there ambiguity regarding the size of Taiapure, but there are also various interpretations as to the intention of the provisions. The written objective of the provisions as stated in section 54a of the Act is "to make, in relation to fisheries waters that have customarily been of special significance to any iwi or hapu, better provision for the recognition of rangatiratanga and the right secured in relation to fisheries by Article II of the Treaty of Waitangi. However, the intention of Taiapure, according to a covering letter of the booklet "Taiapure Guidelines for Applicants" put out by MAF Fisheries, is "to give local communities a greater say in how the fisheries in each taiapure area are used." (MAF Fisheries, Oct 1991)

Conversations with applicants involved in the Taiapure process and readings of supporting documents such as the MAF Fisheries booklet and letters to and from the Minister of Fisheries,
suggest the objectives linked to the Taiapure provisions are manifold. There is the written objective, clearly stated in the legislation (found in Appendix Two) and then there are the perceived objectives. Further discussion of these differing objectives is undertaken later in the study, in section 5.2.1.

Essentially, the Taiapure provisions are offering local communities, who must have the support of the local hapu or iwi, the opportunity to set up advisory committees which will then have a degree of say in the control and management of the fisheries resource in the determined area. The committee can recommend regulations to the Minister of Fisheries to manage the area. These regulations can override any other fisheries regulations, providing the Minister agrees and the regulations do not refuse access to or use of a Taiapure to any person 'by reason of colour, race or ethnic origins'.

3.4 IMPLEMENTATION PROCESS OF THE TAIAPURE PROVISIONS

There are three stages in the process of applying for a Taiapure. (a flow diagram detailing the process is found in Appendix Three) It is a lengthy somewhat complex process with many facets remaining in the unknown box, in terms of time.

Stage One of the process is probably the most time consuming phase, as it consists of the applicants getting the views of all interest groups and individuals, deciding whether a proposal is worthwhile, then actually putting the proposal to paper and presenting it to the Minister of Fisheries. The end of this stage is reached when the Minister, having consulted with the Minister of Maori Affairs, (at present, these two portfolios are both held by Doug Kidd) makes a decision on the proposal in principle. If it is rejected,
it is referred back to the applicants. If it is supported, it moves onto stage two of the process. MAF Fisheries are available to provide information to the applicants at this stage and they must also report to the Minister on the proposal.

The second stage is reached when notice of the proposal is published in the Gazette, advertised nationally and copies of it are given to the district Maori Land Court, the relevant territorial authority and regional council. This distribution should take seven days. In the following two months the notice is published in the Gazette a second time and submissions and objections are called for by the Maori Land Court Registrar. If the court accepts the proposal at that stage, it sets up a Taiapure Tribunal headed by one of the court's judges. The Tribunal holds a public inquiry (no time limit specified) and reports back to the Minister, who then makes a decision. The Gazette is used once again, this time to publish the tribunal report, its recommendations and the Fisheries Minister's decision. At this point, objectors to the proposal have a month to appeal to the High Court, otherwise the proposal moves onto stage three.

Here, the Minister of Fisheries recommends the Governor-General declare a Taiapure by order-in-council, the Taiapure declaration is gazetted and the Minister appoints a Taiapure management committee. The Minister has the final decision as to who sits on the Taiapure committee, but s/he will be aided by people representative of the local Maori community. The management committee will recommend the regulations they wish to enforce in the Taiapure area, and these will be gazetted once the Minister has given the final approval. The application has now reached the end of the process and is a fully fledged, operational Taiapure.
3.5 AGENCIES CONNECTED TO THE TAIAPURE PROCESS

Throughout the process, the applicants will have contact with several agencies. MAF Fisheries is the lead agency, providing applicants with advice on their proposal development, reports and submissions, assistance with meetings with affected groups if required and have the responsibility of reporting to the Minister on the proposal in the first stage. Other central and local government agencies have an interest in the Taiapure process.

The Department of Conservation, in line with its coastal responsibilities and interests, can provide the applicants with information from its coastal inventory and can be present at any meetings called by the applicants to resolve issues concerning marine reserves and freshwater species. The Maori Land Court have the responsibility of conducting a public inquiry into all objections and submissions. Manatu Maori advises the Minister of Maori Affairs on Taiapure proposals and may make submissions to the Taiapure Tribunal hearing.

The Maori Fisheries Commission does not have any mandate to be involved in the Taiapure process, but they do have a natural interest and have been active in submissions to the Fisheries Task Force regarding the Taiapure provisions. They regard the issues in the Taiapure provisions as relating to traditional Maori fisheries systems and see them as being of great importance to iwi. Their official newsletter, "Te Reo O Te Tini A Tangaroa" often carries articles concerning Taiapure and the Commission makes an effort to keep iwi and hapu informed of any developments.
3.6 CURRENT OUTCOME

At present, September 1992, only two proposals have been approved in principle by the Minister. No applications have reached the final stage whereby a management committee is appointed. Despite this slow progress, many more proposals are being formulated by hapu and iwi all over the country. MAF Fisheries has some idea of these numbers as the applicants approach MAF Fisheries for advice. The numbers that no-one has access to, however, is those groups that have started on the process then gave up in frustration or because of lack of resources. As well as the process being costly in terms of time, it absorbs a sizeable quantity of money resources. It is probable that some iwi or hapu have found these costs prohibitive to their involvement in the process.

3.7 SUMMARY

This chapter has given an idea as to the complexity of the Taiapure provisions. It has illustrated the manifold objective or purposes linked with the provisions and has described the intricate and intervention laden process through which applicants must journey to set up a Taiapure. It is these points and others that will be assessed with the application of an analytical framework in Chapter Five in the hope of fulfilling objective One of the study.
CHAPTER FOUR - ANALYTICAL FRAMEWORK

4.1 INTRODUCTION

In order to fulfill objective One of the study, that is, to find out if the Taiapure provisions are designed to work, an analytical framework is applied. This chapter discusses how the framework was chosen, describes its main features and details its elements.

4.2 CHOOSING THE ANALYTICAL TOOL

"Implementation is the carrying out of a basic policy decision usually made in a statute. Ideally, that decision identifies the problems to be addressed, stipulates the objective(s) to be pursued, and, in a variety of ways, "structures" the implementation process."
(Sabatier and Mazmanian, 1980:540)

The researcher turned to the policy literature concerning implementation in the hope that an analytical framework capable of assessing the Taiapure provisions, would be found. Upon reading a portion of the literature the researcher noted two primary variables that were consistently discussed regarding the implementation process. The first was the statute itself and the second variable of concern was the context in which the statute is implemented. Most policy scholars emphasize the importance of context for as Berman (1980:206) argues; "a context-free theory of implementation is unlikely to produce powerful explanations or accurate predictions."

These two variables are found to be highly relevant for the Taiapure provisions which has, as the two previous chapters illustrated, a complex context and an elaborate statutory process. Several theoretical frameworks were then assessed
for their explanatory power for the Taiapure provisions. Sabatier and Mazmanian (1980) are primarily interested in the statute, where they place an emphasis upon the clarity of goals, procedures and jurisdictions and the degree of support from key legislators, implementing officials and sympathetic constituencies (Montgomery, 1990:34). O'Toole (1986) and Mueller (1984) are concerned with the context surrounding a statute, with O'Toole focusing on implementation in multi-actor settings and Mueller focusing on implementation at the local level with national policies. Katzmann (1989) is interested in both variables, statute and context, yet his paper particularly discusses "legislative drafting and then examines the legislative process itself as a means for directing signals to various institutional forces." (Katzmann, R, 1989:288)

None of these frameworks were judged capable of assessing the unique Taiapure provisions as they were either too concerned with one variable to the neglect of the other or were too concerned with a particular type of context and statute. What was needed was a framework that was equally concerned with the statute and its context and was general enough to apply to an incomparable statute such as the Taiapure provisions.

4.3 DESIGN APPROACH

These characteristics were found in Ingram and Schneider's (1988, 1990) model which takes a design approach. This is an integrative strategy which is sensitive to the reality of multiple values in a policy situation. Policy design has an inherent view of both the formulation and implementation phases of policy development.
"Policy design, whether conceptualized as a verb referring to the process of formulating policy ideas or as a noun describing the logic through which policy intends to achieve its objectives...is obviously important."

(Ingram and Schneider, 1988:61-62)

The design approach allows a systematic analysis of the underlying structural logic contained in the provisions, thus making the assumptions upon which the provisions rest more explicit.

An important factor in this approach is the link between policy and context. Ingram and Schneider do not believe that there is one single model for an effective statute, rather smart statutes are designed for the context in which they are to be implemented. This belief is particularly important for the analysis of the Taiapure provisions. Here, the presence of the Treaty of Waitangi brings a particular context to the statute, with the factors and characteristics unique to this specific implementation context having a strong effect on outcomes. A design approach allows a scrutiny of these factors.

A further important factor in this analytical framework is the amount of discretion allocated to implementing agents in the statute. Ingram and Schneider address this through a 'value-added' conception of implementation in which the extent of discretion exercised by implementers is measured by changes they make in the core elements of policy. These core elements of policy are found in the basic statutory blueprint or design.
4.4 ELEMENTS AND LINKAGES OF POLICY DESIGN

The basic elements of the policy designs include objectives or purposes, agents and targets. These are then linked together in the design by tools, rules and assumptions. By breaking down the empirical example into its basic constituent parts, patterns in which the elements have been arranged can be analyzed. To clarify, the elements of policy are listed as follows.

Structural elements:
- objectives or purpose (O)
- target populations (T)
- agents and agencies (A)

Linkages among elements:
- tools (t)
- rules (r)
- assumptions or theories (a)

The underlying logic or pattern in which the elements are arranged, can be drawn and shown graphically.

This diagram shows a statute (S), three implementing agencies, two target populations and two objectives. These elements are linked together by the tools, rules and assumptions.
4.4.1 Objectives

The objectives, purposes or goals of the policy may be explicitly stated in written documents or they may be inferred from interviews and discussion with interested parties. The objectives are not always immediate, short term, measurable, achievable, clear or consistent. In fact, policies often pursue goals or objectives that are inconsistent and require balancing conflicting interests or values. An attempt should be made when analyzing policies to include the objectives of all relevant groups not simply those legislatively mandated.

4.4.2 Target Populations

The target populations in the design are the groups or individuals whose decisions and behavior are related to policy objectives directly or indirectly. These are the people who are expected to gain and lose from the policy. The provisions of the policy may designate eligibility rules that define the target population. Ingram and Schneider also note that the policy criteria may reflect principles of equality, need, equity, effort expended, potential contribution to solving the problems, or some combination of these. Further to this, Ingram and Schneider note that policy may permit targets to be self-selected or may provide for voluntary participation.

4.4.3 Agents

The agents in the design are the officials assigned responsibilities by policy documents as well as others who may have assumed responsibilities in relation to the policy. Dimensions of interest with the agent element include the locus of control, that is the level of government responsible for key design decisions and the level of control, that is the value-added dimension, or amount of discretion permitted.
4.4.4 Tools, Rules and Assumptions

The linkage mechanisms for the three elements discussed above are tools, rules and assumptions. Tools are intended to motivate the agents, agencies and target populations to make decisions and take actions consistent with policy objectives. Ingram and Schneider regard tools as relying upon authority, capacity building, incentives, appeals to symbols, and learning to motivate agencies and target groups. Rules in a policy design determine procedures such as timing, evaluation requirements and conditions for participation. The theories or assumptions then explain why the tools and rules are expected to produce the intended behaviour and how the behaviour is linked to desired objectives.

4.5 CONTEXTUAL ASSESSMENT

With Ingram and Schneider's model, a vital step in analyzing a policy example is to match the design to the context. The context of the statute, as determined with the design focus, should signal which values are lacking in the context in which the statute is being framed. Having identified the problems, the analyst should then clarify the values needed for successful implementation. And it is here, that the value-added concept comes into play, with the optimum level of discretion for agents offering a way towards successful implementation.

Ingram and Schneider offer three contextual characteristics that may be targeted for improved implementation. The amount of discretion needed for each characteristic can then be discussed in an attempt to improve the design of the statute. The first characteristic is related to support for the policy, with a successful policy requiring extensive support. Knowledge
and certainty about the policy content is the second characteristic with the quality of the policy largely resting on the quality of information. The third characteristic is the amount of motivation and capacity for the implementation of the policy. Agents and agencies may have the necessary information to implement the policy and they may support it, but if they lack the motivation and capacity to move through the process, implementation will be unsuccessful.

4.6 SUMMARY AND CONCLUSION

As mentioned in Chapter One, Ingram and Schneider's model is not advanced as the ideal framework for assessing the Taiapure provisions, but it is advanced as a vehicle capable of analysing the provisions. It offers the means for examining the underlying structural logic of the provisions and allows an assessment of the linkages between the design and its context.
5.1 INTRODUCTION

This chapter undertakes an analysis of the Taiapure provisions using the analytical framework outlined in the previous chapter and drawing upon issues raised in Chapter Two. The analysis takes place in three steps. The first step in assessing whether the Taiapure provisions are 'smart' or not, is to consider the context in which Taiapure are implemented. An appraisal of the context in terms of the three characteristics outlined in section 4.5, creates a basis for assessing whether the Taiapure provisions are designed to accommodate these characteristics. The second step, then examines the underlying structural logic of the Taiapure provisions. This is undertaken in terms of the elements and linkages sketched in section 4.4. The third step brings the first two sections together in concluding whether the provisions are a 'smart' statute.

5.2 CONTEXT OF THE TAIAPURE PROVISIONS

"Statutes need to be designed in such a way as to bias the implementation process toward supplying the values crucial to successful implementation, defined in terms of the production of desired consequences, increased knowledge and increased political support."

(Ingram and Schneider, 1990:82)

The following is going to assess the context of the Taiapure provisions in terms of the three characteristics outlined in section 4.5. This assessment creates a basis for examining and later assessing the design of the provisions.
5.2.1 Support for the Taiapure Provisions

For policy to make progress on any problem there has to be sufficient support. This characteristic is concerned with whether there is agreement on the values and goals of the provisions or whether there is conflict. As demonstrated in Chapter Two, there are various resource user groups involved in the Taiapure provisions. These groups all have varying levels of support for the policy, ranging from whole hearted approval to outright dislike, fear and condemnation.

The Maori group, in line with its inherent diversity has a wide range of perceptions as to the intent and purpose of the Taiapure provisions. These may be broadly grouped into four main intentions: to recognize rangatiratanga; to provide local control; to prevent overfishing, and; to enhance the fisheries resource. The fisheries resource is regarded as a taonga that must be looked after and enhanced. It is not 'owned' in the European sense, rather the resource owns the people who live with it. It is the responsibility of the local people to protect and maintain the fisheries resource and they must have the authority to do this. The second article of the Treaty merely reaffirms this right and responsibility in a legislative manner. It did not create the right. Rather it gave recognition to an already existing practice, a practice that was not limited by legislative boundaries but ran on rohe boundaries determined by rangatira authority and co-operation with other iwi and hapu.

The recreational fishing group too, is diverse and the following views can not be said to be fully representative of all recreational fishers. Yet, it appears to be a commonly held perception of recreational fishers, as set out in submissions and press releases from the the New Zealand Recreational Fishing Council and the New Zealand Underwater group, that "access to the fishery is the right of every New Zealander..."
and that there is total opposition to access to and/or management of the fishery resource on racial grounds."
(NZ Underwater, 1992:2)

In line with this view, Taiapure, if they are provided for at all, should only do so in very small areas. Recreational fishers regard the requirement, 'that it be traditional fishing grounds' as a limiting and restrictive boundary. Their perception of rangatiratanga and traditional authority thus appears somewhat different from the iwi and hapu involved.

Commercial fishing interests have a similar perception of the extent of the traditional Maori fishing right, being prepared to

"accept the principle of Taiapure" as long as they are
"small discrete areas within an estuary or on a coastline..."
(The Press, 29 June 1992)

The Maori belief that the taiapure provisions give them the right to apply for very large areas of fisheries waters is "way off target", according to commercial interests. The commercial fishers have got a staunch hold over the fisheries resource and they are not prepared to let traditional fishing interests intrude upon this domain.

Conservation interests as represented by the Department of Conservation appear unsure as to the intentions of the Taiapure provisions and attempt to cover all alternatives. A pamphlet put out by DoC and MAF Fisheries, simultaneously portrays Taiapure as recognising rangatiratanga, local communities, local Maori communities and allowing restoration of coastal fisheries.

Not only do the resource user groups in terms of commercial, recreational and conservation, have differing levels of support but the agencies responsible for implementation of the policy, too, regard the Taiapure provisions in many different ways.
This discussion illustrates the level of support held for the Taiapure provisions. Rather than there being widely held support for the policy, there exists extensive value conflict and disagreement over the goals and objectives of the Taiapure provisions.

5.2.2 Knowledge and Certainty about Taiapure Provisions

The second contextual characteristic identified by the analytical framework is concerned with the level of knowledge and certainty about the policy content. As demonstrated in Chapter Two and Chapter Three, there is neither a high level of knowledge or certainty surrounding the Taiapure provisions. The lack of knowledge manifests itself in the reactions to the policy. Debate over the size of the Taiapure, access to the proposed areas, linkages with other policy regulating fisheries and the meaning and extent of rangatiratanga, all testify to a general lack of knowledge.

Linked to the lack of knowledge is a pervasive uncertainty surrounding the policy. This uncertainty is shared by all parties, from the applicants to the policy opposition to the implementing agencies such as MAF Fisheries. The meaning of littoral or estuarine waters is an illustration of this, where no-one can agree as to the exact meaning of the terms. Understandings of the term littoral range from 'inhabiting the shore of a sea or the shallow waters near the shore' (Collins Dictionary, 1979) to 'areas of the sea where light penetrates.' (Terry Lynch, pers comm) The commercial fishers concerned with this uncertainty have taken the issue to court, moving to obtain a declaratory judgment from the High Court as to the meaning of Taiapure.

Another example of the lack of knowledge and certainty is found with the use of rangatiratanga and Maori fishing rights. This shall be further explored later in section 5.4, but
it is suffice to say that the knowledge and understanding about Maori fishing rights as reflected in the provisions, is of a low level. The provisions are full of ambiguities which do not add to certainty but detract from it. Examples are the many instances of "time unknown" in the process and the myriad objectives of the policy.

Overall, the context of the provisions demonstrates a high degree of misinformation, uncertainty and a lack of knowledge. This is largely a result of the complexity of the problem. As displayed in Chapter Two, with the discussion of the historical and current context, the problem is complex, it spans many years and involves a diversity of people with an amalgam of values. Resolution of the problem requires a clarification of the many issues that make up the context. The information on which the Taiapure provisions rest needs to be sound.

5.2.3 Motivation and Capacity for Taiapure Provisions

The final contextual characteristic to be considered in terms of the Taiapure provisions, is the amount of motivation and capacity for the policy. This characteristic considers whether target populations and agencies linked to the provisions will do, and whether they can do, what the statute asks or requires them to do.

In terms of motivation, this appears to be largely lacking in the implementing agencies. MAF Fisheries and the other agencies do not appear driven to actively pursue the Taiapure provisions. In contrast, several iwi and hapu are driven to pursue the provisions, for should the written objective be realised, the success will affect them positively. Yet these agents rarely have the capacity to substantiate their motivation. Resources, in time, money and expertise are not amply accessible to Taiapure applicants and thus the
lack of these resource acts as an obstacle to the successful implementation of the policy.

Capacity to implement the policy also affects the implementing agencies. It is estimated by MAF Fisheries that the administering and enforcing of the Taiapure provisions will cost the government more than one million dollars a year. And the cost may go higher when the Maori Land Court, which also has a big role to play in the Taiapure application hearing process, works out its likely costs. (MFC Newsletter, Jan 1992:6)

5.2.4 Conclusion

This section, 5.2, has demonstrated the aspects in which the context of the Taiapure provisions 'fall short' of the three characteristics. There exists a situation of broad value and goal conflict leading to varied and often little support for the provisions. There exists a situation of uncertainty, misunderstanding and a general lack of knowledge for all parties involved with the provisions. This lack of knowledge permeates all levels of the context from the central 'big' concepts such as rangatiratanga, to the more discrete but equally pressing concepts such as littoral and estuarine waters. Finally, there exists a variance between the motivation of the target populations and their capacity to substantiate their motivation. The motivation of the other agencies is too, highlighted as being insufficient for effective implementation.

Having assessed the context and pinpointed areas where "values need to be added", the design of the provisions shall be now be examined. An assessment of their match to the context is then undertaken in section 5.4.
5.3 UNDERLYING STRUCTURAL LOGIC

As outlined in Chapter Four, the structural elements of policy design include objectives, agents, targets, and linkages among these three elements. It is possible to diagram the structural logic of a policy by showing the relationships among these elements. (see Fig.4.1) The Taiapure provisions (S) are linked to several implementing agencies (A₁,A₂,A₃ etc) MAF, Maori Land Court, DoC and Manatu Maori as detailed in Chapter Three. The provisions interact directly with the target population of iwi and hapu (T₁) in an effort to address the non-recognition of rangatiratanga and the fisheries right secured by Article II of the Treaty. Other populations affected by the policy are those with an interest in the fisheries resource. As much of New Zealand is connected to the coast and its bounty, this target population (T₂) will be referred to as the general community. The objectives or purpose of the policy are singularly clear in the written legislation, but are perceived in varying ways. The T₂ group are noted to have differing perceptions of the objectives than those of the T₁ group, a situation that will be discussed below. The linkages between these elements may contain tools, rules and assumptions.

5.3.1 Objectives

Ingram and Schneider note that policies, although they may have clearly stated objectives in their legislation, often pursue objectives that are inconsistent and require balancing of conflicting interests or values. The Taiapure provisions are a prime example of such a policy, with the written objective being clearly aimed at Maori people and their traditional fishing right, yet with supporting documents attempting to include all people with an interest in the fisheries resource.

The written objective, "to make...better provision for the
recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi", could be labeled as a goal that is "serving hortatory purposes, the statements of which are an end in themselves." (Ingram and Schneider, 1988:70) That is, the objective shows the government's intent to make provision for enhanced Maori involvement in the control and management of the fisheries resource. By making this intent explicit in legislation, the problem of non-recognition of rangatiratanga is partly addressed without any tangible action being taken. It is an aspiration that provides a sense of direction and testifies to the importance of the Treaty of Waitangi in fisheries issues. Maori, as a target population are presumably expected to take heart at such an objective and regard it as addressing their concerns.

As noted in section 3.3, the written, explicitly stated objective is not the only one linked with the Taiapure provisions. All the various groups with an interest in the fisheries resource have certain ideas as to the meaning and purpose of the provisions. Ingram and Schneider believe that an analyst should be inclusive when discussing objectives and should "seek to represent the values of all relevant groups, not simply the legislatively mandated goals." (Ingram and Schneider, 1988:70)

To this end it is important to identify the perceptions of those resource user groups recognized in Chapter Two, an exercise that was undertaken in the previous section, illustrating the broad value and goal conflicts that exist in the context of the Taiapure provisions. From this brief look at the values and perceptions of the various resource user groups, it is obvious that the objectives, written and perceived, of the Taiapure provisions are manifold and potentially conflicting. The provisions attempt to balance all the interests and end up pleasing none of them.
5.3.2 Target Populations

In line with the inconsistent and conflicting perceptions of the Taiapure objectives, the target populations of the policy are also ill perceived. Essentially, the Taiapure provisions are targeting iwi and hapu, however this may be perceived as a racial criteria, thus section 54K,6 states 'no person can be refused access to or use of any taiapure by race, colour etc', ensures equality. The designation of iwi and hapu as the target population is then subsumed within the desire for equal access for all New Zealanders.

The Taiapure provisions do not appear to take a proactive stance towards the target population of iwi and hapu, rather they exist as a reactive framework should any iwi or hapu wish to utilise the provisions. The iwi or hapu then have to prove their eligibility to take part in the Taiapure framework before beginning the process. Not only do they have to prove their eligibility but they have to demonstrate to the Minister's satisfaction that no-one's welfare in the 'vicinity of the area is detrimentally impacted'. This burden of proof necessarily places a great financial and human resource drain on the Taiapure applicants. The social costs too, are of significant proportion. Should a Taiapure proposal be put to a community that is not responsive to the idea, the applicants are then in a position of having created (or just taken the lid off) community tension and disturbance. It can then be difficult for the applicants living in this community.

5.3.3 Agents and Agencies

As noted in the previous chapter the agents are those people assigned responsibilities by the policy documents as well as others who may have assumed responsibilities in relation
to the policy. The Taiapure applicants transform from target populations to agents of the policy. Yet, in this transformation there is little or no transfer of control. Control is not transferred to the applicants until the final stage of the process when a management committee is set up, and even this level of control is questionable.

The control is firmly in the hands of the assigned implementing agencies, such as outlined in section 3.5, and the Minister of Fisheries. In the present political climate, the Minister of Fisheries and Minister of Maori Affairs are the one and the same, thus this person has the potential to have an inordinate level of control over an essentially local process. The Minister has a pervasive influence throughout the process of establishment, the appointment of the management committee and the approval of regulations.

Among the agencies with control, MAF Fisheries has a greater level than the others. The overt presence of an agency wholly concerned with the fisheries resource and the Minister of Fisheries puts emphasis on one of the perceived intentions of the policy. That is, the objective of restoring and enhancing the fisheries resource. Certainly, the Maori fishing rights under the treaty are of concern to MAF Fisheries, yet it should be questioned as to whether they are a driving force or an incidental one. Such issues will without doubt affect the way in which the agency goes about implementing the Taiapure provisions.

Agencies whose prime concern is the recognition and restoration of rangatiratanga, such as the Maori Fisheries Commission, do not have a legislative mandate over the Taiapure provisions. The absence of such an agency, again must point to a genuine lack of interest in seeing the Taiapure objective realised. The Taiapure applicants literally have no-one to turn to in their bid to create a Taiapure; as agencies willing to
help do not have the allocated resources to do so, and those who have been allocated to help do not appear to be motivated to do so. Thus, the level of support for the Taiapure provisions is not seen to go hand in hand with the level of control.

5.3.4 Linkages: Tools, Rules and Assumptions

The linkage mechanisms for the three elements discussed above are tools, rules and assumptions. The tools in the Taiapure provisions, intended to motivate the agents and target populations, are little more than the somewhat hortatory written objective of the policy. This objective is emotive in that it preys upon the responsibility of honouring the Treaty obligations and contains the promise of fulfilling these obligations - such as the recognition of rangatiratanga. In this manner, implementing agencies feel a responsibility towards the policy and the target populations feel a motivation to exploit the policy for whatever it is worth.

Rules, on the other hand, are abundant in the Taiapure provisions. As detailed in Chapter Three the process necessary to create a Taiapure is a lengthy and complex procedure. The Maori Fisheries Commission regard the provisions as having "excessively bureaucratic and intervention laden procedures for the establishment of taiapure." (MFC, 1992:3) The burden of proof rule, where iwi or hapu must prove their relationship and thus right of access and use to the resource, is a particular example of the excessive rules present in the provisions. As a condition for participation, this rule may result in acting as an obstacle to participation rather than an encouragement.

The rigid rules detailed down to the last inch can lead to the characterization of the provisions as a 'strong statute'. "Strong statute advocates advise that discretion over the
elements (ie. rules) in designs should be retained by statutory designers. Implementers should have no discretion to add values, and instead are supposed to reproduce faithfully statutory designs." (Ingram and Schneider, 1990:74)

However, a 'strong statute' is also characterised by clear and specific goals, no room for diverging interpretations, a minimum of decision points, and a minimum level of discretion given to implementers. The Taiapure provisions clearly do not fulfill all these criteria, thus the presence of rigid rules and procedures do not automatically make the design a 'strong statute'. Instead, the presence of vague goals suggest more of a 'support building' approach where it is left open to the actors involved to further define what the goals should be.

Further conditions of participation detailed by the rules involve the applicants being limited to providing a proposal and then being ready to 'man' a management committee should it get to this stage. They cannot unduly influence the process once their proposal has entered the 'rules race'.

Assumptions underlying the Taiapure provisions, explaining why the tools and rules are the way they are, have been implied throughout the preceding discussion. The presence of a highly motivating objective partnered by a highly dissuading structure of rules and procedures, suggests a symbolic policy design.

"Symbolic and hortatory designs encourage compliance or utilization of policy through manipulation of symbols... no actual or tangible goods are offered. Rather, policy urges or encourages certain actions by attempting to alter perceptions, attitudes, or values."
(Ingram and Schneider, 1988:76)

The Taiapure provision's attempt at altering perceptions appears rather half-hearted on the basis of the manifold perceptions still existing three years after the policy was
enacted. Yet, the provisions do appear to be a symbolic
gesture, full of potential but lacking in the practical
applicability to the reality situation. This applicability
shall be further explored in the following section. The
risks and shortcomings of symbolic and hortatory policy have
been studied by policy analysts. Although feelings about
policy may be positive, accomplishments may not materialize.
"Symbolic and hortatory policies that fail to achieve
objectives may result in cynicism and alienation among
agents and targets." (Ingram and Schneider, 1988:77)

Whether this is the case with the Taiapure applicants shall
be explored in Chapter Six. It has been seen to be the case
with some officials of implementing agencies who regard the
Taiapure provisions as a "toothless tiger."

5.4 ASSESSMENT OF THE TAIAPURE PROVISIONS

Having assessed the context in which the Taiapure provisions
are implemented, and then examined the design of the provisions,
exposing the underlying structural logic, the study now turns
to the linkages between the context and the design, determining
whether the Taiapure provisions are a 'smart statute' or
not. The assessment, in tune with the context assessment
in section 5.2, will take place in terms of the three
characteristics, which is then followed by a conclusion.

5.4.1 Role of Support in the Taiapure Provisions

Section 5.2 demonstrated the lack of support for the provisions,
wrought by the broad value conflict existing in the policy
context. A question to be asked when assessing the linkages
between the provisions and the context is "how is the existence
of conflicting values and goals accounted for in this statute?"
The presence of vague goals which allow room for diverging
interpretations, in a 'support building' policy approach are an attempt to address the conflicting values. It allows the actors, particularly on a local level, to work out what they want out of a Taiapure, whether it is to be big or small and how it is to be managed.

Ingram and Schneider would suggest an allocation of discretion to lower level implementers in such a context. That is, let the applicants in the differing areas have more room to maneuver, with the rules being applicable to their particular situation. More discretion being allocated to local level implementation is likely to lead to locally appropriate policy with mechanisms and forums being provided to represent interests whose consent is important to successful implementation. In this way applicants can be involved at all stages of the Taiapure process instead of putting together a proposal, sending it to the Minister and waiting an undefined time for a reply. Locally appropriate policy is likely to then receive greater support, leading to successful implementation.

It is not being suggested that the rules of the Taiapure provisions are entirely eliminated, for a process of some sort is a necessary and accepted mechanism which ensures public input and a degree of uniformity (John Mitchell, pers comm). Rather it is deemed important that there be numerous entry points for the applicants to add local value.

The Taiapure provisions allow discretion for local variety by not specifying the goals and thus do not enforce an inappropriate framework. In this respect, then, it can be argued that the provisions are 'smart'. However, in other respects, it can be argued that the tools, rules and assumptions of the Taiapure provisions are not matching the need to 'build support' (agreement on goals and values) in this context. For example, no role has been assigned to the Maori Fisheries Commission in the process, leading to the absence
of any agency fully supporting the Maori perspective. The assumption seems to be that agreement on values and goals can be reached without an active role in the form of facilitation, mediation and general help, of outsiders. This appears an unrealistic assumption, given the resources needed to proceed through the Taiapure implementation process.

Ingram and Schneider (1990:81) note that an underlying assumption of the 'support building' approach (characteristics of which are found in the Taiapure provisions) is that the political resolution of conflict overshadows substance in policy. The statutory design does not focus as much on the instrumental aspects of policy as on the political aspects. Here, the process may become an end in itself and an excuse for not achieving measurable results. This supports the proposition put forward earlier that the Taiapure provisions are a symbolic policy only. The emphasis on local discretion and iwi and hapu participation could be viewed as a political and highly symbolic action only, and it does not mean an intention of translating this sentiment into practice. Indeed, the climate promoted by the legalistic and formal procedures of the provisions, rather than promoting an environment in which mutual acceptance of diversity, or a process of consensus can grow, tends to result in frustration on the part of the applicants.

Thus, although the characteristics of a 'support building' approach being found in the Taiapure provisions means an emphasis on support, it does not mean that the emphasis is grounded in reality. The design of the Taiapure provisions, with regard to the contextual characteristic of support, is not 'smart' enough.
5.4.2 Role of Knowledge and Certainty

A fundamental principle of policy analysis is that the quality of the policy rests on the quality of information upon which it is based. The lack of information and context of uncertainty surrounding the policy may be crippling to implementation. Ingram and Schneider (1990:84) note that when the level of knowledge of various kinds is low, statutory design should provide incentives for implementers to add to policy knowledge.

'Strong statute' advice leads to poor policy design for implementation under uncertainty and ignorance because too little is known to specify the elements of a policy logic that will fit reality. Thus, the detailing of rules in the Taiapure provisions to fit an unknown process dogged by conflict and ignorance, is a recipe for disaster. The goals of the policy will not be reached, as the means for getting there are inappropriate for the context. The result of this inappropriate strategy is unachievable goals and further;

"if agencies are mandated by statute to reach goals that turn out to be unachievable, strong incentives will exist for agencies to engage in goal substitution and other strategies." (Ingram and Schneider, 1990:84)

One of these 'other strategies' can be identified with the treatment of Taiapure proposals forwarded to MAF Fisheries and the Minister by the applicants. There are several examples of proposals that have been repeatedly sent back to the applicants for changes before they even get to the Minister to be approved of in principle. Criteria for a satisfactory proposal seem to change daily with detail being required one day, a summary of the issues the next and so on. It appears like a delaying process ensuring that hard decisions later down the track will not need to be made, and it keeps the applicants busy!
Ways of fostering more successful implementation in the context of misinformation and misunderstandings, could be found by making provision for an education programme on the rationale behind the Taiapure policy. This programme would focus on particularly the Maori point of view in an attempt to get understandings at a level with events.

However, the design of the provisions, with its assumptions, rules and tools, does not make a provision of this kind. Instead, it seems to assume that once Maori take the initiative and start interacting with existing agencies and other resource user groups, the lack of knowledge and understanding and the uncertainty will be resolved. This is an unrealistic assumption, given the strength of differing value positions and the absence of a motivating rationale for other groups to attempt such an understanding.

Examples of the Taiapure provisions failing to provide education on the rationale behind the policy, are especially visible with relation to the Treaty of Waitangi and its implications.

The Treaty of Waitangi as the founding constitutional document of our nation, is of integral importance for the Taiapure provisions. There has been and still is, considerable debate over the versions of the Treaty, with the English and Maori versions differing quite dramatically in places. The written objective of the Taiapure provisions heeds this discrepancy and takes it up by letting both versions speak. However, by providing the English interpretation of rangatiratanga, the written objective is in effect setting up a conflict, a conflict that is further played out in the statutory framework of the provisions. In addition, the tools, rules and assumptions underlying the Taiapure framework do not pay heed to the 'essential bargain' of the Treaty, rather they emphasise the dominance of sovereignty and the Crown's right to exercise jurisdiction.
The knowledge and understanding of the Maori fishing right and rangatiratanga is minimal, with little if any attempt being made to clarify understandings. At no stage is the concept accurately clarified, rather it is baldly stated, giving groups the opportunity to take from the provisions what they wish. Perceptions of the provisions restrict the traditional right to estuarine or littoral waters. Whatever definition is subscribed to these terms, it is smaller than the traditional fishing right, which covers all areas where fish are to be caught including offshore reefs and inshore fisheries. Information related to Maori location of fish stocks has been well documented by the Waitangi Tribunal and substantiates a fishing right that is not limited to food gathering and spiritual uses.

Rangatiratanga is one of the most fundamental aspects of Maori culture, it is derived from rangatira which is a sacred component of tikanga Maori. (A.Mahuika, National Radio, 1992) Rangatiratanga can have myriad meanings attributed to it, yet it is essentially about tribal self-determination and tribal authority and control.

As well as not bothering to clarify the concept, the Taiapure provisions derogate rangatiratanga in several ways in their design. The burden of proof lying with iwi and hapu in proposing a Taiapure, contradicts rangatiratanga and article II of the Treaty which specifically guaranteed retention of the iwi's right of possession and full chieftainship over their taonga. Iwi and hapu should not have to identify and prove that areas of the sea are of customary significance, rather the duty should be with the Crown to identify and prove areas of non significance to Maori. (MFC,1992a:3)

The pervasive influence of the Minister of Fisheries usurps the right to manage according to tikanga Maori, as does the
entire bureaucratic and intervention laden process; and finally the denial of the exclusive right to control access and use of the resource in a Taiapure area undermines the tangata whenua rights guaranteed in the Treaty.

Rangatiratanga is limited and constrained in its implications within the Taiapure provisions. It is taken to mean whatever the legislation says. Its wings are clipped and consequently iwi and hapu are not allowed to fly. The written objective of the policy expresses admirable sentiments - symbolic though they may be - then this rhetoric is subsumed within a rigid rules process allowing no real application of rangatiratanga.

The Taiapure provisions do not attempt to 'add value' to the context of uncertainty by, for example, providing education programmes. Instead they reaffirm the persistent misunderstanding, lack of knowledge and uncertainty that pervades the arena of Maori issues. For this reason, they are not a 'smart statute'.

5.4.3 Role of Motivation and Capacity

Tools, as the motivating element of the Taiapure provisions are identified as being little more than the symbolic written objective of the policy. The emotive aspects of this objective are intended to inspire the motivation necessary to proceed through the implementation process. It is noted that the strongest motivation to have a Taiapure established lies with the local people, Maori and other local resource user groups. Yet, linked with this locus of motivation is the assumption of the provisions that the applicants will have enough motivation to carry them through the long process which is full of potential veto points, and have the resources (time, money, legal and other expertise) to do so.

The idea of allocating discretion to the local level is again
viewed as a viable direction to take for the provisions. More discretion at the local level means more control for the people directly affected by the policy, who will thus have vested interests in making the policy work. Yet, this 'theory' does not consider the role that capacity to implement the motivation, plays. Capacity levels to implement the policy must go hand in hand with the motivation to undertake the action. It is ineffective transferring responsibility for policy implementation to the local level without an associated budget to carry out the implementation. Costs of running a Taiapure such as monitoring and enforcement costs are prohibitive to a locally funded group.

The treatment of tribal systems in the Taiapure provisions too, plays the game of encouraging motivation without the necessary capacity being offered as well. The provisions acknowledge the presence of the tribal system and the importance of local control, yet they do not give this recognition backing in the form of resources. Without the resources in the form of management and information systems and financial capital, proposals are likely to fail.

The burden of proof is also a major element that may be enough to kill motivation on the part of iwi and hapu entering the process. As far as the other agencies linked to the process are concerned, the provisions provide nothing to enhance their motivation. They have no rules, obligations or incentives that would either require or encourage them to pursue the fulfillment of the Taiapure objective. They are not encouraged to assist Maori in taking initiatives and those that would undertake this role, such as the Maori Fisheries Commission, have not been designated within the governmental sphere to do so.

A case could be made, indeed, to argue that the tools, rules, and assumptions of the provisions are so stacked against
Maori, that the statute looks like it has been designed to block the creation of Taiapure, a case which supports the symbolic or hortatory argument proposed earlier. The provisions have vague goals, no provision of the means to achieve them and the underlying structure of the statute is so designed that it is very hard for the principal target group, that of te iwi Maori, to achieve them. Such conditions do not encourage the motivation to proceed through the Taiapure implementation process let alone enter them. They also do not allow many groups, particularly under-resourced iwi and hapu, to tackle the process even if they had the motivation, because they lack the capacity to do so. In these respects, the Taiapure provisions are not a 'smart statute'.

5.4.4 Conclusions

"Allocation of discretion should be sensitive to the locus of motivation, knowledge, capacity and support for each policy element. Discretion should be allocated to those levels and agents most likely to supply the values essential for effective policy." (Ingram and Schneider, 1990:85)

The above discussion has demonstrated the role played by the Taiapure provisions in terms of three key contextual characteristics. In each of the characteristics, the Taiapure provisions were shown to be lacking in their applicability. In section 5.2, the discussion of the context, areas were identified where value was needed to be added in order to facilitate successful implementation.

The design of the provisions was then assessed, demonstrating elements of a 'support building' approach, especially in its depiction of vague goals. However, this approach is not entirely appropriate to the context, with the political goal of increased support and decreased conflict between Treaty partners not being substantive enough to meet the
needs of rangatiratanga. Even if the 'support building' approach were 'smartly' applicable to the context, the Taiapure provisions did not adopt the approach throughout their design. Instead, rigid rules and procedures were espoused as a means for achieving Taiapure. These rules, creating an autocratic and strict policy framework, have been explicated as incapable of achieving the written objective, the recognition of rangatiratanga.

As noted in the quote on the previous page, a 'smart statute' should be sensitive to the locus of motivation, knowledge, capacity and support for each policy element. Such a statute is unlikely to follow the advice of any one school of thought, such as the 'support building' or 'strong statute' approaches. Instead, a mixed and complex context such as outlined in Chapter Two and assessed in this chapter, demands a mixed approach. The approach taken would ideally work on 'adding value' to those aspects identified as needing attention, such as practically grounding support for the policy, clarifying information that is central to the policy, and ensuring that motivation is encouraged and then backed up with the capacity to establish Taiapure.

As they stand at present, the provisions do not meet the criteria necessary to be a 'smart statute', that is, the policy design does not link with the context in which it is to be implemented. A clear indicator of this shortcoming is the absence of any legislated Taiapure. No proposals have managed to get through all three stages of the process. This suggests that the Taiapure provisions do not work, they are not designed to achieve their written objective.

The Taiapure provisions are not designed to achieve their objective and they do not appear to recognise rangatiratanga for te iwi Maori.
6.1 INTRODUCTION

The previous chapters postulated that the Taiapure provisions are not a smart statute for te iwi Maori. This chapter tests this analysis by undertaking two case studies with Maori people who have been or are involved with the Taiapure provisions and its process. When undertaking a case study component it is necessary to articulate the way the research was conducted. In this way value positions and their potential effect on the information gathered are exposed. To this end section 6.2 outlines the methodological steps taken. Section 6.3 details the comments from the people interviewed and as a conclusion section 6.4 offers a brief comment on the relationship of the comments to the report's analysis in Chapter Five.

6.2 METHODOLOGY

The basis for undertaking a case study component was to identify and verify the key issues addressed in the study's analysis. By practically grounding the study, the conclusions reached in the analysis are tested. Two groups were chosen as the sites of study, the hapu, Ngati Kere from the North Island, and the iwi Ngai Tahu, from the South Island. These groups were chosen for two major reasons. The first reasoning is practical as Hammersly and Atkinson argue, 1983:4 "the role of pragmatic considerations must not be underestimated in the choice of a setting." The researcher is from the area where Ngati Kere is based, thus has personal acquaintance with the hapu, and she is studying in the area of Ngai Tahu, thus has easy access to Ngai Tahu informants.

The second reason for the choice of the cases, is to represent
the diversity that exists in reality. That is, the diversity in opinion, with a recognition of the value-plurality approach where no positions should be privileged and all understandings are equally valid; the diversity in the tribal system, by addressing both hapu and iwi levels, and the diversity of participation in the Taiapure process, with the groups being at various stages of involvement.

As well as articulating the methodological process, it is important to articulate the researcher's value position. The researcher in this study is a young Pakeha women working for an essentially academic goal. She has constrained time and resource limits and brings her baggage of understandings and experience with her to the research situation. These understandings will necessarily influence her interpretations of the information and will add to the modification of the informants' comments.

The seven interviews were taken in two easily identifiable stages. The first stage was undertaken in the North Island in mid to late August. Three of these interviews were held in Central Hawke Bay and one in Wellington and all took place within a week. The second body of interviews, in the South Island, took place in mid to late October, with two being held within two days and the third being held two weeks later. The major factor influencing the content of the information with this discrepancy in timing was the Sealords Deal, announced at the end of August and deliberated over by iwi and hapu all through the period of interviewing. This meant the South Island interviews differed in emphasis though not in the basic views.

Approaches made towards gaining the interviews were influenced by the relationship the researcher had with the group in question. As previously mentioned the researcher had grown up in the Ngati Kere area, thus had extensive familial contact
with the informants. This necessarily influenced the interview process, often leading to longer interviews as family news was exchanged! The South island interviews were approached on a less informal note, the contacts having been made through previous study and not through familial means. However, the contact with the potential informants had been fostered by prior contacts, thus an element of trust had been established. Personal contact is acknowledged as an important factor in gaining information and the researcher found that a degree of familiarity with the informant aided the transfer of knowledge.

The interviews took place in varying localities with the informants, who were incidentally all men, choosing the time and place. The empowering process of giving the informant the freedom to choose the interview time and place meant he could orient the interview process, especially in terms of time and other commitments. The interviews varied in length, generally taking 1-2 hours, the shortest being half an hour and the longest being 2 hours long. The relative informality of the home interviews generally meant longer interviews, often with family members participating in part of the process.

The interviews were of a semi-structured question format which guided the process but allowed flexibility for individual discretion. There were six questions, three broad questions and three more specific. The questions were:
* What do you perceive as the issue/problem in fisheries?
* How do you perceive rangatiratanga, what does it mean to you?
* Do the Taiapure provisions address the issue outlined above? What are your general feelings about the purpose of Taiapure?
* Who is involved in the process and what stage are you at?
* Are there any problems or difficulties you have had with the process. Conversely, any positive points about process?
* Are there any changes you can recommend to help remedy the difficulties? What do you see for the future?

The recording of the information in the interviews involved taking notes as each man spoke. The intention was to make recording non-threatening and non-intrusive thus the choice of written recording rather than audio-tape. However, this meant there was a double interpretation of the information by the researcher, once as the men spoke and again when writing the comments up in this chapter. Thus, although the chapter is intended to be a collection of interpretations, the controlling power of the researcher in organising the information may mean the researcher's interpretation may be dominant and it is not simply the reflection of the informant's comments and views.

In an effort to give as much controlling power to the informants as possible, the following section, 6.3, was sent to each of the men, giving them the opportunity to comment if they wished.

6.3 INTERVIEWS

The first group interviewed, that of the Ngati Kere hapu from Porangahau, are a major coastal section of the Ngati Kahungunu iwi of Hawke Bay. Their involvement in the Taiapure process is specifically linked with their hapu, although Ngati Kahungunu are supportive of their actions regarding the proposal. Ngati Kere embarked upon the path towards setting up a Taiapure back in November 1990. A meeting was held that month "to discuss increasing local concerns at the depletion of resources occurring in the coastal"waters from Blackhead to Cape Turnagain." (Porangahau Steering Committee, 1992:3) This meeting led to a further meeting where it was decided a committee should investigate the
establishment of a Taiapure. The committee elected, completed this task by August 1991 and presented their findings to a public meeting. It was decided to go ahead with a Taiapure proposal for the area delineated, from Blackhead to Cape Turnagain.

The Ngati Kere proposal is unique in its distinguishing characteristics. The steering committee putting the proposal together is evenly distributed in terms of its members. Half of the members are Ngati Kere and the other half are local Pakeha, many being farmers in the area. According to the people the researcher spoke to, Porangahau has got a headstart on the Taiapure process primarily because of the favorable Maori/Pakeha relations in the area. Porangahau is a small rural town with a small population base. Many of the residents in the village and surrounding area went to school together and have known each other for most of their lives. One informant contrasted this to a city situation where there are lots of people who all have differing views. Because there are so many people, it is near impossible to agree on anything fundamental. He goes on to say that Porangahau is the antithesis of this, with people getting on fairly well, and when there is disagreement, the numbers are so small that creases can be ironed out to an extent. He believes that the conditions in the area are right to achieve a Taiapure.

The steering committee consists of twelve members. In the course of interviewing, three Ngati Kere members were approached and asked for comment on the policy and its process. The fourth informant is also of Ngati Kere descent, but is based in Wellington, thus is not part of the local committee. The men interviewed were; Mr Nick Scia Scia, Jim Hutcheson, Donald Tipene and Piri Scia Scia. Earlier on in the year, two other members (non-Ngati Kere) of the committee were interviewed. Their comments do not find their way into this
chapter rather were adopted in the researcher's general analysis.

At the moment the Porangahau proposal is with the Minister of Fisheries, having been sent off to go through the Taiapure maze in mid August, at the time of interviewing. The hapu can now do little more than wait and hope for a favourable reaction, having aspirations of getting through the process in record time, that is, within a year.

The second group spoken to are not a discrete entity with a single Taiapure proposal as are Ngati Kere, rather, they consist of three individuals who though they belong to the same iwi, have differing hapu and runanga affiliations.

"The tangata whenua within the Ngai Tahu rohe are the descendants of Ngai Tahu, Kati Mamoe and Waitaha. Ngai Tahu is considered the main tribe, the name being used for the confederation of peoples presently united under the Ngai Tahu Trust Board. Each descendent group maintains its individual standing by way of whakapapa."

(Ngai Tahu Maori Trust Board, 1991:2)

The informants, Donald Brown, Anake Goodall and Trevor Howse, are all of Ngai Tahu descent and all are involved to differing levels in the Taiapure process. None of the individuals spoken to are involved in a proposal for their own individual hapu or runanga but they have been involved with other hapu proposals. Their involvement is of a level that ensures they have a sound understanding of the issues enmeshed in the Taiapure provisions and its process. As well as drawing on the comments from these three men, information shall be employed from a couple of these other hapu proposals in the Ngai Tahu rohe. Both the proposals, that of Kati Huirapa at Puketeraki and Kati Kuri at Kaikoura, are in a state of limbo at the moment with other events and issues capturing their attention.
The following discussion, reflecting the oral and written comments of the two groups, is organised around four main sections that derive from the questions asked. The sections concern;

1) the issue in fisheries,
2) the meaning of rangatiratanga,
3) the Taiapure provisions: general perceptions and particular problems, and finally
4) ideas for the future.

The comments of all the individuals interviewed, from the North and South Islands, are considered. The sample of seven informants is regarded as being too small to attribute leanings to one Island or the other. An attempt to reflect the diversity of individual answers shall, however, be taken.

When asked what they perceived as the problem or main issue in the fisheries equation, the informants gave a range of responses along a continuum:

Cultural rights to the resource \(--\cdots\--\--\) Degradation of the natural resource

The issue appeared to exist on these two levels, that is, the problem was the mismanagement of the fisheries resource and its consequent overfished state and the issue of who had the rights to the resource under the Treaty of Waitangi. Most comments had an element of both levels with some being more oriented to one end of the continuum or the other. Two informants had comments that were largely in the realm of the resource problem. They regarded the management of the fisheries as being badly handled with the slaughtering of the fish stocks as a result. The situation is thus "trying to preserve what we've got and hope that it will get better."
A recognition of the commercial role in the overfishing of
the fish stocks was also high on the agenda of these informants with a critical view towards our use of the resource: "there is too much emphasis on the dollar. We are selling the bread and butter out of our house. Selling the very resource on which we are based." Two other informants were more concerned with the denigration of Maori fishing rights in fisheries legislation, especially the 1986 Quota management system. The fisheries are noted as belonging to Maori in terms of the Treaty of Waitangi and they have been illegally misappropriated by the Crown with such legislation as above. One man noted that the issues were not understood generally and the inflammatory media coverage aided this misunderstanding. Yet, despite their concern with their rights to the fisheries resource, these informants were well aware of the resource aspect. As one of them said; "it is as much culture management as resource management."

The remaining informants, too, were well aware of both levels of the fisheries issue, with one informant specifying the existence of the two and giving primacy to the resource aspect. He said the core issue is the resource itself, and the management of this resource. The second level to him pertained to ownership of the rights to the resource. It was about a reconciliation of all perceived rights.

When it came to considering the meaning of rangatiratanga, the seven informants were similar in their comments, with all highlighting firstly their perceived notion of rangatiratanga and then the difference between the concept and its often associated term, ownership. Each of the informants associated the term 'authority' with rangatiratanga, the differences being the authority to do different things. Some regarded it as the authority to grant or deny use and/or access to the fisheries resource, others saw it as the authority to make decisions without the "bureaucratic claptrap" and most rated an ability to assert this authority as being
important. The Crown were regarded as having a responsibility to provide Maori with the resources that are needed to make the decisions, for without the necessary resources the recognised 'rangatiratanga' carries little clout.

Two of the informants emphasised the partnership in the Treaty highlighting the fact that there were other people involved than just Maori. They preferred to opt for a local emphasis than one exclusively iwi or hapu. Yet, they still accentuated the special affinity and responsibility Maori have for the fisheries resource. Rangatiratanga to them is tied up in practices and protocol handed down over many years. It is not something that can be bought or suddenly earned, rather it is embedded in the Maori culture.

As mentioned above, each of the informants noted the differences that existed between ownership and rangatiratanga. Rangatiratanga is about having the 'right' to fish, not about owning the fish. It implies an authority to caretake the resource, to wield kaitiakitanga or stewardship over the fisheries. It is not ownership in its own right but is inherently different and thus more than this. One of the informants regarded ownership as being a limited right and pointed to the Maori land trustees as an example. Here, the land is 'owned' by Maori, yet they have little or no control over the use of the land, this authority being held by the trustees. Overall there was a desire to separate the concept of rangatiratanga from that of 'Pakeha' ownership as it was felt that this association detracted from the full and true meaning of rangatiratanga. It was noted that there is a lack of understanding over the Treaty and its concepts such as rangatiratanga, with the ownership debate adding to the misinterpretations.

The general perceptions held by the informants regarding the Taiapure provisions and their purpose, can be found to
follow a similar path. Initially there was positive reaction to the provisions as the following statements testify:

"Finally some of our mana has been returned by the creation of the Taiapure." (Kaikoura Taiapure Proposal - Kati Kuri)

"A taiapure is a win-win proposal. The Ngai Tahu manage a fishery in their traditional way and obtain spiritual satisfaction from doing so. And over time both the Ngai Tahu and the wider community are able to restore and further develop what is now a rundown and depleted fishery." (Supplement to Kati Huirapa proposal:3)

"The Steering Committee support the taiapure proposal as being positive policy designed to allow management to proceed and protect our kaimoana and waahi mahinga kai, and to foster responsible use of our resource, and to acknowledge true partnership." (Porangahau Steering Committee:20)

However, this optimism waned and the iwi and hapu involved tended to become cynical, some more than others. The view towards the provisions changed from being the saviour of mana to a mechanism that was "better than nothing" and had the potential to start the process towards recognition. As one informant said; "Taiapure isn't everything but its a start. It gets us a say and is a seed to start." Some of the informants were more dismal in their assessment of the provisions; "the Maori Fisheries Act was the only skeleton to hang fisheries rights on. Was the only vehicle available. Realised probably two years ago that it was worthless." Despite the view that the provisions were not going to deliver what they said they would, most of the informants believed in giving the process a go. One informant asked, "What price perfection? We have to take the best you can get." The general feeling was that perhaps the provisions should not be "chucked away" even though they were not perfect. Yet,
some of the informants believed that "the sooner the Taiapure process is got rid of the better."

When asked to comment on any particular problems with the provisions and the process, the informants did not go into too much detail, perhaps feeling they had conveyed their opinion of the policy. Comments that did arise however ranged from a dissatisfaction with the definition of Taiapure to a dislike of MAF Fisheries' treatment of the policy, to the overall difficulty of the red tape burdened process.

The process was identified as having too many constraints leading to nothing meaningful being able to be achieved within them. It is regarded as being purposely designed to be difficult thus taking up resources and energy of iwi and hapu that could be better directed elsewhere. This informant believed the process was made so difficult because the government agencies didn't really want it. Another informant supports this view by likening the process to chasing balloons which then pop after expending copious energy following them. The implied small area of a Taiapure is compared to a swimming pool which wouldn't be at all scientific and would be just a symbolic action rather than a meaningful accomplishment. One comment somewhat sums up the general feeling of iwi and hapu attempting to make the provisions work; "I have had difficulty finding the common sense in it."

Ideas for the future of policy like Taiapure differed quite dramatically between the informants. Some of them hedged around the idea of exclusive areas as fulfilling the requirements of rangatiratanga, yet others regarded this type of thinking as 'radical' and would break up the partnership. This latter response preferred the path of involving locals, Maori and Pakeha, in the activities of management agencies that already exist. Those that support some degree of exclusivity advocate an extended version of
the Taiapure policy. The emphasis on traditional fishing practices is thought to be valid and important and should be elaborated upon. To be included in this extended policy is some utilisation of the rahui concept.

Rahui is a tribal conservation mechanism for the protection of seafood and is generally used for two particular purposes:

1) to declare an area tapu after a death or drowning so that people did not harvest food, swim or use the area until the tapu was lifted.

2) to protect the vitality and productivity of fisheries in an area.

(Donald Brown, pers comm)

A fisheries rahui could declare a total ban, a ban on use except for those entitled to harvest, or allow the area to be fished under certain restrictions such as size limits. The concept is regarded as useful for its flexibility in the long term protection of seafoods and its particular significance as a traditionally employed mechanism, unlike the imposed Taiapure provisions.

One informant gave a list of initiatives that he would like to see included in the extended policy:

- access to mahinga kai
- protect urupa and waahi tapu
- establish kohanga which would give the ability to enhance and reseed
- implement rahui within Taiapure
- have exclusive areas
- give some practical meaning to laws of Tangaroa
- manuhiri to be guided by tikanga Maori

The general view of the future of those who emphasise Maori rather than local rights, is to support anything that puts Maori rights forward in management and allows them to have the authority to control fisheries management according to
their tikanga.

6.4 CONCLUSION

The comments regarding the issue or problem in the fisheries equation support that identified by the analysis, that is the non-recognition of rangatiratanga. However it is seen that the analysis is firmly placed at the cultural end of the continuum of responses and thus tends to neglect a coverage of the resource issue. Yet, in line with the comment that the Maori fisheries issue is as much a culture management problem as a resource management problem, the analysis is found to embrace the resource issue. To help alleviate the pressure impacting on the fisheries resource, it is necessary to clarify and solve the relations of the fisheries resource users. Resource management is inextricably related with people management.

Comments considering the concept of rangatiratanga testified to the level of knowledge and understanding held by te iwi Maori. They have an extensive understanding of the Treaty articles and their implications, and have definite ideas on how the articles should be translated in practice. They also demonstrated through their comments, the more general lack of understanding in the wider public. Not everyone is privy to information regarding the Treaty and its relationship to the fisheries resource, and further, not everybody wants to be.

The informants raised an issue neglected by the analysis, and this was the role of the media in nurturing support for policies. Media coverage of the Maori fisheries issue, including that concerning the Taiapure provisions, is viewed as being inflammatory and hence has the potential to depreciate the support for implementation of the policy.
When asked if the Taiapure provisions addressed the problem of non-recognition of rangatiratanga, the comments given were similar to those tentatively put forward in Chapter Five. One informant when asked this question, gave an outright "no" as an answer, then backed his statement up by detailing the problems faced by iwi and hapu entering the Taiapure process. Overall, the conclusion was that the Taiapure provisions didn't recognise rangatiratanga as te iwi Maori perceived it. However, unlike the analysis, which regarded the provisions as containing fundamental flaws for te iwi Maori, the informants believed in still giving the provisions 'a go.'

Particular comments regarding the details of the provisions were along the same lines as those exposed in the analysis. For example, the complex process, the lack of definition, the lack of resources, and the burden of proof lying with the applicants were all targeted as being shortcomings of the provisions.

One of the informants confirmed the analysis' proposition that the provisions were symbolic in their objective, and their framework just subsumed the admirable sentiments within a bureaucratic process, by likening the process to chasing a balloon. Another informant touched on the symbolism of the provisions with his reference to Taiapure the 'size of swimming pools'.

In summary of these comments and in fulfillment of objective Two, the Taiapure provisions are not seen to recognise rangatiratanga from a te iwi Maori perspective.
7.1 CONCLUSIONS

This study has been clouded by the uncertainty caused by firstly, extensive government reform to fisheries legislation and secondly, the potential resolution of the Sealords Deal. In a climate in which nothing seems certain, it is not possible to provide specific options for the future. However, it has been possible to expose the underlying structural logic of the Taiapure provisions, assess the relationship of the provisions to its context and give some conclusions as to its fulfillment of its written objective.

The written objective of the Taiapure provisions is to "provide for better recognition of rangatiratanga...in relation to fisheries..." The study concluded that this objective is not being fulfilled in a policy sense, as the policy design does not link with the context in which it is to be implemented.

A 'smart' policy design would reduce value conflict and uncertainty, enhance understanding, and boost motivation and capacity for implementation of the policy. The Taiapure provisions do not undertake these steps in their design, thus are identified as not acting as a 'smart statute'.

It is also concluded through the use of a case study approach, that rangatiratanga is not being recognised from a te iwi Maori perspective.

These two conclusions necessarily lead to the third objective of the study - what recommendations for change can be offered?
7.2 RECOMMENDATIONS

The recommendations arising from this study are concerned with 'adding value' to those aspects identified in the analysis as needing attention. These aspects are found in terms of the three contextual characteristics.

1) Support

The 'support building' approach adopted by the Taiapure provisions, in an attempt to work with the broad value conflict that exists, is an effective stance. The written objective of the provisions is an admirable sentiment and the vagueness of its goal allows ample discretion for local value to be added. However, the practical support offered to applicants in the Taiapure process, particularly towards the target population of te iwi Maori, is insufficient.

Extensive outside help to the applicants in the form of facilitation, mediation and expertise in the fields relevant to the establishment of traditional fishing areas, is needed. An agency fully supporting the Maori perspective is vital. They will then be in a position to take part in a process of consensus over the establishment of traditional fishing areas. Emphasis in this process is to be on the actual establishment of areas and isn't to circumvent the issue by having a purely political emphasis.

2) Knowledge and Certainty

The context of lack of knowledge and uncertainty needs to be addressed by the provision of education programmes. All resource user groups should be required to undertake a programme detailing the rationale behind such policy as the Taiapure provisions. These programmes will be in the form of workshops where everyone gets an opportunity to have a say. The only way to reduce uncertainty is
to put all the cards on the table in terms of the resource user groups' value positions. When, for example, the commercial user group has an comprehension of the te iwi Maori perspective, discussion can take place on an even level of knowledge. In this manner a degree of certainty is brought to the arena.

The onus of responsibility for these workshops should not be on te iwi Maori, but on Government agencies, with consultation with te iwi Maori. In this way, Maori do not have to bear the burden of proving their position, and it allows the workshops to be an education experience for everyone, Maori and the other resource user groups.

3) Motivation and Capacity
The achievement of the above suggestion will necessarily have a 'trickle down' effect on the motivation of the groups involved in the establishment and management of traditional fishing areas. Through the consensus process, worked out at the education workshops, a implementation process that is less rigid in its procedures, will be determined. Applicants entering this process will be more motivated to stick with the process, in the knowledge that there will be plenty of discretion points. Agencies responsible for the process, will too, be motivated to champion the establishment of traditional fishing areas, with their added knowledge and certainty about their role.

With the improved information and communication between the resource user groups and the agencies of responsibility, will come an efficient allocation of resources, which should enable a capacity to implement and establish Taiapure effectively.

This set of recommendations involves adding value at restricted points, working with existing frameworks. However, in the
current climate of extensive fisheries legislation reform, there is the likelihood that existing frameworks will be abolished or changed beyond recognition. Thus, building on these frameworks could mean working with very shaky foundations. Rather than doing this, the study recommends taking the opportunity presented by the current climate. This climate is offering the chance to develop an entirely 'value added' process instead of 'adding value' at restricted points. The recommendations on the previous two pages will play a central and guiding role in this change.

The role of te iwi Maori in this process will be pivotal. They will have the responsibility for working out the details of the new provisions, modelling them on cultural traditions and practices. This responsibility, rather than being a burden of proof as with the Taiapure process, will be allied with the authority and capacity to carry out the management practices.

This authority will be supported by the existing management agencies but not usurped by them. Ideally, national guidelines will be set by agencies and te iwi Maori, letting local hapu implement the details. Initiatives such as those proposed by an informant in Chapter Six will be adopted to a greater or lesser extent according to the wishes of the local people.

By working on the recommendations offered to 'add value', an ideal end point such as that outlined below, can be reached. This 'ideal' programme is an attempt to provide a practical option for the future of traditional fisheries management in New Zealand.

1) Have relatively small, exclusive areas of sea for the use of te iwi Maori. Maori are to decide on the area to be delineated with the understanding that once the area is chosen, it can not be changed. This will involve
difficult decisions for iwi, but it will alleviate problems regarding future claims over an area. Activities in the area are entirely the prerogative of te iwi Maori.

2) Have a larger area (suggest out to 1.5/2 miles) of sea. The area is to be managed in the manner of a Taiapure, that is, by the local people. The management committees for the area should be representative of the resource user groups in the community, with a certain number of local iwi being present. Activities in the area will be subject to negotiation by the management committee.

3) The third level of the programme recognises the rohe concept where iwi have authority over the whole tribal coastline. This authority is subject to existing legislation, with the implementing agencies having the responsibility of actively consulting te iwi Maori in regards to activity in the area.

Within the guidelines of this programme, locally based people, te iwi Maori and other resource user groups, can determine the activities most appropriate for them.

Finally, this study recommends that future research be undertaken in the area of traditional fisheries. This is especially important with the historic Sealords Deal going ahead. The Deal will have extensive implications for traditional fisheries, both in terms of their existence and their management. An assessment of these implications is vital for the overall management of our fisheries resource.
1. Reference to the Taiapure provisions is referring to the legislative details set out in Appendix Two and the implementation process supporting the legislation, set out in Appendix Three.

2. There were in fact five variations of the English text circulated in Hobson's official dispatches in 1840; the English text we know today is the document that was taken to hui at Port Waikato and Manukau where it was signed by Hobson and 39 rangatira. (Williams, 1989:77 in Kawharu, 1989)

3. A term coined by the Parliamentary Commissioner for the Environment to describe the fundamental agreement contained in the Treaty. (PCfE, 1988:6)

4. Manutu Maori underwent a transition in June 1992 to Te Puni Kokiri, or the Ministry of Maori Development.
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Appendix 1. The Treaty of Waitangi

MAORI VERSION
Te Tiriti O Waitangi

Ke kupu whakataki
Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki ngā rangatira me nga hapū o Nu Tirani i tana hiahia hoki kia tohungia kia a rātou o rātou rangatiratanga me to rātou wenua a kia mau tonu hoki te rongo ki a rātou me te Atanoho hoki kua wakaaro ia he mea tīka kia tukua mai tetahi rangatira hei kai wakarite ki ngā Tangata Māori o Nu Tirani kia wakaetia e ngā rangatira Māori te Kawanatanga o te Kuini ki ngā wāhikatoa o te wenua nei me ngā motu - nā te mea hoki he tokomaha ke nāa tangata a tona  īwi kua noho ki tenei wenua a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kīno e puta mai ki te tangata Māori ki te Pākeha e noho ture kore ana.

Na kua pai te Kuini kia tukua ahau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo ngā wāhi katoa o Nu Tirani i tukua aiwai e mua atu ki te Kuini e mea atu ana ia ki ngā rangatira o te wakaminenga o ngā hapu o Nu Tirani me era rangatira atu e nei ture ka Kōrerotia nei.

Ko Te Tuatahi
Ko ngā rangatira o te Wakaminenga me ngā rangatira katoa hoki, kihai i uru ki taua Wakaminenga, ka tuku rawa atu ki te Kuini o Ingarangi ake tonu atu te Kawanatanga katoa o o rātou wenua.

Ko Te Tuarua
Ko te Kuini o Ingarangi ka wakarite ka wakaee ki ngāa rangatira, ki nga hapū, ki ngā tangata katoa o Nu Tirani, te tino rangatiratanga o o rātou wenua o rātou kainga me o rātou taonga katoa. Otiia ko ngā rangatira o te Wakaminenga me ngā rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wāhi wenua e pai ai te tangata nona te wenua, ki te ritenga o te utu e wakaritea ai e rātou ko te kaihoko e meatia nei e te Kuini hei kaihoko mona.

Ko Te Tuatoru
Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarangi ngā tangata Māori katoa o Nu Tirani. Ka tukua ki a rātou ngā tikanga katoa rite tahi ki ana mea ki ngā tangata o Ingarangi.

Na, ko matou ko ngā rangatira o te Wakaminenga o ngā hapū o Nu Tirani kā huīhui nei ki Waitangi ko matou hoki ko ngā rangatira o Nu Tirani kia kete nei i te ritenga o e nei kupu: Ka tangohia ka wakaetia katoa e matou. Koia ka tohungia ai o matou īngoa o rātou tohu.

Ka meatia tenei ki Waitangi i te ono o ngā ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.
**Treaty of Waitangi: a literal English translation of the Maori text**

(Signed at Waitangi February 1840, and afterwards by about 500 chiefs)

VICTORIA, the Queen of England, in her kind (gracious) thoughtfulness to the Chiefs and Hapus of New Zealand, and her desire to preserve to them their chieftainship and their land, and that peace and quietness may be kept with them, because a great number of the people of her tribe have settled in this country, and (more) will come, has thought it right to send a chief (an officer) as one who will make a statement to (negotiate with) Maori people of New Zealand. Let the Maori chiefs accept the governorship (KAWANATANGA) of the Queen over all parts of this country and the Islands. Now, the Queen desires to arrange the governorship lest evils should come to the Maori people and the Europeans who are living here without law. Now, the Queen has been pleased to send me, William Hobson, a Captain in the Royal Navy to be Governor for all places of New Zealand which are now given up or which shall be given up to the Queen. And she says to the Chiefs of the Confederation of the Hapus of New Zealand and the other chiefs, these are the laws spoken of.

**Article the first**
The Chiefs of the confederation, and all these chiefs who have not joined in that Confederation give up to the Queen of England for ever all the Governorship (KAWANATANGA) of their lands.

**Article the second**
The Queen of England agrees and consents (to give) to the Chiefs, hapus, and all the people of New Zealand the full chieftainship (rangatiratanga) of their lands, their villages and all their possessions (taonga: everything that is held precious) but the Chiefs give to the Queen the purchasing of those pieces of land which the owner is willing to sell, subject to the arranging of payment which will be agreed to by them and the purchaser who will be appointed by the Queen for the purpose of buying for her.

**Article the third**
This is the arrangement for the consent to the governorship of the Queen. The Queen will protect all the Maori people of New Zealand, and give them all the same rights as those of the people of England.

WILLIAM HOBSON, Consul and Lieutenant-Governor

**Article the fourth**
Two churchmen, the Catholic Bishop, Pompallier and the Anglican Missionary William Colenso recorded a discussion on what we would call religious freedom and customary law. In answer to a direct question from Pompallier, Hobson agreed to the following statement. It was read to the meeting before any of the chiefs had signed the Treaty.

E mea ana te Kawana ko ngā whakapono katoa o Ingarani, o ngā Weteriana, o Roma, me te ritenga Maori hoki e tiakina ngatahitia e ia.

**Translation:**
The Governor says that the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Maori custom shall alike be protected by him.
ENGLISH VERSION
The Treaty of Waitangi

Preamble

Her Majesty, Victoria, Queen of the United Kingdom of Great Britain and Ireland, regarding with her Royal Favour the Native Chiefs and Tribes of New Zealand, and anxious to protect their just Rights and Property, and to secure to them the enjoyment of Peace and Good Order, has deemed it necessary, in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand, and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of these islands. Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to averting the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the Native population and to Her Subjects has been graciously pleased to empower and authorise me William Hobson, a Captain in Her Majesty's Royal Navy, Consul, and Lieutenant-Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty, to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

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 the 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 maintain the same in their possession; but the Chiefs of the United Tribes and the Individual Chiefs yield to Her Majesty the exclusive right of Pre-emption 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.

W. Hobson, Lieutenant-Governor
Article the fourth
Now therefore, We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria, in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names having been made fully to understand the Provision of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof. In witness of which, we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi, this sixth day of February in the year of Our Lord, one thousand eight hundred and forty.
APPENDIX 2: TAIAPURE SECTION OF THE MAORI FISHERIES ACT

"PART III

"TAIAPURE-LOCAL FISHERIES

"54a. Object—The object of this Part of this Act is to make, in relation to areas of New Zealand fisheries waters (being sublittoral or littoral coastal waters) that have customarily been of special significance to any iwi or hapu either—

(a) As a source of food; or

(b) For spiritual or cultural reasons,

et her provision for the recognition of rangatiratanga of and the right secured in relation to fisheries by Article II of the Treaty of Waitangi.

"54a. Declaration of t aiapure-local fisheries—(1) Subject to subsections (2) and (3) of this section, the Governor-General may, from time to time, by Order in Council published in the "Notice," declare any area of New Zealand fisheries waters (being sublittoral or littoral coastal waters) to be a t aiapure-local fishery.

(2) An order under subsection (1) of this section may be made only on a recommendation made by the Minister in accordance with this Part of this Act.

(3) The Minister shall not recommend the making of an order under subsection (1) of this section unless the Minister is satisfied that—

(a) That the order will further the object set out in section 54a of this Act; and

(b) That the making of the order is appropriate having respect to—

(i) The size of the area of New Zealand fisheries waters that would be declared by the order to be a t aiapure-local fishery; and

(ii) The impact of the order on the general welfare of the community in the vicinity of the area that would be declared by the order to be a t aiapure-local fishery; and

(iii) The impact of the order on those persons having a special interest in the area that would be declared by the order to be a t aiapure-local fishery; and

(iv) The impact of the order on fisheries management.

54c. Proposal for establishment of t aiapure-local fishery—(1) Any person may submit to the Director-General a proposal for the establishment of a t aiapure-local fishery.

(2) The proposal—

(a) Shall contain a description of the proposed t aiapure-local fishery, which description shall include particulars of the location, area, and boundaries of the proposed t aiapure-local fishery; and

(b) Shall describe—

(i) Maori, traditional, recreational, commercial, and other interests in the proposed t aiapure-local fishery;

(ii) The species of aquatic life in the proposed t aiapure-local fishery that are of particular importance or interest.

(3) The proposal shall—

(a) State why the area to which the proposal relates has customarily been of special significance to an iwi or hapu either—

(i) As a source of food; or

(ii) For spiritual or cultural reasons;

(b) Set out the policies and objectives of the proposal;

(c) Contain such other particulars as the Director-General considers appropriate.

540. Initial consideration of proposal—(1) The Director-General shall refer to the Minister every proposal submitted to the Director-General in accordance with section 54c of this Act.

(2) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 54a (8), agrees in principle with the proposal, the Minister shall give the Director-General to publish notice of the proposal in the Gazette.

(3) The proposal shall be available for public inspection for a period of not less than 2 months after the date of the publication in the Gazette of the notice of the proposal.

(4) The notice shall specify the office of the Maori Land Court in which objections to the proposal may be lodged.

(5) If the Minister, after consultation with the Minister of Maori Affairs and after having regard to the provisions of section 54a (3) of this Act, does not agree in principle with the proposal, the Director-General shall inform the person who made the proposal that the proposal will not be proceeding further as the Minister does not agree with it in principle.

54e. Notice of proposal—(1) The notice authorised under section 54d (2) of this Act shall be published at least twice, with an interval of not less than 7 days between each notification of the proposal, in the metropolitan newspapers and in a newspaper circulating in the locality of the area to which the proposal relates.

(2) A copy of the proposal shall be deposited in—

(a) The office of the Maori Land Court nearest to the locality of the area to which the proposal relates; and

(b) The Ministry's Head Office; and

(c) The office of the territorial authority for the area to which the proposal relates; and

(d) The office of the regional council for the area to which the proposal relates.

54f. Objections to, and submissions on, proposal—(1) Any person or public authority, local authority, or any body specifically constituted by or under any Act, and any Minister of the Crown, who or who has any function, power, or duty which relates to, or which or who is or could be affected by, any aspect of the proposed t aiapure-local fishery may, within 2 months of the publication in the Gazette of the proposal, lodge at the office of the Maori Land Court specified pursuant to section 54d (4) of this Act—

(a) An objection to the proposal; or

(b) Submissions in relation to the proposal; or

(c) Both.

(2) Any such objection and any such submissions—

(a) Shall identify the grounds on which the objections or submissions are made; and

(b) Shall be supplemented by such particulars and information as the Registrar of the Maori Land Court notifies the applicant the Registrar of the Maori Land Court considers necessary to sufficiently identify the grounds of the objection or the submissions.

54g. Inquiry by tribunal—(1) A public inquiry shall be conducted into all objections and submissions received under section 54f of this Act.

(2) The inquiry shall be conducted by a tribunal consisting of a Judge of the Maori Land Court appointed by the Chief Judge of the Maori Land Court.

(3) The Chief Judge of the Maori Land Court may direct that the tribunal conducting the inquiry conduct it with assistance of one or more assessors to be appointed by the Chief Judge for the purpose of the inquiry.
“(4) In considering the suitability of any person for appointment as an assessor, the Chief Judge of the Maori Land Court, shall have regard not only to that person’s personal attributes but also to that person’s knowledge of and experience in the different aspects of matters likely to be the subject-matter of the inquiry.

“(5) The tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908 and, subject to the provisions of this Act, all the provisions of that Act, except sections 10 to 12, shall apply accordingly.

“(6) The person who submitted the proposal to the Director-General, the Minister, or any regional council or local authority whose region or district is affected by the proposal and every body and person which or who made submissions on or objected to the proposal under section 54(2) of this Act, shall have the right to be present and be heard at every inquiry conducted by the tribunal under this section, and may be represented by counsel or duly authorised representative.

“(7) A tribunal appointed under this section may, if the Chief Judge of the Maori Land Court so directs, conduct any 2 or more inquiries together notwithstanding that they relate to different areas or different parts of any area.

“(8) On completion of the inquiry, the tribunal shall, having regard to the provisions of section 54(5) of this Act—

(a) Make a report and recommendations to the Minister on the objections and submissions made to it, which report and recommendations may include recommended amendments to the proposal; or

(b) Recommend to the Minister that no action be taken as a result of the objections and submissions made to it.

“(9) The Minister, after taking into account the report and recommendations of the tribunal and after having regard to the provisions of section 54(5) of this Act, and after consultation with the Minister of Maori Affairs—

(e) May—

(i) Accept those recommendations; or

(ii) Decline to accept all or any of those recommendations; and

(b) Shall publish in the Gazette—

(i) The report and recommendations of the tribunal; and

(ii) The decision of the Minister on the report and recommendations of the tribunal.

“(10) Subject to section 54(8) of this Act, no appeal shall lie from any report or recommendation or decision made under this section.

“54(8). Appeal on question of law—Where any party to any proceedings under section 54(6) of this Act before a tribunal appointed under section 54(6) of this Act is dissatisfied with the report or any recommendation of the tribunal, as being erroneous in point of law, that party may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only, and the provisions of subsections (2) to (11) of section 162 and of section 162A of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning Act 1977.

“54(9). Power of Minister to recommend declaration of taiahaure-local fishery—Where a proposal for the establishment of a taiahaure-local fishery has been made under section 54(6) of this Act and any proceedings in relation to that proposal (including any proceedings taken under sections 54 to 54(8) of this Act in relation to that proposal) have been disposed of or for the time of taking any such proceedings has expired, the Minister shall, if satisfied that a recommendation should be made under section 54(2) of this Act, make that recommendation accordingly.

“54(10). Management of taiahaure-local fishery—(1) The Minister, after consultation with the Minister of Maori Affairs, shall appoint a committee of management for each taiahaure-local fishery.

“(2) The committee of management may be any existing body corporate.

“(3) The committee of management shall be appointed on the nomination of persons who appear to the Minister to be representative of the local Maori community.

“(4) The committee of management shall hold office at the pleasure of the Minister.

“54(11). Power to recommend making of regulations—(1) A committee of management appointed for a taiahaure-local fishery may recommend to the Minister the making of regulations under section 89 of this Act for the conservation and management of the fish, aquatic life, and seaweed in the taiahaure-local fishery.

“(2) Regulations made under section 89 of this Act pursuant to subsection (1) of this section may override the provisions of any other regulations made under that section or the provisions of any fishery management plan.

“(3) Except to the extent that any regulations made under section 89 of this Act pursuant to subsection (1) of this section override or are otherwise inconsistent with the provisions of any other regulations made under that section or of any fishery management plan, those provisions shall apply in relation to every taiahaure-local fishery.

“(4) Any provision of regulations made under section 89 of this Act that relates only to a taiahaure-local fishery may be made only in accordance with subsection (1) of this section.

“(5) Any provision of a fishery management plan that relates only to a taiahaure-local fishery may be included in that plan only on the recommendation of the committee of management of that taiahaure-local fishery.

“(6) No regulations made under section 89 of this Act shall provide for any person—

(a) To be refused access to, or the use of, any taiahaure-local fishery; or

(b) To be required to leave or cease to use any taiahaure-local fishery by reason of the colour, race, or ethnic or national origins of that person or of any relative or associate of that person.
This diagram shows:

- The stages involved in the application process.
- The times when Iwi or users may interact with each other or Government agencies.
- How Taipure may be implemented.

STAGE ONE: THE TAIAPURE PROPOSAL

1. Iwi support a Taipure proposal

2. Applicant approaches MAF Fisheries for information on Taipure proposal development

3. MAF Fisheries can provide information on contacts so that a meeting with the applicants and other agencies can be arranged

4. Iwi develop a draft proposal

5. Iwi gain views of user groups on draft proposal

6. Applicant sends the Taipure proposal to the Director General, Ministry of Agriculture and Fisheries c/o the Regional Manager, MAF Fisheries [54C(1)]

7. MAF Fisheries reports to the Minister of Fisheries on the proposal [54D(1)]

8. The Minister of Fisheries consults with the Minister of Maori Affairs [54D(2)]

9. The Minister of Fisheries decides in principle to the proposal [54D(2)]

Application referred back to applicants

YES

NO
STAGE TWO: THE MAORI LAND COURT TRIBUNAL HEARING

1. Notice of the proposal is published in the Gazette [54D(2)]

2. MAF Fisheries:
   - Publishes notice of the proposal in national and local newspapers [54E(1)]
   - Sends a copy of the proposal to the District Maori Land Court, the Territorial Authority and the Regional Council [54E(2)]
   - Sends a copy of the Gazette notice to the Applicant

3. Second publication of notice of the proposal published in the Gazette [54E(1)]

4. Submissions and objections received by the Maori Land Court Registrar [54F(1)]

   YES

   NO

5. Public inquiry into submissions and objections by the Taiapure Tribunal headed by a Judge of the Maori Land Court [54G(1),(2),(6)]

6. Tribunal reports to the Minister of Fisheries. [54G(8)]

7. Minister of Fisheries consults with Minister of Maori Affairs and makes a decision. [54G(9)]

8. Minister of Fisheries publishes in the Gazette the:
   - Tribunal Report
   - Tribunal Recommendations
   - Ministers Decision [54G(9)(b)]
9. Notice of Appeal to High Court on points of law stemming from the Tribunal report and recommendations [54H-MFA,162&162A-T&CPA] → ONE MONTH [162(3)T&CPA]*

YES

NO

10. Case stated lodged with Tribunal → TIME UNKNOWN

11. High Court hearing and decision

STAGE THREE: SETTING UP THE TAIAPURE

1. Minister of Fisheries recommends the Governor General declare a Taiapure by Order In Council [54B(1),(2)] → Application referred back to applicants

YES

NO

2. Notice of Taiapure declaration published in the Gazette [54B(1)]

3. Minister appoints Taiapure Management Committee [54]

4. Minister gazettes Taiapure Regulations [54K]

* Affected by the Resource Management Act