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Maori Participation in
Fisheries Management Plans

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by

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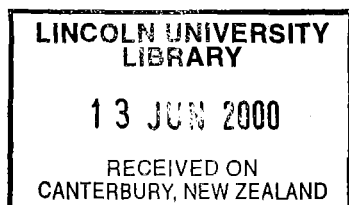
Maori Participation
in Fisheries Management Plans
by J.M. Frater

If tino rangatiratanga as guaranteed under the Treaty of Waitangi is to be met, Maori participation is considered a desirable and necessary component in the development of Fisheries Management Plans.

The aim of this study is to propose a model which allows for Maori participation in fisheries management planning at a level equal to that guaranteed in the Treaty of Waitangi.

The study uses Arnstein's ladder of participation (1969) as a "yardstick" for comparing the different levels of participation which may occur. Both the level of Maori participation provided for in the Treaty of Waitangi and in the institutional arrangements (at the constitutional, collective choice and operational levels) in the development of the Auckland and South-East Fisheries Management Plans are examined.

It is concluded that Maori participation, as provided for in institutional arrangements of both Fisheries Management Plans, was at a level below that guaranteed in the Treaty of Waitangi.



Furthermore, it is recognised that any system which would allow tino rangatiratanga to be expressed would need to incorporate the values and institutions of Maori. Consequently, a bicultural model for fisheries management planning is proposed, incorporating the values and institutions of both Maori and Pakeha.

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Chapter 1

INTRODUCTION

1.1 Background

New Zealand's 200 mile Exclusive Economic Zone (EEZ), occupying 1.2 million square nautical miles, is one of the world's largest. Within these waters there are around 1000 species of marine fish known, of which 100 are commercially significant. In 1989 New Zealand exported fish to the value of 818 993 thousand NZ\$, accounting for 3.6% of the country's Gross Domestic Product (OECD, 1989).

New Zealand's fisheries are prized by both partners to the Treaty of Waitangi -that is, te iwi Maori and the Crown. Both partners regard fisheries for their recreational, commercial, and conservation values. However, in addition, Maori place great importance on the spiritual value they believe accrues to fisheries. Indeed, Maori legend dictates that Maui (a hero of culture renowned throughout Polynesia) fished up the islands of New Zealand.

It is recognised that Maori have fished the waters of New Zealand since their arrival in New Zealand some 1000 years ago (Waitangi Tribunal, 1988:31-35); fish being an essential food source due to the lack of mammals on the islands.

In the early nineteenth century Europeans began to settle in New Zealand. Subsequently, the need for a Treaty between te iwi Maori and the British Crown was realised. The Treaty of Waitangi was signed in 1840 under which, Maori were guaranteed "...te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga" fisheries being regarded as taonga (ibid.:202-205).

However, despite these guarantees, legislation enacted by Pakeha governments¹, both directly and indirectly, decreased the extent of Maori fishing activity, culminating in the passing of the Fisheries Act 1983.

This Act established the Quota Management System whereby Individual Transferable Quota (ITQ) were allocated to fishers based on their previous fishing history. Therefore, the Crown, upon assuming ownership of the fisheries, created private ownership rights for fish.

Currently within fisheries legislation the Treaty of Waitangi is not recognised and little reference is made to Maori fishing rights; the sole reference being under the Section 88(2) of the Fisheries Act which states:

Nothing in this Act shall affect any Maori fishing rights.

¹For the remainder of this report the term "Pakeha" will be used to refer to all people of European descent settling in New Zealand.

Since the signing of the Treaty, there have been many appeals by Maori for recognition of their traditional fishing rights which they believe were preserved by the Treaty of Waitangi. In particular, the Muriwhenua, Manukau and Ngai Tahu claims to the Waitangi Tribunal have highlighted the extent and importance of fisheries to Maori.

Therefore, management of fisheries has been a contentious issue in New Zealand and remains so today. At present the Ministry of Agriculture and Fisheries (MAF) is responsible for the management of New Zealand's fish resources under the Fisheries Act 1983. In accordance with the Act, MAF is required to develop Fisheries Management Plans (FMPs) for each Fisheries Management Area (FMA) (see fig.1). It is my contention that in the development of FMPs for the Auckland and South-East FMAs, the degree of participation by Maori should be consistent with the Treaty.

Fishery Management Area Boundaries

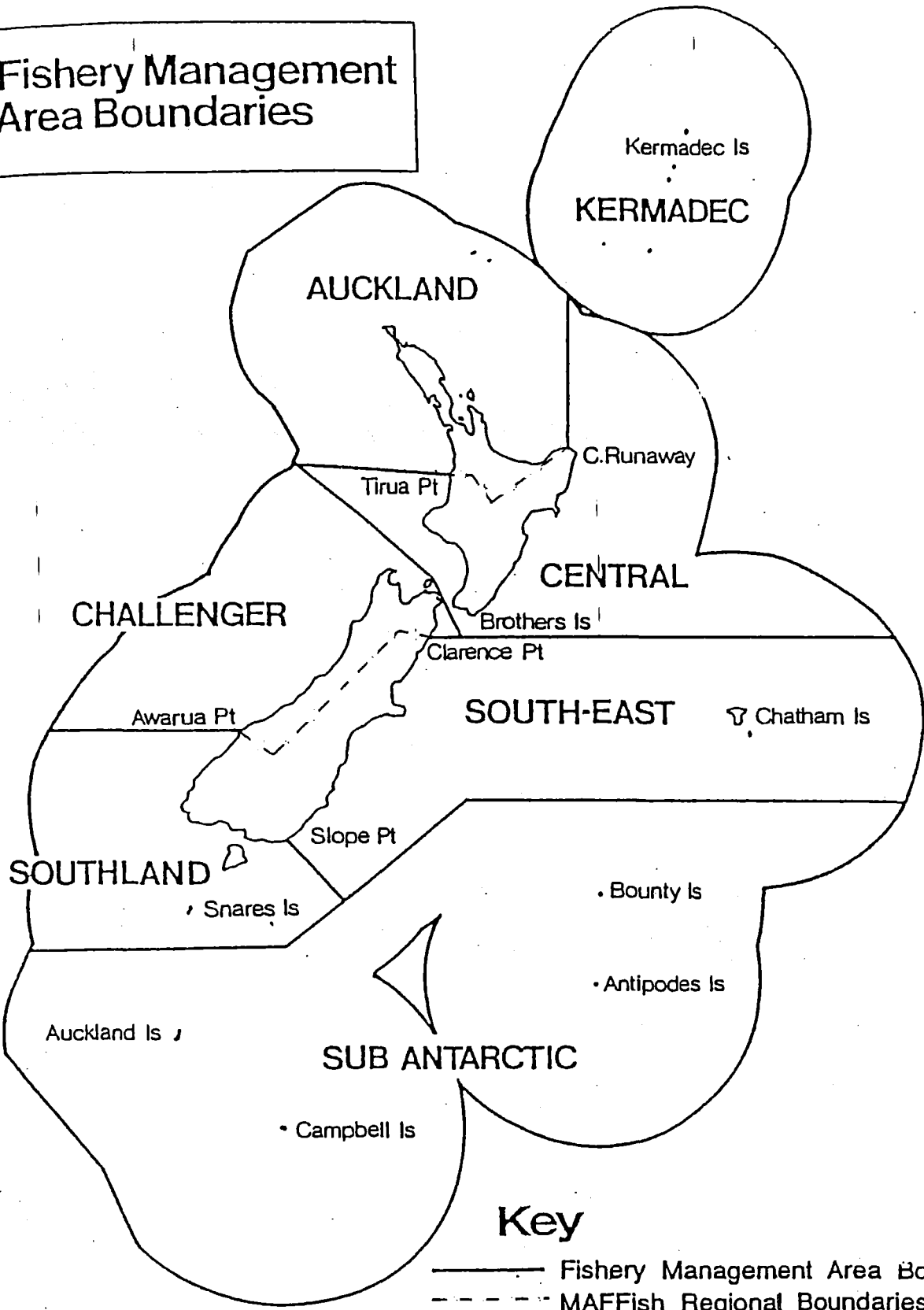


Figure 1 Fishery Management Areas in New Zealand
Source: MAFFish 1989

1.2 Objectives of this study

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It is a primary assumption of this study that the level of Maori participation in fisheries management planning² is not consistent with the Treaty of Waitangi. To investigate this assumption, firstly the level of participation in the management of fisheries resources which the Treaty guarantees to Maori will be determined. Subsequently, the institutional arrangements providing for Maori participation (at three levels of action) in the development of the Northern and South-East FMPs will be determined. Finally, an alternative model will be proposed for fisheries management planning which provides for Maori participation at a level guaranteed by the Treaty.

1.3 Study approach

The concept of participation will be considered in chapter two using Arnstein's "ladder of participation" (Arnstein 1969). This ladder will provide a basis from which to assess the level of participation guaranteed to Maori under the Treaty, and the level which occurred in the development of Fisheries Management Plans.

Consequently, chapter three will outline the guarantees of the Treaty of Waitangi and the level of participation guaranteed will be determined. Following this, the implications of the Treaty for

²Although it is recognised that fisheries management planning includes both the development of FMPs and the QMS system; for the purposes of this report the term "fisheries management planning" will be used to refer specifically to the development of FMPs.

future management of the fisheries resource will be examined.

In Chapter four the nature of FMPs will be outlined and the institutional arrangements which exist at the constitutional, collective choice and operational levels will be examined. Subsequently, using Arnstein's ladder, the institutional arrangements will be analysed to determine the intensity of Maori participation provided for at each of these levels and the outcomes which result.

In the final chapter the factors which need to be considered to enable Maori to participate in the development of FMPs at a level guaranteed to them under the Treaty will be investigated. Consequently, a model for future fisheries management planning will be proposed.

CHAPTER 2

PARTICIPATION

2.1 What is participation?

Participation as defined by Nagel (1987) refers to actions through which ordinary members of a political system influence or attempt to influence outcomes. Nagel qualifies "political system" to include any organised structure of power, influence and authority (not only government) and "ordinary members" to represent all persons except those who perform the activities in question as a requirement of their principal jobs. Importantly, Nagel maintains that participation varies along two dimensions; extent and intensity.

Participation is considered a condition required for democracy to exist. Democracy, as defined by Cohen (1971):

is that system of community government in which, by and large, the members of a community participate, or may participate, directly or indirectly, in the making of decisions which affect them all (Cohen, 1971:6)

Within different societies the breadth and depth of democracy will vary. Breadth refers to the proportion of the community that participates in determining policies, and depth, to the fullness or character of participation which takes place.

Therefore, the intensity of participation may be equated with the depth of democracy. It is these parameters which will be investigated as it was the character of Maori participation

guaranteed by the Treaty will be considered³.

Sherry Arnstein (1969) has developed a framework where participation strategies are ranked preferentially according to the amount of power accorded to members of the public; thereby categorising the intensity of participation (depth of democracy). Essentially, Arnstein sees participation as a struggle by the "have-nots to wrest away power from the "haves". That is, a means of redistributing power to those who have traditionally lacked power, those excluded from the political and economic processes⁴.

She maintains that:

the heated controversy over "citizen participation", "citizen control", and "maximum feasible involvement of the poor," has been waged largely in terms of exacerbated rhetoric and misleading euphemisms" (Arnstein, 1969:216).

Therefore, she offers her typology in the hope of "..encouraging a more enlightened dialogue..." using examples from three federal social programmes: urban renewal, antipoverty and Model Cities. Since 1969, Arnstein's model has been widely utilised as a tool for determining and assessing public participation (eg. Twight and Carroll (1983), Pollack (1985), Alterman (1982)).

³To achieve the objectives of this report, the extent of participation and the breadth of democracy will not be explored.

⁴This definition and the language it uses should be taken in the context of the political science literature from which it arises.

Arnstein arranges her typology as a ladder, with each rung corresponding to the extent of citizen power which may exist in the development of a plan or programme. She identifies 8 rungs, from manipulation (essentially non-participation) on the lowest rung, to citizen control at the highest rung, where citizens are responsible for making decisions which affect themselves (see fig.2). She acknowledges that the ladder simplifies participation; that levels of participation are not discrete, and that combinations of different types of participation may occur.

However, despite these limitations, due the simplicity of Arnstein's ladder it is concluded that it may be useful for comparing the intensity of iwi participation guaranteed by the Treaty; that which is provided for by institutional arrangements; and that which occurs in fisheries management planning.

Hence, Arnstein's ladder of participation will be examined, beginning at the lowest rungs.

2.2 Manipulation and therapy

The lower rungs of Arnstein's ladder are better described as levels of non-participation rather than participation. At these levels power holders lead people to believe they are participating while, in reality, power holders aims are to "educate" or "cure" the participants.

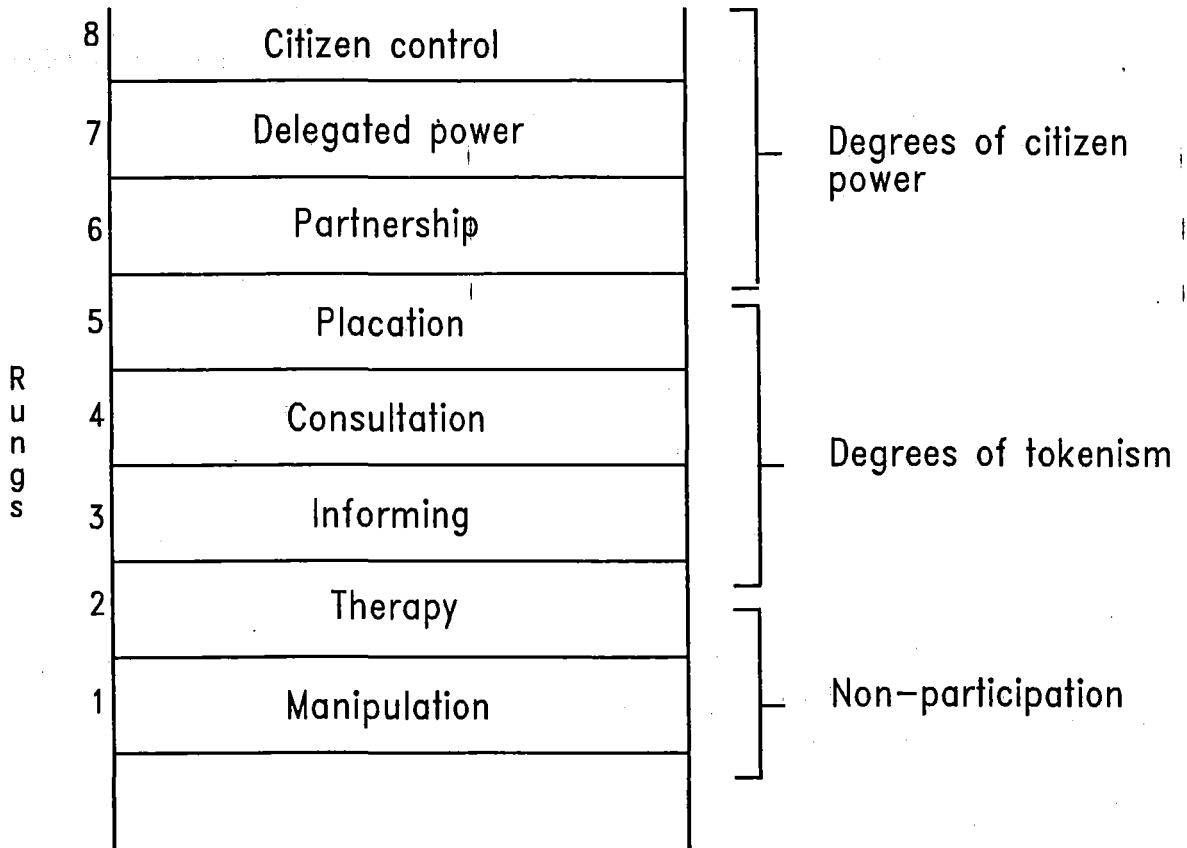


Figure 2 Arnstein's Ladder of Citizen Participation
Source: Arnstein (1969)

2.2.1. Manipulation

Arnstein notes that at the level of manipulation it is common for advisory committees and boards to be set up by power holders to "educate" the participants. These committees serve as "rubber stamps" for power holders and enable them to verify grass roots involvement. Commonly these committees have no legitimate or effective function or power.

2.2.2. Therapy

Arnstein describes participation at the therapy level as "dishonest and arrogant" (Arnstein, 1969:219). At this level participants appear to be involved in the planning process, but the power holders define the problems to be addressed. As Arnstein notes in her discussion concerning federal social programmes:

The focus is on curing them of the 'pathology' rather than changing the racism and victimization that create their "pathologies" (ibid.:218).

This may involve adjusting the values and attitudes of the "participants" to those of the greater society rather than addressing why they face the problems they do.

2.3 Informing

An increased level of participation involves informing citizens of their rights, responsibilities and options. This is often via one-way communication such as the news media, pamphlets, posters and responses to inquires. Commonly there will be no mechanism for

citizens to respond to decisions made by power holders and citizens will not have the power to negotiate. Arnstein notes "particularly when information is provided at a late stage in planning people have little opportunity to influence the program designed "for their benefit" (ibid.:219, my emphasis).

2.4 Consultation and placation

In consultative participation citizens opinions are sought, however, power holders are not compelled to take citizens views into account⁵. Consequently citizens are powerless and participation may be defined as "tokenism". Usual methods to gauge public opinion are attitude surveys, neighbourhood meetings and public hearings (ibid.:219). Participation is measured according to how many participants come to meetings, take brochures home, or answer questionnaires. It is a way of the power holders to be seen to be concerned with identifying public opinion. Frequently, however all that results is that a lot of the participants' time is taken up (with little or no return) and the status quo is maintained. A phrase often used to describe this type of participation is "lip service".

Arnstein further proposes a level of placation where participants have marginally more "say" than consultation. Power-holders

⁵It should be noted that the terms consultation and partnership have both been used by the Government, the Waitangi Tribunal and throughout the community to define various relationships between Maori and Pakeha. For the purposes of this study, Arnstein's definition of these terms will be considered apart from any other definitions which may exist.

consider advice given to them, judge the legitimacy of it, and then make their decision. Complicated advisory committees, boards or task forces of various types may be formed. The advice may be taken into account if (1) it is based on a high level of technicality; (2) if citizens are well organised and are able to apply pressure to stress the importance of their views; and (3) if power holders do not hold the majority of seats in the decision making structure (ibid.:220). Essentially, agencies may carry out the actual planning with citizens having a peripheral role as "watchdogs" and "rubber stamps" of the plan generated (ibid.:221).

2.5 Partnership

Arnstein describes partnership as "the redistribution of power through negotiation between citizens and powerholders" (ibid.:221). An effective partnership in Arnstein's view is one where "citizens have some genuine bargaining influence over the outcome of the plan" (ibid.:221). Arnstein claims that:

partnership can work effectively when there is an organised power-base in the community to which the citizen leaders are accountable; when the citizens' group has the financial resources to pay its leaders reasonable honoraria for their time-consuming efforts; and when the group has the resources to hire (and fire) its own technicians, lawyers, and community organizers (ibid.:221).

Furthermore, it can work effectively when "...both parties find it useful to maintain the partnership" (ibid.:221).

2.6 Delegation

At a level of participation above that of partnership, Arnstein proposes a level she labels delegation. At this level she proposes that a system of joint planning may be developed where, through negotiation citizens' views may dominate decision making, regarding a particular plan or programme. To achieve this citizens must hold a majority of seats and their powers must be specified clearly. Under this process it is the responsibility of the power holders to start the bargaining process in preference to responding to pressure from the community. However, power holders may still have the right of veto as government may still have to approve the programme before funding is supplied.

Arnstein notes that different forms of delegation may be appropriate for different communities. When grievances exist between citizen groups and power holders, joint planning may not be appropriate due to the lack of trust between the two parties. It is suggested that in this case, both parties would need to be given equal power and consequently decisions could be negotiated between the two parties (but with an added provision for citizen veto).

A further arrangement Arnstein presents involves decentralization of power, where the agency may issue a subcontract to resident dominated groups. Under this arrangement community groups plan and/or operate one or more programmes. Within the contract, the duties, responsibilities and rights of groups and a line by line budget are specified. It is recognised that, contracts which give

community groups many responsibilities may verge on models of citizen control.

2.7 Citizen control

Under conditions of citizen control the community has a degree of power or control to ensure:

that its participants or residents can govern a programme or an institution, be in full charge of policy and managerial aspects and be able to negotiate the conditions under which "outsiders" may change them (ibid.:223).

Under these arrangements no intermediaries exist between the community groups and its source of funds. However, the responsibility for awarding funds remains the responsibility of the State. Consequently, the State gives final approval for projects and is held accountable for the programme.

Various arguments against community control have been suggested, one of which is that:

it can turn out to be a new Mickey Mouse game for the havenots by allowing them to gain control, but not allowing them sufficient resources to succeed (ibid.:224).

2.8 Conclusions

Arnstein's ladder outlines a variety of levels of participation which may exist.

Ascending the ladder, the degree of citizen participation provided for increases, from that of non-participation - where citizens are

lead to believe they are participating, to degrees of tokenism - where citizens act as "rubber stamps", then on to participation - where a certain amount of power is held by citizens. However, even at the top most rung, citizen control, the State retains ultimate control.

Due the simplicity of Arnstein's ladder it is considered a useful tool for comparing the level of participation guaranteed to te iwi Maori under the Treaty and the level of participation provided for (and which occurred) in fisheries management planning.

Before this comparision can be done, it is necessary to explore Treaty of Waitangi, in order to clarify its guarantees.

CHAPTER 3

THE TREATY OF WAITANGI

3.1 The signing

In 1840 the Treaty of Waitangi was signed by the British Crown and te iwi Maori. The text of the Treaty was drafted in English, with subsequent translation of the text into Maori by a local missionary, Henry Williams. The Treaty was distributed throughout New Zealand and the issues it addressed were discussed and debated. As a result over 500 chiefs signed the Maori text and 39 the English text (Orange, 1988:16).

3.2. The text

The Treaty is divided into 3 articles. Under Article I of the English version of the text, Maori ceded "...all rights and powers of sovereignty" to the Crown (see Appendix 1). In Article II, Maori were guaranteed the "...full exclusive and undisturbed possession of [their] Lands and Estates, Forests and Fisheries". Article III granted Maori Royal protection and all rights and privileges of British subjects.

Under Article I of the Maori text, the word "kawanatanga" (governorship) is used to give an equivalent to sovereignty. Article II of the Maori text guarantees "...te tino rangatiratanga (full authority) o o ratou wenua o ratou kainga me o ratou taonga katoa" (lands, homes and things prized).

Therefore, both texts stipulated the rights Maori were to retain and those which the Crown was to acquire. However interpretation of the nature of these rights depends on which text is read. Currently many researchers agree that the Maori text of the Treaty should have precedence over the English text (Kelsey, 1989:11, Jackson, 1989:43, Gray et al, 1988).

3.3 Reasons why the Maori text should have precedence

A principal reason given why the Maori text should have precedence is that all Maori chiefs (except those who signed at Waikato Heads) signed the Maori text (Orange, 1988:16).

Under the Treaty of Waitangi Act 1975, the Waitangi Tribunal was required to have regard to both the Maori and the English versions of the Treaty, and to:

...determine the meaning and effect of the Treaty as embodied in the two texts and to decide issues raised by the differences between them (Treaty of Waitangi Act 1975).

Subsequently, the Tribunal investigated the relative positions of the two texts in the proceedings of the Motunui claim. Applying the rules of Treaty interpretation, accepted in both international and British common law, the Tribunal concluded that where there was no conflict between the texts, each should be read to complement the other:

However it is submitted that should any question arise of which text should prevail the Maori text should be treated as the prime reference (Waitangi Tribunal, 1983:57)

Consequently, the Tribunal recommended that the rule of contra

proferentum should be applied. Under this rule if an ambiguity exists "a provision should be construed against the party which drafted or proposed that provision" (ibid.:57).

Due to the prominence of the Maori text it is considered appropriate to examine what is meant by rangatiratanga and kawanatanga.

3.4 Rangatiratanga

The Waitangi Tribunal was given power, under the Treaty of Waitangi Act 1975, to interpret the Treaty and investigate claims based on the "practical application" of the "principles of the Treaty of Waitangi" (Kelsey, 1990:60). Despite the strict rules within which the Tribunal is confined, the Tribunal has attempted to resolve differences between the two texts. Throughout claims the Tribunal has consistently recommended recognition of mana Maori and tribal authority. In the Orakei claim the Tribunal:

...refused to usurp the mana of the claimants, not only to possess but to control and manage those taonga guaranteed them in accordance with their preferences...(Kelsey, 1989:35).

Subsequently, in the Muriwhenua claim the Tribunal recognised:

...when the Treaty promised Maori New Zealanders possession of their fisheries it meant...that they would have possession that was "full, exclusive and undisturbed" (Temm 1990:83).

and in the Manukau claim:

...the Crown's guarantee in the Treaty was not only a guarantee of possession in respect of fisheries but also a guarantee of the "authority to control, that is to say, of rangatiratanga and

mana (Temm 1990:52).

Thus in each of these claims the Tribunal agreed that the Treaty guaranteed te iwi Maori the authority to possess, manage and control resources and taonga which they wished to retain ie. rangatiratanga over their resources. The Tribunal recognises that preserving iwi self management and active protection of taonga are necessary elements of recognising rangatiratanga.

Furthermore, in the Motunui claim the Tribunal found te tino rangatiratanga to mean "the highest chieftainship" or indeed "the sovereignty of their lands" (Waitangi Tribunal, 1983:59). This finding highlights the need to determine the precise meaning of kawanatanga, as it was equated with 'sovereignty' in the English text, yet in this context it is likened to rangatiratanga.

3.5 Kawanatanga

On the grounds that the Maori text has precedence the meaning inferred by 'kawanatanga' should be considered in preference to 'sovereignty'. To the Maori, kawanatanga means the right to govern. In 1840, Maori were familiar with the use of the term kawana to mean Governor.

According to a group known as the Kia Mohio Kia Marama Trust, kawanatanga gave:

the British Governor, power on behalf of the British Crown to provide for 'law and order' and security through a Governor, not an authorised settler Government, who was inferior to and

subject to te tino rangatiratanga, and remains so (Kia Mohio Kia Marama Trust, 1989:69)

In its reports the Tribunal has addressed the meaning of kawatanga conveyed to Maori.

In the Kaituna claim the Tribunal recognised:

... the limited authority of 'kawatanga' to maintain law, order and security in a manner which safeguarded the exercise of tino rangatiratanga (Waitangi Tribunal, 1984:18-19).

and further to this in the Manukau claim, the Tribunal recognised that kawatanga was:

...something less than the sovereignty (or absolute authority) ceded in the English text. As used in the Treaty it means the authority to make law for the good order and security of the country but subject to an undertaking to protect particular Maori interests (Waitangi Tribunal, 1985:90)

Consequently, these findings (along with others) refer to the nature of a relationship between rangatiratanga and kawatanga; a concept which subsequently will be examined further.

3.6 The interaction of rangatiratanga and kawatanga

The most controversial aspect of the Treaty concerns the degree of overlap of the rights and responsibilities of the two Treaty partners, ie. where kawatanga and rangatiratanga overlap. Historically, the relationship between kawatanga and rangatiratanga has varied: however, characteristically it has been

one of tension.

The Tribunal has examined the relationship, perhaps most thoroughly in the Muriwhenua claim. Boast (1989) restates the Tribunal's approach as the following set of propositions:

- 1) Neither kawanatanga nor rangatiratanga are absolute rights. They qualify and restrict one another; the Crown's kawanatanga is restricted by the tribes' rangatiratanga, and viceversa. Thus the Treaty, if it is ever implemented fully, must operate as a constitutional fetter on parliamentary sovereignty.
- 2) Sometimes, however, kawanatanga can override rangatiratanga.
- 3) In terms of subject-matter, one area in which the Crown's kawanatanga can override tribal rangatiratanga is that of conservation. Laws binding on all for the purpose of conservation are not contrary to the Treaty.
- 4) However, before such a limitation is within the terms of the Treaty (and is in that sense "constitutional") it must be "absolutely necessary" for conservation, and it must be shown that controls over those who lack Treaty rights have been applied first. Only if regulation of non-Treaty interests has proved insufficient can rangatiratanga be overridden in the interests of conservation" (Boast, 1989:58)⁶.

These propositions isolate conservation as an issue which government should have jurisdiction over and fail to recognise that tribal rangatiratanga will also incorporate concern for conservation and sustainability.

⁶ The findings of the Tribunal should be viewed in the context of the political climate of the time. As the Manukau and Kaituna claim were heard before the New Zealand Maori Council v Her Majesty's Attorney General 1987 (commonly known as the SOE case) the Tribunal's findings were more bold. However, in the SOE case it was stated that the Tribunal could only make recommendations in keeping with the principles of the Treaty as determined by the judges of the High Court (Kelsey, 1990).

In their findings the Tribunal recognises the right of Maori to exercise tino rangatiratanga, with the condition that the Crown possesses ultimate power concerning the management and use of resources currently held in their possession. These findings are predictable due to the political constraints within which the Tribunal operates. Consequently, they differ from the relationship between kawanatanga and rangatiratanga as prescribed by the Kia Mohio Kia Marama Trust (1989), where the power of the Government to maintain law and order is inferior to and subject to the exercise of tino rangatiratanga.

In conclusion, it would seem that for tino rangatiratanga, as guaranteed under the Treaty to be returned to Maori, provision must exist for Maori to manage those resources (as stipulated in the Treaty) in the manner they prefer. In order to fulfil this guarantee in its entirety, Crown kawanatanga cannot override tribal rangatiratanga. Indeed, in the Kaituna Claim it was recognised that the chiefs would never have signed the Treaty if they believed that their rangatiratanga would be usurped by the Crown (Waitangi Tribunal, 1984:18-19).

Perhaps Arnstein's ladder of participation may provide further insights into the level of participation the Treaty guaranteed to Maori.

3.7 The Treaty and participation

The Treaty has been interpreted in a variety of ways and different

degrees of participation by Maori have been suggested. Partnership is a term frequently used to prescribe a relationship which the two Treaty partners should develop. There exists many different perceptions of what participation means.

The level of participation Arnstein defines as partnership is one where the community negotiates with power-holders for power. She describes this as the first level of participation where there is any real redistribution of power. Furthermore, she maintains that powerholders will only concede power when they find it useful to do so. However, tino rangatiratanga guaranteed to te iwi Maori under the Treaty exceeds that level of participation Arnstein defines as partnership.

The Waitangi Tribunal's interpretation of the Treaty (particularly evident in the Muriwhenua report, 1988) suggests participation at the level Arnstein describes as delegation. This level provides for Maori participation at a level which exceeds that she defines as partnership but below that guaranteed in the Treaty.

At the level of delegation power-holders have responsibility to start the bargaining process; power-holders have the right of veto (eg. regarding conservation issues); procedures for community participation are set up by Government; and distribution of finances is the responsibility of Government.

These characteristics are reflected in the Tribunal's recommendations and in the Government's partnership response - Te Urupare Rangapu, but at this level of participation the community

still relies on the state for finance: consequently the State holds the balance of power.

Examples of this type of 'participation' are evident in many policy directives in society. A useful example is the introduction of 'Tu tangata' into the Maori Affairs Department, a policy directed at developing a "people-oriented, people managed society" (Spoonley, 1988:79). Some funding and power was given to local communities, but the success of this policy initiative was compromised as the Department was accountable to Government and relied on Government for "...substantial financial support [which had] not always been forthcoming" (ibid.:80). Consequently, important policy questions on resources were still decided by the Department. Furthermore, the Maori people saw the Department as an agent of the Crown and not as an agent of the tangata whenua. Consequently, they did not support the Department's initiatives. As the current Ministry of Agriculture and Fisheries is similarly an agent of the Crown, it may also lack the support from Maori as its policies primarily reflect those of the Crown.

Arnstein recognises that "no one in the nation has absolute control..." (Arnstein, 1969:223). Therefore, even at the highest rung of her ladder of participation, citizen control, the State maintains power; a situation which as previously discussed, fails to allow tribal rangatiratanga to be exercised.

It is certain that any initiatives by Government to restore tino rangatiratanga will be within Arnstein's spectrum, as to recommend otherwise would undermine the power of the State. However, for

tino rangatiratanga to be exercised by Maori, ultimate power cannot remain the responsibility of the other Treaty partner. Instead it is considered that power should be shared by Maori and Pakeha. Consequently, Maori participation should exceed the top rung of Arnstein's ladder. Therefore, it would seem inappropriate to recognise the policy framework of one Treaty partner and not that of the other when managing a resource.

3.8 Implications for management of the fisheries resource

The implications of appropriate recognition of the Treaty with respect to the management of New Zealand's fisheries resources are vast; most notably with respect to the recognition of tino rangatiratanga. It is the opinion of some Maori, that for tino rangatiratanga to be returned, tribal structures which traditionally were used to govern the use of resources within a tribes control should be recognised (Jackson 1989). Presently Government actions to return some authority to Maori have assumed that the iwi should be the basis of Maori control (see the Runanga Iwi Act 1990). However, it is recognised that traditionally, resources were managed by those closest to the resource ie. at the hapu or whanau level (a subject which will be examined further in chapter 5).

Under the Runanga Iwi Act provision has been made for the establishment of iwi authorities to represent the interests and responsibilities of iwi. With respect to fisheries it should be noted that iwi boundaries are, in most cases, incompatible with

current Fisheries Management Area boundaries. Therefore, any structure which provides for tribal rangatiratanga to be exercised will require these boundaries to be revised.

Recognition of Maori rangatiratanga involves far more than "a duty to consult". Furthermore, it would seem that present institutional structures, based on Pakeha values and beliefs, will be unable to accommodate this. Therefore, to fully recognise rangatiratanga it is necessary for a Maori policy framework, based on Maori values and beliefs, to operate alongside that of Pakeha.

The level of Maori participation in fisheries management planning will now be examined to determine whether this is compatible with that guaranteed by the Treaty.

CHAPTER 4

FISHERIES MANAGEMENT PLANS

From the preceding discussion it is clear that the development of fisheries management plans in New Zealand is a process in which Maori should participate, if guarantees of the Treaty are to be met.

Kiser and Ostrum, in their analysis of institutions, recognise 3 distinct levels of analysis: the operational level, which explains the world of action; the collective choice level which explains the world of authoritative decision-making; and lastly the constitutional level which explains the design of collective choice mechanisms (Kiser and Ostrum, 1982:184). Kiser and Ostrum maintain that the same working parts make up each of the 3 levels (supra.) (see appendix 2). They examine how institutional arrangements at each of these levels affect the degree, type and distribution of outcomes.

Therefore, Kiser and Ostrum's framework provides a means of categorising the institutional arrangements for a particular process. Consequently, it is a useful framework to categorise the institutional arrangements in fisheries management planning. Subsequently, this facilitates analysis of the level of Maori participation provided for by institutions concerning fisheries management using Arnstein's ladder.

It is proposed that due to institutional arrangements at the

constitutional, collective and operational levels Maori have not participated at a level guaranteed to them under the Treaty. In order to establish this, first it is necessary to identify the purpose and nature of FMPs as defined at the constitutional level through legislation.

4.1. The nature of Fisheries Management Plans

Before the establishment of the Fisheries Act 1983, fisheries in New Zealand were managed through a variety of restrictions and regulations introduced by the Fisheries Act 1908. Following 1963, with the de-licensing of the fishing industry and the removal of export restrictions on fish, commercial fishing activity increased to a level where inshore fin-fish stocks were over-fished. In response, the Fisheries Act 1983 was enacted which provided for a comprehensive and integrated approach to fisheries management, in particular through the formulation of FMPs. The aim of FMPs was to provide a coordinated system of management which incorporated concepts from overseas and from land planning: an integral part of which was the input by the public via objections and submissions.

However, due to the length of time required to produce a comprehensive FMP, the Quota Management System (QMS) was introduced through amendment to the Fisheries Act in 1986. This was done in an attempt to provide immediate action to limit the depletion of the inshore fishery. The QMS was concerned primarily with addressing over-fishing problems by imposing limits on commercial catches. As a result, the role of FMPs evolved to complement the

QMS. Consequently, FMPs deal not only with issues concerning over-fishing but with more specific fishery issues not covered by the Quota Management System. FMPs may include both fin-fish and shellfish, however provision exists for separate plans to be developed for certain fish types if considered necessary. This is decided on the basis of the size of the fisheries.

4.1.1 Fisheries Management Areas

New Zealand's fisheries waters have been divided into 7 Fishery Management Areas (FMAs) (see fig.1). The Gazette notice of April 1984 (Appendix 3) outlines the precise extent of these areas and species which are excluded from the jurisdiction of the plan⁷.

Originally, with the introduction of the Exclusive Economic Zone in 1978, New Zealand's fishery was divided into 8 areas to make surveillance and management easier. These areas were based on the fishing patterns of the foreign vessels that had operated around New Zealand (Boyce, 1986:6). However, as a result of the Fisheries Act 1983, boundaries for the FMAs were set with the intent to take more account of the distribution of fish stocks.

Subsequently, the institutional arrangements at the constitutional level which concern fisheries management planning will be considered.

⁷ These include those species subject to foreign fishing craft operations, barracouta, hake, hoki, ling, orange roughy, oreo dory, silver warehou, squid and six species of tuna.

4.2 Institutional arrangements at the constitutional level

Fisheries Management Plans were established under section 5 of the Fisheries Act 1983. The purpose of Fisheries Management Plans, as defined by Section 4 of the Fisheries Act 1983, is "to conserve, enhance, protect, allocate and manage the fishery resources within New Zealand fisheries waters". In addition, the Act establishes Fishery Management Areas, sets out guidelines for their development, and assigns responsibility for fisheries management and for preparing FMPs to MAF. National fisheries management objectives are contained in provisions of the Fisheries Act and the Maori Fisheries Act 1989. It is intended that management objectives and strategies of FMPs should be consistent with national objectives, initiatives and policies and should deal with issues specific to the region.

The Maori Fisheries Act was established in response to Maori demands for restoration of traditional tribal fisheries (in particular the Muriwhenua claim, 1988). The Act is primarily concerned with Maori fishery matters and seeks to:

- (1) make better provision for the recognition of Maori fishery rights secured by the Treaty of Waitangi; and
- (2) facilitate the entry of Maori into, and the development by Maori of, the business and activity of fishing (MAFFisheries, 1990:92)

A provision of the Act to achieve these aims is the establishment of taiapure (local fishing areas) to be controlled by local iwi. Under the Act, regulations for taiapure may override the provisions of the FMP; thus providing local iwi with a greater amount of

authority over fisheries resources defined as taiapure. However, this authority is to a large extent usurped as MAF retains overall control⁸.

In addition, under the Act, 10% of the total allowable catch has been allocated to Maori over a 4 year period. This is to be transferred by the Crown to a Maori Fisheries Commission who administers the funds.

However, despite provisions of the Act, no direct reference is made to FMPs.

In addition, MAF maintains that the general management approach outlined by FMPs will be adopted when addressing the relevant provisions of legislation such as the Marine Reserves Act and the Marine Farming Act 1971.

To enable the level of Maori participation provided for in institutional arrangements at the constitutional level to be assessed, the process for fisheries management planning as provided for by the Fisheries Act will be examined in more depth.

⁸Local iwi are required to identify taiapure (or rahui areas) they consider important to MAF. MAF policy stipulates that taiapure are to be identified for specific reasons and purposes. These are classified generally as wahi tapu and may allow fish to be taken only for local use, seasonally or may prevent fish being taken altogether. As a result of MAF's fisheries management role, it is responsible for the classification of areas as taiapure.

assessed, the process for fisheries management planning as provided for by the Fisheries Act will be examined in more depth.

4.2.1 The planning process

Who participates?



As outlined in figure 3 provision exists under Section 7 of the Fisheries Act 1986 for Fishery Management Advisory Committees (FISHMAC) to be appointed for each FMA for "...the purposes of preparing proposed plans and giving advice in relation to operative plans for each FMA" (section 7). These committees:

shall have as chairman [sic] an officer of the Ministry...and may include members representing commercial, processing, wholesaling, retailing, recreational, Maori and consumer interests in the area relating to fishing (section 7(2))

In addition, Fisheries Liaison Committees (FLCs), and in some cases Harbour Liaison Committees, may be established to discuss local

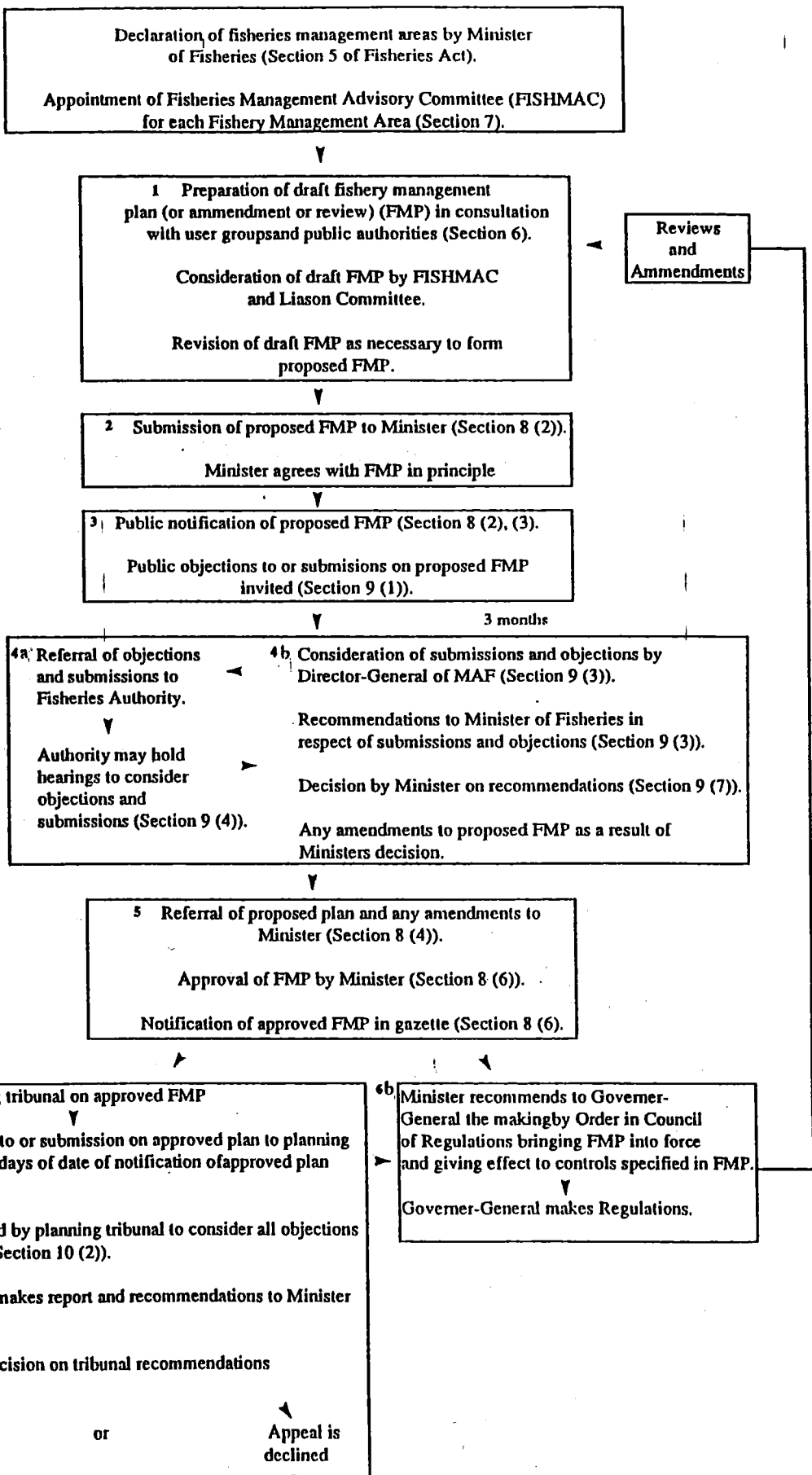


Figure 3 Main steps in the preparation of a Fishery Management Plan.

The numbers in the upper left hand corner of each box correspond to those in the text.

Source: MAFFish 1989

fisheries issues ⁹.

MAF is responsible for drafting the plan and controlling the process. ¹During preparation of the draft fishery management plan MAF is required to consult and have regard to the views and responsibilities of user groups (including Maori) and public authorities as the Minister considers appropriate (Fisheries Act 1983 (6)).

²Once the Minister agrees with the draft plan in principle, it is made available for public inspection. ³Submissions and objections on the plan are accepted within a 3 month period from the date of the plan's release. ^{4a}Following this period the Director-General considers the submissions and objections and may refer matters raised to the Fisheries Authority.

The Authority was established under Section 13 of the Act. It consists of 5 members, including a member appointed after consultation with the Fishing Industry Board and another after consultation with the New Zealand Maori Council. The appointment of the remaining 3 members is at the Minister's discretion.

The Fisheries Authority has the power to conduct public hearings to enable the writers of submissions and objections to present their views. Subsequently, the Authority makes recommendations

⁹The basis for membership of either of these committees is the same as for FISHMACs, as discussed earlier.

to the Minister who makes decisions based on these recommendations.

^{4b}Instead of referring objections and submissions to the Fisheries Authority, the Director-General of MAF (following consideration of submissions and objections) may make recommendations directly to the Minister of Fisheries. The Minister ultimately makes decisions on recommendations and may decide on amendments to the proposed FMP.

⁵The proposed plan is forwarded to the Minister for approval with the addition of any amendments necessary. The public are notified of the approved plan via the Gazette and a date is specified after which the plan becomes operative.

^{6b}With the Minister's recommendations, the Governor General makes regulations to bring the FMP into force. These regulations may be specific to the FMA to which the plan responds or may be applicable nationally. ^{6b} Provision exists for any objectors, or people who make submissions who disagree with the approved plan, to appeal to the Planning Tribunal. The Tribunal conducts a public enquiry, considers all objections and submissions and makes recommendations to the Minister. The Minister may decide an amendment to the approved plan is necessary or may decide the appeal is not warranted. The appellants only further recourse is if there has been a breach of the law in which case an appeal may be made to the High Court.

Plan implementation

FMPs are implemented by regulations made under Section 10 A of the Fisheries Act or under existing regulations. Any regulations made under section 10 A or 11 of the Act will override any previous regulations if they conflict. The Fisheries Regulations 1986 apply nationally and relate to both commercial and amateur fishing.

Amendments to plans

Plans may be amended, suspended or revoked in accordance with sections 6 and 8 of the Act. Under the Act the Minister is required to have regard for and consult public authorities, acclimatisation societies, the Fishing industry Board and other interest and user groups in order to amend, suspend or revoke plans. In addition, the Minister is required to consult with the Fishing Industry Board or any appropriate acclimatisation society before any emergency amendments to the plan or emergency restrictions are imposed (section 11(1))¹⁰.

Conclusions

Institutional arrangements at the constitutional level as outlined above are followed in the formulation of all FMPs. However,

¹⁰Any decisions made may only remain in effect for a period of 90 days. However, this may be extended for one further 90 day period if desired (section 11(3)).

different regions may possess different aims, goals, purposes or be guided by different principles. For this reason, different levels of Maori participation may be provided for in institutional arrangements in different FMAs. These will subsequently be examined, for both the Auckland and South-Eastern FMAs, to determine the level of Maori participation provided for at the collective choice level and that which actually occurred at the operational level.

4.3 The Auckland process

The draft FMP for the Auckland FMP (AFMP) was released on 14 December 1989 in accordance with the standard process for development of FMPs as outlined in figure 3. The plan covers the area from Tirua Point on the west coast, clockwise to Cape Runaway in the east, with mean high water mark as the landward boundary and the seaward limit being the extent of the Exclusive Economic Zone (EEZ) (see fig.1). It is intended that the AFMP, when implemented, should give direction for fisheries management for a 5 year period, after which it will be reviewed and, if necessary, amended. The aims, goals, purpose, management strategies for Maori as a user group and guiding principles of the plan provide an idea of MAF's commitment to Maori rights in fisheries management.

4.3.1. Institutional arrangements for Maori participation at the collective choice level

Aim

The overall aim of the Proposed Auckland FMP is:

To ensure that the fishery resources of the Auckland Fishery Management Area are conserved, enhanced, protected, allocated and managed for the maximum benefit of present and future generations (MAFFish, 1989:4)¹¹.

Goals

A number of goals are stated in the plan, one of which is "to manage fisheries... in ways which are responsive to the needs of Maori" (ibid.:4) (my emphasis).

stated management strategies for Maori as a user group

Concerning management responsibilities and consultation with respect to Maori fisheries, MAF policy states that the objective is:

to devise management systems which are in accord with principles for Crown Action on the Treaty of Waitangi (MAFFish, 1989:80).

Concerning consultation, it is maintained that MAF intends:

to develop with the Maori Community, a consultative process which provides for sharing of information and encourages a joint approach to resolution of management issues (ibid.:82) (my emphasis).

¹¹The proposed Auckland FMP deals only with fin-fish. It is intended that management strategies for shellfish will be appended at a later date.

In addition, the need for a "two-sided network" where each party (ie. Maori and the Ministry) "is able to advise the other about fishery management issues and problems and jointly work towards achieving solutions" is recognised (supra).

In order to adopt a formalised consultative structure and to develop more informal linkages with the Maori community, MAF proposes:

- (1) establishing a Maori Fisheries Panel for the Auckland FMA comprising representatives from each of the Iwi Authorities within the Auckland FMA to provide a regular point of contact between Maori and the Ministry;
- (2) continuation of Maori representation on Auckland FISHMAC and FLCs; and
- (3) Ministry representation, if invited, on any formalised bodies established by the Maori community to deal with fisheries matters.

However, included in the proposed plan is an introductory statement concerning Maori fisheries. It states that:

this Fishery Management Plan contains various references and management proposals which relate to Maori fisheries matters. This has been done because of the desire of the Ministry of Agriculture and Fisheries to produce a plan in which all interests in fishery resources (my emphasis) (in particular commercial, recreational and Maori) are considered in relation to one another (MAFFish, 1989).

It continues, that inclusion of material relevant to Maori fisheries may seem inappropriate to some due to ongoing efforts to resolve Maori Fisheries issues via the Maori Fisheries Bill. However:

"...management proposals, relating to Maori fisheries, are intended to indicate in broad terms only, actions the Ministry wishes to take to achieve a balanced use of fishery resources (emphasis mine).

Purpose

The plan's stated purpose is to:

provide a long-term framework for the management and administration of fisheries in the greater Auckland region (ibid.:2).

Further to this it is maintained in the plan that the process seeks to reflect the community's desires for fisheries management through its involvement in the process. It is intended that management measures be developed to bring benefits to as many interest and user groups as possible while not unduly disadvantaging any particular group.

Guiding principles

The following three guiding principles have been adopted as a basis for the management strategies proposed in the plan;

1. Maintenance of the sustainability of fishery resources is of primary importance.
2. The concept of a "reasonable share" needs to guide decisions on access to, and allocation of, fisheries resources.
3. As well as biological considerations, both the economic and social implications of management strategies need to be identified before decisions on implementation are made (ibid.:5).

Committees established

As a result of MAF policy the Auckland FISHMAC was established in

1984 following provisions of the Fisheries Act 1983. In addition 3 non-statutory Fisheries Liaison Committees were set up in Northland, Auckland and the Bay of Plenty and informal Harbour Liaison Committees were established to discuss issues relating to the Kaipara, Manukau and Raglan harbours.

Conclusions

Essentially, any commitment MAF has towards Maori rights to participate in fisheries management planning are within a Pakeha policy framework. It would seem that the prime intention of the plan is to balance the interests of all interest groups. It does not intend to give Maori interests priority over other interests (in line with fisheries legislation) nor does it encourage or require the Crown to relinquish any of its power.

Subsequently, following Kiser and Ostrum's framework, the level of participation provided for at the operational level will be examined.

4.3.2. Institutional arrangements at the operational level and outcomes

Work towards the AFMP started in early 1984 with the preparation of a series of introductory papers¹². These papers were intended to "...inform user and interest groups about the FMP process, the

¹²The degree of Maori participation at the operational level is difficult to determine as information is, for the most part, not documented.

status of fisheries in the Auckland region and options for future management of the fisheries" (Handford, pers. comm.). During the following two years, the introduction of Individual Transferable Quotas (ITQ) was discussed. This included consultation with user groups (in particular the fishing industry) and iwi representatives at a national fisheries hui held in Wellington (supra.). The aims of the hui were to identify a network of iwi contacts and areas with fisheries of special significance to iwi.

During these same years, the Muriwhenua fisheries claim was lodged with the Waitangi Tribunal. The Tribunal found that under the Treaty of Waitangi, Maori were guaranteed full protection for their fishing activities. Furthermore, the Quota Management System was found to be in fundamental conflict with the Treaty's principles and terms (Waitangi, 1988:239-240, 296-297).

It was intended to proceed with the AFMP in three phases: phase I representing the release of a proposed FMP; phase II involving investigations and discussions on a range of issues (see appendix 4); and phase III the formulation of a final plan (MAFFish 1986).

Under the circumstances, the Ministry decided not to deal with Maori fisheries issues, within the context of the FMP, until the Government had made a decision regarding Maori access to fisheries resources (Handford, pers. comm.). Consequently, no detailed programme for iwi participation was set up for phase I of the Auckland FMP and it was considered that Maori fisheries may have required discussion in a third phase.

Despite these developments, Maori participation was provided for; firstly through Maori representation on the Auckland FISHMAC (presently elected through contact with the Iwi Transition Agencies within the Auckland FMA) and on the Whangarei, Auckland and Tauranga FLCs. However, in July 1990 there were no Maori representatives on FISHMAC¹³. Of the FLCs, no Maori representatives were known in either Tauranga or Auckland, however, one member representing Maori existed in Whangarei (Roberts, pers. comm.).

In the second instance Maori participation was provided for through discussion with iwi regarding local fisheries issues (eg. in the Bay of Islands, Manukau Harbour, and Ohiwa harbour). It is said that as a result of these discussions, several issues were recognised by iwi as being of particular concern and were identified for further investigation within the context of the FMP (Handford, pers. comm.). MAF maintains that discussions with Maori concerning the management of fisheries are ongoing and recognise the need for further consultation to occur (Fanselow, pers. comm. 1990). However, recently a legal opinion was sought by MAF on the degree of consultation they should pursue. As a result of these investigations, it was concluded that the Fisheries Act did not provide for further consultation with Maori in the fisheries management planning process (ibid.).

¹³MAF Fisheries commented that negotiations had begun in order to obtain five tribal representatives who would represent Maori interests on the Auckland FISHMAC (Fanselow, pers. comm. 1990).

Additionally, through the objection/submission process, of a total of 900 submissions received, 8 were received from individuals or groups who identified themselves as Maori - including one extensive submission from the Ngaitai Iwi Authority of 21 pages. This perhaps indicates the inappropriate nature of the objection/submission process to provide for Maori participation in the planning process.

Therefore, it would seem that actions at the operational level were consistent with those at the collective choice level, as the extent of Maori participation would indicate that all interests in fishery resources were considered, of which Maori were but one. To better define the degree of participation at the three levels of action reviewed above (and in order to allow comparison between the three levels) Arnstein's ladder will be used as a 'measuring stick'.

4.3.3 An analysis of institutional arrangements at the three levels of action

Maori participation at the constitutional and collective choice levels

The process prescribed in the Fisheries Act allows for participation by Maori through:

- 1) participation in the draft FMP following appointment to FISHMAC's;
- 2) the public objection and submission process;

- 3) the Fisheries Authority (through the member elected through consultation with the New Zealand Maori Council); and
- 4) through the process of Appeal.

The only participating body which requires a Maori representative is the Fisheries Authority (a body whose power has been greatly reduced due to the limited number of species remaining outside the QMS system). However, it is recognised that the member appointed may not be representative of Maori (indeed it would be impossible for 1 member to represent Maori throughout the FMA).

In Maoridom those closest to the resource are traditionally responsible for its management. Subsequently, a system whereby a few individuals "represent" Maori on committees is inappropriate. Furthermore, under these arrangements Maori remain but one of many members with equal voting powers. Perhaps the fact which overrides all others is that the FMP process is controlled by the Crown. As such it is based on Pakeha values and beliefs and is essentially mono-cultural. Consequently, Maori representation on committees is minimal and only a small percentage of Maori offer objections and submissions on the plan.

As Arnstein contends, at this level:

power holders are not compelled to take citizens views into account (Arnstein, 1969:220).

The power holder (MAF) considers advice received, judges the legitimacy of it and then makes recommendations to the Minister

who makes a decision. In the FMP process the "complicated advisory committees" (Arnstein, 1969:220) - in this case FISHMACs, FLCs and HLCs - are set up and consulted during preparation of the draft plan. However, the Minister's agreement with the proposed FMP is still necessary. Further to this, representation of Maori on these committees is not a requirement. Consequently, Maori participation through these committees may be lacking, negligible, or alternatively may not be "representative" (as discussed above).

The taiapure process may provide for Maori participation at a higher level. The characteristics of this system parallel a level of participation Arnstein terms **delegation**. At this level, local iwi are issued with a sub-contract to operate a programme. Under this system the duties, rights and responsibilities and a line-by-line budget are specified by the state.

However, although the taiapure process may provide for Maori participation at a higher level on Arnstein's ladder, in general, Maori participation at the constitutional level is equivalent to the fifth (and possibly the fourth) rung, that is **placation and consultation**.

Maori participation at the operational level

The early stages of the AFMP could be classified by Arnstein's ladder as 'informing', due to the nature of the introductory papers which were prepared, and the lack of a mechanism for citizens (including Maori) to respond.

As attempts to set up an iwi participation programme were forestalled by discussions concerning Maori access to fisheries resources, participation by Maori was limited to discussion with local iwi and through submissions and objections (of which very few were received). This type of participation characterises that Arnstein defines as **consultation** where citizens opinions are sought, however, power holders are not compelled to take citizens views into account.

Therefore, at the operational level it would appear that despite provisions made, Maori representation on advisory committees was lacking. Possibly for reasons as outlined above. Consequently, although these mechanisms established by MAF at the collective choice level may have allowed for Maori participation at a level Arnstein describes as **placation**, at the operational level Maori participation was at a lower level of **consultation** or even **informing**.

4.4 The South-East process

The formulation of the draft South-East FMP (SEFMP) was influenced by debate over Maori fishing rights and the subsequent Maori Fisheries Act 1989. Although complete, the plan has yet to be officially released. It includes all waters on the east coast of the South Island between Clarence Point, north of Kaikoura, and terminates at Slope Point, south of Dunedin (see fig.1). The

landward boundary (as for the AFMP) is mean high water mark and seaward the area extends to the limit of the 200 mile EEZ. Excluded from the plan is the Chatham Island Shellfishery, for which a separate plan will be prepared.

As for the AFMP, the goals, aims, purpose and guiding principles of the plan are set out. Examination of these characteristics allow the level of commitment by MAFFisheries to Maori participation to be determined. In addition, determination of the level of Maori participation provided for in institutions at the operational level, allows an analysis of the level of participation which actually occurred in the formulation of the plan.

4.4.1. Institutional arrangements for Maori participation at the collective choice level

Purpose

The purpose of the South-East Fishery Management plan mirrors that of the Auckland Fishery management Plan. That is to:

provide a long-term framework for the management and administration and enforcement of fisheries resources in the South-East Fishery Management Area (SEFMA) (MAF Fisheries 1990).

Guiding principles

In many respects the two plans are similar. However, in the South-East plan an additional guiding principle has been added. This principle states that:

Fisheries Management shall have regard to the principles of the Treaty of Waitangi (MAF Fisheries 1990:5) (my emphasis).

Goals

In addition, a goal proposed for management in the SEFMA is to:

recognise Maori cultural values and interests, and to provide for these in the management of Fishery resources in the SEFMA.

This goal contrasts with the goal of the AFMP, to manage fisheries resources; "in ways which are responsive to the needs of Maori" (Auckland FMA, 1989:4).

However, in the plan MAF maintains that it seeks community involvement in order to reflect community desires for fisheries management and furthermore, public comment on objectives and policies for the management of valuable fishery resources (my emphasis).

Scope of the plan

It is recognised that the SEFMP has a clear role to play in complementing the provisions of the Maori Fisheries Act 1989 and the Fisheries Act 1983; and in recognising the activities of Maori.

In this context it is proposed that once taiapure have been established under the Maori Fisheries Act, they may be incorporated into the SEFMP if the Taiapure Management Committee requests.

Furthermore, in the plan it is concluded that:

the FMP has a clear role to address the provision [of the Maori Fisheries Act, concerning quota allocation] and to facilitate

Maori involvement in the fishery management planning process (ibid:93)(my emphasis).

Importantly it is noted in the plan that:

Within the context of fisheries management, Government has undertaken [to] promote decision making in the machinery of government, in areas of importance to Maori communities, which provide opportunities for Maori people to actively participate, on jointly agreed terms, in such policy formulation and service delivery. (supra.)(my emphasis).

Therefore, MAF recognises that the status of the tangata whenua needs to be reflected in fisheries management: the two most relevant principles of the Treaty being rangatiratanga and cooperation as defined by the Crown (ibid:93).

In line with these principles, the objectives of the SEFMP are to:

- 1) support and assist the implementation of appropriate management strategies which integrate traditional and current fisheries management practices; and,
- 2) to continue a consultative process with the Maori community which provides for the sharing of information and encourages a joint approach to the resolution of management issues (ibid. 5).

It is anticipated that this can be achieved by:

- 1) strengthening the relationship with Maori consultative bodies and the communities they represent;
- 2) supporting and having regard for Iwi Management Plans concerning fisheries; and
- 3) facilitating the establishment of taiapure and their incorporation into the SEFMP.

MAF policy has endeavoured to recognise the principles of the Treaty of Waitangi (notably rangatiratanga and cooperation) through

a system known as the Hui/Tangi permit system and through any consultation which takes place. Under the permit system a local kaumatua may permit the collection of seafood for a hui or tangi, without the need to consult MAF.

In the SEFMA, a Maori Fishery Committee was established by MAF to consult with MAF and provide Maori views on how fisheries of the SEFMA should be managed. The Committee was comprised of representatives from each of the eight Ngai Tahu Maori Trust Board electoral districts (fig.4) and the Maori Fisheries Consultant for MAF. It was expected that a system of consultation would occur where local runanga (councils), formed opinions which would then be discussed by regional runanga. These opinions would then be communicated by representatives on the Maori Fishery Committee to MAF.

The Committees functions were to:

- 1) guide and support the Maori Fisheries consultant;
- 2) devise a programme to identify rahui and taiapure areas;
- 3) identify fishery issues of special concern to Maori
- 4) represent Maori at Fishery Liaison Committees and FISHMACs;
- 5) effectively represent Maori fisheries to Government and to the public; and
- 6) report progress to the Iwi Authority (ibid:94).

The Committee's relationship with the South-East FISHMAC is important in terms of the formulation of the FMP as the FISHMAC is expected to give advice on the preparation and revision of plans. Therefore, FISHMAC is seen as a primary forum for MAF and Maori groups to investigate and resolve matters of mutual interest. In addition, Maori representation on FLCs in Kaikoura,

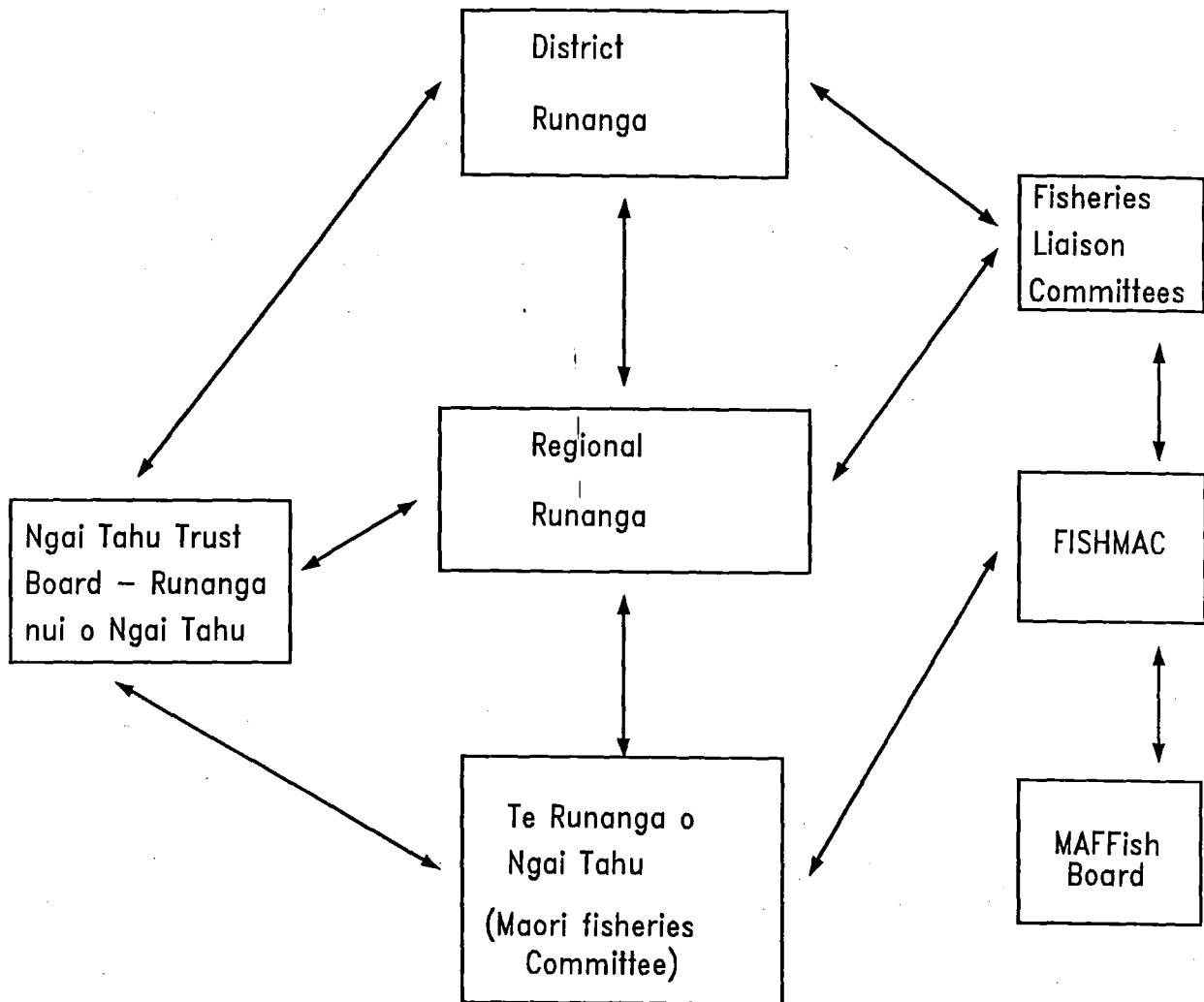


Figure 4 Te Runanga o Ngai Tahu he Ika - Accountability chart
Source: based on Teirney (pers. comm.)

Christchurch, Timaru and Dunedin also influence FISHMAC activities. It is envisaged that both Maori and MAF "... advise each other about fishery management issues and problems as they arise and jointly work towards achieving solutions" (ibid:94). With this

level of commitment by MAF at the collective choice level it is appropriate to determine the institutional arrangements at the operational level to see whether the commitment has been followed through.

4.4.2 Institutional arrangements at the operational level

As at the collective choice level, institutional arrangements for Maori participation in the SEFMP at the operational level were influenced by the passing of the Maori Fisheries Act 1989. Consequently, although based on the Auckland FMP, it could be expected that a greater degree of participation could have occurred.

Consultation with all interested groups occurred in the preparation of the plan over a 2 week period in June 1990 (Teirney, pers. comm.). This consultation included a two day hui at Waihau marae where features of the FMP were discussed with the Maori Fisheries Committee (te runanga o Ngai Tahu hi ika).

Additionally, each of the 2 FISHMACs for the SEFMA has two Maori representatives (however, generally it is noted that at any meeting only one representative will be present (ibid.)). These representatives have been invited to attend Fisheries Liaison Committee (FLC) meetings in Kaikoura, Timaru, Christchurch and Dunedin but generally have not attended. This lack of attendance is thought to have occurred as discussion at FLC meetings has tended to focus on commercial fishing (ibid.) and has not

considered the wider issues pertaining to fisheries¹⁴.

4.4.3. An analysis of institutional arrangements at two levels of action

Maori participation at the collective choice and operational level

The formulation of the Maori Fisheries Committee for the SEFMA suggests a commitment enabling Maori participation beyond that required under the Fisheries Act 1983 in the formulation of FMPs.

Due to the organised nature of the Maori Fisheries Committee and the fact that its members are accountable to the runanga they represent, the committee may be able to apply pressure on MAF to stress the importance of its views. However, the degree of participation will be affected by the degree of funding allocated to the Committee. In addition, as the Committee's representation on FISHMACs and FLCs is far exceeded by that of other fisheries users (notably commercial fishers) Maori representation on these committees will be relatively minor and frequently overridden.

Although the representatives on the Maori Fisheries Committee may represent their runanga (which could be said to represent an "organised power base" (Arnstein, 1969:221)) the Committee does

¹⁴ At present there are moves to restructure FISHMACs to better represent the range of fishery users (Teirney, pers. comm.).

not satisfy any of the other requirements which Arnstein labels "partnership". That is, the Committee does not have the financial resources to pay its leaders reasonable honorarium or hire and fire its own technicians, lawyers and organisers.

For these reasons, Maori participation in the SEFMP may be likened to that of "watch dogs" and "rubber stamp" roles typical of a level of participation Arnstein describes as **placation**.

As was suggested for the AFMP, it would seem unlikely for the committee's advice to be taken into account for the following reasons:

- 1) It is not likely that Maori values pertaining to fisheries will be based on a high degree of technical knowledge or certainty which would generally be the basis for fisheries management decisions made by MAF; and
- 2) the Maori Fishery Committee's representation on FISHMAC will be minimal compared to that of other user groups.

Consequently, despite the fact that the Maori Fishery Committee may represent a well organised group, the views of its representatives are unlikely to be taken into account.

This is highlighted by the fact that the Committee is to provide "...Maori views on how fisheries of the SEFMA are to be managed", and not what is to be managed and by whom. Therefore, as with the AFMP, MAF policies do not hand over any 'real' power to Maori as was guaranteed under the Treaty. This has occurred to a small

extent through the Hui/Tangi permit system and the taiapure system. However, these systems alone do not go far enough in returning tribal rangatiratanga.

4.5 Summary - see figure 5

The main findings of this chapter (as shown in figure 5) are that institutional arrangements at the constitutional level allow for Maori participation at a level comparable to that which Arnstein terms **placation** (or perhaps the lower level of **consultation**). At the level of placation, citizen's views are sought, however, power holders are not compelled to take these views into account.

For the Auckland FMP, institutional arrangements for Maori participation at the collective choice level parallel those provided for at the constitutional level. However, at the operational level, institutional arrangements provide for Maori participation at a level Arnstein defines as **consultation** or even the lower level of **informing**.

For the SEFMP, institutional arrangements for Maori participation at the collective choice and operational levels typify participation at a level Arnstein terms **placation** where participants have marginally more "say" than at the level of consultation but ultimately citizens perform a peripheral role as "watch-dogs" and "rubber stamps". Consequently, it can be concluded that at all three levels of action (for both the Auckland and South-East FMPs) institutional arrangements for Maori

participation in FMPs only provide for participation in the form

Three Levels of Action

		Constitutional Level	Collective Choice Level	Operational Level
Levels of Participation	AUCKLAND FMP	placation (5) (or perhaps consultation (4))	placation (5) (or perhaps consultation(4))	consultation (4) or informing (3)
	SOUTH-EAST FMP		placation (5)	

Figure 5 Summary of the levels of participation provided for by institutional arrangements at the three levels of action for the AFMP and SEFMP.

of tokenism (see fig.2).

Thus, provision does not exist for Maori to participate at levels Arnstein recognises as offering a degree of citizen power, or for tino rangatiratanga to be practised as guaranteed by the Treaty of Waitangi.

Consequently, in chapter 5, a bicultural approach to fisheries management planning which allows tino rangatiratanga to be exercised will be explored.

CHAPTER 5

A BICULTURAL APPROACH

5.1. Introduction

Different societies possess different frameworks by which they develop policies to manage resources available to them. The nature of these frameworks has been examined by some policy analysts who have developed models of how the policy process within a particular society works.

Daniel Bromley (1987) suggests one such model. He suggests that the customs, norms and values of a given society are reflected in the set of rules which apply. Subsequently, he maintains that from these rules a system of organisation is developed, as shown in

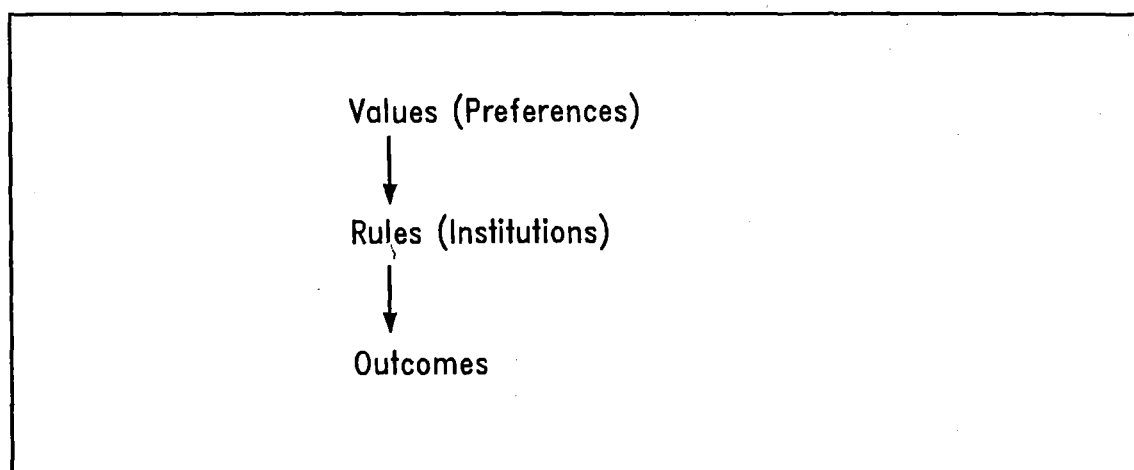


Figure 6 Bromley's Model

figure 6.

On the basis of Bromley's model it seems appropriate first to gain some understanding of the differences in values of Maori and Pakeha. Subsequently, the significance of values systems will be examined in general and salient features of both the Maori and Pakeha value systems will be considered.

Despite arguments which dispute Bromley's framework¹⁵, it may provide a starting point with which to examine Maori and Pakeha policy frameworks and consequently reveal any differences between the two frameworks which may exist.

5.2 Value systems

Particularly in recent years Maori have been requested to define their values in disputes between Maori and Pakeha (notably in claims brought before the Waitangi Tribunal). However, the necessity to identify Pakeha values has not been recognised and consequently they have not been examined to anywhere near the same extent.

It has been suggested that the lack of demand for specification

¹⁵Bromley's model is based on an ideological view of the world. This conclusion may be reached (as according to some authors) causality may operate in the opposite direction to that proposed by Bromley (Pollak, 1985:18, Bartlett, pers. comm.). If this idea is accepted then, as a result of the outcomes, institutions may be changed and subsequently the values or preferences of society may be altered.

of Pakeha values is due to the position Pakeha hold in New Zealand as the holders of power. Consequently, Pakeha values have underlain all policies and legislation and as with any monocultural society, these values tend to go un-questioned. Furthermore, the outcomes they induce are regarded as "the norm" rather than a product of the values of the society. However, in order to compare Maori and Pakeha policy frameworks these values must be unearthed.

It should be recognised that the values of a society change with time. These changes may be due to a variety of factors including the interaction with societies possessing other values systems. Notably, due to assimilationist policies which prevailed in New Zealand until the 1960s, Maori have acquired many of the values common to Pakeha. In addition, Pakeha have acquired some values characteristic of Maori (although it could be concluded to a much lesser extent)¹⁶. In the following analysis an attempt will be made to identify some of the salient values of Pakeha.

5.2.1 The Pakeha value system

Different value systems and perceptions of those systems exist within Pakeha society, so any analysis of Pakeha values will not be universally applicable.

¹⁶It is inaccurate to generalise too broadly, as the degree of acquisition of values from other cultures will vary greatly between individuals.

However, in general Pakeha society is based on secular materialism, where the material secular world is placed before and above that of the spiritual and the non-material. As implied, this does not involve the total rejection of things of the soul. However, the material world of science is given priority and is the basis of society. This idea is demonstrated by the doctrine of humanism, which Ehrenfeld (1978) maintains is at the heart of present western culture. Humanism is a belief in a way of life centred on human interests and values. This philosophy:

regards man [sic] as a natural object and asserts the essential dignity and worth of man and his capacity to achieve self realization through the use of reason and the scientific method (Ehrenfeld, 1978:5)

As such, it rejects the supernatural and is based instead on supreme faith in human reason and the ability to control our own minds, bodies and the world outside. Ehrenfeld adds that what humans can't control they predict.

Furthermore, it is maintained that an additional feature of western societies is that:

the progress of humanity has appeared to depend on establishing and maintaining a strict order through the perfection of administrative control; ie. the mastery of nature has depended upon a mastery of human nature (Torgerson, 1990:119)

Therefore, both Ehrenfeld and Torgerson support the notion that in the western world the spiritual world is overridden, by the secular material world. These views are congruent with those of Max Weber who writes of the 'protestant ethic' and the 'spirit of capitalism' (Weber, 1983). Weber specifies values characteristic

of western society which stem from these two bases.

He maintains that through the 'spirit of capitalism', profit is sought rationally and systematically. According to this doctrine the earning of money is seen as a result and expression of virtue and proficiency. Therefore, the capitalist system demands a devotion to making money: this is associated with an acquisitive manner of life. In order for the individual to increase their capital, punctuality, justice, industry, frugality and honesty are considered useful attributes.

The characteristics of these doctrines emphasise the status of the individual, rather than the group. This value is perpetuated by equalitarianism where each individual is considered to have equal rights. This in turn is upheld by the concept of majoritarianism, where as a consequence of the equality of individuals, that group with the greatest number rule. As a consequence of these two concepts, the status (or position) of particular groups which may exist in society are not acknowledged.

Democracy is a further value of Pakeha society; however, as discussed in chapter two, it may vary greatly in its depth and breadth. The process of democracy itself incorporates both majoritarianism and equalitarianism. However, it encompasses a further value concerning the right to participate in the decision making within society. As Nagel (1987) maintains, this may range from voting for a leader to entrust with policy making (indirect democracy) to a system where individuals themselves decide matters

of policy (direct democracy). Whatever type of democracy exists, a system of voting is used and different policy makers are elected with time.

It is recognised that many more values underlay Pakeha society. However, it is thought that secular materialism, equalitarianism, majoritarianism, individualism and democratism form the basis. These ideas will be useful to highlight some of the main points of conflict between Maori and Pakeha society.

5.2.2. The Maori value system in comparison

Essentially, Maori values are derived from the three kits of knowledge:

Te Kete Tuari- contains scientific knowledge - **Matauranga**

Te Kete Aronui - contains celestial and cosmogenic information designed to benefit human kind - **Whakaaro**

Te Kete Tuatea - comprises all rituals, acts and formulae with all things on earth and the cosmos - **Ritenga and Kawa**

Central to the value system of Maori is **wairuatanga**, whereby everything in Maori society has a spiritual dimension (fig.7).

From these three kits the values as depicted in figure 7 are derived. Under the concept of **whanaungatanga** Maori are united by kinship linkages. This concept assists people to determine who, on different occasions, stands in authority. Therefore, it gives

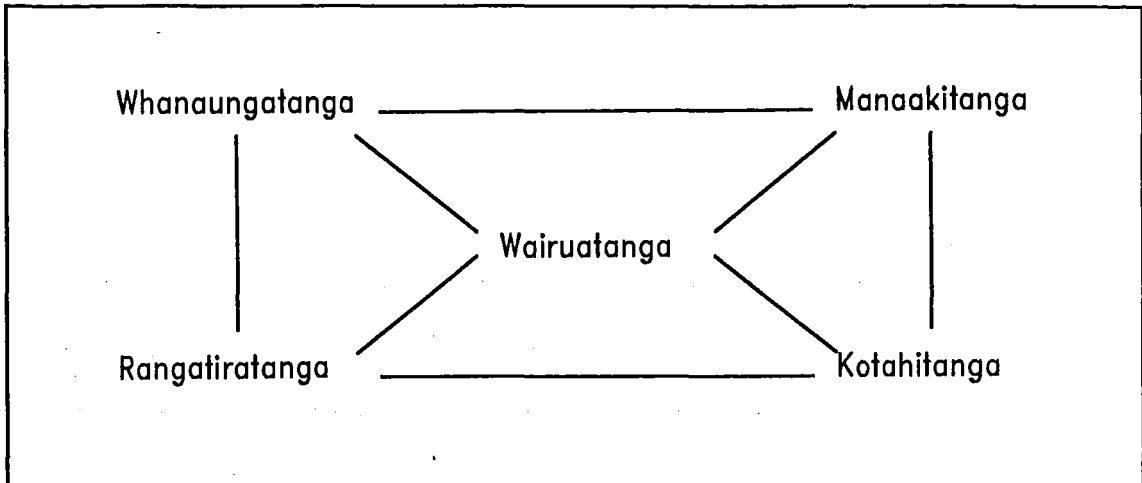


Figure 7 Salient Maori values
Source: Ritchie (undated)

rise to **rangatiratanga** ie. the process of holding and exercising status within an event or a community. In Maori society respect and subsequently leadership status, may be gained through inheritance, peer acceptance or by an individual proving their ability with respect to an issue. This contrasts with Pakeha society where a system of voting is used more frequently to determine leadership.

Although within Maori society the individual status of particular people is recognised, the concept of **kotahitanga** (unity through consensus) is important. Under this process everyone's mana is recognised and as a consequence of whanaungatanga a sense of unity is evoked. Essentially, individuals find their identity as part of a group and exist to serve collective group purposes; in contrast to western society where in general it is maintained that individuals form groups for personal gain (Mulgan, 1989:62). A further concept of note is that of **manaakitanga** - reciprocal sharing. This concept pertains to the allocation of resources on

the basis of need.

5.2.3 Differences in the two value systems

The major difference in the two value systems lie in the relative importance of the spiritual as opposed to the secular, material world, This fundamental difference has resulted in much conflict between the two peoples, examples of which are evident in all claims brought before the Waitangi Tribunal.

Importantly, whereas Pakeha may feel able to control nature; for Maori nature is the origin of life and thus deserves respect¹⁷.

Additionally, Maori society is not based on the values of capitalism which encourage individualism, capitalism and material acquisition. As a consequence, those attributes thought useful for achieving these goals are not considered important by Maori for the same reasons.

Furthermore, systems of leadership and decision making differ between the two groups, primarily due to the status conferred on individuals. It is the combination of these differences which gives rise to two different policy frameworks.

¹⁷However, as Torgerson notes:

in the aftermath of modern industrialisation nature appears more complex and sensitive - in a sense more recalcitrant to human designs (Torgerson, 1990:120).

Consequently, the western view that nature is controllable may have lost some strength in ¹⁷ recent years.

5.3 Policy frameworks

To enable a model for the process of fisheries management to be developed which provides te iwi Maori with rangatiratanga, as guaranteed under the Treaty of Waitangi, a detailed analysis of the policy process is considered unnecessary. However, a comparison of possible policy frameworks for Maori and Pakeha (based on their respective value systems) may provide insights into the factors which need to be considered in order to establish a system whereby tribal rangatiratanga is exercised.

5.3.1 A Pakeha policy framework based on Bromley

Essentially the framework proposed by Bromley has 3 levels: policy, organisation and operation (fig.8). At the policy level rules are discussed and empowered through legislation and enforced by the judicial system. Policies are then passed on to organisations where bureaucrats format, formalise and implement these rules. These rules then influence individuals and groupings of individuals at the operational level which act on the resource base.

Bromley maintains that institutions link the organisational levels together. Furthermore, he proposes that the nature of these institutions is dependent on four dimensions:

- 1) the normative - based on the norms of society;
- 2) the political ie. the values the majority subscribe to;
- 3) the economic - whereby an economic surplus is produced so that

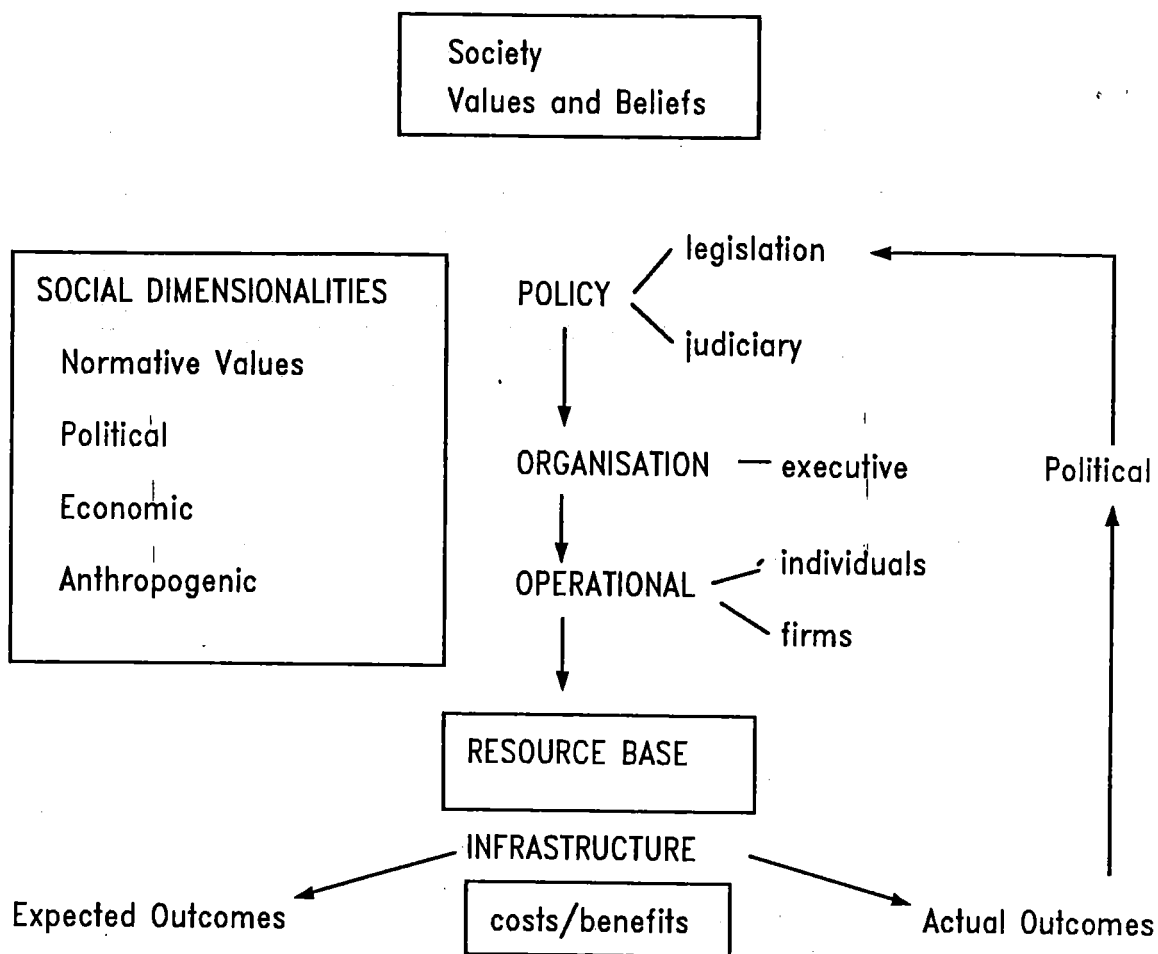


Figure 8 A Pakeha Policy Framework
 Source: Saunders (1990)

a service sector may operate; and

4) the anthropogenic - where individuals in society develop skills and competencies.

Under this framework Bromley proposes that if outcomes are not compatible with the values of the society then through a system of feedback citizens can attempt to induce the state to "...redefine the institutional arrangements within which they must

act and interact" (Anderson and Hide, 1988:6). Therefore, the conclusion Bromley draws from his framework is that the policy process is merely a means of achieving outcomes. Consequently, once outcomes are determined, the policy process can be designed to produce these outcomes.

Furthermore, in contrast it could be maintained that the policy process itself produces outcomes (see Fn15). However, in this study it is not intended to determine which approach is correct but rather to attempt to determine differences which exist between the Maori and Pakeha policy frameworks by using models.

5.3.2 The Maori policy framework

In Maori society tikanga (policy) is decided by those closest to the resource base ie. by the whanau (Saunders, 1990, Gray, pers. comm.) (fig.9). The whanau have the role of caretakers, users and are the repositories of knowledge regarding the resource. Therefore, the whanau determines the ways, rules, and conditions of proper conduct.

Tikanga may be imposed at the level of the hapu (regional), iwi (central) or possibly the waka level (comprising many iwi).

Following the formulation of tikanga, authority is allocated at the level of ritenga (which is synonymous with the executive level) and is subsequently operationalised at the level of kawa by protocols and rules of the tribal level. Additionally all levels

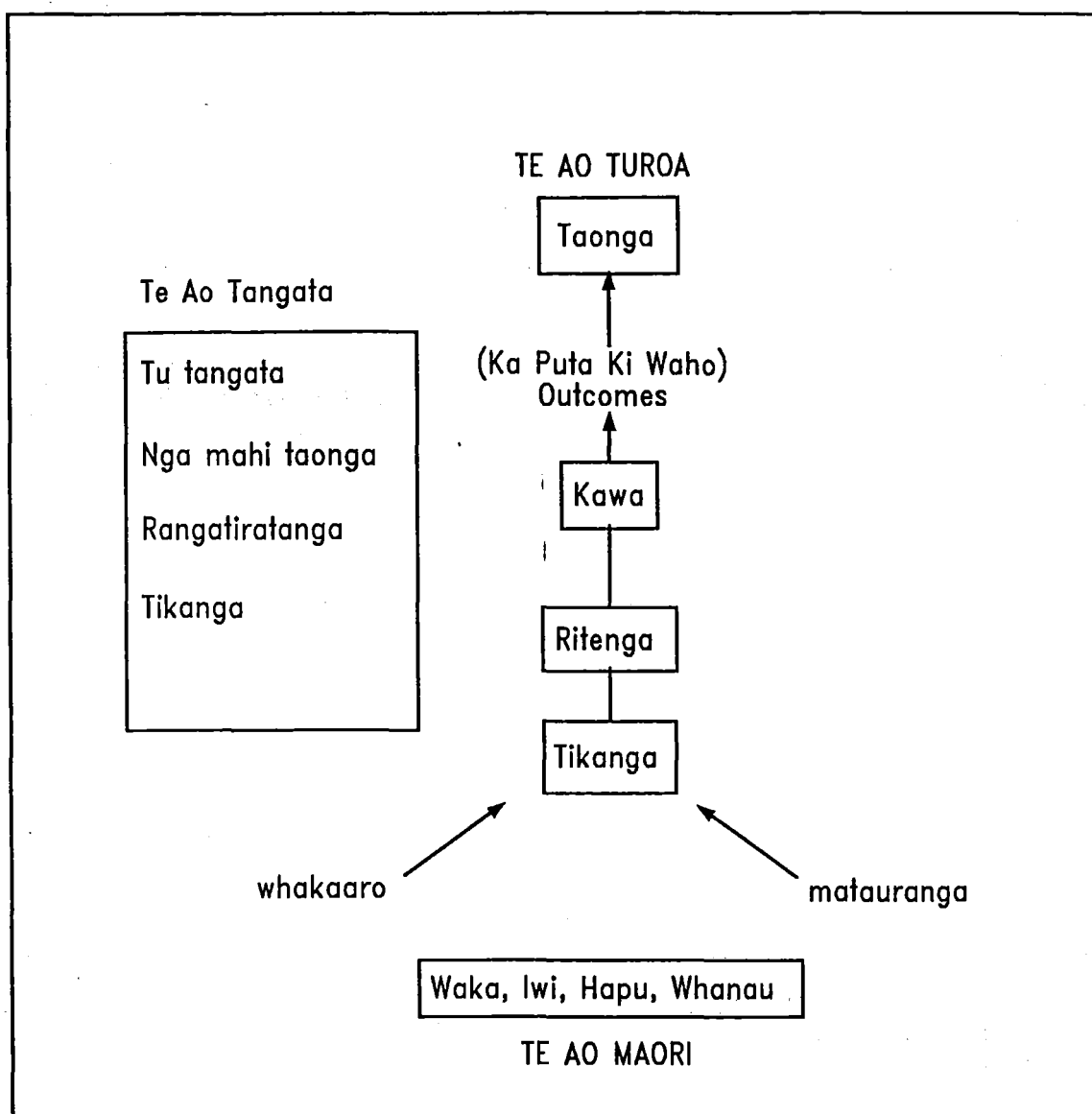


Figure 9 A Maori Policy Framework
Source: Saunders (1990)

of the policy process operate within the following social dimensions:

- 1) tutangata - pertaining to the anthropogenic dimension;
- 2) nga mahi taonga (working the resources) - similar to the economic dimension in a Pakeha policy framework;
- 3) rangatiratanga - the political dimension; and

4) tikanga - based on the norms of society, that is, on whakaaro and matauranga.

Therefore, the Maori policy framework proposed by Saunders and Gray reflects a "bottom up" approach.

5.3.3 The differences in the two frameworks and the consequences

If Bromley's model (fig.6) is taken as a basis, differences in the Maori policy framework proposed by Gray and Saunders and that proposed to depict that of Pakeha by Bromley, stem from the two

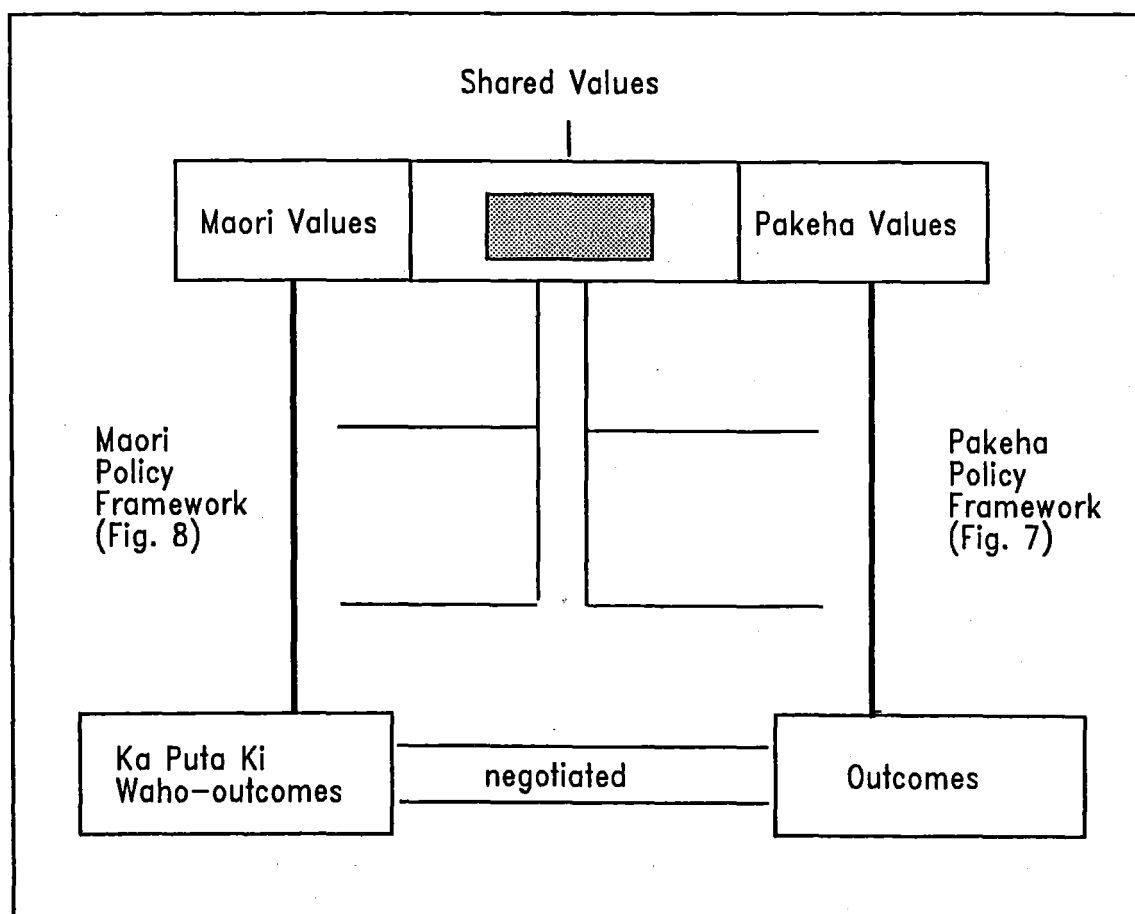


Figure 10 The Process as Recommended by Gray and Saunders
Source: Gray and Saunders (in prep.)

different value systems. As a result of these values the Maori policy process exemplifies a "bottom up" process, in contrast to the Pakeha process which Bromley maintains is "top down" (supra.). The direction of the process relates primarily to the level where policy/tikanga is made in the two systems and how it is implemented. However, whereas in Pakeha society policy is manifested in legislation, in Maoridom it is manifested in rituals and protocols (ritenga and kawa).

Due to differences which exist between the Maori and Pakeha policy frameworks it is considered that attempts to facilitate Maori authority over resources guaranteed under the Treaty, by incorporating them into any of the stages within the Pakeha framework are inadequate, pointless and illustrate ignorance of the existence of two differing systems of policy formulation. Consequently, the values and institutional arrangements of policy processes of both Maori and Pakeha need to influence the fisheries management planning in New Zealand. To achieve this, a system whereby policy outcomes are produced which are compatible with the values and institutional arrangements of policy processes of both Maori and Pakeha is necessary. Such a system may be termed bicultural.

5.4 A bicultural model for fisheries management planning

To ensure that guarantees for Maori participation in the management of fisheries resources made under Article II of the Treaty are met, both partners need to have responsibilities at all levels of the

policy process in fisheries management planning. It is suggested that both policy frameworks could operate in society, each of which would produce outcomes (fig.10). At the level of outcomes, exchange in the form of negotiation and/or mediation between Maori and Pakeha could occur. Through this process it would be hoped outcomes could result which would be compatible with the values of both Maori and Pakeha. This concept is reflected in the findings of the Orakei report where it was concluded:

in the Maori view, unity is sought by respecting differences, and the separate mana of the different groups or families to which we individually belong. It is seen as more important to respect differences and negotiate the bonds that bridge them (Waitangi Tribunal 1987:171).

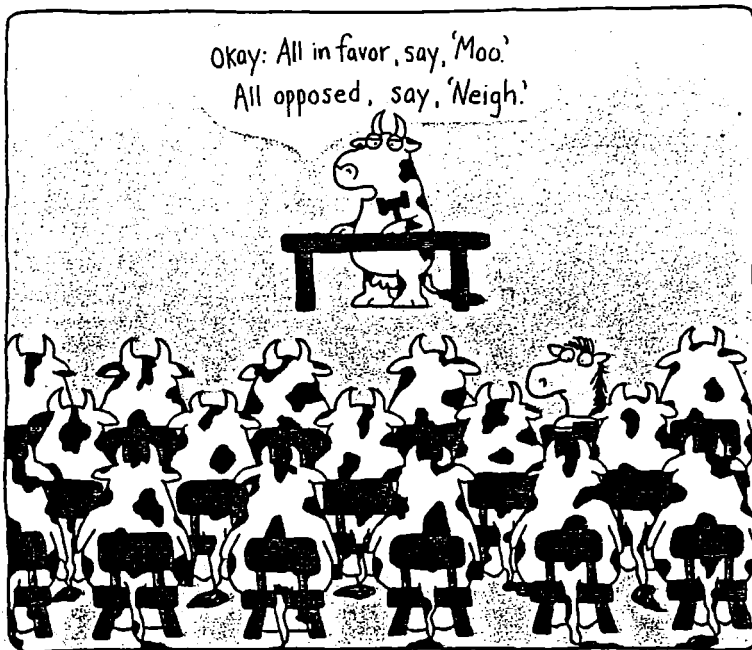
The establishment of a system for iwi management of resources assumes that iwi have ownership rights to the resource (a question which is currently under the jurisdiction of the Waitangi Tribunal). Consequently, the process whereby ownership is established may need revision. Furthermore, in order for a Maori policy framework to operate, sufficient financial resources and people skills will be necessary. For these reasons it is recognised that a bicultural model for fisheries management planning should be established in a determined but incremental manner.

ACKNOWLEDGEMENTS

Well, in the beginning there was confusion; then there was more confusion; dallying over topics ranging from Paua farming to management plans for Banks Peninsula until finally the topic came to me. Then I went in search of a supervisor (this year thin on the ground) and advisors whose time I could take up.

Slowly things came together with help from Garth, Maurice, Peter, Lindsay, and Bob (and even Angus if I remember correctly) at the University, and Laurel Teirney and Richard Fanselow and from MAF Fisheries. In addition, of course, I received great advice from Jenny and John.

Now this project is complete and its time to get out and about before being subsumed in the job scene.



**Just because you're outnumbered
doesn't mean you're wrong.**

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Appendix 1 The Treaty of Waitangi

Appendix 2 Three levels of institutional analysis

Appendix 3 Gazette notice declaring establishment of
Fishery Management Areas in New Zealand

Appendix 4 Phases of the Auckland Fishery Management Plan

TE TIRITI O WAITANGI

HE 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 ki a rātou o rātou rangatiratanga me to rātou wenua a kia mau tonu hoki te rongu ki a rātou me te Atanoho hoki kua wakaaro ia he mea tika 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 ngā tangata o tona iwi kua noho ki tenei wenua a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino, e puta mai ki te tangata Māori ki te Pākehā e noho ture kore ana.

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

KO TE TUARUA Ko te Kuini o Ingarani ka wakarite ka wakaae ki ngā 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. Otia 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 whakaritea ai e rātou ko te kaihoko e meatia nei e te Kuini hei kaihoko mona.

KO TE TUATORU Hei whakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani ngā tangata Māori katoa o Nu Tirani. Ka tukua ki a rātou ngā tikanga katoa rite tahi ke ana mea ki ngā tangata o Ingarangi.

Na, ko matou ko ngā rangatira e te Wakaminenga o ngā hapū o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko ngā rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu. Ka tangohia ka wakaetia katoatia e matou. Koia ka tohungia ai o matou ingoa o matou 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.

KO TE TUATAHI Ko ngā rangatira o te Wakawinenga 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.

• 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.

THIS IS 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.

THIS IS 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.

THIS IS 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

Now, we the Chiefs of the Confederation of the Hapus of New Zealand, here assembled at Waitangi, and we, the chiefs of New Zealand, see the meaning of these words and accept them, and we agree to all of them. Here we put our names and our marks.

THE FOURTH ARTICLE

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 Weteriana, of Rome, and also Maori custom shall alike be protected by him.

• ENGLISH VERSION •

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.

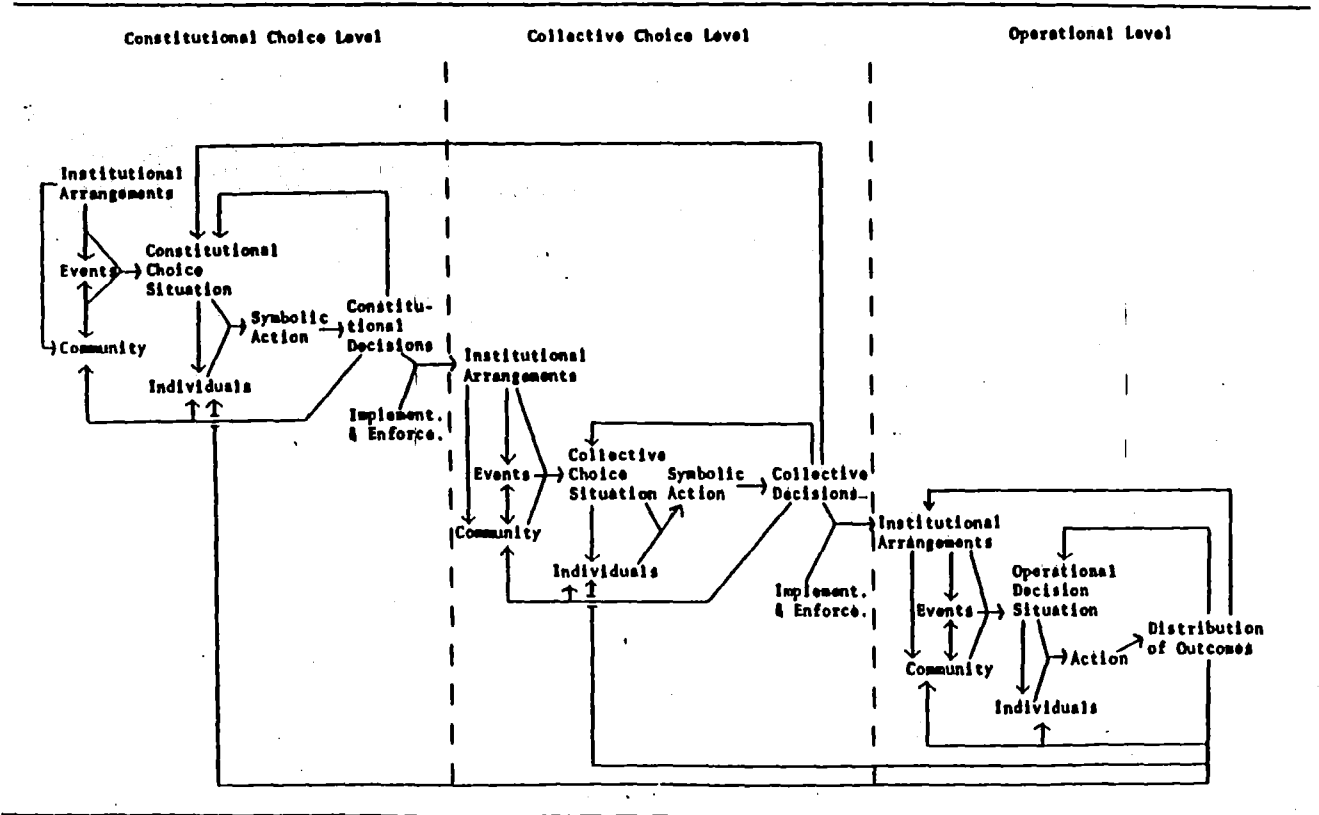
ARTICLE THE THIRD

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

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.

Source: Kiser and Ostrum (1982)



Fishery Management Areas in New Zealand

Source: MAFFish 1989

Extract from *New Zealand Gazette*, Thursday, 27 April 1984, No. 68, page 1402*Notice Declaring Fishery Management Areas*
(Ag. 9/2/0/2; No. 3232)

PURSUANT to section 5 of the Fisheries Act 1983, I hereby declare the areas described in the Schedule to this notice to be fishery management areas for the management of all species of fish within those areas:

Provided that this notice shall not apply to—

(i) Those species of fish which are subject to foreign fishing craft operations pursuant to the Territorial Sea and Exclusive Economic Zone Act 1977; or

(ii) Those species of fish subject to the Fisheries (Sea Fishing) Notice 1983, including such species as may be included or excluded from that notice as notified by me from time to time in the *Gazette*; or

(iii) Albacore tuna (*Thunnus alalunga*), bigeye tuna (*Thunnus obesus*), skipjack tuna (*Katsuwonus pelamis*), slender tuna (*Allothunnus fallai*), southern bluefin tuna (*Thunnus maccoyii*) and yellowfin tuna (*Thunnus albacares*).

SCHEDULE

KERMADEC FISHERY MANAGEMENT AREA

ALL that area of New Zealand fisheries waters around the Kermadec Islands enclosed by a line commencing at a point 34°34.3'S and 179°51.0'W on the outer limits of the exclusive economic zone; and then proceeding generally in an easterly, northerly, westerly and southerly direction along the outer limits of the exclusive economic zone to a point 34°22.1'S and 179°29.6'E on the outer limits of the exclusive economic zone; and then proceeding in a straight line to the first-mentioned point.

AUCKLAND FISHERY MANAGEMENT AREA

ALL that area of New Zealand fisheries waters enclosed by a line commencing at Tirua Point on the west coast of the North Island (at 38°23'S and 174°38.5'E); and then proceeding along a straight line to the outer limits of the exclusive economic zone to a point 37°35'S and 170°03'E; then proceeding in a generally northerly and easterly direction along the outer limits of the exclusive economic zone to a point 33°25'S and 177°59.4'E; then proceeding due South to Cape Runaway on the east coast of the North Island (at 37°32'S and 177°59.4'E); thence in a generally northwesterly and south-easterly direction along the line of the mean high-water mark of the coast of the North Island to the point of commencement.

CENTRAL FISHERY MANAGEMENT AREA

ALL that area of New Zealand fisheries waters enclosed by a line commencing at Cape Runaway on the east coast of the North Island (at 37°32'S and 177°59.4'E); then proceeding due North to a point at 33°25'S and 177°59.4'E; then proceeding in a generally south-easterly direction along the outer limits of the exclusive economic zone to its intersection with the 42°10'S parallel of latitude; then proceeding due West along latitude 42°10'S to a point 42°10'S and 174°42'E; then proceeding in a straight line to a point 40°32'S and

174°20'E; then proceeding in a straight line to a point on the outer limits of the exclusive economic zone at 37°44'S and 169°56'E then proceeding in a generally northerly direction along the outer limits of the exclusive economic zone to a point at 37°35'S and 170°03'E; then in a straight line to Tirua Point on the west coast of the North Island (at 38°23'S and 174°38.5'E); then proceeding in a generally southerly, easterly, and northerly direction along the mean high-water mark of the coast of New Zealand to the point of commencement.

SOUTHERN FISHERY MANAGEMENT AREA

ALL that area of New Zealand fisheries waters enclosed by a line commencing at Clarence Point on the east coast of the South Island (at 42°10'S and 173°56'E); and thence proceeding due East to the outer limits of the exclusive economic zone along latitude 42°10'S; and then proceeding in a generally southerly direction along the outer limits of the exclusive economic zone to latitude 46°S; the proceeding due West to a point 46°S and 172°E; then proceeding due South to a point 48°30'S and 172°E; and then proceeding due West to a point 48°30'S and 169°E; then proceeding due South to a point 49°S and 169°E; then proceeding due West to the outer limits of the exclusive economic zone; then proceeding in a general northerly direction along the outer limits of the exclusive economic zone to a point 44°16'S and 162°13'E; then proceeding due East to Awarua Point on the west coast of the South Island (at 44°16'S and 168°03'E); and then in a generally southerly, westerly, and northerly direction along the line of the mean high-water mark of the coast of the South Island to the point of commencement.

SUB-ANTARCTIC FISHERY MANAGEMENT AREA

ALL that area of New Zealand fisheries waters enclosed by a line commencing on the outer limits of the exclusive economic zone at a point 46°S and 171°45'W; and then proceeding due West to a point 46°S and 172°E; then proceeding due South to a point 48°30'S and 172°E; and then proceeding due West to a point 48°30'S and 169°E; then proceeding due South to a point 49°S and 169°E; then proceeding due West to the outer limits of the exclusive economic zone at a point 49°S and 161°26'E; then proceeding in a generally southerly and northeasterly direction along the outer limits of the exclusive economic zone to the first-mentioned point.

CHALLENGER FISHERY MANAGEMENT AREA

ALL that area of New Zealand fisheries waters enclosed by a line commencing at Awarua Point on the west coast of the South Island (at 44°16'S and 168°03'E); then proceeding due West along latitude 44°16'S to the outer limits of the exclusive economic zone to a point 44°16'S and 162°13'E; then proceeding in a generally northeasterly direction along the outer limits of the exclusive economic zone to a point 37°44'S and 169°56'E; then proceeding in a straight line to a point 40°32'S and 174°20'E; then proceeding in a straight line to a point 42°10'S and 174°42'E; then proceeding due West along latitude 42°10'S to Clarence Point on the east coast of the South Island (at 42°10'S and 173°56'E); then proceeding in a generally northerly, westerly and southwesterly direction along the mean high-water mark of the coast of the South Island to the point of commencement.

Dated at Wellington this 18th day of April 1984.

DUNCAN MACINTYRE, Minister of Fisheries

Source: MAFFish 1986

SUBSEQUENT PHASES OF THE AUCKLAND FISHERY MANAGEMENT PLAN

MAF proposes to initiate preliminary investigations and discussions on Phase II of the Auckland plan shortly after the release of Phase I as a proposed Fishery Management Plan.

The following matters will be addressed in later phases of the plan:

1. Recreational fishing - specific regional strategies will be developed from the national policy on marine recreational fishing in Phase II.
2. Marine protected areas - regional policies and programmes for marine protected areas (marine reserves, parks, and habitat reserves) will be developed in conjunction with Phase II. As a result of delays with the revised legislation necessary for the implementation of any marine protected areas programme, it is now appropriate to address this aspect in the next phase.
3. Management of the rock lobster fishery. A discussion paper on options for future management of the rock lobster fishery was released in April 1986¹. The management strategy for rock lobster will be developed on a national basis during Phase II from discussions on the options presented in this paper.
4. Maori fisheries - the extent to which Maori fisheries are addressed in Phase II will depend on progress with the national policy for Maori traditional fisheries. A two year timetable has been set for its development. It is hoped that Phase II will be developed within a considerably shorter time. Thus it may be necessary to address Maori fisheries in detail in a third phase. However, where possible Phase II of the FMP will address specific Maori concerns which need to be resolved as soon as possible. Many of these are expected to centre on conflicts with commercial fishing and the effects of local depletion on the ability of small Maori communities to catch fish for food. A general strategy for both of these issues has been developed for Phase I and will be refined during Phase II.
5. Shellfish fisheries
6. Seaweed fisheries.
7. Freshwater fisheries, e.g. eels
8. Marine farming.

To meet the requirements of the Fisheries Act, Phases II and III will be proposed as amendments to Phase I. At the same time management strategies proposed in Phase I will be reviewed and refined as necessary. For fisheries which are addressed only in general terms in Phase I, more specific strategies will be developed as knowledge of these fisheries improves.

