

Reprint
as at 29 November 2004



Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

Public Act 1992 No 121

Date of assent 14 December 1992

Commencement see section 1

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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An Act—

- (a) **to give effect to the settlement of claims relating to Maori fishing rights; and**
- (b) **to make better provision for Maori non-commercial traditional and customary fishing rights and interests; and**
- (c) **to make better provision for Maori participation in the management and conservation of New Zealand’s fisheries**

Preamble

Whereas—

- (a) by the Treaty of Waitangi the Crown confirms and guarantees to the Chiefs, tribes, and individual Maori full exclusive and undisturbed possession and te tino rangatiratanga of their fisheries; and
- (b) section 88(2) of the Fisheries Act 1983 provides that nothing in that Act shall affect any Maori fishing rights; and
- (c) there has been uncertainty and dispute between the Crown and Maori as to the nature and extent of Maori fishing rights in the modern context and as to whether they derive from the Treaty or common law or both (such as by customary law or aboriginal title or otherwise) and as to the import of section 88(2) of the Fisheries Act 1983 and its predecessors; and
- (d) Maori have claimed in proceedings in the High Court and in various claims to the Waitangi Tribunal that the quota management system introduced by the Fisheries Amendment Act 1986 is unlawful and in breach of the principles of the Treaty of Waitangi, or has no application to Maori fisheries (including commercial fisheries), and have obtained from the High Court and Court of Appeal,

- by way of interim relief, a declaration declaring that the Crown ought not take further steps to bring the fisheries within the quota management system; and
- (e) at a national hui held at Wellington in June 1988 the Maori principals were given a mandate by Maori claiming rights and interests in the fisheries of New Zealand to secure a just and honourable settlement of their claims with the Crown; and
- (f) the Maori Fisheries Act 1989, an Act “to make better provision for the recognition of Maori fishing rights secured by the Treaty of Waitangi” (which came into force on 20 December 1989) provides for the transfer from the Crown to the Maori Fisheries Commission of quota totalling 10% of the total allowable commercial catches for all species then subject to the quota management system (which transfer was required to be effected in instalments over the period ending with the close of 31 October 1992); and
- (g) on 27 February 1990, the Crown and Maori agreed that there should be discussions between them to ensure that the evolution of the quota management system, including the term of quota, met both conservation requirements and the principles of the Treaty of Waitangi and further agreed that all substantive court proceedings should stand adjourned *sine die* to allow discussions to continue, and the Crown agreed that no further species would be brought within the quota management system pending agreement or court resolution; and
- (h) there remain disputes between the Crown and Maori as to the nature and extent of Maori fishing rights and interests and their status, and the litigation between the plaintiffs and the Crown is still outstanding with interim declarations in relation to squid and paua and the Crown undertaking not to bring further species within the quota management system still in force; and
- (i) on 26 and 27 August 1992, representatives of the Crown and Maori met to discuss their differences with a view to settling outstanding claims and Treaty grievances of Maori in relation to fisheries, and, therefore, the outstanding litigation; and, on 27 August 1992, agreement was reached on a proposal for settlement; and
- (j) the Crown and Maori wish to resolve their disputes in relation to the fishing rights and interests and the quota management system and seek a just and honourable solution in conformity with the principles of the Treaty of Waitangi; and
- (k) the Crown recognises that traditional fisheries are of importance to Maori and that the Crown’s Treaty duty is to develop policies to help recognise use and management practices and provide protection for and scope for exercise of rangatiratanga in respect of traditional fisheries; and
- (l) a deed dated 23 September 1992 was entered into between the Crown and Sir Graham Latimer, the Honourable Matiu Rata, Richard Dargaville, Tipene O’Regan, Cletus Maanu Paul, and Whatarangi Winiata, together with other persons who have negotiated with the Crown on behalf of iwi, the New Zea-

land Maori Council, the National Maori Congress, and other representatives of iwi, whereby it was agreed between the parties that—

- (i) Maori would enter into a joint venture with Brierley Investments Limited to acquire Sealord Products Limited, a major fishing company; and
- (ii) the Crown would pay to Maori a sum of \$150 million to be used for the development and involvement of Maori in the New Zealand fishing industry, including participation in the acquisition of Sealord Products Limited; and
- (iii) the Crown would introduce legislation to ensure that Maori were allocated 20% of all quota for species henceforth brought within the quota management system; and
- (iv) the Crown would introduce legislation empowering the making of regulations recognising and providing for customary food gathering and the special relationship between the tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is not commercial in any way nor involves commercial gain or trade; and
- (v) the Crown would introduce legislation to reconstitute the Maori Fisheries Commission as the Treaty of Waitangi Fisheries Commission; and
- (vi) the Treaty of Waitangi Fisheries Commission would consider the resolutions in respect of the assets held by the Commission at the settlement date specified in the deed, as adopted by the Annual General Meeting of the Commission on 25 July 1992, and consider how best to give effect to the resolutions, and would be empowered to allocate those assets; and
- (vii) following consultation with Maori, the Treaty of Waitangi Fisheries Commission would devise and report to the Crown on a scheme for the distribution of the Commission's assets other than those referred to in subparagraph (vi); and
- (viii) the implementation of the deed through legislation and the continuing relationship between the Crown and Maori would constitute a full and final settlement of all Maori claims to commercial fishing rights and would change the status of non-commercial fishing rights so that they no longer give rise to rights in Maori or obligations on the Crown having legal effect but would continue to be subject to the principles of the Treaty of Waitangi and give rise to Treaty obligations on the Crown.

1 Short Title and commencement

- (1) This Act may be cited as the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- (2) Except as provided in subsection (3), this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more

Orders in Council may be made bringing different sections into force on different dates.

- (3) Section 8 shall come into force on the day on which this Act receives the Royal assent.

Section 1(2): Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 brought into force, on 23 December 1992, by the Treaty of Waitangi (Fisheries Claims) Settlement Act Commencement Order 1992 (SR 1992/370).

Part 1

Provisions relating to settlement of Maori fisheries claims against the Crown

2 Interpretation

In this Act, unless the context otherwise requires,—

BIL means Brierley Investments Limited, a duly incorporated company having its registered office at Wellington; and includes any wholly-owned subsidiaries for the time being of that company

Director-General means the Director-General of Agriculture and Fisheries

Maori BIL Joint Venture means the joint venture (including any company formed to act as the joint venture entity) established by and between the Treaty of Waitangi Fisheries Commission (through Te Waka Unua Limited) and BIL to purchase Sealords

Maori Fisheries Negotiators means Sir Graham Latimer, Robert Mahuta, the Honourable Matiu Rata, Richard Dargaville, Tipene O'Regan, Cletus Maanu Paul, David Higgins, and Whatarangi Winiata

Minister means the Minister of Fisheries

Sealords means Sealord Products Limited, a duly incorporated company having its registered office at Manukau City; and includes the entirety of the business and undertaking of that company; and also includes any wholly-owned subsidiaries for the time being of that company.

3 Interpretation of Act generally

It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the Deed of Settlement referred to in the Preamble.

4 Act to bind the Crown

This Act binds the Crown.

5 Purchase of Sealords by Maori BIL Joint Venture

Notwithstanding any other enactment or rule of law,—

- (a) the Director-General may issue to Sealords a permit under section 63 of the Fisheries Act 1983 authorising it to continue to undertake the fishing activities previously conducted by Sealord Suisan Limited and Fish Packers Limited, so long as those 2 last-mentioned companies surrender to the Director-General their existing permits under that section and undertake not to seek further permits under that section;
- (b) the Minister or the Director-General, as the case may be, may exercise the powers conferred by section 28W(3) or section 28Z(9) of the Fisheries Act 1983 (or both) for the purpose of giving effect to the acquisition of Sealords by the Maori BIL Joint Venture.

6 Crown to indemnify Treaty of Waitangi Fisheries Commission against certain liability for goods and services tax

The Crown shall indemnify the Treaty of Waitangi Fisheries Commission against any liability to pay goods and services tax under the Goods and Services Tax Act 1985 in respect of payments referred to in clause 3.1 of the Deed of Settlement between the Crown and Maori dated 23 September 1992.

7 Payment of \$150,000,000 to Maori

The Crown shall pay out of money appropriated by Parliament, in accordance with clause 3.1 of the Deed of Settlement between the Crown and Maori dated 23 September 1992, the sum of \$150,000,000.

8 Payment of special dividend by Aotearoa Fisheries Limited

- (1) The board of directors of Aotearoa Fisheries Limited is hereby deemed to have declared a special dividend of \$17,500,000 in favour of the Maori Fisheries Commission, which special dividend shall be payable to the Commission not later than 5 days after receipt by Aotearoa Fisheries Limited of a notice from the Commission requesting payment of that amount.
- (2) For the avoidance of doubt, it is hereby declared that no person shall be liable either civilly or criminally by reason only of the company's payment to the Commission of the amount specified in subsection (1).

9 Effect of Settlement on commercial Maori fishing rights and interests

It is hereby declared that—

- (a) all claims (current and future) by Maori in respect of commercial fishing—
 - (i) whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise; and
 - (ii) whether in respect of sea, coastal, or inland fisheries, including any commercial aspect of traditional fishing; and

- (iii) whether or not such claims have been the subject of adjudication by the courts or any recommendation from the Waitangi Tribunal,—

having been acknowledged, and having been satisfied by the benefits provided to Maori by the Crown under the Maori Fisheries Act 1989, this Act, and the Deed of Settlement referred to in the Preamble, are hereby finally settled; and accordingly

- (b) the obligations of the Crown to Maori in respect of commercial fishing are hereby fulfilled, satisfied, and discharged; and no court or tribunal shall have jurisdiction to inquire into the validity of such claims, the existence of rights and interests of Maori in commercial fishing, or the quantification thereof, the validity of the Deed of Settlement referred to in the Preamble, or the adequacy of the benefits to Maori referred to in paragraph (a); and
- (c) all claims (current and future) in respect of, or directly or indirectly based on, rights and interest of Maori in commercial fishing are hereby fully and finally settled, satisfied, and discharged.

10 Effect of Settlement on non-commercial Maori fishing rights and interests

It is hereby declared that claims by Maori in respect of non-commercial fishing for species or classes of fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983—

- (a) shall, in accordance with the principles of the Treaty of Waitangi, continue to give rise to Treaty obligations on the Crown; and in pursuance thereto
- (b) the Minister, acting in accordance with the principles of the Treaty of Waitangi, shall—
- (i) consult with tangata whenua about; and
 - (ii) develop policies to help recognise—
use and management practices of Maori in the exercise of non-commercial fishing rights; and
- (c) the Minister shall recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Maori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and māhinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade; but
- (d) the rights or interests of Maori in non-commercial fishing giving rise to such claims, whether such claims are founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty

of Waitangi, statute, or otherwise, shall henceforth have no legal effect, and accordingly—

- (i) are not enforceable in civil proceedings; and
- (ii) shall not provide a defence to any criminal, regulatory, or other proceeding,—

except to the extent that such rights or interests are provided for in regulations made under section 89 of the Fisheries Act 1983.

11 Provisions relating to certain civil proceedings

- (1) The proceedings referred to in subsection (2) that have not been discontinued before the commencement of this Act are hereby discontinued.
- (2) The proceedings to which subsection (1) applies are the following:
 - (a) *Te Runanga o Muriwhenua Inc v Attorney-General and others* (CP No 553/87);
 - (b) *HR Tau, the Ngai Tahu Maori Trust Board v Attorney-General and others* (CP No 559/87);
 - (c) *The New Zealand Maori Council and others v Attorney-General and others* (CP No 610/87);
 - (d) *Robert Te Kotahi Mahuta and others v Attorney-General and others* (CP No 614/87);
 - (e) *The Hon Matiu Rata and others v Attorney-General and others* (CP No 743/88);
 - (f) *Robert Te Kotahi Mahuta and another v Attorney-General and others* (CP No 744/88);
 - (g) *J Henare and others v Attorney-General and others* (CP No 746/88);
 - (h) *T or SG O'Regan and another v Attorney-General and others* (CP No 747/88);
 - (i) *J Henare and others v Attorney-General and others* (CP No 762/88);
 - (j) *CJ Pile v Attorney-General* (CP No 110/88).
- (3) All interim orders made and all undertakings given by the parties, in respect of any proceedings referred to in subsection (2), being orders and undertakings in force immediately before the commencement of this Act, are hereby cancelled.
- (4) Every declaration made before the commencement of this Act under section 28B of the Fisheries Act 1983, being a declaration that any species or class of fish in any quota management area shall be subject to the quota management system established under Part 2A of that Act, is hereby declared to be and always to have been valid.

Part 2

Amendments to other enactments

Maori fisheries

[Repealed]

Heading: repealed, on 29 November 2004, pursuant to section 214 of the Maori Fisheries Act 2004 (2004 No 78).

12 Sections to be read with Maori Fisheries Act 1989

[Repealed]

Section 12: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

13 Interpretation

[Repealed]

Section 13: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

14 Change of name of Commission

[Repealed]

Section 14: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

15 Additional functions

[Repealed]

Section 15: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

16 Membership of Commission

[Repealed]

Section 16: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

17 Powers

[Repealed]

Section 17: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

18 New Schedule 1A inserted

[Repealed]

Section 18: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

19 Repeals

[Repealed]

Section 19: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

20 Provisions relating to settlement of Maori claims relating to commercial fisheries

[Repealed]

Section 20: repealed, on 29 November 2004, by section 214 of the Maori Fisheries Act 2004 (2004 No 78).

Fisheries

[Repealed]

Heading: repealed, on 1 October 2001, pursuant to section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

21 Sections to be read with Fisheries Act 1983

[Repealed]

Section 21: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

22 Interpretation

[Repealed]

Section 22: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

23 Declaration that species or class of fish subject to quota fishing

[Repealed]

Section 23: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

24 Matters to be taken into account in determining or varying any total allowable commercial catch

[Repealed]

Section 24: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

25 Interpretation

[Repealed]

Section 25: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

26 Minimum holdings of quota and interests in quota*[Repealed]*

Section 26: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

27 Power of Crown to acquire, hold, transfer, lease, or cancel quotas*[Repealed]*

Section 27: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

28 Restriction on amount of quota that may be held by any one person*[Repealed]*

Section 28: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

29 Assessment of deemed value of fish*[Repealed]*

Section 29: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

30 Declaration of controlled fisheries*[Repealed]*

Section 30: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

31 Restrictions on licences in certain cases*[Repealed]*

Section 31: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

32 Closed season in exclusive economic zone*[Repealed]*

Section 32: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

33 Limitation of Act*[Repealed]*

Section 33: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

34 Regulations*[Repealed]*

Section 34: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

35 Fish in excess of certain quantities deemed to have been acquired or possessed for purposes of sale

[Repealed]

Section 35: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

36 Variation of resource rentals by Order in Council

[Repealed]

Section 36: repealed, on 1 October 1994, by section 8(3)(e) of the Fisheries Amendment Act 1994 (1994 No 87).

37 Fisheries (Amateur Fishing) Regulations 1986

[Repealed]

Section 37: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

38 Schedule 1 amended

[Repealed]

Section 38: repealed, on 1 October 2001, by section 314(2)(p) of the Fisheries Act 1996 (1996 No 88).

Treaty of Waitangi

39 Sections to be read with Treaty of Waitangi Act 1975

This section and the next succeeding section shall be read together with and deemed part of the Treaty of Waitangi Act 1975 (in that section referred to as the principal Act).

40 Jurisdiction of Tribunal to consider claims

Amendment(s) incorporated in the Act(s).

Fishing Industry Board

41 Sections to be read with Fishing Industry Board Act 1963

This section and the next 2 succeeding sections shall be read together with and deemed part of the Fishing Industry Board Act 1963 (in those sections referred to as the principal Act).

42 Establishment of New Zealand Fishing Industry Board

Amendment(s) incorporated in the Act(s).

43 Committees

Amendment(s) incorporated in the Act(s).

Conservation

44 Sections to be read with Conservation Act 1987

This section and the next succeeding section shall be read together with and deemed part of the Conservation Act 1987 (in that section referred to as the principal Act).

45 Guardians of Lakes Manapouri, Monowai, and Te Anau

Amendment(s) incorporated in the Act(s).

Schedule

New Schedule 1A inserted into Maori Fisheries Act 1989

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Amendment(s) incorporated in the Act(s).

Contents

- 1 General
- 2 Status of reprints
- 3 How reprints are prepared
- 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
- 5 List of amendments incorporated in this reprint (most recent first)

Notes**1 General**

This is a reprint of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The reprint incorporates all the amendments to the Act as at 29 November 2004, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted

enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)

- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Maori Fisheries Act 2004 (2004 No 78): section 214

Fisheries Act 1996 (1996 No 88): section 314(2)(p)

Fisheries Amendment Act 1994 (1994 No 87): section 8(3)(e)

Treaty of Waitangi (Fisheries Claims) Settlement Act Commencement Order 1992 (SR 1992/370)