



# Indigenous and Non-Indigenous Interests in Modern Fisheries Acts

## Introduction

Global fisheries are under increasing stress. There is a growing need for fisheries legislation around the world to modernize and take issues of sustainable fishing seriously. In some countries such as Canada and New Zealand fisheries legislation has been recently redrafted in an effort to provide a framework for sustainable fishing in these jurisdictions. An interesting point to note in both these recent examples though is the way in which the rights, interests and perspectives of these two countries' respective indigenous peoples have been included as an integral part of these new pieces of legislation. This knowledge note looks at these two statutes to explore how sustainable resource management concerns can be brought in line with indigenous rights and interests.

## Canada – Modern Fisheries Act

The *Fisheries Act* is the federal law that governs the management of fisheries and the protection of fish habitats in Canada. First enacted in 1868, before all the provinces and territories had entered Confederation, and well before the introduction of modern fishing technology, the Act has been amended occasionally over the years, but required a significant overall in recent years to better meet the challenges faced by modern fisheries. These recent changes to the legislation have been negotiated through extensive consultations with provinces, territories, fishing interests, First Nations and other interested stakeholders and were introduced into federal parliament at the end of 2006. Under the theme of shared stewardship, the new Act seeks to expand the role of stakeholders, including First Nations groups, in promoting sustainable fishing practices in Canada.

The Department of Fisheries and Oceans expects the Act to benefit all stakeholders in the fishing sector, not just one specific group, but there are provisions within specifically aimed at First Nations stakeholders. The Act emphasizes shared management and provides First Nations and industry a more direct role in fisheries management. This would be achieved through mechanisms such as legally binding Fisheries Management Agreements which would identify and clarify details on involvement in management and decision-making. As well, provisions allow for the creation of advisory bodies which will provide advice to the Minister on matters relating to fisheries management. The new Act also acknowledges a role for traditional knowledge in decision-making, where such information is made available to the Department of Fisheries and Oceans. It also requires that those involved in the administration of the Act seek to manage fisheries in a manner consistent with the constitutional protection provided to existing First Nations customary and treaty rights.

Finally, the new Act provides a legal mechanism for the Minister to set allocations for up to 15 years for fleets and groups in commercial, recreational and Aboriginal fisheries in marine waters. Under the proposed regime, when making decisions on allocation, the Minister may, but is not obliged, to consider historical participation of various stakeholder groups in fisheries and the best use of fish to ensure the fisheries social, economic and cultural potential. One of the key values identified in the preamble is the constitutional protection of existing First Nations customary and treaty rights and the importance of fisheries to many First Nations communities.

## Māori Fisheries Act 2004 and Te Ohu Kaimoana

It would not be until the mid-1980s that fisheries legislation in New Zealand would begin to

meaningfully recognise Māori participation in fisheries. As part of the Treaty of Waitangi settlement process the government and Māori entered into a negotiation process with the goal of resolving claims outside the court system in the late 1980s. For fisheries this resulted in the *Māori Fisheries Act 1989* as an interim measure until a full settlement could be reached. In 1992, Māori and the Crown negotiated a full and final settlement of all marine and freshwater claims in the *1992 Fisheries Deed of Settlement*, subsequently passed into law by the *Treaty of Waitangi (Fisheries Claims) Act 1992*. These settlements included new regulations creating a framework for the declaration of *mataitai* reserves – being traditional fishing grounds or areas of special significance for customary food gathering – and a process through which the Minister appoints local guardians who are responsible for issuing customary fishing authorizations and overall ongoing management of the fishing resources within the reserve area. These guardians are able to make by-laws to manage any non-commercial fishing in the area. These new agreements were the start of a stronger Maori presence in the New Zealand fisheries industry.

Two decades of conflict, negotiation and litigation between government, Māori, and industry culminated in the *Māori Fisheries Act 2004*. The Act formally established Te Ohu Kaimoana, the corporate trustee of the Māori Fisheries Trust along with its associated entities, to allocate the assets transferred through the Māori Fisheries Settlement from the Crown to *iwi* (Māori tribal organizations). In September 2006, sixty per cent of the Māori Fisheries Settlement assets, amounting to more than NZ\$350 million, had been transferred to *iwi*. As of January 2007, Te Ohu Kaimoana was looking to turn its attention from allocation of settlement assets to fisheries management.

## Discussion

Probably the most important point to note in the passage of these statutes was how they have been able to encompass the broad spectrum of indigenous interests in fisheries from customary to commercial, while at the same time developing more robust frameworks to meet the broader goal of resource sustainability. Another important point to note is how this came about through a process of negotiation.

All too often statutes like this are measured in terms of the end-state outcomes such as increased sustainability of fisheries produced by the new laws rather than the often just important issue of process outcomes. In the case of these two statutes, meaningful engagement between all stakeholders in the process of negotiation has helped facilitate the emergence of a stronger relationship of understanding and cooperation between these various parties – a process outcome possibly equally valuable in the long-run as the end-state outcome of increasingly sustainable fisheries. Indeed, this process outcome – of increased cooperation between these interested parties – may actually increase the likelihood of the end-state outcomes of the two respective statutes being achieved.

## Contact

**Synexe Consulting Limited**

**E:** [synexe@synexe.com](mailto:synexe@synexe.com)

**W:** [www.synexe.com](http://www.synexe.com)