Integrating Indigenous Cultural Traditions in the Management of Protected Marine Resources: The Fiordland example

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Indigenous communities that rely upon natural resources for their cultural practices depend on the ecosystem health for such traditions to continue. Yet efforts to protect ecosystem integrity by "locking up" resources in reserves risk the disruption of traditions compatible with sustainability. This tension can be seen in the Fiordland area of New Zealand. Statutes governing the management of adjacent marine resources incorporate Māori values of kaitiakitanga (guardianship). This paper traces the evolution of recognition of Māori guardianship practices in the management of Fiordland marine resources, culminating in the inclusion of representation of the local iwi (tribe), Te Runanga o Ngāi Tahu, on the Fiordland Marine Guardians management authority established in the Fiordland (Te Moana O Atawhenua) Marine Management Act of 2005. In conclusion, this paper makes recommendations for application of similar statutory tools in situations where protective management measures may threaten traditional cultural use.

Increasingly, natural resource managers recognise limits of marine ecosystems under their jurisdiction, and move to adopt or promote conservation measures to protect these resources. One tool favoured to protect biodiversity is the designation of marine reserves, spatially explicit marine management areas where no take of life is allowed. Marine reserves have been shown to be effective at rebuilding depleted fish stocks and restoring ecosystem health, a broad scientific consensus supports the use of marine reserves for improved ecosystem integrity outcomes (Roberts and Hawkins, 2000).

New Zealand is a leader in adoption of marine reserves as a protective measure, with its early adoption of the Marine Reserves Act of 1971 and its consistent record of accomplishment of marine reserve designations under this act (Sobel and Dahlgren, 2004). New Zealand's signing of the Convention on Biological Diversity (CBD) in 1992 reaffirms this commitment, as the government reviews the Act to "better provide for the protection of marine biodiversity" (Department of Conservation and Ministry for the Environment, 2000). However, the CBD requires not only that the contracting nation establish networks of protected areas, but also that they "respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity" [1].

While indigenous communities that rely upon natural resources for their cultural practices and livelihoods depend on the health of the ecosystem for their traditional practices to continue, government efforts to protect ecosystem integrity by "locking up" resources in "no-take" reserves risk disrupting such practices. Ma-

rine reserves address environmental conservation goals, yet incautiously applied they defeat parallel goals of sustaining indigenous traditions and knowledge. The Te Wāhipounamou / South West New Zealand (Fiordland) area illustrates this tension (see Figure 1), where frictions between increased conservation focus and traditional customary uses of marine resources have resulted in new solutions to resolving the debate.

Fiordland, its indigenous peoples and marine resources

The Fiordland marine area is unique. Heavy rainfall washes tannins down from the vegetation on the land to the deep and confined fiords, which forms a layer of dark water that filters sunlight, allowing deepwater corals and fishes to thrive within 40 metres of the surface (Department of Conservation, 2005). The area is known both for its abundance and for diversity of marine species and is a tourist destination popular with divers and boaters as well as a fishing hotspot for both recreational and commercial fishers (Warne, 2000).

From before the arrival of Europeans, the South Island Māori *iwi* (tribe) [2] Ngāi Tahu have relied upon the natural resources within this unique area, from the native *pounamou* (greenstone) not found elsewhere to the various and plentiful *kai moana* (seafood), the plentiful fish and shellfish found in its waters (Waitangi Tribunal, 1992). After the arrival of Europeans, this reliance continued but became subject to relations between Ngāi Tahu and the Crown of England set forth in the Treaty of Waitangi, signed by *Rangatira* (chiefs) of Ngāi Tahu, which described the nature of affairs between the Crown of England and Māori (Boast, 1989). While the treaty was signed in both English and Māori language versions, generating much scholarship over proper interpretation and harmonization between the two, this paper only considers the understanding expressed by Ngāi Tahu in the Māori version. In Article I of the Treaty, Māori agreed to allow the crown *kawanatanga* (governance) over New Zealand in exchange for assurances in Article II that the Crown confirm and guarantee Ngāi Tahu the *tino rangatiratanga* (full tribal chieftainship and authority) of their lands, estates, forests, fisheries and other *taonga* (treasured possessions) (Boast, 1989). Taonga is an encompassing term, and includes both tangible possessions such as the actual resource itself and intangible qualities of the resource, such as sustainability achieved through maintenance of its natural environment (Goodall, 1997).

For well over a century, the Crown failed to honour guarantees expressed in Article II of the Treaty; however, in the 1970s the government began to acknowledge its treaty obligations (Robinson, 2002, Boast, 1989). The passage of the Treaty of Waitangi Act in 1975 aimed to "provide for the observance, and confirmation, of the principles of the Treaty of Waitangi" and set up the Waitangi Tribunal to hear claims over breaches of the treaty's provisions (Robinson, 2002).

The importance of recognition of treaty principles was brought into the common law in the case of *New Zealand Māori Council v. Attorney General* in 1987 (Goodall, 1997). However, customary use of marine resources was not explicitly recognized until 1989, when in the case of *Te Weehi v. Regional Fisheries Officer* the court acknowledged the existence of, and the Crown's requirement to protect, Māori customary fishing practices (Wickliffe, 1995; Munro, 1994; Dawson, 1992).

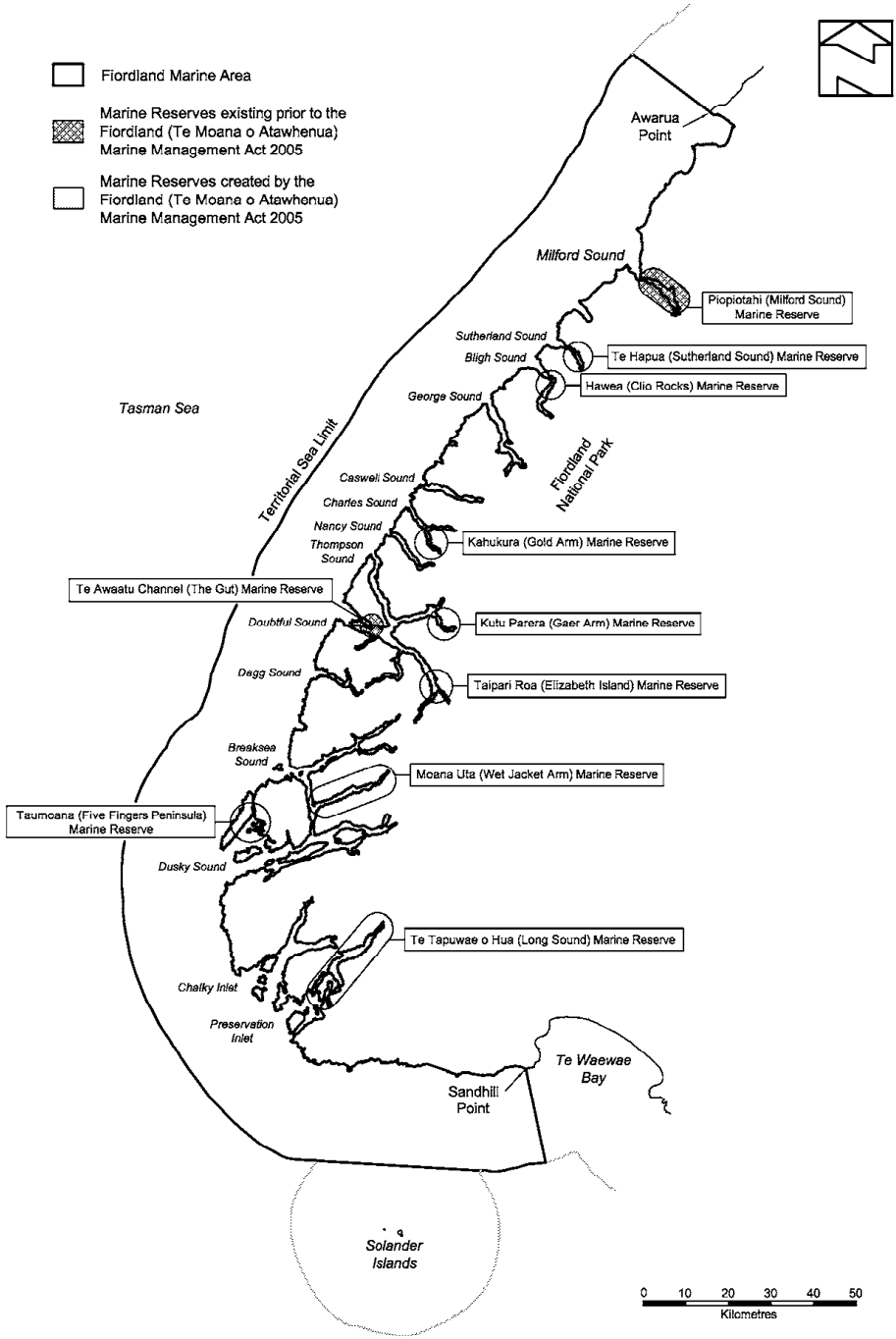

Figure 1 *Indicative map of Fiordland (Te Moana o Atawhenua) marine area and marine services. (Source: Fiordland - Te Moana o Atawhenua - Marine Management Act 2005, Schedule 1)*

Subsequent legislation in the Treaty of Waitangi (Fisheries Claims) Settlement Act of 1992 separated traditional Māori customary fishing practices between commercial and non-commercial, settled the commercial claims and clarified and made explicit the nature and extent of non-commercial fishing rights (Wickliffe, 1995; Dawson, 1992). Further legislation in the Fisheries Act of 1996 set forth requirements for the Crown to consult with representatives of Māori and to provide for input of *tangata whenua* (people of the land) with affected customary fishery interests when enacting fishery sustainability measures [3], and clarified the nature and extent of customary (non-commercial) fishing practices [4]. Critics note that this separation itself does not respect traditional Māori practices and question whether the non-commercial rights are accurately portrayed (Wickliffe, 1995). Others suggest that regulatory embodiment of traditional non-commercial practices offers an opportunity to make such practices explicit (Bess, 2000).

Specific provisions of the Fisheries Act 1996 link Māori principles to management of the fisheries. During consultation, the Act requires the Minister of Fisheries to have "particular regard to *Kaitiakitanga*" [5], or the tradition of guardianship of natural resources. The Act declares its object with regard to the customary fishing provisions as "better provision for the recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi" [6]. The Act establishes the Crown's authority to "make regulations recognising and providing for customary food gathering by Māori and the special relationship between tangata whenua and places of importance for customary food gathering" [7]. However, the Act limits harvests "to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade" [8]. Regulations authorised by the Act (promulgated later) allow designation of exclusive customary fishing areas known as *mataitai* reserves, managed by local iwi through *marae* (meeting house) committees or *katiaki* (guardians) of the tangata whenua [9]. Another provision in the Act establishes the Crown's authority to declare a coastal or estuarine area as a "*taiapure*-local fishery," *taiapure* is a legal term coined for this management tool combining *tai* (sea) and *āpure* (patch) to describe its territorial nature [10]. Taiapure are declared upon consideration of a proposal stating "why the area … has customarily been of special significance to an iwi or *hapu* [sub-tribe] either … [a]s a source of food; or … [f]or spiritual or cultural reasons" [11]. A committee appointed from nominations of representatives of the local Māori community manage the taiapure-local fishery (the appointees themselves need not be Māori) [12]. Such management committees have the power of recommending fishery regulations "for the conservation and management of the fish, aquatic life, or seaweed in the taiapure-local fishery," to be promulgated by the Minister of Fisheries [13]. Other traditional marine management measures include *tapu* (spiritual restriction) and *rahui* (reserve); the Fisheries Act partially recognises these instruments [14], but with time limitations that do not reflect traditional practice (Wickliffe, 1995). While inclusion of customary fishing practices in legislation helps to recognise and define Māori traditions, the requirement of Ministerial approval for designation of taiapure, mataitai and rahui limits the recognition of rangatiritanga (Memon et al, 2003). Essentially, legislative acknowledgement of these practices amounts to a declaration of co-management aspirations with details left to be worked out through adaptive management (Id.)

During the same time these fisheries laws and regulations were sorted on a national level, Ngāi Tahu brought a claim for grievances under the Treaty including claims over marine resources (Waitangi Tribunal, 1992). These claims were settled with the Crown by legislation in the Ngāi Tahu Claims Settlement Act of 1998. Ngāi Tahu agreed to the settlement terms in a spirit of reconciliation (Ngāi Tahu Negotiating Group, 1997). In the Act, the Crown explicitly acknowledged the iwi's "cultural, spiritual, historic, and traditional association" to "Te Mimi o Tu Te Rakiwhanoa (Fiordland Coastal Marine Area)" [15], allowing Ngāi Tahu the opportunity to reassert its rangatiratanga by meaningful participation in management of the area (Id.). Also amongst its provisions, the Crown acknowledged the association of Ngāi Tahu with "taonga fish species," and made explicit Ngāi Tahu's role in their future management, including a role in developing regulations concerning mataitai and taiapure [16]. Customary fishing regulations were determined by Ngāi Tahu in coordination with other South Island iwi working closely with the Ministry of Fisheries, spelled out in Fisheries (South Island Customary Fishing) Regulations of 1999 (Bess, 2000).

The development of the Fiordland marine guardians

The Fiordland area was designated a national park in 1952, but boundaries of the park stop at the mean high-water mark and do not include the marine area (Department of Conservation, 2003). In 1990 the Fiordland area was inscribed on the UNESCO World Heritage List upon application by the Department of Conservation (DoC), the Royal Forest and Bird Society (a conservation NGO), and the Ngāi Tahu Māori Trust Board, but again specifically did not include the marine area . The agency that oversees national parks in New Zealand, DoC, wanted to include the marine area (UNESCO, 1986). But local stakeholders in the marine area including Ngāi Tahu, commercial fishermen, recreational interests and community groups, resisted designation of the marine area for fear of increased visitation pressures upon the marine environment and the possibility of well-intentioned yet poorly-designed restrictions to counter such pressure (Carey, 2004). Nonetheless, these stakeholders recognised the need for conservation measures, and joined together in 1995 to form the Guardians of Fiordland's Fisheries (Tautiaki Ika O Atawhenua) to "manage and conserve Fiordland's fisheries resources for the use and enjoyment of future generations" (Guardians of Fiordland's Fisheries, 1999).

To start, the Guardians' documented the nature and extent of both traditional and current fishery interests, gathering the collective knowledge of the members of the group. The Guardians ensured participation of independent scientists to incorporate the biological and physical data needed for context. In 1999, the group published the results of its investigation to inform discussions going forward. Previously, no single document gathered all of the data relevant to the management of the resources together with the communities' interaction with the resources (Id.).

The Guardians' agreed to seven principles guiding its work towards recommending an integrated strategy for the Fiordland marine area:

- To ensure sustainable utilization of resources;
- To support existing fisheries management framework;

- To ensure the interests of tangata whenua and other stakeholders are identified, recognized and involved in management decisions;
- To ensure equity of access amongst stakeholders;
- To prevent uncontrolled expansion of effort by any sector;
- To identify research or information needs;
- To adopt a cautious approach to any proposed new use of the resources.

(Guardians of Fiordland's Fisheries, 1999)

The group expanded to include interests of environmental NGOs, and was able to sort out issues through a novel intra-group bargaining process of mutual respect and shared interests dubbed "gifts and gains" for its approach to promoting tradeoffs between members (Guardians of Fiordland's Fisheries & Marine Environment, 2002). From this basis, the Guardians developed a proposed integrated management strategy for the Fiordland marine area, released in October 2002 for public comment (Id.). Subsequently, the Guardians published the final strategy in September 2003 (Guardians of Fiordland's Fisheries & Marine Environment, 2003).

Originally, the group considered the fisheries management tool of taiapure as suitable for accomplishing its consensus strategy; but after review, it became clear that while taiapure may be useful for customary fishery management, it does not work well at coordinating the non-fisheries aspects of an integrated strategy such as increased visitations, bioinvasion risks, and pollution concerns (Id.). Thus, implementation required a broader overarching mechanism - legislation. The strategy was submitted to the Ministers of Fisheries and the Environment with a request to honour the package as a whole; Ministers supported the approach and passed the Fiordland Marine Management Act on 13 April, 2005.

This Act established a new management body patterned on the prior stakeholder group to advise on actions taken in the Fiordland area - the Fiordland Marine Guardians (FMG) [17]. The Act is important to Ngāi Tahu because it explicitly requires Ngāi Tahu representation on the FMG, ensuring future katiaki involvement in management of marine resources [18]. The Act established eight new marine reserves in representative areas the stakeholder group chose, as well as an eight-year moratorium on additional marine reserve applications to give time to monitor effects of the new designations [19]. The Act places additional restrictions on each user group, but importantly, these were restrictions agreed to from the "gifts and gains" process, rather than imposed by central government from afar [20].

The process of establishing the Fiordland Marine Guardians may provide a useful template for co-management of marine resources elsewhere. For jurisdictions that may wish to follow this model, the author makes the following recommendations:

- *Identify* all members of the community: Traditions of Ngāi Tahu exist complimentary to other users of the resource – recognizing this allowed traditions to be honoured and respected in management processes, a comprehensive solution would not be possible without inclusion of all interests.

- *Encourage* discussion between all users: Open and honest communication between stakeholders as to where their interests lay provided the insight of common values and opportunity to work together.
- *Seek* additional information: The Guardians invited scientists to join their effort, adding more information to support the validity of its recommendations to legislative decision makers, bolstering the group's management authority.
- *Listen* to areas of agreement between parties: Positions developed from informed consensus of stakeholders only work if officials recognize the balance of tradeoffs within the communities of interest represented.
- *Act* on recommendations: Respect the time and effort of stakeholders and incorporate the communities' recommendations within a reasonable period to encourage continuing engagement of affected communities.
- *Follow-through:* Once a plan is in place for incorporating community and traditional values, make certain that such values continue to be respected in practice. The continuing role of Ngāi Tahu on the Fiordland Marine Guardians assures the indigenous community will continue to have input on management of its traditional marine resources into the future.

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Endnotes

[1] United Nations Convention on Biological Diversity Art. 8(j).
[2] Translations from Māori derive from Goodall (1997).
[3] Fisheries Act 1996 § 12(1).
[4] *Id.*
[5] *Id.*
[6] Fisheries Act 1996 § 174.
[7] Fisheries Act 1996 § 186(1).
[8] *Id.*
[9] Fisheries Act 1996 § 186(2).
[10] Fisheries Act 1996 § 175.
[11] Fisheries Act 1996 § 177.
[12] Fisheries Act 1996 § 184.
[13] *Id.*
[14] Fisheries Act 1996 §§ 186A, 186B.
[15] Ngai Tahu Claims Settlement Act of 1998, Sched. 102.
[16] Ngai Tahu Claims Settlement Act of 1998 §§ 298-311.
[17] Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 §§ 12-29.
[18] Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 § 15.
[19] Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 §§ 7, 10.
[20] Fiordland (Te Moana o Atawhenua) Marine Management Act 2005, Preamble (6).

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