

CHAPTER 1

OVERVIEW

All was quite deserted; the land, the sea, the streams and lakes, the forests, the rocks, were deserted; the food, the property, the work, were deserted; the dead and the sick were deserted; the landmarks were deserted.¹

The whenua guaranteed to Maori in the Treaty was the full estate, the land with its forests and rivers, its flora and fauna, its people whose ancestors were buried there. At 1840 each hapu had rangatiratanga over its whenua, that is, hapu were political units exercising autonomous resource management. The economy of each hapu was different. Ngati Kuri obtained the greater part of their livelihood from marine resources, trapping migrating kuaka on the strands of Parengarenga. Ngati Hine were forest and river people, weaving pouches from kiekie for the mokoroa caterpillars they used for eel bait. Hapu guarded land burnt for fern root and pits constructed for kumara storage because they regarded carbohydrate as the source of muscular strength. In the South Island, cabbage trees, fern root, and eels formed a staple diet, complemented by an abundance of bird life, while North Island tribes hunted kereru and kaka with an intricate technology. In no hapu, however, was agricultural land the predominant economic resource prior to the formation of capital markets.

Many New Zealand birds and fish secured their existence by ranging over territory greater than any hapu controlled. Kuaka migrate from Siberia; pipiwharau migrate from the tropical Pacific; kereru move between mountain and lowland forests; koaro, inanga, piharau, and tuna migrate into estuaries from the sea and travel through lowland swamps into mountain terrains. Sustained harvests depend, therefore, on tracts of forest and wetlands retaining the integrity to recover from human and natural disturbance. Maori achieved this as long as forests and swamps predominated over the portion of land burnt for fernland and cleared for agriculture and settlement. From 1840, however, the Crown's objective was to remove the forest to expedite the colonising economy and settlement. The Crown's allegiance was to England, not to its Maori partner.

From 1840, some hapu participated prosperously in two systems of knowledge, technology, and harvesting:

1. Governor Gore Brown, 1860, quoting a letter composed by two chiefs to the people of Taranaki. This description delineates some components of whenua remaining after the departure of able-bodied men and women (Turton, 1883, Appendix F, p 31).

Up-river, at Totoro and Kaiwaka and about Mahoenui the people grew wheat and all manner of other crops; they ground the wheat into flour in their own water-mill, and down at the heads they did the same. The harvest of the waters, too, they gathered in abundance. The fishing canoes, large and small, were out every day in the summer; the long flax seines were drawn in the estuary; the beaches were fragrant to the Maori nostril with long lines of shark drying in the sun, and snapper and other fish were smoke-cured in tons. Up-river there was the tuna, the eel . . . The Mokau and its creeks were famous for the silvery eels, which came along in enormous numbers in March and April especially. There were pa-tuna – eel-weirs – in every stream and at every place where a swampy watercourse emptied its brown waters into the main river. There was the harvesting of the wheat and the maize besides the usual mainstays of life, the potato, and in all this work the communal system of the tribe was at the apex of its value.²

In some respects there was a fine exchange between Maori and Pakeha. In 1838 a hive of honey bees was introduced at Hokianga. The bees shortly went wild, and established colonies in Northland forests. Maori responded by gathering the honey from hollow puriri trunks, and incorporating honey bees into the classification of forest fauna, as ngaro, a group which includes pollen-gathering native flies, native solitary bees, hover flies which hum harmoniously (ngaro paira), and spider-hunting wasps which buzz as they build mud cells for their prey (ngaro wiwi).

Some old people in Northland still use the original name given to honey bees, ngaro rere rangi, after their habit of rising high into the sky. Other families class honey bees with native stinging bush flies and call them all ngaro ngahere, while some have adopted Pakeha usage and call them hone or pi hone, from 'honey bee'. Nineteenth-century hives were woven from wickerwork, a skill at which Maori were adept. As beekeeping spread, Maori beekeepers developed a reputation for the craftsmanship of their hives and for their beekeeping skills.

Meanwhile, Pakeha settlers on the West Coast of the South Island, arriving with traditions of angling and netting, found shoals of migrating whitebait that 'covered the face of the waters' for miles in length; shoals several hundred feet long and varying from three to six feet in width were not uncommon sights as late as 1890.³ Settlers responded by adopting Maori fishing technology.

Maori trap inanga both on their upstream migrations in spring, when they travel in vast shoals of multi-specied whitebait, and on their more hidden downstream migrations in autumn, when they return to estuaries to spawn, rich with roe. For Pakeha, however, the whitebait fishery has been overwhelmingly a capture of incoming shoals of transparent juveniles.

Maori fishing technology includes a range of diversion channels cut through S-bends and shingle banks, and weirs built out into the channel to deflect migrating

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2. J Cowan, *Tales of the Maori Bush*, Dunedin (etc), A H & A W Reed, 1934, pp 64–65. Cowan is describing the Mokau River in Taranaki around the time when the ariki Wetere Te Rerenga died and was succeeded by his brother, the ariki Rangituataka.
 3. G G M Mitchell, *Maori Place Names in Buller County*, Wellington, Reed, 1948, p 45; R M McDowall, *The New Zealand Whitebait Book*, Wellington, Reed, 1984, p 99. McDowall undertook a comprehensive search of the fisheries sources cited in this report.

shoals into woven traps. Each trapping method is suited to a local configuration of river and fish movement, and each trap has its own technical vocabulary (hinaki, kaka, koumu, pakau, and so on). Pakeha whitebaiters amalgamated elements of this technology into a method they called simply the ‘trench’. This comprised a low dam built out into the river channel, often constructed from sacks filled with gravel. Set nets were placed at intervals, in gaps in the dam. Fish swimming upstream followed along the wall to the find the flow through a gap.⁴

By the 1860s Pakeha had joined Maori in selling whitebait commercially – sixpence a pint in Greymouth.⁵ During the 1870s Chinese goldminers trapped, dried, marketed, and exported whitebait.⁶ Commercial canning of whitebait by Pakeha began at Hokitika in 1891.⁷

In 1894 the Crown introduced regulations affecting whitebait harvesting.⁸ The regulations prohibited use of diversion channels and ‘trenches’ – essential elements of Maori fishing technology:

No scrim or whitebait net shall be used as a set net or be set or placed in openings made in the banks of rivers or streams or in dams constructed therein . . .⁹

With successive regulations, other aspects of Maori technology were outlawed, such as drafting fish towards the trap; and closed seasons were imposed, transferring control of the fishery to the Crown. All the while, commercial canning of whitebait by Pakeha enterprises – Irvine and Stevenson, Nolans, E C Frost – continued largely unregulated, the impact on the fishery passing unresearched.

By the 1920s the Chief Inspector of Fisheries, A E Hefford, was commenting doily to the Marine Department: ‘The regulations made in the past have been mainly for the purpose of adjusting matters between competing fishermen rather than from the point of view of conservation of the stock’.¹⁰ In 1927 the Marine Department conceded that depletion of the whitebait fishery had been ‘almost universal’.¹¹ The love affair had become a bitter loss of harvest.

In following the background to the Wai 262 claim it is next necessary to understand that from the 1870s on, the loss of harvest was observed, reported, and publicly debated as it happened, decade by decade, river by river. Upokororo (grayling) had been observed to ‘assemble in the streams in immense numbers’.¹² In 1869 they were so abundant in one river that a mill wheel was brought to a

4. McDowall, *The Whitebait Book*, pp 139–140

5. C J Pfaff, *The Digger’s Story*, Wellington, Wright and Carman, 1914, p 9; C Hunt, *Speaking a Silence*, Wellington, Reed, 1981; McDowall, *The Whitebait Book*, pp 98, 102

6. *West Coast Times*, 14 December 1875; R C Reid, *Rambles on the Golden Coast of the South Island of New Zealand*, London, Colonial Publishing and Printing, 1884, p 174; McDowall, *The Whitebait Book*, p 100

7. McDowall, *The Whitebait Book*, p 103

8. Whitebait Fisheries Regulations 1894, 1896

9. McDowall, *The Whitebait Book*, pp 129, 140

10. R M McDowall, *New Zealand Freshwater Fishes: A Natural History and Guide*, Auckland, Heinemann Reed and MAF Publishing, 1990, p 130, quoting Marine Department files

11. McDowall, *The Whitebait Book*, p 188

12. J Hector, ‘Notes on the New Zealand Whitebait’, in *Transactions and Proceedings of the New Zealand Institute*, vol 35, 1903, pp 312–319

standstill.¹³ By 1874, upokororo had disappeared from the Waikato River.¹⁴ By 1884 upokororo were ‘by no means’ any longer common in Otago rivers,¹⁵ and in 1910 their disappearance from the Inangahua and Buller Rivers was announced.¹⁶ Upokororo were last seen in the 1920s, in streams and rivers remote from Pakeha settlement.¹⁷

Many factors coincided to bring about the loss of harvest, but for a while scientists and public pinpointed isolated aspects of the colonial enterprise.

Trout were introduced during the 1860s, and by the 1920s Maori and Pakeha commentators had connected fishery declines to colonisation of streams with a new, predatory fauna. Whitebaiting interests wrote to the papers: ‘whitebait is being eaten out of New Zealand rivers by stocking them with imported trout to provide sport for comparatively few people’.¹⁸ Canning interests protested to the Marine Department that trout ‘will finish the whitebait as they have the greyling.’¹⁹ Maori had made submissions to the Rotorua Town Board as early as 1897, advising that stocking the central plateau lakes with trout was destroying their koaro fisheries.²⁰

Over-exploitation was pinpointed: ‘Commercial interests are ruling in the whitebait industry’.²¹ Further whitebait canneries were opened during the 1930s,²² and Taranaki Maori made representations ‘in regard to the fishing of whitebait by Europeans and to the decrease in supplies’.²³ Sometime in 1940 the Marine Department commented that ‘it is undoubtedly the high cash value of whitebait that induces’ over-exploitation.²⁴

Impacts of an agricultural economy were recognised. Decline in populations of waikaka (mudfish) were attributed to forest clearance and swamp drainage.²⁵ Whitebait declines were attributed to loss of inanga spawning grounds, through trampling by stock and replacement of indigenous forest cover with introduced trees. In 1932 Captain Hayes advised the Marine Department:

known spawning grounds should be fenced off . . . there are in many places areas of swamp which are of little or no value to agriculture, and in which permanent lagoons which would accommodate considerable numbers of inanga might be formed.²⁶

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13. B G Moss, ‘Upokororo, New Zealand’s Mystery Fish’, in *Ammohouse Bulletin*, vol 1, no 5, 1958, p 5
 14. E Best, *Fishing Methods and Devices of the Maori*, Wellington, Dominion Museum Bulletin, 1929, p 212
 15. W Arthur, ‘On the Brown Trout Introduced into Otago’ in *Transactions and Proceedings of the New Zealand Institute*, vol 16, 1884, pp 467–512
 16. J Drummond in *Otago Daily Times*, 23 March 1910
 17. W J Phillipps, ‘Life-history of the New Zealand Grayling’, in *New Zealand Journal of Science and Technology*, vol 6, no 2, 1923, pp 115–117
 18. *Otago Daily Times*, 6 March 1922
 19. McDowall, *Natural History*, p 86
 20. P J Burstall, ‘Trout Fishery: A History of Management’, in D J Forsyth and C Howard-Williams, *Lake Taupo: Ecology of a New Zealand Lake*, New Zealand Department of Scientific and Industrial Research, 1983, pp 119–131
 21. D Hope in *The Press*, 5 September 1928; McDowall, *The Whitebait Book*, p 185
 22. McDowall, *The Whitebait Book*, p 103
 23. *Taranaki Herald*, 5 May 1930
 24. McDowall, *The Whitebait Book*, p 186, citing Marine Department files
 25. W Martin, *New Zealand Nature Study*, ‘Volume 1 – The Fauna’, Whitcombe and Tombs, [1929] p 173
 26. McDowall, *The Whitebait Book*, pp 183–184

Spawning areas on the Manawatu River were fenced; otherwise McDowall could find no record of the Minister of the Marine Department responding to the advice. In sum, habitat was ‘greatly diminished in the course of civilised settlement by the drainage of swamps and lagoons and their conversion into agricultural lands’.²⁷ Later, fisheries scientists attributed declines to indigenous forest clearance, noting that in occasional streams not modified by agriculture and pine forestry, koaro may still be found in dense populations.²⁸

Lack of action from the Government and lack of research also received comment: ‘The native fishes except those that are of economic value and subject to fisheries regulations are entirely unprotected’. There was a call for ‘the cessation of chaotic and blindfold fishery control’.²⁹

During the 1920s the voices of fisheries scientists combined with public opinion (expressed through the media) to distil acclimatisation, over-exploitation, lack of research, and destruction of habitat as salient factors in the loss of harvest.

It is next necessary to understand why, as the indigenous flora and fauna declined, representations by Maori and advice from scientists were not heeded. Here we encounter ‘an incompatible and entirely unequal set of competing interests’.³⁰ Declines of indigenous flora and fauna had been accompanied by lively public debate; the problem was not with lack of awareness but with Crown bias. Nowhere, geographers comment, has acclimatisation been more extensive than in New Zealand.³¹

From 1867, acclimatisation societies were mandated by statute to secure the establishment of introduced flora and fauna.³² In 1890 the Otago Acclimatisation Society reported destroying 1880 eels from the Waipahi Stream to protect stocks of trout,³³ and in 1929 the societies proposed a commercial eel fishery as a way of further protecting trout fisheries.³⁴

Whitebait fisheries were also to be compromised in the interests of trout. With trout predation of whitebait now widely discussed, in 1922 the Southland Acclimatisation Society proposed: ‘the taking of whitebait has grown to such proportion as to have a serious effect upon Trout . . . restricting the Whitebait Season to three months would be beneficial to the trout fishing’.³⁵ By 1916

27. McDowall, *The Whitebait Book*, pp 183–184

28. McDowall, *Natural History*, pp 105, 109

29. G Stockell, *Wild Life Control. Defects in Present Scheme Exposed. Some Constructive Suggestions*, Wellington, Blundell, 1941

30. R H Grove, *Green Imperialism*, Cambridge University Press, 1995, p 265

31. M M Roche, *Forest Policy in New Zealand*, Palmerston North, Dunmore Press, 1987, p 44, citing *Nature*, vol 6, 1872, p 219; N V Pears, ‘Familiar Aliens: The Acclimatisation Societies’ Role in New Zealand’s Biogeography’, in *Scottish Geographical Magazine*, vol 98, no 1, 1982, pp 23–34

32. Animals Protection Act 1867, ‘An Act to provide protection of certain animals and for the Encouragement of Acclimatisation Societies in New Zealand’. Animals Protection and Game Act 1921–1922. Wildlife Act 1953. Conservation Law Reform Act 1990 (acclimatisation societies replaced with fish and game councils).

33. R M McDowall, *Gamekeepers for the Nation: The Story of New Zealand's Acclimatisation Societies*, Christchurch, Canterbury University Press, 1994, p 120

34. McDowall, *Gamekeepers for the Nation*, p 122

35. McDowall, *The Whitebait Book*, pp 176–177

acclimatisation societies had released around 50 million brown trout into New Zealand waterways.³⁶ The whitebait industry supported low-income households, Maori and Pakeha,³⁷ and during the 1920s speakers for the whitebait fishers stated the issue. Some went directly to Government: ‘a choice should be made between trout for the privileged few . . . or an industry employing 2000 including pensioners and disabled’.³⁸ Some went public: ‘whitebait is being eaten out of New Zealand rivers by stocking them with imported trout to provide sport for a comparatively few people’.³⁹

In the Freshwater Fisheries Act 1983, acclimatisation societies wrote their own statute,⁴⁰ prompting a fisheries scientist to comment dourly that a body with interests in acclimatised game fish had been given responsibility for managing the habitat of native fish: ‘No other agencies in New Zealand have ever been to the same extent self-regulating in a statutory sense, with such minimal government oversight’ nor elected by such an ‘exclusive user group’ who are the sportsmen ‘controlling the management of the resources they exploited’.⁴¹

In 1967 the Water and Soil Conservation Act accorded management of rivers to regional Water Boards and Catchment Boards, and accorded to the boards the ability to issue themselves with general authorisations. The boards are ‘dominated by sectional interest groups, in particular, farmers’.⁴² In 1977, the boards were criticised for the ‘insidious whittling away of the freshwater fisheries . . . by thousands of individual rights to take water from our rivers and streams’.⁴³ In 1980 aquaculture scientists voiced their exasperation: ‘In New Zealand [hydro-electric] schemes have been planned by government which . . . did not impose habitat restoration on itself’.⁴⁴ In 1983, during discussion of a National Conservation order to protect the Rakaia River from water abstraction for irrigation, the chairman of the Hearings Committee stated, ‘The critical factor in this hearing is irrigation’, that is, not wildlife and fisheries.⁴⁵ In 1990, a fisheries scientist commented: ‘Sometimes the Crown seriously oversteps the mark’ in failing to protect rivers and river flows.⁴⁶

It is next necessary to ask how the interests of an extractive economy can override the interests of an indigenous people.

During 1993 the Waikato Regional Council (Environment Waikato) received an application from Coeur Gold New Zealand Ltd for a water permit (930923) and a discharge permit (930924) for drilling at Waitekauri. The application was opposed

36. G M Thomson, *The Naturalisation of Animals and Plants in New Zealand*, Cambridge University Press, 1922, p 215

37. In the 1930s ca 95 percent of whitebaiters on the Waikato were Maori (McDowall, *The Whitebait Book*, p 92).

38. McDowall, *The Whitebait Book*, p 45, citing Marine Department files.

39. *Otago Daily Times*, 6 March 1922

40. McDowall, *Gamekeepers for the Nation*, p 59, citing the Fisheries Act, 1983.

41. McDowall, *Gamekeepers for the Nation*, pp 18–23, 32

42. McDowall, *Natural History*, p 479

43. *Ibid*, p 505

44. P Dinamani and R W Hickman, *Proceedings of the Aquaculture Conference*, Fisheries Research Division, Occasional Publication, no 27, Wellington, New Zealand Ministry of Agriculture and Fisheries, 1980, p 44

45. McDowall, *Natural History*, p 477

46. *Ibid*, p 479

by Moehau Nga Tangata Whenua Trust Board, and by Te Ruunanga a Iwi o Ngati Tamatera. The water permit covered water extraction from 13 rivers and streams and their tributaries, in regenerating native forest. The discharge permit covered discharge of drilling materials. During 1996 Mr Ohomauri Mataia Nicholls, Mr Pitau Williams, and Mr Tewiremu Matai (Nicholls) made submissions stating that the intrinsic value of water could not be compromised for extrinsic, human, monetary values:

They considered that the waters of the application area are of highest value and that this must be considered in relation to the entire area which contains these waters and which contributes to the essential nature of these waters. Protection of the 'whole' environment is necessary to protect the values of these waters. Ngati Tamatera considered that without a holistic approach, their Kaitiakitanga responsibilities to protect the overall intrinsic values of the ecosystem could not be appropriately exercised.

The Waikato Regional Council Hearings Committee decided:

the stated purpose of the [Resource Management Act 1991] is to promote the sustainable management of the natural and physical resources . . . [and is] not an Act designed to protect and conserve natural and physical resources at all costs, but an Act with the express intention of facilitating the use of such resources in a sustainable way.

The Hearings Committee granted the resource consents sought by Coeur Gold.⁴⁷ The majority decision of the committee was:

They do not believe allowing the activity under the restrictions placed by the Mining Licence and the conditions placed on this consent compromise the principles of the Treaty of Waitangi or any claims currently under consideration by the Waitangi Tribunal.⁴⁸

Whether Maori participated or did not participate and benefit from acclimatisation, timber milling, forest clearance, swamp drainage, water extraction, mining, and stock retention, the Crown had already vested its own interests in an extractive economy, through legislation which conferred rights explicitly on those who cleared forest and 'cultivated' land, and not in its partnership with an indigenous people. Against Maori interests in indigenous flora and fauna, New Zealand statutes encouraged clearance of native forest through timber licensing regulations; encouraged planting of exotic plantations through the Forest Trees Planting Encouragement Act 1871; and revoked 623,257 acres of state forest lands for settlement purposes between 1890 and 1919.⁴⁹

47. Environment Waikato, ref 60 14 20A. The hearings took place at Paeroa on 27 and 28 May 1996, and were reconvened on 18 September 1996 'for presentation of the results of the consultation with tangata whenua'. The resource consent was dated 23 October 1996.

48. Councillor Livingston stated that granting the applications would contradict section 2.1.5. of the Act, 'Tangata whenua relationship with natural and physical resources'.

It is finally necessary to understand that forest cover provided the nursery conditions which secured the phenomenal abundance of freshwater fisheries up to 1840,⁵⁰ and that the greater part of Maori harvests from forests and fisheries were derived not from the mountain forests but from the lowland swamp-forests. However, the warm, berry-rich, bird-rich lowland forests occupied the plains intended by Pakeha for clearance for an agricultural economy.⁵¹ From the perspective of historical geographers, what took place was a 'cultural confrontation between a land-hungry colonial state and an indigenous culture' whose economic base was the land with all its woods and waters.⁵²

Roche comments that the 'prevalent view was of indigenous forests as providing a transitional landscape for a sawmill industry and generally as a hindrance to the progress of settlement'.⁵³ In 1841 the British Colonial Land and Emigration Office sent advice to the Colonial Office:

to reserve the forest is to reserve the land, with whatever object it is made Crown Reserves of land in a new Colony are in our opinion impediments to the progress of settlement and hurtful to the interests of settlement.⁵⁴

On the signing of the Treaty the lowland forest, which had long sustained Maori harvests from flora and fauna, was to yield a final crop.⁵⁵ In the deed of sale negotiated at Mokau in 1854, between Ngati Pehi and the Chief Land Purchase Commissioner, Donald McLean, the terms were those of an extractive economy:

There is no reserve whatever in this land now entirely given up by us to Victoria the Queen of England under the shining sun of the present day for ever and ever with all its Lakes, rivers and waters as well as all its trees all its stones and everything either above or under the land and every thing connected with it now surrendered by us for ever.⁵⁶

49. Roche, pp 50–51, 96

50. McDowall, *Natural History*, p 331: 'loss of forest cover from the catchments of many New Zealand waterways has had profound effects on the fish fauna.'

51. G Park, *Nga Uruora / The Groves of Life: Ecology and History in a New Zealand Landscape*, Wellington, Victoria University Press, 1995

52. Grove, p 265

53. Roche, p 88

54. Roche, p 21, quoting Colonial Land and Emigration Office to Colonial Office, 7 January 1841, No 8, Enclosure 2 G 1/1.

55. Roche, p 23

56. Park, 1995, pp 132–137