



## THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

27/03/2025

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

*Te Ohu Kai Moana Trustee Ltd v Attorney-General* [2025] NZHC 657

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

### **What this judgment is about**

This case concerns the 1992 fisheries settlement between the Crown and Māori, commonly known as the Sealord deal. The plaintiff, Te Ohu Kai Moana (Te Ohu), does not seek to revisit the settlement or challenge its finality. Rather, it argues the Crown is in ongoing breach of its settlement obligations. The Crown denies any breach, and argues the law prevents Te Ohu from bringing its claim.

The case centres on the Crown’s promise to transfer 10 per cent of fishing quota to Māori (so-called settlement quota). A succession of provisions in the relevant Fisheries Acts, most recently s 23 of the Fisheries Act 1996, have provided that quota can be compulsorily taken from some fishing operators, including Māori, and given to others. Those transfers are designed to pay off a debt the Crown incurred in 1986 when the quota management system was established. Although originally incurred by the Crown, legislation passed in 1990 shifted responsibility for paying the debt away from the Crown, and onto the shoulders of the industry. The result is that since the early 1990s, settlement quota have been confiscated from Māori and given to other operators. Te Ohu seeks declarations that this confiscation of quota constitutes a breach of the 1992 settlement.

## **Background**

The quota management system (QMS) was established in 1986. Because many fishing operators were required to reduce their catch levels, and the Government decided operators in that category were entitled to compensation. Some opted to receive cash, while others opted for a deferred entitlement to quota. That option, under s 28N of the Fisheries Act 1983, entitled operators to receive new quota, free of charge, as increasing catch levels permitted. 28N rights were originally a debt owed by the Crown. It paid off its debt by giving free quota to 28N rights-holders instead of putting the quota up for sale.

When the QMS was overhauled in 1990, the Crown stopped issuing new quota when catch levels increased, meaning the Crown could no longer use free quota to pay its s 28N debt. Instead, legislation passed in 1990 shifted the debt to other fishing operators. 28N rights-holders still received free quota when catch levels rose, but they were confiscated from existing holders instead of being issued by the Crown.

## **Te Ohu's claim**

Te Ohu argued that in 1992 the Crown and Māori intended the transfers of quota, which formed part of the settlement, would be permanent, and that no-one contemplated settlement quota would later be confiscated, without compensation, to pay off the Crown's historic debt. It argued Māori would never have entered the settlement agreement if they had understood the quota they received would be vulnerable to confiscation.

## **The Crown's defence**

The Attorney-General, on behalf of the Crown, denied the Crown breached the settlement obligations. It argues the Crown fully met its settlement obligations long ago, and that the settlement has no continuing legal force. The Crown argued that nothing in the settlement said or implied that the transfers of settlement quota would be permanent.

The Crown raised four affirmative defences, arguing the Court is barred from even considering Te Ohu's claim. It argued the legislation which implemented the 1992 settlement (the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act) deems the Crown to have complied with its obligations under the settlement whether or not it has actually done so. It also argued the Fisheries Act 1996 bars the Te Ohu's claim, and that Te Ohu had waited too long to bring proceedings, meaning the case was barred by the Limitation Act 1950.

## **Decision**

Boldt J concluded the Settlement Act provided legislative recognition of the Crown's promises to Māori under the Deed of Settlement. In return for fulfilling its obligations under the settlement, the Crown acquired protection from new claims regarding Māori fishing rights.

Boldt J determined that the appropriation of settlement quota from Māori breached the 1992 settlement. In 1992 the Crown and Māori intended and understood that the allocations of quota which formed part of the settlement would be permanent. The evidence showed that at the time they entered the settlement, neither the Crown nor Māori fully understood that settlement quota were vulnerable to confiscation. Permanence was of critical importance to Māori.

Boldt J found Māori would not have entered the agreement if they had known the quota they acquired were subject to reappropriation without compensation. Because it has special obligations to Māori under the settlement, the Crown was obliged to devise a mechanism to offset the losses Māori incur when quota are taken from them to meet the 28N debt. The Crown's failure to do so means it is in breach of the settlement and, by extension, the Treaty.

*Does the Crown have a valid defence to the proceeding?*

Boldt J rejected the Crown's affirmative defences. Most importantly, Boldt J held the various statutes on which the Crown relied were designed to facilitate its compliance with the settlement, not to license the Crown to breach it with impunity.

## **Result**

Boldt J declared:

- a) The Crown's obligation to transfer 10 per cent of existing fishing quota to Māori, initially created by the Maori Fisheries Act 1989, formed part of the 1992 Fisheries Settlement.
- b) Both parties to the settlement intended the transfer of settlement quota would be permanent, and that quota would not be compulsorily reacquired from Māori without compensation.
- c) It is a breach of the settlement, and by extension the Treaty, for the Chief Executive to appropriate settlement quota from Māori under s 23 of the Fisheries Act 1996 without providing redress which preserves the value of the quota Māori acquired as part of the 1992 settlement.