



Marine and Coastal Area (Takutai Moana) Bill
February 2011

BACKGROUND

We made a promise during the 2008 elections to repeal the 2004 Act and restore access to the courts.

When we entered into a relationship with the National Party our promise became a milestone in that agreement. That milestone has been a key priority of our work in Parliament over the last 18 months.

The Bill delivers on our promise. The Bill is at a crucial stage and the public has been bombarded with negative messaging that has gained traction.

It is imperative that the Māori Party constituents get information directly from the Māori Party that is not skewed with misinformation but instead focuses on what the Bill is trying to achieve and what outcomes there will be for all New Zealanders.

KEY FACTS

- **Abolishes Crown title and recognises customary interests (mana tuku iho) of all coastal iwi.**
Customary interests include a right to protect wāhi tapu; and a right to be consulted on conservation and resource management.
- **Allows iwi to claim customary title.**
Customary title is a property right that includes customary interests plus all minerals except gold, silver, uranium and petroleum; all newly found taonga tūturu; development rights; and a right to develop a plan which regional councils must recognise and provide for insofar as it relates to resource management issues and is consistent with the purpose of the Resource Management Act 1991.
- **Restores the right of access to court.**
If negotiations with Ministers do not reach agreement, tangata whenua can take their title claims to court.
- **Transfers the burden of proof.**
The Crown has to prove customary rights were extinguished, rather than iwi having to prove they were not.
- **Sets new threshold tests for customary title, unlike the FSSB Act:**
 - tests incorporate tikanga, allowing for variations among iwi, transfers of rights between hapū, and for tikanga to evolve
 - tests do NOT require claimants to own adjoining land (so raupatu iwi can claim customary title)
 - allowing others to fish, and overlapping rights of neighbouring hapū, do not disqualify claims (manaakitanga is part of tikanga)
 - negotiated agreements do not require confirmation in High Court

Addresses two fundamental rights violated by the 2004 Act:
The right to access justice through the courts and property rights

KEY STATEMENTS

- To turn our back on this Bill, would be to break the promise we made to our people in 2005.
- If the Bill isn't passed, the law that deprived our people of their day in court, of their mana moana, will remain in force. Is this what the people want? Is this why we marched?
- The Bill does not give us everything we wanted, but it is a step forward. If others have a better plan for repealing the FSSB Act, let's see it.
- The Bill reopens the door that was slammed shut in 2004, and allows tangata whenua to have a longer discussion on customary rights.
- The Bill does not settle the issues, but it keeps them alive.
- The Māori Party can advocate for customary rights and tikanga in the Bill, but only tangata whenua can negotiate and settle matters of mana tuku iho.
- The decision to support or oppose the Bill is a matter of strategy: do we take a step forward, knowing we still have a long way to go? Or do we retire from the battlefield, and try to rejoin the fray some time in the future?

CHANGES FROM SELECT COMMITTEE

The Attorney-General will be recommending the House amends the Bill to require any recognition of customary title through negotiated agreement be given effect through legislation. This means that every such agreement will be subject to full Parliamentary and public scrutiny. This will dispel any concerns about future governments doing shoddy deals.

FREQUENTLY ASKED QUESTIONS

Can the Government decline customary title over lands that have been confiscated?

If an iwi is declined title, it will not be because their land was confiscated, so no the Government and Court can not decline title solely on the basis of confiscation. Iwi who have had their land confiscated are still eligible to claim customary title.

Is there funding available for claimants seeking customary title and if so, what funding is available, how can you apply for it and how much is available?

Yes. The Crown has said funding will be made available to iwi in a manner similar to how claimant funding is provided in the Treaty settlement negotiations process.

Can the current foreshore and seabed that is not privately owned be bought and sold?

Under the Bill the foreshore and seabed cannot be sold, unless it is "reclaimed land" in which case the Crown and iwi and hapū (who exercise customary authority in the area) have rights of refusal.



Why can't we just repeal the Seabed and Foreshore 2004 Act and create a Marine and Coastal Bill to replace the 2004 Act with conditions that are more acceptable to Māori?

Repealing the Act but not replacing it will cause uncertainty and the law cannot allow uncertainty. Therefore Parliament cannot repeal the Act without replacing it with alternative legislation. The Takutai Moana Bill is consistent with resource management legislation. To address many of the concerns that hapū and iwi have would require a complete overhaul of a significant collection of other Acts. Such an approach would be best considered in the process of the Constitutional Review.

Why was tupuna title not included in the Bill?

There was no legal precedent for tupuna title. Tupuna title was not universally agreed to by iwi or by Government.

CONSULTATION TIMELINE

March 2009: Ministerial review panel on the Foreshore and Seabed Act 2004 calls for and reviews public submissions.

March 2010: Release of Discussion document on options to replace Foreshore and Seabed Act 2004.

April 2010: Attorney-General and MPs attend public meetings and hui around New Zealand.

September 2010: Marine and Coastal Area (Takutai Moana) Bill introduced to Parliament; referred to select committee.

November-December 2010: The Māori Affairs Select Committee considered public submissions on the Bill and reported back to the House on Monday 14 February 2011.

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