Pākia ki uta pākia ki tai

Report of the Ministerial Review Panel

Ministerial Review of the Foreshore and Seabed Act 2004

Volume 2: Appendices

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1 Legal History, Ownership and Management of the Foreshore and Seabed

1 Introduction

This Appendix provides an analysis of the New Zealand legal history relating to the foreshore and seabed. One purpose of this Appendix is to document the point made in the text of our report that ownership of the foreshore and seabed is not a new issue in New Zealand law.[1] This section does not deal with Māori customary law relating to the foreshore and seabed (although that, too, is certainly part of its "legal history") which is discussed in the body of the report. This Appendix is concerned with the normative or "official" law relating to this area, beginning with English Common Law and taking the narrative down to the *Ngāti Apa* decision of 2003. It does not aspire to deal comprehensively with Native Title law relating to the foreshore and seabed in other jurisdictions, and the main focus here is on the New Zealand statutory framework.

The core issue has been the extent of the jurisdiction of the Māori Land Court. In addition the legal history of the foreshore and seabed has been significantly affected by statute law in two other areas of law. First, it has been the practice of the New Zealand Government to make grants of particular areas of foreshore and seabed to harbour authorities. All key harbours (Wellington, Auckland, Napier, etc.) have a long history of specific harbours-related and harbour boards enactments. However, as will be explained, in 1988 the old harbour boards were disestablished and new legislation relating to port companies was then enacted. Assets formerly granted to port companies were revested in the Crown. In some cases the assets of some former harbour boards were transferred not to port companies but rather to local authorities.

The other main development has been the rise of "planning" and environmental legislation, including the Town and Country Planning Act 1953, the Water and Soil Conservation Act 1967 (which was important in both the areas of property rights and water management), the Town and Country Planning Act 1977, and the Resource Management Act 1991 (the Resource Management Act).

Because of its particular importance and significance the coast has always been a central focus of environmental and planning law.[2] The development of this part of the law is considered in detail in this Appendix as well.

2 Ownership of Water Bodies and Water in English Common Law

In international law States have full rights of sovereignty over their adjacent territorial sea, an assumption which certainly equates with State practice in England and New Zealand. In 17th-century Europe the assumption seems to have been that the "territorial sea" was the range of a shore-based cannon – that is, that part of the sea that could be effectively controlled from shore – or sometimes the limit of vision on a fine day, later equated to a league or three nautical miles (a nautical mile is now standardised as 1,852 metres).[3] In English law it was originally the practice to refer to the "narrow seas" as the area falling within the Crown's sovereignty, but later cases discarded this and replaced it with the concept of the "territorial sea" deriving from international law.[4]

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[1] This Appendix was prepared separately by R P Boast, and should be seen as a technical appendix to the report rather than forming part of the text of the report itself. To have placed all this material in the body of the report would have made it far too long and technical. The main sources on which this Appendix is based are R P Boast, *The Foreshore*, Rangahaua Whanui Series Report, Waitangi Tribunal, 1996; Boast, "In Re *Ninety-Mile Beach* Revisited: The Native Land Court and the Foreshore in New Zealand Legal History", (1993) 23 *Victoria University of Wellington Law Review* 145 and the relevant sections in Boast, *Foreshore and Seabed*, LexisNexis, 2005.

[2] See D A R Williams *Environmental Law*, (Butterworths, Wellington, 1980 ed., 152): "The coastal zone is narrow in extent but broad in human and ecological significance".

[3] For a discussion of the international law background to state ownership of the territorial sea, see Brownlie *Principles of International Law*, (6th ed), Oxford University Press, Oxford, 2003, 174, 180.

[4] *Attorney-General (British Columbia) v Attorney-General for Canada*, (1914) AC 153, 174-5 (PC); *New South Wales v The Commonwealth (Seas and Submerged Lands Case)*, (1975) CLR 337, 461-2 (HCA, per Mason J).

In English Common Law the foreshore and seabed has always been regarded as exceptional. At Common Law the Crown was, by prerogative right, the presumptive owner of the foreshore, the beds of tidal rivers, the seabed and coastal waters. This was a presumptive title only which could be displaced by proof of a Crown grant, or, alternatively, by continuous occupation such that a Crown grant could be presumed. The Crown did not have to prove its title: rather, the onus of proof was cast on anyone who sought to seek title to foreshore or seabed. In his textbook on *Common Law Aboriginal Title* Professor Kent McNeil describes the position at Common Law as follows:[5]

> In the case of the foreshore and seabed the Crown is presumed to have been in possession all along. Accordingly no record of the Crown's title is necessary. Subjects who occupy these lands are prima facie intruders. Furthermore, in the absence of a Crown grant, any predecessors through whom they claim would have been intruders as well, without an estate or interest that could have been passed on.

In *Halsbury's Laws of England* the point is put this way:[6]

> (…) by prerogative right the Crown is prima facie the owner of all land covered by the narrow seas adjoining the coast, and also of the foreshore. There is a fundamental principle of ownership in favour of the Crown. This presumption arises from the fundamental principle that all the land in the realm belonged originally to the sovereign.

It is also settled that the Common Law applies fully to the foreshore and the territorial sea, both in England and in Australia and New Zealand.[7]

It is sometimes thought that this presumed prerogative title of the Crown is at odds with indigenous customary title, but this is not the case. The issue was discussed by the Law Commission as long ago as 1989 in its discussion paper on Māori fishing rights.[8] The position at Common Law is not exactly that the Crown "owns" the foreshore and seabed, but rather that it is presumed to do so in the absence of proved opposing titles. The point was made in that Law Commission discussion paper that there is no reason why Māori customary title to a particular piece of foreshore and seabed could not displace – in any given case – the presumptive title of the Crown. The criteria for establishing a title to the foreshore in the Native Land Court or in the High Court in a Native Title case are essentially the same as what would be necessary at Common Law to displace the Crown's presumptive title. As the Law Commission put it:[9]

> So the fact that the Crown holds the paramount title to the foreshore is not even prima facie incompatible with the legal recognition of indigenous property rights.

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[5] McNeil, *Common Law Aboriginal Title*, Clarendon, Oxford, 1989, 105.

[6] *Halsbury*, 4th ed,, vol 8, 1418. See e.g. *Attorney-General v Emerson* [1891] AC 646, 653 (HL).

[7] There were suggestions in some of the authorities that *the common law extends no further than low-water mark, at least in cases relating to criminal jurisdiction (R v Keyn (1876) Ex D 63;* R v Dodd (1874) 2 NZCA 598), but these cases were said by the High Court of Australia in Commonwealth v Yarmirr [2001] 208 CLR 1 to apply to their own particular facts: see [2001] 208 CLR 45 (per Gleeson CJ, Gaudron, Gummow and Hayne JJ) ("If the contention that the common law does not 'extend', 'apply or operate' beyond low-water mark is intended to mean, or imply, that, absent statute, no rights deriving from or relating to events occurring or places lying beyond low-water mark can be enforced in Australian Courts, it is altogether too large a proposition and it is wrong.")

[8] Law Commission, Preliminary Paper No 9, *The Treaty of Waitangi and Māori Fisheries: Mataitai: Nga Tikanga Māori me Te Tiriti o Waitangi: A Background Paper*, Wellington, 1989.

[9] Ibid, 69-70.

There are a number of possible explanations as to why the foreshore and seabed was placed in a special position at Common Law. There are connections with the complicated Common Law rules relating to Crown grants. Professor McNeil summarises the various arguments as follows:[10]

> As for the reason for the rule, it has been suggested that, unlike other lands, the foreshore and seabed were not generally granted out by the Crown, and consequently its original title has been retained. But we have seen that Crown grants of other lands are in most cases fictitious. Why not apply the same fiction here? A possible explanation lies in the fact that the fiction of grants was invented along with the fiction of original Crown occupation and ownership to explain the Crown's paramount lordship over lands that were originally occupied by others. But the foreshore and seabed are different because, except where a pier, retaining wall or the like is built, they cannot be occupied in the same way as other lands. More commonly they are unoccupied, and probably always have been, and are therefore presumed to have remained in the original occupation of the Crown, which extends to all waste lands that have never been held by subjects. Furthermore, there are important public rights of navigation and fishing over tidal and coastal waters that need to be protected.

It is certainly possible to have Crown grants made to parcels of foreshore and seabed. Such a grant, however, "is subject to the public rights of navigation and fishing and rights ancillary thereto existing over the locus of the grant".[11] Although grants could be made to the foreshore and seabed, such grants, whether actual or inferred, were subject to certain public rights of navigation and fishery. In the Canadian Privy Council appeal in *Attorney-General (British Columbia) v Attorney-General (Canada)* (1914) Viscount Haldane said:[12]

> [T]he subjects of the Crown are entitled as of right not only to navigate but to fish in the high seas and tidal waters alike. The legal character of this right is not easy to define. It is probably a right enjoyed so far as the High Seas are concerned by common practice from time immemorial, and it was probably in very early times extended by the subject without challenge to the foreshore and tidal waters which were continuous to the ocean, if, indeed, it did not first take rise in them.

Although the law in New Zealand up to the time of the enactment of the Foreshore and Seabed Act 2004 seems to have simply been that any Crown grant to the foreshore and seabed, while still a freehold, would have been subject to public rights of access and navigation, the High Court of Australia in *Commonwealth v Yarmirr*[13] seems to have determined that exclusive grants to the foreshore and seabed are beyond the competence of the Crown. This analysis was influential in the framing of the Foreshore and Seabed Act 2004. It could be argued, however, that *Yarmirr* was wrongly decided (and that the reasoning in Kirby J's dissent is to be preferred[14]) or alternatively that it

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[10] McNeil, *Common Law Aboriginal Title*, 104-5.

[11] *Halsbury*, 4th ed., vol 49, 286.

[12] [1914] AC 153, 169. And see also per Elias CJ in *Ngāti Apa v Attorney-General* [2003] 3 NZLR 643, at 660: It was also early established, but again without prejudice to public (or common) rights of navigation (including anchoring), that the Crown could grant, and did grant, to subjects the soil below low water mark including areas outside ports and harbours: for example *Gann v Free Fishers of Whitstable* (1865) 11 HLC 191 at pp 207-08, 213-14, 218 and 219-220.

[13] (2001) 208 CLR 1; (2001) 184 ALR 113. *Yarmirr* is discussed fully by the Waitangi Tribunal in its *Report on the Crown's Foreshore and Seabed Policy:* Wai 1071 (Legislation Direct, Wellington, 2004) 50-56. The issue in *Yarmirr* was whether an exclusive title could be granted to the area under consideration (an area of sea and seabed adjacent to various islands in Arnhem Land) pursuant to the Native Title Act 1993; this in turn depended on an analysis of section 223(1) (c) of the Act, which stipulates that native title rights must be recognised by the common law of Australia. The majority held that an exclusive native title to an area of sea and seabed would be "fundamentally inconsistent" with "the common law public rights of navigation and fishing, as well as the right of innocent passage" (per Gleeson CJ, Gaudron, Gummow and Hayne JJ) at (2001) 208 CLR 1, 68.

[14] The argument in the High Court of Australia was on the basis that the claimants' right to exclude, if granted, would be a qualified one, *qualified*, that is, by international law (a right of innocent passage) and by the rights of the ordinary Australian public to navigate within the claim area or to fish within it provided that such members of the public held fishing licences. In Kirby J's view a right so "qualified" was nevertheless still "exclusive". See (2001) 208 CLR 1, 127-8. It is submitted that this must be correct, as the common law certainly did recognise freehold grants to the foreshore and seabed, which, subject to specific and limited public rights, were otherwise no less "exclusive" than the Native Title Act rights that were being sought in *Yarmirr*.

is inapplicable to the foreshore generally[15], or to the circumstances of New Zealand.[16]

The presumptive rights of the Crown applied also to "navigable" rivers, but this was understood in the very narrow sense of meaning tidal rivers only.[17] There was no presumed Crown title to inland rivers or the beds of lakes. These were simply seen as land. If the boundary of a parcel of land, either arising in a conveyance or in a Crown grant, was bounded by a river or other water body, title was presumed to go to the mid-line (*ad medium filum aquae*). The "doctrine of ad medium filum aquae is settled law in both England and New Zealand".[18] This was a presumption that could be rebutted in appropriate circumstances. The *ad medium filum* rule is undoubtedly part of New Zealand law.

Water itself, whether in the sea or in rivers and lakes is un-owned at Common Law. The general legal position is set out in *Halsbury's Laws of England* as follows:[19]

> Although certain rights as regards flowing water are incident to the ownership of riparian property, the water itself, whether flowing in a known and defined channel, or percolating through the soil, is not, at common law, the subject of property or capable of being granted to anybody. Flowing water is only *publici juris* in the sense that it is public or common to all who have a right of access to it.

Once water is enclosed in a pipe or a tank, however, it becomes "owned", and it is certainly theft and conversion to take water from pipes or tanks belonging to another.[20]

3 Harbours Acts and related legislation in New Zealand

a The Harbours Acts

Section 2 of the Public Reserves Act 1854 allowed the Governor to grant reclaimed areas and parcels of the foreshore to the provincial government, and, with provincial government approval, to private individuals. This provision can have had no impact on Māori property rights to the foreshore and seabed. The first really important statutory provision impacting on the ownership of the foreshore and seabed in New Zealand was section 147 of the Harbours Act 1878. This provided that "no part of the shore of the sea" could be conveyed or granted in any way to any person "without the special sanction of an Act of the General Assembly". This provision ultimately became section 150 of the Harbours Act 1950, now repealed, a provision which was given a certain amount of prominence by the Court of Appeal in *In Re the Ninety-Mile Beach*. The provision appears to be nothing more than a limitation on the prerogative powers of the Crown. After 1878 the Crown could not make prerogative grants to the foreshore: this required parliamentary sanction. It is hard to see how this can have any bearing on whether the foreshore, or any part of it, can be Māori customary land. The parliamentary debates on section 147 give no indication that the provisions had anything to do

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[15] *Yarmirr* was concerned only with the seabed, not with the foreshore (the foreshore to the islands within the claim area in *Yarmirr* had already been granted to the Arnhem Land Aboriginal Trust under Northern Territory Land Rights legislation). Public rights of navigation and fishery do not apply to the foreshore, only to the seabed. Public rights with respect to the foreshore itself are limited: see *In Becket (Alfred F) Ltd v Lyons* [1967] Ch 449, 468; *Llandudno U.D.C. v. Woods* [1899] 2 Ch 705.

[16] See *Ngāti Apa v Attorney-General*, (2003) 3 NZLR 643, 679 (per Elias CJ) where the ordinary common law position is stated. In its *Foreshore and Seabed Report*, 2004, the Waitangi Tribunal stated that "there would need to be a majority of bold judges" to implement Kirby's analysis in *Yarmirr* (at 3.3.4), but arguably this is not really the case: in fact the New Zealand Courts' views on the point had already been made in *Ngāti Apa* itself. Furthermore since the Native Lands Acts of 1862-65 in New Zealand Māori customary title has been treated as the foundation for exclusive freehold grants: arguably the legal traditions and conventions in New Zealand are quite different from those in Australia. In *Yarmirr* the Native title claim appeared to relate not only to the seabed but also to the water column itself, which perhaps explains the approach of the majority judges in that case, whereas in New Zealand (i.e. before 2004) any title application would be for the seabed only, whether by declaratory proceedings in the High Court or for a vesting order in the Māori Land Court.

[17] *Murphy v Ryan* (1867) 2 IR Rep CL 143; *Carter v Murcott* (1768) 98 ER ER 127; see Graeme Austin, 'Legal Submissions on the Beds of Navigable Rivers', reprinted in the Waitangi Tribunal's *Pouakani Report*, Wai 33, 1993, 459-469.

[18] *The King v Morison* [1950] NZLR 247, 256.

[19] *Halsbury's Laws of England*, 4th ed., vol 49, para 368.

[20] See *Ferens v. O'Brien* (1883) 11 QBD 21.

with customary titles. That was not discussed at all. The only reference to section 147 was made by Whitmore when introducing the second reading of the Bill, where he remarked: "Foreshores and land under the sea could only be granted by special authority of the General Assembly, for reasons which were obvious".[21]

As well as the general Harbours Acts, it later became standard practice for the New Zealand legislature to constitute harbour boards by statute and vest in them certain lands, including areas of foreshore and seabed, as an endowment. One example is the Napier Harbour Board, established by the Napier Harbour Act in 1875. Various lands, including the Napier Inner Harbour, set aside by an earlier Act in 1874, were then vested in the Board.[22] There were further Acts in 1876, 1889, 1906, 1912, 1914 and so on. Some of the Harbour Board Acts were either consistent with or made specific provision for Māori fishing rights or other interests in the foreshore and seabed when vesting such areas in the boards. In *Ngāti Apa v Attorney General* Elias CJ noted that the Thames Harbour Board Act 1876 was an example of "legislative acknowledgment that there may be Māori customary lands lying below the high water mark".[23] Another example is section 2 of the Whangarei Harbour Board Vesting Act 1917. This reserves from the bed of Whangarei harbour vested in the Board "any Native Land as defined by the Native Land Act 1909 and any Native fishing grounds and fisheries".[24]

b Port Companies Act 1988

This Act radically reorganised the law relating to ports. This Act operated in tandem with section 36 of the Local Government Act 1974 in transferring the management of the country's ports to "port companies". The principal objective of a port company was "to operate as a successful business".[25] In *Manukau City Council v Ports of Auckland Ltd* (2000) (PC) Lord Cooke described the objectives of the Port Companies Act 1988 as follows:[26]

> The Port Companies Act 1988 is one of a number of New Zealand statutes effecting a policy of "corporatising" functions hitherto discharged by central or local government. It required every Harbour Board to form and register a public company to be a port company within the meaning of the Act, and to carry out port related commercial activities with the principal objective of operating as a successful business. The port related commercial undertakings of each [Harbour] Board were to be identified in a port company plan submitted for approval to the Minister of Transport, who had certain discretionary powers.

c Foreshore and Seabed Endowment Revesting Act 1991

At the time of the creation of the various port companies and the disestablishment of the former Harbour Boards all areas of foreshore and seabed formerly vested in the Boards was revested in the Crown pursuant to section 5 of the Foreshore and Seabed Endowment Revesting Act 1991. In its analysis of the effect of the legislation, the Court of Appeal in *Ngāti Apa* focused on section 9A of the Foreshore and Seabed Revesting Act 1991 ("foreshore and seabed to be land of the Crown") and section 2(2) of the Foreshore and Seabed Endowment Revesting Amendment Act 1994. Section 2(2)(b) provided that nothing in section 9A of the parent Act was to limit or affect "any interest in that land held by any person other than the Crown".

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[21] (1878) 28 *New Zealand Parliamentary Debates* 214

[22] Napier Harbour Board Act 1874.

[23] [2003] 3 NZLR 643,660.

[24] Whangarei Harbour Board Vesting Act 1917 section 2. For a full discussion of this provision see Law Commission, *Treaty of Waitangi and Māori Fisheries*, 163.

[25] Port Companies Act 1988, s 5.

[26] [2000] 1 NZLR 1.

The Court of Appeal found that section 9A, especially when read with section 2(2)(b) of the amending act, was – as Keith and Anderson JJ put it – "careful to save existing property rights". The 1991 legislation did not in any way extinguish customary title to the foreshore and seabed in their view. Elias CJ and Tipping J agreed.[27]

4 Pre-emption era deeds and the foreshore

Prior to the establishment of the Native Land Court in 1862-5 the usual method of extinguishing Māori title was by means of pre-emptive purchase by deed. Some of the deeds did contain references to coastal and inland waterways as forming part of the customary interests in the land supposedly alienated to the Crown. Often the language used in the Māori texts of the deeds is imprecise, making it unclear exactly what is being referred to. One example is the Ahuriri deed (Hawke's Bay) of 1851. This document contains the following clause:

> Kua oti a matou huihinga kōrero te mihi te tangi te poroporoake te tino te wakaae kia tukua rawatia enei whenua o matou tipuna tuku iho ki a matou *me nga moana me nga awa me nga wai* me nga rakau me nga aho aua whenua ki a Wikitoria te Kuini o Ingarani ake tonu atu.

Professor S M Mead has retranslated this passage for the Waitangi Tribunal's *Te Whanganui-a-Orotu* Report as follows:[28]

> At our meetings we have completed our greetings, our weepings and our farewells and (offered) our solemn agreement to gift these lands for ever (to really let go of these lands) that were handed down to us as ancestral treasures and these *include the seas or lakes, and the rivers and the waters* and the trees and whatever other benefits come from those lands, to Victoria, the Queen of England, for all time.

The problems involved in the interpretation of the Ahuriri deed were discussed at length by the Tribunal in *Te Whanganui-a-Orotu*.[29] But the language used does indicate that as far as the Crown was concerned Māori undoubtedly did have a valuable property right in the sea which was capable of alienation.[30] In other words Māori had property rights which they could sell to the Crown if they so chose, and on some occasions they may intended to do exactly that. The fact that it was judged necessary to insert clauses into the deeds relating to "nga moana me nga awa me nga wai" does indicate that as far as the Crown was concerned such areas did not simply belong to the Crown by mere operation of law. They had to be bought and paid for.

5 The Native Land Court, the Foreshore and Lakebeds

a The first foreshore crisis and the suspension of the Native Land Court, 1872

In the late 1860s and early 1870s the issue of control of the foreshore and seabed became a matter of great concern to the government of the day. In particular there was concern over control over the foreshore at Shortland (Thames), valuable because of the gold thought to be present in the sands. This issue, and the real risk of violence between miners and local Māori, led to official investigations and reports in 1869.[31] The outcome was the Shortland Beach Act 1869, which prohibited persons other than the Crown from entering into any "contract lease or conveyance" with any "aboriginal Native" regarding any foreshore lands at Thames. This Act did not, however, settle the issue definitively and politicians were not united in their views: William Fox thought that "the right of

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[27] See per Elias J, [2003] 3 NZLR 643, 664-666; Tipping J., ibid, 698-9.

[28] Waitangi Tribunal, *Te Whanganui-a-Orotu Report*, 1995, 63.

[29] See *Te Whanganui-a-Orotu Report*, 1995, 63-66.

[30] This point was also made to the Panel by Emeritus Professor FM (Jock) Brookfield, (3-1-1) referring to the Rakiura deed.

[31] See *Report by Mr Mackay on the Thames Gold Fields*, 1869 AJHR A-17; *Report of the Select Committee on the Evidence Adduced before the Native Lands Bill Committee*, 1869 AJHR F-7; *Report of the Select Committee on the Thames Sea Beach Bill*, 1869 AJHR F-7.

the Crown to land between high and low water-mark (...) would not admit of any discussion" but J C Richmond thought that with the waiver of Crown pre-emption by statute in 1862 it was now too late for the Crown's prerogative rights to the foreshore to be revived.[32]

In an effort to stop the Native Land Court from issuing titles to land below high-water mark in 1872, which it seems to have been doing, the government issued a proclamation suspending the Court's operations "within the Province of Auckland, being all that portion of the said Province situate below high water mark".[33] At the next foreshore case at Thames, involving a block known as Kapanga Moana No 2, Crown counsel intervened in the hearing and produced the proclamation, bringing the case to a halt.[34] MacCormick, Crown counsel, nevertheless told the Court that his instructions were that the government had not made up its mind about Māori claims to the foreshore and seabed and it was not intended to deprive Māori of any "just rights" they might have in the foreshore:[35]

> It may be necessary that the question of what is to be done with all the claims by the natives to the seashore should be considered in the General Assembly, where there will be natives to take part in the deliberations upon it. I am, therefore, instructed to impress upon the natives that the hearing of these claims is only deferred, not refused; and that the Government have not the wish, as they certainly have not the power, to deprive the natives of any just rights they may have to the foreshore.

These remarks are consistent with some of Fox's statements made in the House of Representatives during the debates on the Shortland Beach Act 1869 (although convinced of the Crown's right to the foreshore he had stated that "ample provision would be made against the Natives suffering any loss".[36])

b The *Kauwaerenga* (1870) and *Parumoana* (1883) decisions

The *Kauwaerenga* decision related to an area of foreshore near Thames. In *Kauwaeranga* Judge Fenton repudiated earlier Land Court practice, seen in some other cases in the Hauraki region, where the Court had been prepared to issue freehold titles to areas located below high-water mark. Fenton thought that allowing freehold grants to the foreshore was undesirable, stating that he could not "contemplate without uneasiness the evil consequences which might ensue from judicially declaring that the foreshore of the colony will be vested absolutely in the natives, if they can prove certain acts of ownership". This was especially so given "how readily they may prove such, and how impossible it is to contradict them if they only agree amongst themselves".[37]

The background to the *Kauwaerenga* decision, as well as the significance of Fenton's findings, have recently been analysed at length by the Waitangi Tribunal in its *Hauraki* Report (2006).[38] The Tribunal has, amongst much other material, drawn attention to parliamentary intervention in the events with the Thames Foreshore with the Thames Sea Beach Bill of 1869, which was not in the end enacted, and the Shortland Beach Act 1869. The legislation was careful not to extinguish Native title to the foreshore and seabed, and in fact "did little to disturb the status quo as far as Māori rights were concerned".[39] The Tribunal has also drawn attention to Fenton's previous *Whakaharatau* decision, where, in the Tribunal's words, he expressed "support for a view that

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[32] (1869) 6 *New Zealand Parliamentary Debates* 196.

[33] (1872) *New Zealand Gazette* 347.

[34] (1872) 2 Coromandel MB 315-16.

[35] *Daily Southern Cross*, Thursday, 16 May 1872.

[36] See (1869) *New Zealand Parliamentary Debates* 214.

[37] (1870) 4 Hauraki MB 236; reprinted with an introduction and notes by Alex Frame in (1984) 14 *Victoria University of Wellington Law Review* 224.

[38] Waitangi Tribunal, *The Hauraki Report*, Wai 686, 2006, especially 383-386, 1021-1052.

[39] *Hauraki*, 387.

Māori could own land in the inter-tidal zone".[40] Fenton, it seems, was not in principle opposed to conducting investigations of title to land below high water mark, and it is reasonable to assume that where – as in *Kauwaerenga* – Fenton made a fisheries order only, the rights were nevertheless to be understood in a reasonably broad and expansive way.

As a substitute for a title order in *Kauwaerenga* Fenton was prepared to grant a right of fishery, which obviously he assumed his court had jurisdiction to do under the Native Lands Acts then in operation. Fenton said that he had not forgotten the maxim of the Common Law that "the honour of the King is to be preferred to his profit", but he believed that "there can be no failure of justice" if the Māori applicants here "have secured to them the full, exclusive, and undisturbed possession of all the rights and privileges over the locus in quo which they or their ancestors have ever exercised". He made a fisheries order, but declined "to make an order for the absolute propriety of the soil, *at least below the surface* [emph. added]".

The significance of the reference to "below the surface" relates to the precise context of *Kauwaerenga*, which related to the control and ownership of gold believed to be present in the sands at Thames. The context of the case included a history of long-running disputes and antagonism between local Māori and miners over the control of these gold-bearing sands. Fenton was not prepared to accept that Māori could, by invoking claims to title based on fisheries management, claim a proprietary title which would, in accordance with the ordinary rules of the Common Law, include rights in minerals located in the subsoil. On the other hand Fenton clearly intended that the fisheries right that he did confer, if not a title order, was nevertheless a substantial property interest. As seen, he understood the right to include "full, exclusive, and undisturbed possession" of all their former rights and privileges. That Fenton saw the right as "exclusive" is particularly interesting. The exclusivity of the rights was something that had been emphasised in the evidence of the Māori claimants in Court.[41] That the rights were intended to be reasonably full and comprehensive ones is shown also by the terms of the final order made in court, which granted "the exclusive right of fishing upon and using the for the purpose of fishing, whether with stake-nets or otherwise the surface of the soil of all of the foreshore or parcel of land between high water mark and low water mark".[42]

The *Kauwaerenga* decision set the precedent for the Native Land Court's *Parumoana* [Porirua Harbour] decision (1883). There is not much information contained in the Court minutes relating to this case. A brief statement of evidence was given by Wi Parata, there were no objectors to the application, and the Court's judgment itself is only tantalisingly brief.[43] After a number of delays the case was heard on 1 August 1883 and judgment was given on Tuesday 7 August. The case was heard by two judges, J W Macdonald, who was Chief Judge, and Judge Puckey. Wi Parata began by producing a survey plan, which was a standard requirement in the Native Land Court. The surveyor, a Mr Wyles, "explained that he had surveyed the land between high [and] low water marks by direction of the late Judge Heaphy".[44] The survey had cost £45, which Wi Parata had paid for himself. Wi Parata named those associated with him in the application as Wi Neera, Ngahuka Tungia, Raiha Puaha, Hemi Matenga, Hohaia Pokaitura and Hohepa Horomona, which must have

[40] *Hauraki*, 1029, citing the following comments of Fenton in *Whakaharatau*, at 4 Hauraki MB 202-03: I can find no reason or law which renders it incompetent for a Māori to have ownership of land covered by sea at high water, and considering the character of the English original occupation of the Island, the history and intent of the Treaty of Waitangi and the several statutes relating to the wild lands of the colony and the decisions of the Courts in England and in America on matters of this character I am of opinion that the question of ownership of any portion of the foreshore by a Māori must depend on a question of fact.

[41] E.g. in the evidence of Hoterini Taipari, at (1870) 4 Hauraki MB 217-18 (cited in Waitangi Tribunal, *Hauraki*, 1030-31): I am N'Maru and many tribes. The land described goes down to the Waihou River – It is the site of certain fisheries and pipi banks and Kuaka preserves before Hobson's time I and my ancestors exercised the exclusive right of property on this land to the exclusion of others. This was irrespective of the ownership of land adjoining. There were different names for the mud flats. I have placed nets supported by stakes on the land for fish. My right to do this was held exclusively by me and those whom I called.

[42] The final orders in Kauwaerenga are at (1871) 4 Hauraki MB 259.

[43] *Parumoana*, (1883) 1 Wellington MB 127, 147, 148, 149, 157 and 158.

[44] (1883) 1 Wellington MB 147.

been representative of the chiefly leadership of Ngāti Toa at that time. Wi Parata said that he lived at Porirua and at Waikanae, and that he claimed an interest in the matter before the Court. The land, he said, "is land at low water, only a portion is covered by high water". The *take* on which the claim was based was conquest: "I claim it by conquest of [i.e., by] Ngāti Toa". Wi Parata admitted the rights of all the other co-claimants, and said, perhaps curiously, that "we have occupied this land as a race course" He then added that "we have not lived on it – but all around it – we have not planted on it", but that "pipis and pupus grow there". He added that the shellfish were protected by the rules of customary law: they "are protected by us in their season".

The Court's judgment begins by noting that in this case the Court has been asked to decide "that the title of applicants to certain land situate between high and low water marks has been proved according to native custom or usage".[45] There were "no counter claimants nor was there any objection raised on the part of the Crown". The Court was satisfied that "the applicants had from time immemorial and certainly before the making of the Treaty of Waitangi and down to the present time been accustomed to collect pipis on the land".

As noted, the 1883 Court applied *Kauwaerenga* stating that "if the judgment of the Court in the matter of the Shortland foreshore be correct and has not been impeached it is clear that the present applicants are entitled not to the land but to a right of fishery".[46] The Court held that the applicants "are entitled to an incorporeal hereditament" (in that a property right in the nature of a right to take or use something, but not a full freehold). It was observed that "it yet remains to be shown that the Court has any jurisdiction to deal with the Title thereto". The Court was certainly prepared to award a valuable and significant property right, one which the iwi certainly assumed was legal and which they were entitled to rely on in the years to come. As far as can be determined these rights are still extant.

c The decision in *Waipapakura v Hempton*

This case was an action in conversion brought by a Māori woman against a fisheries officer who had seized her nets on the grounds that she was fishing unlawfully, but the plaintiff argued that the seizure was unlawful as she was exercising a Māori fishing right protected by section 77(2) of the Fisheries Act 1908. The essence of the decision was that such fishing rights had to be sourced in statute. Chief Justice Stout did, however, note that there "is no allegation in this case that the land over which the tide flows belongs to the Māoris".[47] Stout noted that any Crown grant in favour of the Māori here could only be to high-water mark (that is, under the Crown Grants Act 1908). He appears to mean nothing more than the fishing right cannot be sourced in a Māori freehold land title to a coastal block; the decision does not clearly state that foreshore and seabed belong to the Crown in dominium. This case did not clarify the extent of the jurisdiction of the Māori Land Court.

d Lakebeds: The decision in *Tamihana Korokai*

One of the more puzzling aspects of the development of the law relating to waterbodies in New Zealand is the different treatment accorded to lakebeds on the one hand and foreshore and seabed on the other. The leading New Zealand case on Māori title to lakebeds in the 1912 decision of the Court of Appeal in *Tamihana Korokai v Solicitor General*, in which Sir John Salmond appeared for the Crown.[48] The case arose out of proceedings in the Native Land Court where Arawa claimants were seeking an investigation of title to the beds of the Rotorua lakes. The Court of Appeal held that the Native Land Court had jurisdiction to investigate title to lakebeds, and it follows from this

[45] (1883) 1 Wellington MB 158.

[46] Ibid.

[47] (1914) 33 NZLR 1069, at 1072,

[48] *Tamihana Korokai v Solicitor-General* (1912) 15 GLR 95.

that lakebeds have no particular status in New Zealand common law and that they are simply Māori customary land until investigated by the Court and Crown-granted. This applies even to large water bodies such as Lake Taupo and Lake Te Anau.

Following Tamihana Korokai the Crown remained very reluctant to concede that Māori had title to lakebeds, especially large lakebeds.[49] In the *Lake Omapere* case, heard in the Native Land Court by Judge Acheson in 1929, the Crown continued to argue that there was no customary title to lakebeds. Acheson – who, as will be seen, was also sympathetic to Māori claims to areas of foreshore – rejected this. Lakes, he observed, were simply land:[50]

> The bed of any lake is merely a part of that lake and no amount of juggling with words or ideas will ever make it other than part of the lake. The Māori was and still is a direct thinker and he would see no more reason for separating a lake from its bed (as to the ownership thereof) than he would see for separating the rocks and soils that comprise a mountain. In fact in olden days he would have regarded it as a rather grim joke had any strangers asserted that he did not possess the beds of his own lakes. A lake is land covered by water, and it is part of the surface of the country in which it is situated, and it is as much part of that surface and as capable of being occupied as is land covered by forest or land covered by a stream.

Often the Crown has preferred to settle lakebed issues by means of negotiated agreements given effect to in statute. The Rotorua lakes affair was dealt with by a special statutory settlement in 1922, this being section 27 of the Native Land Amendment and Native Land Claims Adjustment Act 1922, which applied to the "Arawa district lakes". The legislation vested the beds of 14 lakes in the Crown, "freed and discharged from the Native customary title, if any" and set up the Arawa District Māori Trust Board which received income from the Crown and from fishing licences. Not all Arawa leaders were happy with this outcome.[51] The precedent set in the case of the Rotorua lakes was repeated with Lake Taupo in 1926 and there have been a number of other similar statutory arrangements, for example the Lake Waikaremoana Act 1971. Today the Crown accepts that lakes are simply land and as such can be investigated by the Māori Land Court, as shown by recent settlements relating to Lake Taupo and the Rotorua lakes.

e Napier inner harbour (Te Whanganui-a-Orotu)

In the twentieth century there was a series of legally inconclusive investigations to Te Whanganui-a-Orotu, the huge area of estuarine marshes and salt flats which stretched north and west of the town of Napier.[52] The Napier earthquake of 1931 complicated this issue when the entire area was raised above sea level and which converted the former area of lagoon and estuary into the flat plain which stretches north of the modern city.

The problems over ownership of the Napier lagoon was complicated by the further question as to whether or not the harbour, and all of the islands in it, were included within the boundaries of the Ahuriri purchase of 1851. Over the years the lagoon was the subject of a variety of arguments. In 1916 the Solicitor-General, Sir John Salmond, took the view that although the harbour was not included in the Ahuriri purchase it belonged to the Crown in any event by prerogative right, laying heavy emphasis on Stout CJ's decision in *Waipapakura v Hempton* (1914).[53] The harbour "is tidal

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[49] See R P Boast, "Sir John Salmond and Māori Land Tenure", (2007) 38 *Victoria University of Wellington Law Review* 831, 844-5; Mark Hickford, "John Salmond and Native Title in New Zealand: Developing a Crown Theory on the Treaty of Waitangi, 1910-1920", (2007) 38 *Victoria University of Wellington Law Review* 853, 862-882. See also Ben White, *Inland Waterways*, Rangahaua Whanui Series, Waitangi Tribunal, 1998.

[50] (1929) Bay of Islands MB 259.

[51] See Ben White, *Inland Waterways*, 122.

[52] On Te Whanganui-a-Orotu see Waitangi Tribunal, *Te Whanganui-a-Orotu Report*, Wai 55, Brooker's, Wellington, 1995.

[53] Salmond to Under-Secretary of Lands, 28 August 1916, L&S 1, 29057, National Archives, Wellington.

water and the limits of Native customary title are high water mark". In 1934, however, the Crown Law Office was no longer confident that the claim to title to the lagoon by prerogative right was sustainable:[54]

> With all respect to the late Solicitor-General's opinion, I doubt if Waipapakura v Hempton (1914), 33 NZLR 1065, goes as far as he suggests; once the law has recognised the assertability of Native rights in the demesne land of the Crown, which no doubt it has done – Nireaha Tamaki v Baker [1901] AC 561 – it is difficult to find a good ground for excluding any land over which the Crown has imperium, dominium, and mesne ownership, whether the covering water be river, lake, or sea, whether tidal or not, and whether the land be above, within or below the foreshore strip. But I trust such important issues will not be raised on the present reference.

In 1916 the Native Land Court concluded that it could not deal with Te Whanganui-a-Orotu because it was not Māori customary land or Māori freehold land; Chief Judge Jones, presiding over the Māori Land Claims Commission in 1920 concurred, but Chief Judge Harvey took a very different view in his 1948 report.[55] Much of the argument and evidence at the various inquiries into the lagoon at Napier focused on the rather arid and intractable question as to whether Te Whanganui-a-Orotu ought to be classed as a "lake" or as an "arm of the sea". These classifications mean nothing in Māori customary law but reflect the position in New Zealand common law (as clarified in *Tamihana Korokai*): if the lagoon was a "lake" then it was land and could be investigated by the Native Land Court and a title issued, but if it was foreshore then it was part of the intertidal zone and supposedly belonged to the Crown.

In his 1948 report Judge Harvey found the evidence on this to be inconclusive. After waiting for fourteen years for Judge Harvey to write his report local Māori learned only that the question could not be resolved. Judge Harvey was much more guarded on whether the Native Land Court could recognise titles below high-water mark than was his counterpart in Northland, Judge Acheson. In regard to Māori rights in Te Whanganui-a-Orotu on the basis that it was foreshore he would say only this:[56]

> If the area in question was in any year (say 1840) below mean high-water mark the question of Native rights over it becomes too involved to be dealt with adequately by this Court, or upon the case presented in these proceedings. It can be said, however, that the law has recognised the assertability of native rights in the demesne lands of the Crown (Nireaha Tamaki v Baker [1901] AC 561). The Native Land Court, a special Court with land jurisdiction only was set up to adjudicate upon the rights of Natives under their customs and usages as against the title of the Crown. In some cases (…) the Native Land Court has dealt with lands which lie below high-water mark and the Crown has to some extent recognised these orders by giving a limited title to orders.

Te Whanganui-a-Orotu has now been reported on by the Waitangi Tribunal (1995). The Tribunal concluded, after a careful review of the historical evidence, that the lagoon was neither a true lake nor an arm of the sea but had ingredients of both: it "included elements of fresh water and sea water, with the relative amounts of each varying from one part to another and from one time to another":[57]

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[54] Crown Law Office to Under-Secretary, Department of Lands and Survey, 15 March 1934, copy on L 1/29057, Archives New Zealand, Wellington (cited in Boast, *The Foreshore*, Rangahaua Whanui Report, Waitangi Tribunal, 1996, p 42).

[55] (1916) 66 Napier MB 235; 1921 AJHR G-5, 12, 14: 1948 AJHR G-6A, 26, 30-31.

[56] 1948 AJHR para 163(d), p 90.

[57] Waitangi Tribunal, *Te Whanganui-a-Orotu Report*, Wai 55, 1995, at 206.

> The presence within Te Whanganui-a-Orotu of large quantities fresh water and a very restricted link to the sea distinguished it from harbours like Manukau. We therefore cannot accept the Crown's presumption that Te Whanganui-a-Orotu was a part of the sea. It follows that the bed of Te Whanganui-a-Orotu did not as matter of common law (…) vest in the Crown.

In any event, in terms of the Tribunal's Treaty jurisdiction, these technicalities should not matter. The distinctions between lakes and coastal lagoons, drawn from English common law, had no meaning in the Māori world and could not properly be relied on as a mechanism to extinguish property rights.[58]

f Judge Acheson and the northern foreshore cases

The most significant developments took place in Northland, in the Tai Tokerau division of the Native Land Court. One key factor here was the presence of a remarkable Judge, Frank Acheson, Tai Tokerau Judge from 1924-43.[59] Acheson, who could often be scathingly critical of government actions, carried out a long courtroom battle with Sir Vincent Meredith, Crown Solicitor at Auckland, over Māori foreshore claims, Acheson making grants below high water mark and Meredith appealing the decisions to the Māori Appellate Court. Of these cases the most significant was one over the Ngakororo mudflats on the Hokianga harbour, decided by Acheson in 1941 and dealt with by the Appellate Court in 1944.[60] Northland was also an area of high Māori population, had a long coastline relative to its land area, and was a region where Māori dependence on the resources of the foreshore and the sea had always been historically important and continued to be so.

The main areas in dispute, with the exception of Orakei (Auckland) were all on the west coast of the Northland peninsula: they comprised the Ngakororo mudflats in the Whakarapa "river" – an arm of the Hokianga harbour – near Panguru; the Herekino harbour; and Ninety-Mile Beach. With the exception of the Ninety-Mile beach litigation all of the Northland cases were complicated by difficult legal and factual problems relating to accretions. Acheson faced many difficulties in dealing with these cases. Māori applicants to his Court were typically unrepresented. On the other hand the cases were opposed by the Crown, represented by Meredith. Meredith could draw on the resources of the Lands and other government departments to assist with the development of complex legal arguments regarding accretions and the legal position of the foreshore.

In *Ngakororo* the Appellate Court was unable to see any difference in principle between investigating title to the foreshore and conducting an investigation of title to any other piece of land:[61]

> The Native Land Court's decision as to whether these mud flats are papatupu land must rest upon findings of fact. Just as in the investigation of title to customary land, it is necessary for the claimants to establish their right, and this is done by showing that the land has descended to them from a tribal ancestor and has been in the continual occupation of the claimants and their predecessors prior to 1840 and down to the date of investigation.

The Appellate Court accepted that in 1840 the Crown acquired "title" to the foreshore and the seabed, but in the Court's view this was subject to a Māori customary title which had been "preserved" by the statutory provisions relating to the jurisdiction of the Native Land Court. The Court could see no reason why proof of customary occupation should not lead to a proprietary title to the foreshore:[62]

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[58] Waitangi Tribunal, *Te Whanganui-a-Orotu Report*, Wai 55, 1995, at 206. The Tribunal has made the same point in its *Foreshore and Seabed Report*, Wai 1071, 2004, 27.

[59] On Acheson see John Acheson and R P Boast, (1998), "Acheson, Frank Oswald Victor 1887-1948: Clerk, land purchase officer, land court Judge, writer", *Dictionary of New Zealand Biography*, vol 4, pp 1-3.

[60] *Ngakororo* case (1942) NACMB 137.

[61] ibid.

[62] ibid.

> If the proof offered by the claimants in respect of their claim established that these mud flats have been exclusively occupied by a particular hapū or tribe prior to 1840 and since then to the present day, without attempting to decide the matter we should have thought they might have been able to establish title to the land itself, although it may have lain below high-water mark. In England the fee simple to land below high-water mark has, in certain circumstances, become vested in the proprietor of the foreshore. If, under the circumstances of the English people, title to the sea-bed can be established in this way, we see no reason why title should not just as well be established by the Māori people of New Zealand.

In terms of what was needed to be proved, it was stressed that the standard was a relatively strict one. Māori use of the specific location had to be differentiated from that of the general public. The area claimed needed to be carefully defined; there had to be "reliable" evidence "to suggest the continuous and exclusive use of this land by the claimants and their predecessors from time immemorial", and the mudflats had to be shown to exist "in 1840 in much the same condition as they appear today".[63]

Another Northland harbour which was the subject of a foreshore claim in the Land Court was *Herekino*, south of Ahipara on the west coast. The claim was brought by Toma Atama on behalf of the Māori people of Rangikohu. As in the *Ngakororo* case, the claim was opposed by the Crown, once again represented by Sir Vincent Meredith. The concerns of the applicants related to access to coastal land and the damage caused by reclamation dams installed by a local farmer. Acheson found that the applicants were entitled to the area in issue on the basis of accretion to their own properties but also on the basis that it was uninvestigated customary (or papatipu) land. According to Acheson:[64]

> It follows from the above that the Court in the exercise of its judicial duty to deal justly and equitably with the Native claim, cannot accept the suggestion made on behalf of the Crown that the Natives are entitled to the bulk of the land west of the Herekino River under the Pākehā law as to accretion. The Court holds definitely that the Natives are entitled to all the land west of the River and shown on Plan 13805 because it is "papatupu" or Customary land for which an order on Investigation of Title can and should issue. The fact that the Natives would also be entitled to this land under the Pākehā law as to accretion is beside the point. The Court declines to derogate from the papatupu right of the Natives by basing its decision upon the law as to accretion. Vital issues are at stake and no attempt at compromise should be allowed by the Court.

The Crown again appealed Acheson's decision to the Appellate Court and was again successful. The Appellate Court treated the issue as one of accretion, and found that the Land Court had no jurisdiction to deal with accretions to parcels of Māori freehold land. The accretions belonged, rather, to the owners of the existing individualised Māori freehold titles who needed to apply to the District Land Registrar for correction of the plans.[65]

g *Ninety Mile Beach* in the Māori Land Court (1957)

The *Ninety Mile Beach* case in the Court of Appeal also began, of course, in the Māori Land Court, which conducted a full investigation of title and heard a great deal of evidence relating to customary use of the beach. The hearing took place in 1957 at Kaitaia before Chief Judge Morison. The case commenced with applications for investigation of title lodged by a Mr Tepania of the Te Rarawa

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[63] ibid.

[64] Herekino Case, provisional judgment of Judge Acheson, (1941) 72 Northern MB, 22 January 1941, cited Boast, *The Foreshore*, Rangahaua Whanui Report, 1996, 61.

[65] Māori Appellate Court, judgment re Rangikohu Mudflats, Herekino Harbour, 1 September 1942, cited Boast, *The Foreshore*, Rangahaua Whanui Report, 1996, 61.

people claiming that the "land is customary land having been at one time completely under the control and jurisdiction of a Māori, [namely] Tohe" – Tohe having been a founding ancestor of the Te Rarawa people many centuries ago. A key issue raised in the application was control and management of toheroa and an order was sought vesting the beach in trustees. The application was again opposed by Sir Vincent Meredith on behalf of the Crown; the applicants were represented by G G Dragicevich, a solicitor practising locally at Kaitaia. The factual inquiry in the Native Land Court was only a skirmish in a much bigger battle, that is whether the Land Court had jurisdiction to conduct this sort of inquiry at all.

Evidence was given by kaumatua and by sympathetic members of the Pākehā community at Ahipara. The claim was proved in the Court in the same way as title to a mainland block: by proof of descent from a particular ancestor, of exclusive use, of resource harvesting, and of control through the mechanisms of Māori customary law. Chief Judge Morison stated that the evidence had clearly demonstrated the following:[66]

a That the Northern portion [of the beach] was within the territory occupied by Te Aupouri and the Southern portion was within the territory occupied by Te Rarawa.

b That the members of these tribes had their kāingas and their burial grounds scattered inland from the beach at intervals along the whole distance.

c That the two tribes occupied their respective portions to the exclusion of other tribes.

d That the land itself was a major source of food supply for these tribes in that from it the Māoris [sic] obtained shell fish [etc.]

e That the Māoris [sic] caught various fish in the sea off the beach (…)

f That for various reasons from time to time rahuis [prohibitions] were imposed upon various parts of the beach and the sea itself.

g That the beach was generally used by members of these tribes.

So, simply, ownership of foreshore – and seabed, for that matter – would be regarded by the Land Court simply as a matter of fact, to be proved by the elements of exclusivity, actual use and management by customary law. Chief Judge Morison applied what may be called standard Māori Land Court practice. After reviewing the evidence and the reasons given by the Crown for opposing the application he concluded that the claim had been made out:

> The Court is of opinion that these tribes were the owners of the territories over which they were able to exercise exclusive dominion or control. The two parts of this land were immediately before the Treaty of Waitangi within the territories over which Te Aupouri and Te Rarawa respectively exercised exclusive dominion and control and the Court therefore determines that they were owned and occupied by these tribes respectively, according to their customs and usages.

There is, therefore, at least some authority which indicates what Māori Land Court practice, if left undisturbed, might have been. The case law cannot be described as highly developed. Going by what is there, the Court would essentially treat applications for vesting orders in the same way as applications for title to "terrestrial" blocks. There is no suggestion that there is a special or particular standard applicable to foreshore and seabed cases. It is possible that the Court might have been prepared to make orders for relatively substantial stretches of coast – it was certainly prepared to do so in 1957.

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[66] (1957) 85 Northern MB 126-7.

The *Ninety-Mile* litigation went on the Supreme Court and the Court of Appeal, both of which held that the Māori Land Court had no jurisdiction to conduct investigations of title to the foreshore and seabed.[67]

6 Territorial sea legislation and extinguishment of native title

There appears to have been no statutory attempt to clarify the proprietary interests of the Crown in the seabed until the enactment of the Territorial Sea and Fishing Zone Act 1965, subsequently repealed and replaced by the Territorial Sea and Exclusive Economic Zone Act 1977. Unlike the foreshore, the law relating to the territorial sea has an international law aspect. The statutory changes made in 1965 and in 1977 reflect changes in international law and state practice.[68] By Article 3 of the Law of the Sea Convention of 1982 stipulates that "every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles". Anticipating this, New Zealand expanded its territorial sea boundary in 1977, and most Commonwealth countries, including Britain and Australia, have also adopted a 12-mile limit. In customary international law the ships of all states have a right of "innocent passage" through the territorial sea, and this was codified and defined in Article 14(1) of the Convention on the Territorial Sea and Contiguous Zone Act 1958 and Article 19 of the Law of the Sea Convention of 1982.

The 1965 Act is described as "An Act to make provision with respect to the territorial sea and fishing zone of New Zealand". It is a short enactment of 11 sections. Section 2 of the Act is a definitional section; ss 2-7 relate to the Territorial Sea, and section 8 deals with "the fishing zone of New Zealand". The Act is completely silent on the subject of Māori property rights. The 1977 Act is somewhat more elaborate (33 sections). Principally the Act is concerned with the New Zealand Exclusive Economic Zone. Apart from the addition of a regulation-making provision, the sections relating to the territorial sea are the same. In both Acts the "vesting" provision happens to be section 7 and both are worded identically. The only difference is the definition of the territorial sea, three nautical miles from baseline in section 3 of the 1965 Act and 12 nautical miles in section 3 of the 1977 Act.

Section 7 of both statutes states:

> Bed of territorial sea and internal waters vested in the Crown – Subject to the grant of any estate or interest therein (whether by or pursuant to the provisions of any enactment or otherwise, and whether made before or after the commencement of this Act), the seabed and subsoil of submarine areas bounded on the landward side by the low-water mark along the coast of New Zealand (including the coast of all islands) and on the seaward side by the outer limits of the territorial sea of New Zealand shall be deemed to be and always to have been vested in the Crown.

Thus the seabed, while "vested" in the Crown, is "subject to the grant of any estate or interest therein". It would appear that those words were intended to make it clear that the "vesting" of the area in the Crown was not intended to render nugatory the effects of any earlier grants, or to disbar the Crown, or bodies acting on behalf of the Crown (such as the Māori Land Court) from making grants in the future. Read this way it is clear that the vesting was one of *imperium* or sovereignty only, as indeed the Court of Appeal found in *Ngāti Apa*.[69] The stipulation in the Act that existing

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[67] [1960] NZLR 673 (SC, per Turner J); [1963] NZLR 461 (CA).

[68] New Zealand is party to a number of international agreements relating to the sea and marine resources. These include (for example) the 1946 Convention on the Regulation of Whaling; the 1958 Convention on the Continental Shelf (ratified by New Zealand on 18 January 1965); the United Nations Convention on the Law of the Sea (UNCLOS) (ratified 19 July 1996); the International Convention for the Prevention of Pollution from Ships 193/1978 (MARPOL) (ratified 30 April 1975 and implemented by regulations made pursuant to the Resource Management Act and the Marine Transport Act 1994); and numerous others.

[69] *Ngati Apa v Attorney-General* [2003] 3 NZLR 643, 665 (per Elias CJ, who found that "no expropriatory purpose in the Act in relation to Māori property recognised as a matter of common law and statute can be properly read into the legislation"), 657 (per Gault P), 687-88 (per Keith and Anderson JJ), and 669 (per Tipping J, who stated that '[t]here is no need to discuss the Territorial Sea legislation (…) it cannot possibly be regarded as having extinguished the status of any Māori customary land that may have been involved").

grants are unaffected is in fact a confirmation that the provision vests merely imperium in the Crown, an ability to make grants and extinguish Native title being a principal component of the Crown's radical title.

7 Environmental Legislation, Water Bodies and the Foreshore and Seabed

a Water and Soil Conservation Act 1967

Prior to the enactment of the Resource Management Act 1991 water management (including the management of coastal waters) and land use planning were regulated under separate statutes. The latter was controlled under the Town and Country Planning Act 1953[70], repealed and replaced by the Town and Country Planning Act 1977. Separate statutes related to consents for mining and for coal mining.

The first comprehensive[71] statute enacted for the purpose of water management was the Water and Soil Conservation Act 1967. The long title to the Act described it as:

> An Act to promote a national policy in respect of natural water, and to make better provision for the conservation, allocation, use, and quality of natural water, and for promoting soil conservation and preventing damage by flood and erosion, and for promoting and controlling multiple uses of natural water and the drainage of land and for ensuring that adequate account is taken of the needs of primary and secondary industry, water supplies of local authorities, fisheries, wildlife habitats and all recreational uses of natural water.

The Act effectively nationalised or expropriated all development rights relating to natural water by vesting in the Crown (section 21(1):

> the sole right to dam any river or stream, or to divert or take natural water, or discharge natural water or waste into any natural water, or to discharge natural water containing waste on to land or into the ground in circumstances which result in that waste, or any other waste emanating as a result of natural processes from that waste, entering natural water, or to use natural water.

This vesting in the Crown is still the law, the effect of section 21 being preserved by the Resource Management Act section 354.

The 1967 Act set up a system of permits for taking and discharging water administered by bodies known as Regional Water Boards (all existing Catchment Boards also became Regional Water Boards under the 1967 Act). The 1967 Act created the modern system of water rights which was updated and elaborated by the Resource Management Act 1991, but not fundamentally changed. Essentially the same management system has been in operation since 1967.

One issue which arose after the enactment of the Water and Soil Conservation Act 1967 was the extent to which the common law system of riparian rights continued in existence. In *Glenmark Homestead v. North Canterbury Catchment Board* the Court of Appeal treated the former common law as in effect abolished. Woodhouse J stated:[72]

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[70] Each council was required by section 19 of the 1953 Act to "provide and maintain" a district scheme consisting of a scheme statement, a code of ordinances and a map which was to "make provision" for such of the various "matters to be dealt with in district schemes" set out in the Second Schedule.

[71] In 1912 and 1932 Bills relating to water pollution were introduced into Parliament but were not enacted. Following an Interdepartmental Committee Report on the Pollution of Waters in 1952 the Water Pollution Act 1953 was enacted. This Act was widely perceived as a failure. See Williams, *Environmental Law*, 1980 ed., 91.

[72] [1978] 1 NZLR 407, 412-13.

> As the long title to the Water and Soil Conservation Act shows, that Act has the important purpose of promoting a national and comprehensive policy in regard to the conservation, allocation, use and quality of natural water and the control of its use. In addition the Act is concerned with the associated purpose of soil conservation. All this is intended to be achieved by an administrative mechanism authorised and empowered by the first twenty sections of the Act. The broad objectives in view can be gleaned from the sections dealing with the various functions of the statutory tribunals and from sections in the second half of the Act dealing with such matters as the classification of natural waters and the regulation of trade wastes. But all is made possible by section 21 which may be regarded as a sort of conduit leading from the old to the new. It effects what may properly be regarded as a transformation of the law. Common law rights are extinguished and statutory rights where appropriate are to take their place.

The approach of the Court of Appeal was reflected in a number of Planning Tribunal decisions[73], which operated on the assumption that the common law riparian rights rules no longer existed.

The 1967 Act was defective in a number of respects, in particular in failing to define the criteria to be applied by regional water boards and by the Town and Country Planning Appeal Board – later renamed as the Planning Tribunal – in processing applications to take or discharge into water. It was necessary for the criteria to be defined by the Courts and by the Planning Tribunal, which together developed and applied a "benefit/detriment" test in the absence of any clear legislative guidance.[74] A particular problem with the Water and Soil Conservation Act 1967 was the extent to which 'metaphysical' or spiritual issues raised by Māori objectors were a relevant aspect of the "benefit/detriment" test. It was the practice of the Planning Tribunal to not take such issues into account (see e.g. *McKenzie v Taupo County Council* [75]).

Long-standing Planning Tribunal and Regional Water Board practice was overturned by the High Court in 1987 (Chilwell J) in its decision in *Huakina Development Trust v Waikato Valley Authority*.[76] In overturning the Planning Tribunal practice Chilwell J considered inter alia the status of Māori customary law in New Zealand common law, the observations made by this Tribunal in the *Manukau Report* (1985)[77] and the place of the Treaty of Waitangi in New Zealand public law. Chilwell J. found:[78]

> The answer to the rhetorical questions in the immediately preceding chapter of this judgment whether or not the word 'interests' and the phrase 'the interests of the public generally' include Māori spiritual and cultural values must, in my judgment, be that they cannot be excluded from consideration if the evidence establishes the existence of spiritual, cultural and traditional relationships with natural water held by a particular and significant group of Māori people.

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[73] *See Stanley v South Canterbury Catchment Board* (1971) 4 NZTPA 63; *Greensill v Northland Catchment Commission* (1971) 4 NZTPA 63.

[74] *Environmental Defence Society v National Water and Soil Conservation Authority*, (1976) 6 NZTPA 49; *Keam v. Minister of Works and Development* [1982] 1 NZLR 319 CA; see generally D.A.R. Williams, *Environmental Law*, Butterworths, Wellington, 1980, pp 120-123.

[75] (1987) 12 NZTPA 83

[76] [1987] 2 NZLR 188.

[77] *Manukau Report*, Wai 8, Waitangi Tribunal, 1985.

[78] [1987] 2 NZLR 188, 223. Chilwell J. found also that the Water and Soil Conservation Act 1967 was "so deficient in guidelines" that the Courts had to have recourse to "extrinsic aids", which included here "the Treaty of Waitangi, the Treaty of Waitangi Act, the Waitangi Tribunal interpretations of the Treaty and the Planning Act". The net effect of these sources was that "the primary tribunal and the Planning Tribunal cannot rule inadmissible evidence which tends to establish the existence of spiritual, cultural and traditional relationships with natural water held by a particular and significant group of Māori people". *Huakina* was almost immediately applied by the Rangitikei-Wanganui Catchment Board in a decision relating to minimum flow levels in the Wanganui River (Rangitikei-Wanganui Catchment Board and Regional Water Board, *Wanganui Minimum Flow Review: Report and Recommendations of the Tribunal*, 20 September 1988, 22). On appeal the Planning Tribunal, as bound by *Huakina*, accepted that Māori values had to be taken into account but rejected a submission that Māori values had to have a priority (see *Electricity Corporation of New Zealand v Manawatu-Wanganui Regional Council*, Planning Tribunal, W70/90, at 70, 71-2, 178-79).

All that this decision did, however, was to make it clear that "spiritual" or "metaphysical" issues (so-called) were a *relevant* factor and could not be *per se* excluded as inadmissible material by the Planning Tribunal. This could be said to be better than nothing. In my submission the decision in *Huakina* was far less significant than the nationalisaton of development rights in natural water without compensation in 1967 in the first place.

b Statutory Changes circa 1970-1980

In the 1970s the two main statutes (Town and Country Planning Act 1953 and the Water and Soil Conservation Act 1967) were supplemented by a number of important supplementary statutes. These included the Marine Reserves Act 1971, Clean Air Act 1972, the Marine Pollution Act 1974, the Historic Places Amendment Act 1975 (which fobade modification of all archaeological sites unless authorised by a permit) and the Pesticides Act 1979. A system of environmental impact reporting and assessment was introduced by Cabinet directive in 1973.[79]

The first significant statutory reference to Māori issues in environmental legislation of any kind was section 3(1)(g) of the Town and Country Planning Act 1977. According to an article published in the University of Auckland Law Review in 1988 the provision was, however, nevertheless regarded as a disappointment by some Māori groups.[80]

Sections 3 and 4 of the Town and Country Planning Act 1977 are the parent provisions of Part II of the current Resource Management Act 1991. Section 3 of the 1977 Act listed seven "matters of national importance" to be "recognised and provided for" in "the preparation, implementation, and administration of regional, district, and maritime schemes". One of these matters was identified in section 3(1)(g) as:

> The relationship of the Māori people and their culture and traditions with their ancestral land.

These changes made the law increasingly complex. The Waitangi Tribunal expressed its concern on a number of occasions. In its Mangonui Sewerage Report (1988) the Tribunal identified two key problems with existing processes, these being consultation and the difficulty of identifying institutions within Māori society able to make binding decisions and enter into binding commitments in the area of environmental management. The Tribunal said:[81]

> The objection rights in planning laws do not fulfil Treaty obligations when there is not the facility for prior consultation with local tribes. The practical difficulty is that, through the neglect of tribal rights in former years, there is now a dearth of legally cognisable institutions representative of the tribes readily able to formulate a tribal position. Subject to the provision of such institutions, which in our opinion the Crown must now provide, the Planning Tribunal should have power to defer proceedings where in its opinion consultation is required.

Arguably the consultation requirements in the Resource Management Act went some way towards meeting the Tribunal's concerns. The passage cited above is significant and insightful in linking the questions of Māori governance and environmental management. It is true to state that there is still a "dearth of legally cognisable institutions representative of the tribes readily able to formulate a tribal position" – although perhaps it would not be put quite that way today. Recent efforts by the Law Commission to analyse the issue of Māori governance are relevant in this context and will be returned to at the end of this submission.

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[79] *Environmental Protection and Enhancement Procedures* (1973). The Commission for the Environment was first established by Cabinet Directive in 1972, its principal function originally being that of 'auditing' environmental impact reports [EIRs]. See S.J. Mills, "Environmental Impact Reporting in New Zealand: A study of government policy in an age of transition", [1979] *New Zealand Law Journal* 472-484, 494-501, 515-524; D A R Williams, *Environmental Law* (1980), ch. 8.

[80] S Bielby, "Section 3(1)(g) of the Town and Country Planning Act 1977, (1988) 6 *Auckland University Law Review* 52.

[81] Wai 17, 1988, p 60.

c The Resource Management Law Reform [Resource Management Law Reform] process 1988-1991

The Resource Management Law Reform process – that is, the process of discussion and review leading up to the enactment of the Resource Management Act and Crown Minerals Act 1991 – began in 1988. The subject matter of the review was the entire range of the then existing corpus of planning and environmental law, including the Town and Country Planning Act 1977 and the Water and Soil Conservation Act 1967, as well as the mining statutes and the Environmental Protection and Enhancement Procedures.

In August 1988 the Ministry for the Environment released its first major statement entitled *Directions for Change: A Discussion Paper*.[82] This text reflected the government's perception that the Treaty of Waitangi had to be taken account of in the review process. In the discussion paper was a section[83] entitled "Recognising the Treaty of Waitangi". This was only a short discussion that referred to some existing policy initiatives (including the release of the "Partnership Perspectives" Report in April 1988), the principle of "active protection" as expounded by the Court of Appeal in the 1987 Māori Council decision and by the Waitangi Tribunal, and a short section on "control and authority". A general commitment to the Treaty and to a specifically Māori perspective on resource management was certainly made, but this was done very cautiously:[84]

> Government has made an important commitment that any new resource management legislation will not worsen, and will seek to improve the position of Māori in resource management.

It was also stated that "ownership" issues were not going to be considered in the course of the Resource Management Law Reform process and the drafting of the new legislation:[85]

> Government has agreed that the Resource Management Law Reform is not the place to resolve ownership grievances, and that issues relating to Māori ownership of resources not be dealt with in this review.

By this vitally important decision the Crown drew a clear distinction between "ownership" and "management" and excluded everything bearing on the former from the review process. Thus, for example, while the process of water rights allocation under the Water and Soil Conservation Act 1967 was vital to the review process, key "ownership" questions such as the expropriation of the beds of navigable rivers by the Crown with the Coal Mines Amendment Act 1903 or the confused state of the law relating to ownership of the foreshore were not. This key policy stance was not deviated from in the course of the review and is reflected in the decision to simply re-enact the key resource nationalisation/expropriation provisions in section 10 of the Crown Minerals Act and section 354 of the Resource Management Act. The 1991 legislation is – in theory at least – concerned only with management, as key early Environment Court decisions made shortly after the legislation became operative pointed out.[86]

In December 1988 the Ministry for the Environment released a much more elaborate report title *People, Environment and Decision-Making: The Government's Proposals for Resource Management Law Reform*.[87] This report contained a section entitled "Māori interests and the Treaty of Waitangi".

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[82] Ministry for the Environment, Wellington, August 1988.

[83] *Directions for Change: A Discussion Paper*, 1988, 14-15.

[84] Ibid, 14.

[85] Ibid, 15.

[86] Judge Kenderdine stated in *Haddon v Auckland Regional Council* A77/93 that the "whole thrust of the purposes and principles under Part II of the Act is towards managing the use, development and protection of resources" (p. 13) and in the same case accepted a submission that "ownership per se is not an issue under the Resource Management Act".

[87] Ministry for the Environment, Wellington, December 1988 (*People, Environment and Decision-Making*).

The main policies relating to Māori issues and environmental management were set out in the following terms:

> As the basis for further negotiations and consultation the government has:
>
> a Agreed that the Government should take an active stand in relation to Māori interests in mineral and geothermal resources and directed officials from Māori Affairs, Environment, Energy and Treasury to report on options in relation to Māori interests in mineral and geothermal resources;
>
> b Agreed that new legislation should provide for more active involvement of iwi in resource management, including statutory requirements for consultation, and noted that the question of opportunity for greater Māori participation in local and regional government is still to be looked at in the context of the reform of local and regional government;
>
> c Agreed that legislation should provide for the protection of Māori cultural and spiritual values associated with the environment.

This statement stands as a clear articulation of what the Crown was hoping to achieve with the legislation. As with the Waitangi Tribunal's observations in its Mangonui report a link is made between environmental management and governance, although here the emphasis is on improved Māori participation in local government. This is certainly vitally important, given the extent to which control over environmental management was devolved to local bodies under the 1991 legislation. Whether this objective of improved participation of Māori participation in local government has been achieved, nearly twenty years after the 1988 reports, is at least debatable.

People, Environment and Decision-Making reiterated that the Government had decided that the resource management law reform process was "not the place to resolve ownership issues", although it also claimed that the Government "has also directed further parallel work" on at least some ownership issues.[88] (Presumably nothing came of this). *People, Environment and Decision-Making* took the stance that legal effects of the Treaty of Waitangi were still being developed by the Courts, and stated that in consequence an objective of the Resource Management Law Reform process ought to be the development of a flexible regime which could evolve in its turn as the process of clarification continued to unfold:[89]

> The main issues are in improving the position of the Māori people in resource management, and in developing a management system that is able to evolve as further principles of the Treaty are clarified.

More detail on water and geothermal issues was set out at pp 36-37 of that Report. Here it was stated that the new legislation "should provide for more substantial recognition of the special interests of the tangata whenua in water". The Core Group in charge of managing the reform process was directed to report further on this. It was also stated that perpetual water rights ought not to be granted until the Waitangi Tribunal had had a chance to deal with water resources claims.[90] The Report advised also that it was the intention of the Government to "provide for the more substantial recognition of the special interest of the tangata whenua in lakes, rivers and sea" and that the legislation might, in addition, "recognise" some of the Waitangi Tribunal's ideas regarding water resources management. There was no sustained analysis of this issue, however, and instead there was the following list of suggestions as extrapolated from the earlier decisions of the Tribunal.

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[88] *People, Environment and Decision-Making*, 23-24.

[89] Ibid, 24.

[90] See ibid, p 36, proposal (f).

These were:

- The ability to delegate authority to kaitiaki (Manukau claim);
- Power to clean up an area or improve standards (Manukau claim);
- Changes to permit granting, condition setting and review procedures (Te Atiawa claim);
- Encouragement of waste disposal methods which are compatible with with Māori values relating to water;
- Formalising in the statute current case law provisions for recognising the mauri associated with lakes, rivers and coastal waters in decision making.

These two Ministry for the Environment discussion papers have been cited fully for the reason that they form the most authoritative guide as to what the policy objectives were with regard to the legislation that was ultimately enacted in 1991 as the Resource Management Act 1991 and the Crown Minerals Act 1991. The analysis in the two reports is neither extensive nor penetrating, and reveals a lack of clear ideas and focus with regard to Māori and Treaty of Waitangi issues at the time the Resource Management Act was being drafted. It is small wonder that the Resource Management Act has proved in practice to often be unsatisfactory from the Māori standpoint.

The two discussion papers cited above make it clear that the Resource Management Law Reform process was never designed to deal with "ownership" issues, and these were simply excluded entirely from the review. The existing structure of resource ownership was left unchanged and was not in fact examined in any way. So existing expropriations of development rights in natural water, geothermal resources, the beds of navigable rivers, petroleum, uranium and gold and silver were simply re-enacted (see Resource Management Act section 354 and Crown Minerals Act 1991 section 10). The two policy papers did, however, prefigure a statutory reference of some kind to the Treaty of Waitangi in the new legislation (and, in fact, there are references to the Treaty in both the Resource Management Act and the Crown Minerals Act 1991), and stautory requirements relating to consultation. These were certainly done, and thus the Resource Management Act is undoubtedly an improvement on the existing law.

d Water Management Provisions of the Resource Management Act

The Resource Management Act treats regional councils as the direct descendants of the former Catchment/Regional water boards and vests in them virtually complete control over water management (section 30). The abolition of private riparian rights in water is continued by the principal water related provisions, sub-section 14 and 15. Essentially all takings of water require a resource consent, unless the limited exceptions of section 14(3) (reasonable domestic needs) or section 20 (existing lawful activities) happen to apply. No particular exemptions or exceptions for Māori water use apply, except in the case of geothermal water.[91] Sections 14, 15 and 30 need to be read, of course, with the general provions of Part II of the Resource Management Act (sub-section 5-8).

Coastal space is controlled primarily by Resource Management Act section 12. Section 12(2) states:

> No person may, in relation to the land of the Crown in the coastal marine area, or land in the coastal marine area vested in the regional council –
> occupy any part of the coastal marine area; or
> remove any sand, shingle, shell, or other natural material from the land –

[91] Resource Management Act section 14(3)(c).

> unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent.

The key phrase in this provision is, of course, "land of the Crown". Prior to the Court of Appeal's decision in *Ngāti Apa* the Crown assumed, evidently, that all of the foreshore and seabed, except, perhaps that included in existing Crown grants and private title, would have been "land of the Crown". The Court of Appeal's *Ngāti Apa* decision thus had very significant implications for the operation of the coastal space provisions of the Resource Management Act. If this area was not "land of the Crown" it followed that its recognised customary owners (probably) and any owners following the making of a vesting order by the Māori Land Court would have been able to occupy these areas without the need for a resource consent, and would have been able to remove sand, shingle etc.

e Coastal Management Provisions and the New Zealand Coastal Policy Statement [NZCPS]

Coastal planning is distinct from other areas regulated by the Resource Management Act in that management of the resource remains relatively centralised. Section 56 requires that there shall be at all times at least one New Zealand Coastal Policy Statement (NZCPS). Section 56 of the Resource Management Act states that the purpose of the NZCPS is "to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand". There is a binding obligation on the Minister of Conservation to prepare the NZCPS which may, inter alia, state policies on "the protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga mātaitai and tauranga raranga" (Resource Management Act s 58(b)).

Local authority policy statements and plans must be consistent with the NZCPS.[92] If there is any inconsistency between the NZCPS and any local authority policy statement or plan, then the local statement or plan is required to be changed.[93] A consent authority, when considering an application for a resource consent, is required by Resource Management Act section 104(1)(c) to "have regard" to the NZCPS. The NZCPS is therefore an important text at all consent hearings relating to the coast.

The NZCPS is concerned not with the "coastal marine area" (which is the area required to be managed by means of regional coastal plans under Resource Management Act section 64) but with the "coastal environment". The current operative NZCPS took effect in 1994. The NZCPS is not a very long document (26 pages) and has been drafted at a very high level of generality.

The NZCPS contains a number of statements regarding what might be called, in a general sense, Māori and Treaty of Waitangi issues, but these statements typify the vagueness and generality characteristic of the document as a whole. Chapter 2 of the NZCPS, for instance, deals with "The Protection of the Characteristics of the Coastal Environment of Special Value to the Tangata Whenua". This states:

> Policy 2.1.1
> Provision should be made for the identification of the characteristics of the coastal environment of special value to the tangata whenua in accordance with tikanga Māori. This includes the right of the tangata whenua to choose not to identify all or any of them.
>
> Policy 2.1.2.
> Protection of the characteristics of the coastal environment of special value to the tangata whenua should be carried out in accordance with tikanga Māori. Provision should be made to

[92] Resource Management Act section 67(2), 75(2).

[93] Resource Management Act section 55.

determine, in accordance with tikanga Māori, the means whereby the characteristics are to be provided.

Policy 2.1.3
Where characteristics have been identified as being of special value to tangata whenua, the local authority should consider:

a The transfer of its functions, powers and duties to iwi authorities in relation to the management of those characteristics of the coastal environment in terms of section 33 of the Resource Management Act 1991; and/or

b The delegation of its functions, powers and duties to a committee of the local authority representing and comprising representatives of the relevant tangata whenua, in relation to the management of those characteristics of the coastal environment in terms of Section 34 of the Resource Management Act 1991.

f Independent Review of the New Zealand Coastal Policy Statement

In 2004 Dr Johanna Rosier of Massey University prepared a detailed review of the NZCPS and recommended significant changes to it.[94] Time and space prevent a full commentary and analysis of this review in this Appendix. Dr Rosier carried out a comprehensive review of the NZCPS. In her view the effectiveness of the NZCPS has been mixed. It had been reasonably effective at the level of regional coastal plans and policy statements, but (in her assessment) far less so at the level of district plans and still less effective at the level of environmental monitoring. The relevant part of the report states:

NZCPS policies have been implemented effectively through the regional policy statements and regional coastal plans analysed in this review. While all regional coastal plans are not yet operative (seven still need to be approved by the Minister), the NZCPS has been effective in changing the practice of directly discharging sewage effluent into the coastal marine area. Restricted coastal activities (RCAs) have been implemented where appropriate in regional coastal plans.

However, the NZCPS has been only partially effective in influencing district plans and subsequent land use planning decisions within the coastal environment. The review finds that while the NZCPS has assisted management of subdivision and land use changes within the coastal environment, there are some concerns about the degree to which the principles and policies are reflected in district plan contents and implementation. It is also acknowledged that there are other factors, beyond the NZCPS, that determine land use outcomes.

The report finds that the NZCPS is only generally referred to in resource consent applications and council officer reports about resource consents. The resource consent process, particularly in territorial authorities, was difficult to assess (…) By comparison, Environment Court judges make more detailed reference to NZCPS policies in dealing with statutory plans and policy statements.

The area of poorest implementation has been in monitoring environmental outcomes and assessing the degree to which plans and policy statements have influenced environmental results. There is often a reluctance to implement national requirements because of funding implications. It is difficult to judge how significant a problem that is. However, action is needed at a national level of planning to clarify responsibilities for environmental monitorig.

[94] D.J. Rosier, *Independent Review of the New Zealand Coastal Policy Statement: A Report Prepared for the Minister of Conservation*, May 2004.

g Marine Reserves

Marine Reserves were first provided for by the Marine Reserves Act 1971. This Act was described in its long title as:

> An Act to provide for the setting up and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study.

Section 3 of the 1971 Act provided:

> 3 Marine reserves to be maintained in natural state, and public to have right of entry –
>
> 1 It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.

There is a new Marine Reserves Bill but this has not been enacted. This Panel has no detailed information on why this has been delayed.

8 Summary and Conclusions

This (unfortunately rather lengthy) review of how the current law relating to the foreshore and seabed evolved – apart, that is, from the Foreshore and Seabed Act itself, which is discussed in the main body of our report, reveals that the current complex law is as much a product of historical accident as it is of rational design. It also demonstrates that legal issues relating to the foreshore and seabed are not a new problem, but are long-standing.

In terms of title, the position now is that while Māori cannot obtain title to foreshore and seabed – although they can obtain Territorial Customary Rights findings and Customery Rights Orders under the Act – they can have title to the beds of large navigable lakes. Thus Tuwharetoa can acquire title to Lake Taupo but Ngāti Ranginui and Ngāi Te Rangi cannot obtain title to Tauranga Harbour. One is a lake, the other is "foreshore and seabed". This may be defensible in policy terms, but the real reason for the distinction is historical. Lakes and the foreshore and seabed have simply followed different historical trajectories.

For most of New Zealand's legal history issues relating to ownership and title have been of principal importance, but from the 1960s onwards New Zealand, like other countries, began to put in place a new body of environmental law. As seen above, during the Resource Management Law Reform process the decision was taken that the new legislation was concerned with "management" and not with "ownership". Whatever changes are made to the foreshore and seabed in terms of ownership, ordinary environmental law will continue to apply. But some aspects of environmental law, especially the allocation of coastal space under section 12 of the Resource Management Act, were drafted on the assumption that the Crown had a full proprietorial title to all of the foreshore and seabed also, the environmental law relating to the coast has become extremely complicated. As well as the consents system of the Resource Management Act, the coast is in addition governed by a special coastal policy statement, and there are in additional other systems in place including marine reserves under the Marine Reserves Act 1971. This Appendix has not even attempted to review the complex law relating to fisheries and aquaculture, but this is area is complex in itself and also creates other types of reserves (Mātaitai and taiāpure) which are quite different from Marine Reserves and which are established by quite different processes.

The question has to be asked whether this complex body of law that has evolved in an ad hoc way over a long period of time is capable of serving New Zealand well in a new uncertain world in which the effects of climate change on our coastlines may well soon become increasingly apparent.

2 Coastal Statutory Framework

Introduction

There are a wide range of statutes that apply in the coastal marine area. The statutory framework covering this area is complex, and has evolved in a relatively ad hoc manner over a long period. The complexity of the statutory framework reflects the complexity of the underlying interests in the coastal marine area, and the progressive manner in which these interests have been addressed through legislation.

These issues and the complexity of the statutory framework have been recognised in processes such as Oceans Policy. Further, the complexity has been evident in law reform processes such as those relating to aquaculture and marine reserves, and policy processes such as the Marine Protected Areas Policy. The aquaculture law reform is an example of the complexity of legislation in the coastal marine area. Despite a significant aquaculture law reform process ending in 2004, that legislation is now being reviewed further to address the complexity and workability issues that have arisen.

Legislation in the Coastal Marine Area

There are in excess of 40 statutes applying in the coastal marine area. These represent the range of interests in the area, and address for example use and development, environmental protection and Māori interests. One issue with the framework is that there are a wide range of purposes, principles and processes under the various statutes, and there are issues in achieving integration between the different institutions and statutory processes.

Examples of some of the better known statutes applying in the coastal marine area include the:

- Resource Management Act 1991;
- Foreshore and Seabed Act 2004;
- Fisheries Act 1996;
- Biosecurity Act 1993;
- Crown Minerals Act 1991;
- Conservation Act 1987;
- Marine Reserves Act 1971;
- Marine Mammals Protection Act 1978;
- Wildlife Act 1953;
- Local Government Act 2002;
- Maritime Transport Act 1994;
- Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
- Māori Fisheries Act 2004; and
- Māori Commercial Aquaculture Claims Settlement Act 2004.

The legislation is characterised by the following features:

- statutes with a range of purposes and principles which are often not consistent;
- the standards that apply under different statutes to the same issues (for example in relation to Māori interests or marine protected areas) can vary significantly;

- overlap and duplication – for example one activity can require authorisation under a number of statutes. Further, similar outcomes can be achieved through a number of different statutory routes (such as the creation of marine protected areas); and
- a lack of integration between the different statutes.

Administrative and Institutional Arrangements

The complexity of the statutory framework in the coastal marine area is also reflected in the administrative and institutional arrangements for the area. There are a significant number of agencies and entities involved in administering the coastal marine area.

Core agencies/entities include the Ministry of Fisheries, Department of Conservation, Ministry for the Environment, Ministry of Transport, Maritime New Zealand, regional councils, and the Ministry of Economic Development. Further agencies/entities also with responsibility in the area include Land Information New Zealand, Ministry of Research, Science and Technology, the Foundation for Research, Science and Technology, the Ministry of Agriculture and Forestry, the Ministry for Culture and Heritage, the New Zealand Defence Force, the Environmental Risk Management Authority, the New Zealand Food Safety Authority, the Ministry of Health, the Ministry of Justice and the Ministry of Foreign Affairs and Trade.

Interests in the Coastal Marine Area

The statutory framework that applies in the coastal marine area reflects both the broad range of interests at play in that area, and the ad hoc manner in which those interests have been addressed over time through legislation. The coastal marine area is very important to a wide range of interest groups, particularly given the high levels of population, and commercial, recreational and cultural activity in and around the coastal marine area.

Examples of the interests in the coastal marine area include:

- Māori interests, including in relation to commercial, recreational and customary fishing, aquaculture, wahi tapu and areas of significance, and through a range of Treaty settlements (both iwi specific and the more generic fisheries and aquaculture settlements);
- fishing interests including the property rights inherent in the quota management system for commercial fishing, and recreational and customary fishing interests;
- recreational interests including for swimming, yachting, surfing, diving and sporting events;
- economic interests such as for ports and shipping, aquaculture, infrastructure, mining and tourism;
- conservation and environmental protection interests such as the creation of marine protected areas and marine reserves, protected zones in plans under the Resource Management Act, and threatened species protection; and
- community and amenity interests particularly for those who live near the coast or use that area for cultural or recreational pursuits.

A review of coastal legislation reflects this range of interests, and often a single statute can address a range of these different interests. Examples of this include the Fisheries Act 1996 and the Resource Management Act 1991, both of which address both economic interests and environmental protection.

The Nature and Complexity of the Statutory Framework

One way to illustrate the nature and complexity of the statutory framework is to consider the means by which three objectives of the framework are reached. Those objectives are:

- Use and development;
- Conservation and environmental protection; and
- Māori interests.

Use and Development

There is no one statute that governs use and development of the coastal marine area. The relevant statute that applies will depend upon the activity being undertaken. By way of example, the Crown Minerals Act 1991 will apply to mining activities, the Fisheries Act 1996 to fishing activities, the Resource Management Act to activities such as reclamations, dredging and erection of structures, and the Marine Mammal Protection Regulations to commercial whale watching.

The Resource Management Act applies to most use and development activities in the coastal marine area, including mineral extraction, marine mammal viewing and (to a limited extent) fishing (despite the separate statutory regimes for these activities also applying). The Resource Management Act provides for a range of instruments including Regional Coastal Plans to cover the coastal marine area. A person wishing to undertake an activity in the area would need to refer to the Regional Coastal Plan, and may require a resource consent from the Regional Council to undertake such an activity. For example, activities requiring resource consents are likely to include aquaculture, tourism activities, construction of structures such as jetties and marinas, dredging and reclamations.

The statutes that authorise use and development of the coastal marine area often contain provisions designed to protect the environment. For example the Resource Management Act and Fisheries Act 1996 both contain provisions relating to protection of the environment from harm arising from use and development activities.

Conservation/Environmental Protection

The statutory framework for the protection of the coastal marine area is similarly complex. The following are examples of how statutes applying in the coastal marine area can address environmental protection:

- Protection of the environment is an important component of the sustainable management purpose of the Resource Management Act. For example, the Regional Coastal Plans under the Resource Management Act can include provisions for the protection of sensitive areas and/or species. The objectives, policies and rules included in these plans can be drafted in a manner so as to protect these areas/species, as can conditions applied to resource consents granted over the coastal marine area;
- Protection of the environment is also an important component of the sustainable utilisation purpose of the Fisheries Act. There are a range of provisions in the Fisheries Act aimed at protecting the marine environment and species from adverse effects resulting from fishing activities. For example, there can be limits placed on by-catch of associated species, and areas set aside for protection through regulations (such as Benthic Protected Areas). Customary fishing regulations provide for Māori to promote the creation of mataitai reserves which are another form of marine protected area;
- The Marine Mammals Protection Act 1978 contains prohibitions on the killing and/or taking of marine mammals, and there is the ability to create marine protected areas in the form of Marine Mammal Sanctuaries. One example of activities controlled under this statute is the stranding of whales on the beach, and permits are required from the Minister of Conservation for the

taking of whalebone from stranded whales. The Marine Mammal Protection Regulations impose constraints on marine mammal viewing activities. There is also a link with the Fisheries Act 1996 to address harm to marine mammals resulting from fishing activities (through the population management plan process);

- The Wildlife Act 1953 contained prohibitions on the killing and/or taking of protected wildlife species (such as seabirds), and there is the ability to create protected areas such as in the form of Wildlife Sanctuaries, Wildlife Refuges and Wildlife Management Reserves. Permits are required from the Director-General of Conservation for the killing and/or taking of wildlife. There is also a link with the Fisheries Act to address harm to marine mammals resulting from fishing activities (through the population management plan process);

- The Marine Reserves Act 1971 provides a process for the declaration of an area to be a marine reserve. A marine reserve results in significant restrictions on activities that can be undertaken in an area, with the primary focus being on protection. As noted above protected areas can also be created through the Marine Mammals Protection Act, the Wildlife Act, the Resource Management Act and the Fisheries Act; and

- The Biosecurity Act 1993 provides for pest management in the coastal marine area, include through national and regional pest management strategies. Biosecurity can also be addressed through the Resource Management Act.

Recognition and Protection of Māori interests

Another illustration of the complexity of the statutory framework applying to the coastal marine area is the manner in which Māori interests are addressed. There is no one statute or standard applying to Māori interests in the coastal marine area. Rather, those interests are addressed in different ways from statute to statute. By way of example:

- The Conservation Act 1987 requires that conservation legislation (including statutes such as the Marine Reserves Act, Marine Mammals Protection Act and Wildlife Act) is administered so as to "give effect to" the principles of the Treaty of Waitangi;

- The Resource Management Act requires that persons exercising functions and powers under that statute "recognise and provide for" the relationship of Māori with certain resources, have "particular regard to" kaitiakitanga and "take into account" the principles of the Treaty of Waitangi;

- The Fisheries Act 1996 requires persons exercising powers and functions to act in a manner consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;

- As a result of the 1992 fisheries settlement, the Fisheries Act 1996 provides for the making of customary fisheries regulations which allow for Māori to authorise customary fishing activities and for mātaitai reserves to be created; and

- The Local Government Act 2002 includes principles and requirements intended to facilitate Māori participation in local government decision-making processes.

The complexity of the statutory framework and the different standards that apply create challenges for Māori, public authorities and the public in terms of dealing with Māori interests in the coastal marine area.

Conclusion

The statutory framework for the coastal marine area comprises in excess of 40 statutes that have been developed in an ad hoc manner over a long period. These statutes reflect a wide range of underlying interests in the area, and an attempt to balance those interests through legislation. There is at times a lack of consistency and integration between the various statutes, and there are examples of duplication and overlaps in the framework. The means by which differing objectives are met by the statutory framework is a useful example of the complexity of this framework.

3 International Law on Indigenous Peoples' Rights and the Foreshore and Seabed

Claire Charters and Andrew Erueti "International Law on Indigenous Peoples' Rights and the Foreshore and Seabed"

(Memorandam to the Ministerial Review Panel 11 June 2009)

1 Introduction

We have been requested to:

- set out international law on the rights of Indigenous peoples relevant to New Zealand's Foreshore and Seabed Act 2004 (FSA);
- explain the applicability of international law to the foreshore and seabed issue;
- assess the FSA's compliance with international law; and
- suggest options for addressing issues raised by the FSA that are consistent with international law.

We have borne in mind the Foreshore and Seabed Review Panel's (Panel) terms of reference. We do not set out the background to the foreshore and seabed issue nor the substance of the FSA on the assumption that it is not required by the Review Panel.

The opinions expressed here are consistent with the views expressed in our publications on the rights of Indigenous peoples' under international law.[1]

2 International Legal Obligations

The sources of international legal obligations relevant to Māori interests in the foreshore and seabed are set out here.

a Universal Human Rights Treaties

Universal human rights treaties ratified by New Zealand have been interpreted to protect Indigenous peoples' rights to lands, territories and resources, for example the right to self-determination and the right to culture under Articles 1 and 27 respectively of the International Covenant on Civil and Political Rights (ICCPR).[2]

In its General Comment on Article 27, the Human Rights Committee (HRC), which interprets the ICCPR, stated that culture "may consist in a way of life which is closely associated with territory and use of its resources" and "manifests itself in many forms, including a particular way of life associated with the use of land resources".[3]

Protection of indigenous peoples' land rights has frequently been stressed in HRC comments on states' reports. For example, the HRC recommended that Mexico respect Indigenous peoples' "customs and culture and their traditional patterns of living, enabling them to enjoy the usufruct of their lands".[4]

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[1] Including Claire Charters "Indigenous Peoples and International Law and Policy" (2007) PLR; Claire Charters "The Road to the Adoption of the Declaration on the Rights of Indigenous Peoples" (2007) 4 NZYIL"; "Responding to Waldron's Defence of Legislatures: Why Parliament Cannot Protect Rights in Hard Cases" (2006) 4 NZ Law Rev; Claire Charters "The Rights of Indigenous Peoples" [2006] NZLJ; Claire Charters "Developments in Indigenous Peoples' Land Rights under International Law and their Domestic Implications" [2005] 21 NZULR; Andrew Erueti "The Demarcation of Indigenous Peoples' Traditional Lands: Comparing Domestic Principles of Demarcation with Emerging Principles of International Law" (2006) 23 Arizona Jnl of Int'l and Comp L; and Andrew Erueti "The Use of International Human Rights Fora to Protect Māori Property Rights in Oil and Gas and Foreshore-Seabed"(2004) YBNZJ.

[2] Article 27 states, "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." International Covenant on Civil and Political Rights (19 December 1966) 999 UNTS 171.

[3] UN Human Rights Committee, "General Comment 23: The Rights of Minorities" (8 April 1994) paras 3.2 and 7.

[4] UN Human Rights Committee, "Concluding Observations on Mexico's Fourth Periodic Report" (27 July 1999) CCPR/C/79/Add.109, para 19.

The HRC has been most progressive on Indigenous rights to land in decisions on communications brought by Indigenous peoples.[5] In the *Lubicon Lake* communication, Chief Ominayak, on behalf of his Band, alleged that the Canadian government allowed the Alberta provincial government to expropriate its territory for the benefit of private corporate interests.[6] The HRC found Canada in breach of Article 27 of the ICCPR.

The HRC's more recently expressed willingness to take the ICCPR's guarantee of a peoples' right to self-determination into account when interpreting Article 27 in communications from Indigenous peoples will support the protection of Indigenous peoples' land rights under the ICCPR.[7] The right to self-determination includes the right of peoples to "freely dispose of their natural wealth and resources", which includes land.[8] The HRC suggested to Canada that "extinguishing aboriginal rights be abandoned as incompatible with Article 1 [the right to self-determination] of the Covenant".[9]

The Committee on the Elimination of Racial Discrimination (CERD Committee) interprets the right to freedom from racial discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to require states to protect Indigenous peoples' land rights.[10] Its 1997 General Recommendation on Indigenous Peoples:[11]

> calls upon States parties to recognise and protect the rights of Indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands, territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

In observations on States' reports, the CERD Committee has sought to induce States to respect Indigenous peoples' rights under Indigenous peoples' customary law.[12] After reviewing Australia's state report in February/March 2005 the CERD Committee criticised the priority afforded to certainty over Indigenous title under the Australian Native Title Act 1993.[13]

The CERD Committee has assessed numerous petitions from Indigenous peoples alleging state non-compliance with their land rights, including in relation to the FSA. It has consistently required states to recognise and protect Indigenous peoples' land rights.[14]

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[5] See P Thornberry, *Indigenous Peoples and Human Rights* (2002) 122-181, and S J Anaya, *Indigenous Peoples in International Law* (2nd ed, 2004). For example, the HRC has recognised Indigenous peoples' non-traditional economic cultural rights, see *Lansmann et al v Finland No 1* Comm No 511/1992. Views adopted 26 October 1994, Report of the Human Rights Committee, vol II, GAOR 50th Session No 40 UN Doc A/50/40, pp 66-76, and *Apirana Mahuika et al v New Zealand* Comm No 547/1993; Report of the Human Rights Committee (15 November 2000) CCPR/C/70/D/547/1993.

[6] *Bernard Ominayak, Chief of the Lubicon Lake Band v Canad*a Comm No 167/1984; Report of the Human Rights Committee, vol II (1990) UN Doc A/45/40, para 2.3.

[7] *Apirana Mahuika et al v New Zealand* Comm No 547/1993; Report of the Human Rights Committee (15 November 2000) CCPR/C/70/D/547/1993, para 9.2.

[8] International Covenant on Civil and Political Rights (19 December 1966) 999 UNTS 171, Art 1(2).

[9] UN Human Rights Committee, "Concluding Observations of the Human Rights Committee: Canada" (7 April 1999) CCPR/C/79/Add.105, para 8.

[10] International Convention on the Elimination of All Forms of Racial Discrimination (4 January 1969) 660 UNTS 195.

[11] UN Committee on the Elimination of Racial Discrimination, "General Recommendation XXIII: Indigenous Peoples" (18 August 1997) A/52/18, annex V, para 5. For an early analysis of the compliance of the government's policies on the foreshore and seabed with the ICERD, see A Erueti, "The Use of International Human Rights Fora to Protect Māori Property Rights in the Foreshore and Seabed and in Minerals" (2004) 7 Yearbook of New Zealand Jurisprudence 86.

[12] For example, it highlighted the importance of land for Indigenous peoples and "their cultural and spiritual identity, including the fact that they have a different concept of land use and ownership" in UN Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala" (23 April 1997) CERD/C/304/Add.21, para 31.

[13] UN Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia" (March 2005) CERD/C/AUS/10/15, para 16.

[14] See, for example, the Office of the High Commissioner for Human Rights website http://www2.ohchr.org/english/bodies/cerd/early-warning.htm (last accessed 9 June 2009).

b International Labour Organisation Conventions and Jurisprudence

International Labour Organisation Convention 169 on Indigenous and Tribal Peoples (1989) (ILO Convention 169) requires states to recognise and protect Indigenous peoples' ownership and possession of the lands that they traditionally occupy.[15] It also provides that Indigenous peoples have a right to restitution where their land is taken by the state or, where return is not possible, a right to lands of equal status and quality.[16] Indigenous peoples can elect compensation as an alternative.

While the ILO Convention 169 does not explicitly protect Indigenous peoples' land rights under Indigenous customary law, instead stressing traditional occupation, it requires states to have due regard to Indigenous peoples' customs or customary laws as a general rule.[17] Article 17 recognises Indigenous peoples' land tenure systems.

The ILO Governing Body has also required states that have ratified the ILO Convention 169 to respect Indigenous peoples' land rights. For example, an ILO tripartite Committee noted, after considering Peruvian legislation to convert Indigenous property into individual titles, that governments:[18]

> shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands and territories (…) which they occupy or otherwise use, and in particular the collective aspects of this relationship.

c Regional International Institutions and Jurisprudence

The Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have recognised states' obligations to protect Indigenous peoples' rights to their lands, territories and resources, and demarcate such lands, in a number of decisions.[19]

One of the more important aspects of the Inter-American human rights jurisprudence is the acceptance that the right to property does not only encompass Western property rights recognized by the state but also property interests that arise from Indigenous systems of land tenure. In other words, Indigenous peoples' rights to lands (based on their relationship to the land and traditional use etc) are recognised by international law and this is a right that exists independently of any domestic legal recognition of Indigenous peoples' land rights. Moreover, the Commission and Court have rejected the claim that there must be evidence of a continuous connection to the lands claimed from the time of sovereignty.[20]

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[15] ILO, Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (27 June 1989), art 14.

[16] Ibid, art 16.

[17] Ibid, art 8(1).

[18] ILO Governing Body, "Report adopted by the Governing Body at its 271st Session regarding the representation made by the General Confederation of Workers of Peru, alleging non-observance of Convention No.160 by Peru" (March 1999) Doc GB.270/16/1.

[19] I/A HR Court, *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Series C (No. 79) (2001); *Moiwana Community v. Surinam*, Series C (No. 124) (2005); *Yakye Axa Indigenous Community v. Paraguay*, Series C (No. 125) (2005); *Sawhoyamaxa Indigenous Community v. Paraguay*, Series C (No. 146) (2006); I/A HR Court, *Saramaka People v. Suriname*, Series C (No. 172) (2007); *Mary and Carrie Dann*, Case 11.140 (United States), (27 December 2002) Inter-Am Comm H R, Report 75/02. The Commission wrote, at para 128: "[Recognition of the collective aspect of Indigenous rights] has extended to acknowledgment of a particular connection between communities of Indigenous peoples and the lands and resources that they have traditionally owned and used, the preservation of which is fundamental to the effective realisation of human rights of Indigenous peoples." *Maya Indigenous Communities of the Toledo District v Belize* (12 October 2004) (Inter-Am Comm H R, Report 96/03. The Commission wrote, at para 117: "[T]he organs of the inter-American human rights system have recognised that the property rights protected by the system are not limited to those property interests that are already recognised by states or that are defined by domestic law, but rather the right to property has an autonomous meaning in international human rights law. In this sense, the jurisprudence of the system has acknowledged that the property rights of Indigenous peoples are not defined exclusively by entitlements within a state's formal legal regime, but also include the Indigenous communal property that arises from and is grounded in Indigenous custom and traditions."

[20] *Maya Indigenous Communities of the Toledo District v Belize* (12 October 2004) (Inter-Am Comm H R, Report 96/03) paras 127-130.

As discussed below, the decision of the Inter-American Commission of Human Rights on Belize Mayan land rights was persuasive in the Belize Supreme Court decision to recognise such land rights. Importantly, the Belize Supreme Court rejected the Government's arguments based on restrictive common law aboriginal title principles preferring, instead, to recognise Mayan communal land rights based on their customary practices and norms.[21] In its 2007 decision in *Saramaka v Suriname*, the Inter-American Court stated:[22]

> [t]he Court observes that although so-called judge-made law may certainly be a means for the recognition of the rights of individuals, particularly under common-law legal systems, the availability of such a procedure does not, in and of itself, comply with the State's obligation to give legal effect to the rights recognized in the American Convention. That is, the mere possibility of recognition of rights through a certain judicial process is no substitute for the actual recognition of such rights.

d The Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples requires states to: recognise and protect[23] Indigenous peoples' spiritual relationships with their lands, territories and resources, including those no longer possessed by Indigenous peoples; recognise Indigenous peoples' rights to own their lands; provide mechanisms to recognise and adjudicate Indigenous peoples' rights to their lands, territories and resources; and provide redress where Indigenous peoples' lands are taken, occupied, used or damaged without Indigenous peoples' free, prior and informed consent.

e Support from International Institutions

A number of other international institutions have recognised Indigenous peoples' rights under international law including, for example, the UN Special Rapporteur on Indigenous Peoples' Permanent Sovereignty Over Natural Resources and the UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people (the Special Rapporteur on Indigenous Peoples).[24]

f Summary of International Legal Obligations

Under international law, states have obligations to:

- respect Indigenous peoples' spiritual relationships with their traditionally owned, occupied or used lands, territories, waters, coastal seas and other resources (ILO Convention 169, CERD Committee interpretation of ICERD, Inter-American Human Rights Commission and Court case law and the Indigenous Peoples' Declaration);

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[21] *Aurelio Cal in his on behalf and on behalf of the Maya Village of Santa Cruz et al v Belize* Claim 171 of 2007, Supreme Court of Belize.

[22] I/A HR Court, *Saramaka v Suriname*, Series C (2007) at para 105.

[23] UN General Assembly Resolution 61/295 "United Nations Declaration on the Rights of Indigenous Peoples" (13 September 2007) UN Doc A/RES/61/295.

[24] United Nations Sub-Commission on the Promotion and Protection of Human Rights, "Indigenous Peoples' Permanent Sovereignty Over Natural Resources: Final Report by Special Rapporteur Erica-Irene A Daes" (14 July 2004) E/CN.4/Sub.2/2004/30, para 39. United Nations Commission on Human Rights, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples" (4 February 2002) E/CN.4/2002/97, paras 39-48. He has also commented on the devastating impact that large scale and major development can have on Indigenous peoples' land: United Nations Commission on Human Rights, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples" (21 January 2003) E/CN.4/2003/90. In the United Nations Commission on Human Rights, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples" (26 January 2004) E/CN.4/2004/80, he illustrates the role of colonial justice systems in Indigenous peoples' loss of land. The Special Rapporteur has also reviewed various states' respect for Indigenous land rights. He has visited a number of countries, including Chile, Canada, the Philippines and Guatemala, and prepared corresponding reports. For example, in relation to Chile he writes, "one of the most serious long-standing problems affecting Indigenous peoples in Chile relates to land ownership and territorial rights as a result of a long process that has left them stripped of their lands and resources." See United Nations Commission on Human Rights, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples" (17 November 2003) E/CN.4/2004/80/Add.3, executive summary.

- respect Indigenous peoples' right to own, use, develop and control their lands (ILO Convention 169, HRC interpretation of ICCPR, CERD Committee interpretation of ICERD, Inter-American Human Rights Commission and Court case law and the Indigenous Peoples' Declaration);
- respect Indigenous peoples' customs, traditions and land tenure systems when legally recognising and protecting Indigenous peoples' lands, territories and resources (ILO Convention 169, CERD Committee interpretation of ICERD, Inter-American Human Rights Commission and Court case law and the Indigenous Peoples' Declaration);
- establish processes to recognise and adjudicate Indigenous peoples' rights to lands, territories and resources (the Indigenous Peoples' Declaration); and
- provide Indigenous peoples with redress – including restitution or lands, territories and resources equal in quality – when lands, territories and resources are confiscated, taken, occupied, used or damaged without Indigenous peoples' free, prior and informed consent (ILO Convention 169, CERD Committee interpretation of the ICERD, Inter-American Human Rights Commission and Court case law and the Indigenous Peoples' Declaration).

3 Application of Indigenous Peoples' Rights Under International Law to New Zealand

a Formally Binding Treaty Obligations

New Zealand is formally bound, as a matter of international law, by international treaties it has ratified, such as the ICCPR and the ICERD, and customary international law.

New Zealand has incorporated many human rights treaties into domestic law, such as the ICCPR in the Bill of Rights Act 1990 (BORA). Thus, the BORA includes, in section 20, the right to culture under Article 27 of the ICCPR, and the right to freedom from discrimination, also from the ICERD, in section 19.

Where treaties New Zealand has ratified have not been incorporated into domestic law, they still influence New Zealand law under the doctrine that domestic law should be interpreted consistently with international law.[25]

To the extent that Indigenous Peoples' Declaration, ILO and Inter-American jurisprudence influence the interpretation of the human rights treaties New Zealand has ratified, and the content of customary international law, New Zealand policy and law should be interpreted consistently with it also, even though it is not formally binding in and of itself. As was noted in *R v Goodwin*, "whether a decision of the Human Rights Committee is absolutely binding in interpreting the Bill of Rights Act may be debatable, but at least it must be of considerable persuasive authority."[26] It is not surprising, then, that former Supreme Court Justice and current International Court of Justice Judge Rt Hon Sir Kenneth Keith has stated:[27]

> If the Treaty text is directly part of the law (…) the courts have stressed the importance of using international methods of interpretation. They have used a valuable statement by Lord Wilberforce that they should determine the meaning unconstrained by technical rules of

[25] New Zealand Law Commission *A New Zealand Guide to International Law and Its Sources* (NZLC R 34, Wellington, 1996) para 71. This was the approach taken to international law in *New Zealand Airline Pilots Association Inc v Attorney-General* [1997] 3 NZLR 269, 289 (CA).

[26] *R v Goodwin* (No 2) [1990-92] 3 NZBORR 314, 321.

[27] Rt Hon Sir Kenneth Keith, "The Impact of International Law on New Zealand Law" (1998) 7 Waikato LR 1, 23. Sir Keith footnotes the following references: *James Buchanan & Co Ltd v Babco Shipping and Forwarding* (UK) Ltd [1978] AC 141, 152, eg in *King-Ansell v Police* [1979] 2 NZLR 531, 537; *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, 714; *Baltic Shipping Co Ltd v Pegasus Lines SA* [1996] 3 NZLR 641, 647; see also *CBI NZ Ltd v Badger Chiyoda* [1989] 2 NZLR 669, 682.

> English law, or of English precedent, but on broad principles of general acceptation.

The UN Special Rapporteur on Indigenous Peoples writes of a "common normative understanding" of Indigenous peoples' rights under international law, epitomised by the Indigenous Peoples' Declaration as it has built on existing international law.[28] He states that,[29]

> [t]he practice of international bodies and mechanisms in recent decades has significantly contributed to building an understanding of the rights of Indigenous peoples on the basis of general human rights norms and a wide array of international instruments. The authoritative interpretation of these norms has contributed to the gradual crystallization of a universal common understanding of the minimum content of the rights of these peoples as a matter of international law and policy.

b Customary International Law

Some international law on Indigenous peoples' rights may be reaching the status of customary international law, as is suggested by the above quote from the Special Rapporteur on Indigenous Peoples.

Customary international law is made up of "general and consistent practice followed by states from a sense of legal obligation".[30] In many instances, human rights fail the test of "consistent state practice", as human rights are often breached. However, the International Court of Justice has concluded that the practice of states need not be "perfect" or "completely consistent" and:[31]

> [t]he Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of states should, in general, be consistent with such rules, and that such instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule.

The Special Rapporteur on Indigenous Peoples writes:[32]

> [a]lbeit clearly not binding in the same way that a treaty is, the Declaration relates to already existing human rights obligations of States, as demonstrated by the work of United Nations treaty bodies and other human rights mechanisms, and hence can be seen as embodying to some extent general principles of international law. In addition, insofar as they connect with a pattern of consistent international and State practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law.

States may claim "persistent objector" status if they persistently object to a specific customary international law norm, which exempts them from the application of that customary international law. New Zealand has not claimed this status in relation to the Indigenous Peoples' Declaration or Indigenous peoples' rights under international law.

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[28] See UN Office of the High Commissioner for Human Rights at http://daccessdds.un.org/doc/UNDOC/GEN/G08/149/40/PDF/G0814940.pdf?OpenElement (last accessed 8 June 2009).

[29] Ibid.

[30] A E Roberts, "Traditional and Modern Approaches to Customary International Law: A Reconciliation" (2001) 95 AJIL 757, 758. The International Court of Justice has defined customary international law as "settled practice" by states and as being "carried out in such a way as to be evidence of a belief that this practice is rendered obligatory by the rule of law requiring it": *North Sea Continental Shelf (FRG/Den; FRG/Neth)* [1969] 169 ICJ Rep 3, 44.

[31] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v US)* Merits [1986] ICJ Rep 14, para 186.

[32] UN Office of the High Commissioner for Human Rights at http://daccessdds.un.org/doc/UNDOC/GEN/G08/149/40/PDF/G0814940.pdf?OpenElement (last accessed 8 June 2009).

c Sound Policy Reasons for Compliance with International Law

A prudent authority would also take into account the Indigenous Peoples' Declaration. It is relevant that:

- the Declaration was negotiated over 25 years;
- the Declaration has received enormous support from the international community (including from all regions of the world) – 144 states supported its adoption in the UN General Assembly;
- the Declaration was drafted with the input of states and Indigenous peoples from all regions of the world;
- New Zealand holds itself out internationally as in compliance with, and a promoter of, international human rights;
- it represents the clearest, most authoritative statement of the rights of Indigenous peoples; and
- provides a principled framework for governments who wish to commit to respecting Indigenous peoples' way of life and their viability as vibrant communities.

The Belize Chief Justice, in a Belize High Court decision involving Mayan claims to land held that while international instruments, including the Indigenous Peoples' Declaration and international tribunal interpretations of them are not formally legally binding, he could "hardly be oblivious to them" and may even find them "persuasive".[33]

d The Possibility of Censure

In *Tavita*, Cooke P considered that individuals' recourse to the HRC would be a factor to consider when the question whether international human rights treaties are a mandatory relevant consideration in administrative decision-making is finally decided. He wrote:[34]

> [i]f and when the matter does fall for decision, an aspect to be borne in mind may be (…) that since New Zealand's accession to the Optional Protocol the United Nations Human Rights Committee is in a sense a part of this country's judicial structure, in that individuals subject to New Zealand jurisdiction have direct rights of recourse to it. A failure to give practical effect to international instruments to which New Zealand is a party may attract criticism. Legitimate criticism could extend to the New Zealand courts if they were to accept the argument that, because a domestic statute giving discretionary powers in general terms does not mention international human rights norms or obligations, the executive is necessarily free to ignore them.

This comment suggests that potential censure by international human rights treaty bodies is a reason for courts (and other authorities) to take into account New Zealand's international legal obligations in domestic law. As international human rights treaty body censure is also likely if New Zealand courts take a more restrictive interpretation of human rights than the international human rights treaty bodies, an interpretation of legislation consistent with international human rights bodies' interpretations of international human rights is to be encouraged.[35]

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[33] *Aurelio on his behalf and on behalf of the Maya Village of Santa Cruz et al v Belize* Claim 171 of 2007, Supreme Court of Belize, at para 22.

[34] *Tavita v Minister* of Immigration [1994] 2 NZLR 257, 266.

[35] AS Butler and P Butler write: "the availability of international complaint mechanisms has had an impact. The courts have recognised that (unless domestic law explicitly enacts contrary to international law) there is little point in making decisions contrary to international human rights norms when these are susceptible to challenge on the international plain. Inevitably, this has encouraged counsel to cite, and judges to give effect to, international human rights provisions and jurisprudence." AS Butler and P Butler, "The Judicial Use of International Human Rights Law in New Zealand" (1999) 29 VUWLR 173, 190.

In addition to oversight of New Zealand by UN treaty bodies, there are many other bodies that will continue to examine, and censure, New Zealand where it does not comply with international obligations to respect and protect Indigenous peoples' land rights, including the following:[36]

- The UN Human Rights Council: the Human Rights Council is the principal, and highest ranking, UN body on human rights and is made up of 47 states, elected periodically. It conducts a "universal periodic review" of states' compliance with international human rights obligations. In 2009, the Human Rights Council recommended that New Zealand:[37]
  - ratify ILO Convention 169;
  - support, and implement, the Indigenous Peoples' Declaration;
  - "engage with the Māori and wider community to promote the realization of Indigenous rights";
  - "[c]ontinue to address all forms of political, economic and social discrimination against the Māori by meeting their various demands for constitutional and legal reforms and recognition";
  - "consistent with the observations of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples, *continue the new dialogue between the State and the Māori regarding the Foreshore and Seabed Act of 2004, in order to find a way of mitigating its discriminatory effects through a mechanism involving prior informed consent of those affected*" [our emphasis]; and
  - "find appropriate ways to provide adequate compensation to Māori, in particular for their loss of land."
- ***The UN Permanent Forum on Indigenous Issues (PFII):*** the PFII, which meets once a year, is a forum in which Indigenous peoples often allege breaches of Indigenous peoples' human rights. It is in the process of examining ways in which it can review states' compliance with the Declaration.[38]
- ***The UN Special Rapporteur on Indigenous Peoples:*** the Special Rapporteur uses, amongst other instruments, the Indigenous Peoples Declaration and ILO Convention 169 as the normative framework for his assessment of states' compliance with the human rights of Indigenous peoples. As discussed below, New Zealand, and the FSA specifically, has been the focus of the Special Rapporteur's criticism. He also has the mandate to respond to communications alleging breaches of Indigenous peoples' rights.[39]

[36] UN Human Rights Council "Draft Report of the Working Group on the Universal Periodic Review: New Zealand" UN Doc A/HRC/WG.6/5/L/7 (11 May 2009).

[37] Ibid.

[38] See, for example, its work in relation to Article 42 of the Indigenous Peoples' Declaration available at the UN Permanent Forum on Indigenous Issues http://www.un.org/esa/socdev/unpfii/en/workshops.html (last accessed 10 June 2009).

[39] Human Rights Council Resolution 6/12 "Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People" (21 September 2007) and available at the Office of the High Commissioner for Human Rights at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_12.pdf (last accessed 9 June 2009).

4 Evaluation of the FSA's Compliance with International Law

The FSA does not comply with international law on the rights of Indigenous peoples for, amongst others, the following reasons:

- it discriminates against Māori in extinguishing all extant potential customary law or aboriginal law titles to the foreshore and seabed but not freehold titles, without adequate justification;
- the tests to establish customary rights orders or territorial customary rights orders are extremely difficult to meet, undermining the states' obligation to recognise and protect Indigenous peoples' land rights under international law;
- there is no guaranteed redress for the taking of Māori customary or common law aboriginal titles to the foreshore and seabed;
- mechanisms to recognise Māori interests in the foreshore and seabed do not adequately take into account tikanga Māori; and
- the FSA did not receive the free, prior and informed consent of Māori before it was enacted.

As mentioned, the CERD Committee found the FSA to discriminate against Māori in contravention of the ICERD, recommending that the government resume a dialogue with Māori "to seek ways of lessening its discriminatory effects, including where necessary through legislative enactment".[40]

The Special Rapporteur on Indigenous Peoples highlighted that the FSA:

- expropriated Māori land rights;
- does not provide any guarantee of equitable redress; and
- was considered discriminatory.

He recommended the repeal or amendment of the FSA.[41]

5 Alternatives to the FSA to Comply with International Law

a Relevant Principles

International law does not provide a "one-size-fits-all" procedure for recognising and protecting Indigenous peoples' land rights. Nonetheless, some guiding principles are relevant, including the following:

- *International law recognises Indigenous peoples' rights in lands, territories and resources even when domestic law does not*. For example, in the Belize Mayan case, the Inter-American Commission on Human Rights found that the rights to property:[42]

  > are not limited to those property interests that are already recognized by States or that are defined by domestic law, but rather that the right to property has an autonomous meaning in international human rights law. In this sense, the jurisprudence of the system has acknowledged

[40] United Nations Committee on the Elimination of All Forms of Racial Discrimination, "Decision 1(66): New Zealand Foreshore and Seabed Act 2004" (11 March 2005) CERD/C/66/NZL/Dec.1. For a close analysis of the arguments made, process leading to, and substance of the CERD Committee's FSA Decision, see C Charters and A Erueti, "Report: the CERD Committee's Review of the Foreshore and Seabed Act" (2005) 36(2) VUWLR 257.

[41] "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental freedoms of Indigenous Peoples, Rodolfo Stavenhagen" UN Doc E/CN.4/2006/78/Add.3 (Geneva, 13 March 2006) and available at the Office of the High Commissioner for Human Rights http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/36/PDF/G0611836.pdf?OpenElement (last accessed 9 June 2009).

[42] *Aurelio Cal in his on behalf and on behalf of the Maya Village of Santa Cruz et al v Belize* Claim 171 of 2007, Supreme Court of Belize, at para 171.

that the property rights of Indigenous peoples are not defined exclusively by entitlements within a state's formal regime, but also include that Indigenous communal property that arises from and is grounded in Indigenous custom and tradition.

- Legislative or judicial mechanisms to recognise common law aboriginal title may not provide adequate protection of Indigenous peoples' land rights under international law. This was reflected in the CERD Committee's criticism of the FSA and the Australian Native Title Act 1993. [43]

- Any mechanism to deal with Māori interests in the foreshore and seabed must be implemented with Indigenous peoples' free, prior and informed consent. This is required by the CERD Committee and the Indigenous Peoples' Declaration, and was highlighted by the Human Rights Council in its universal periodic review of New Zealand, mentioned above.

- If Indigenous peoples' land rights are confiscated, taken, occupied, used or damaged without Indigenous peoples free, prior and informed consent, redress, in the form of restitution or, if not possible, by replacement lands, is required. Only if that is not possible are other forms of compensation appropriate.

- Given the underlying principle of partnership between Indigenous peoples and states in international law, reflected most clearly in the Indigenous Peoples' Declaration, Māori and the Government should agree to the most appropriate means to address their interests in the foreshore and seabed.

b International Law Consistent Alternatives to the FSA

In the light of the abovementioned international law on the rights of Indigenous peoples, we are of the view that any policy of legislation to repeal or amend the FSA should reflect the following principles:

- the assumption that iwi and hapū have legal title over the foreshore and seabed under tikanga Māori unless proved otherwise by the Crown (similar to the concept of adverse possession).

- the common law doctrine of aboriginal title should not constrain the recognition of hapū and iwi property interests in the foreshore and seabed as recognised under international law.

- that hapū and iwi should negotiate with the Crown to determine how their interests in the foreshore and seabed can be realised (consistently with the principle of Indigenous peoples' self-determination).

- the terms of the negotiation between the Crown and hapū and iwi should be determined by the Crown and Māori, in accordance with New Zealand's obligation to acquire the free, prior and informed consent of Māori before adopting measures that affect them (reflected in the CERD Committee's FSA Decision and the Indigenous Peoples' Declaration).

- the terms of negotiation should include, as above, the basic assumption that iwi and hapū have legal title over the foreshore and seabed under tikanga Māori and that negotiations should comply with international human rights and Indigenous peoples' rights law.

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[43] United Nations Committee on the Elimination of All Forms of Racial Discrimination, "Decision 1(66): New Zealand Foreshore and Seabed Act 2004" (11 March 2005) CERD/C/66/NZL/Dec.1. For a close analysis of the arguments made, process leading to, and substance of the CERD Committee's FSA Decision, see C Charters and A Erueti, "Report: the CERD Committee's Review of the Foreshore and Seabed Act" (2005) 36(2) VUWLR 257. See United Nations Committee on the Elimination of Racial Discrimination, "Decision 2(54) on Australia" (18 March 1999) CERD A/54/18.

- negotiations between the Crown and hapū and iwi in relation to their interests in the foreshore and seabed should be reviewable, by the courts or other appropriate body (possibly the Māori Land Court or the Waitangi Tribunal), to ensure that principles of fairness, equality and independence are complied with, as well as the basic principles underlying the negotiations (eg the assumption of hapū and iwi ownership and compliance with international law).
- if hapū or iwi are deprived of their property interests in the foreshore and seabed, adequate redress is required in the form of property interests of equal quality and value and, only if that is not possible, compensation.

4
Reading List

Books

Title
Tom Bennion; Malcolm Birdling and Rebecca Paton *Making sense of the foreshore and seabed: A special edition of the Māori Law Review* (Māori Law Review, Wellington 2004)
Richard Boast *Foreshore and Seabed* (LexisNexis, Wellington, 2005)
Claire Charters and Andrew Erueti (eds) *Māori Property Rights and the Foreshore and Seabed: The Last Frontier* (VUP, Wellington, 2007)

Articles and Other Materials

Title
Andrew Erueti "Translating Māori Customary Title into a Common Law Title" (2003) NZLJ 421
Claire Charters "Developments in Indigenous Peoples' Rights under International Law and their Domestic Implications" 2005 21(4) NZULR 511
Claire Charters and Andrew Erueti "Report from the Inside: the CERD Committee's Review of the Foreshore and Seabed Act 2004" (2005) 36 VUWLR 257
Maria Bargh "Changing the game plan: the Foreshore and Seabed Act and constitutional change Kōtuitui" 2006 1 NZ Journal of Social Sciences Online 34
Moana Jackson "Decoupling the Treaty and the Iwi – Summary analysis of the Government's final foreshore and seabed legislative framework as released on 7 April 2004" <http://www.converge.org.nz/pma/fs080404.htm> (last accessed 3 March 2009)
Moana Jackson "The Devil and the Deep Blue Sea – An analysis of the government framework for the foreshore and seabed" <http://www.converge.org.nz/pma/fs201203.htm>(last accessed 3 March 2009)
Paul McHugh "Brief of evidence to the Waitangi Tribunal" in re Applications for an urgent inquiry into Foreshore and Seabed Issues, WAI No 1071.
Paul McHugh "Aboriginal Titles in New Zealand: A Retrospect and Prospect" (2004) 2 NZJPIL 2
Paul McHugh "Setting the Statutory Compass: The Foreshore and Seabed Act 2004"(2005) 3 NZJPIL 255
Richard Boast "Māori proprietary claims to the Foreshore and Seabed after Ngāti Apa" 2004 21 NZULR 1
Richard Boast and Paul McHugh "New Zealand Law Society Seminar: The Foreshore and Seabed (2004) New Zealand Law Society.
Shaunnagh Dorsett and Lee Gooden "Interpreting Customary Rights Orders under the Foreshore and Seabed Act: The New Jurisdiction of the Māori Land Court" (2005) 36 VUWLR 229
Waitangi Tribunal report "Report on the Crown's foreshore and seabed policy" (2004) (Wai 1074) http://www.waitangi-tribunal.govt.nz/reports/view.asp?ReportID=838C5579-36C3-4CE2-A444-E6CFB1D4FA01

Legislation

Title	Location
Foreshore and Seabed Act 2004	www.legislation.govt.nz
Foreshore and Seabed Act (Repeal) Bill	http://www.legislation.govt.nz/bill/member/2006/0086-1/latest/versions.aspx
Resource Management Act 1991	http://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html?search=ts_act_resource+management+act_resel&sr=1
Te Ture Whenua Māori 1993 / Māori Land Act 1993	http://www.legislation.govt.nz/act/public/1993/0004/latest/DLM289882.html?search=ts_act_te+ture+whenua+Māori_resel&sr=1
Crown Minerals Act 1991	http://www.legislation.govt.nz/act/public/1991/0070/latest/DLM242536.html?search=ts_act_Crown+Minerals+Act+1991_resel&sr=1
Fisheries Act 1996	http://www.legislation.govt.nz/act/public/1996/0088/latest/DLM394192.html?search=ts_act_Fisheries+Act+1996_resel&sr=1
Treaty of Waitangi (Fisheries Claims) Settlement Act 1992	http://www.legislation.govt.nz/act/public/1992/0121/latest/DLM281433.html?search=ts_act_Treaty+of+Waitangi+(Fisheries+Claims)+Settlement+Act+1992_resel&sr=1

Foreshore and Seabed Agreements

Title	Location
Ngāti Porou Deed of Agreement	http://www.justice.govt.nz/foreshore/negotiations/te-runanga-o-ngati-porou/Signeddeed.html
Ngāti Pahauwera Agreement in Principle	http://www.justice.govt.nz/foreshore/negotiations/ngati-pahauwera/ngati.html
Te Whānau a Apanui Heads of Agreement	http://www.justice.govt.nz/foreshore/negotiations/te-runanga-o-te-whanau-a-apanui/agreement-february-2008/index.html
Te Rarawa Milestone Document	http://www.justice.govt.nz/foreshore/negotiations/te-runanga-o-te-rarawa/milestone-document.html
Ngāti Porou ki Hauraki Milestone Document	http://www.justice.govt.nz/foreshore/negotiations/ngati-porou-ki-huraki-trust/milestone-document.html
Note: there are other documents relating to the negotiations on http://www.justice.govt.nz/foreshore/negotiations such as the Terms of Negotiations.	

Foreshore and Seabed Bill and Policy

(including material provided by departmental advisors to the Select Committee)

Title
Bill of Rights Act 1990 vet of the Foreshore and Seabed Bill.
Summary of oral hearings
1st reading, 2nd reading and 3rd reading speeches
Transcript of Professor Paul McHugh at Fisheries and Other Sea-related Legislation Committee (13 September 2004)
All independent advice to Select Committee – Timothy J Castle
Report of the Fisheries and Other Sea-related Legislation Committee
Departmental Report on Foreshore and Seabed Bill prepared by the Department of the Prime Minister and Cabinet (8 October 2004)
Response to Question 1 of the Select Committee: "How Māori customary land can be alienated after it has been declared as such?"
Response to Questions 2 and 3 of the Select Committee: "What impact will the ability of the Māori Land Court to issues ancestral connection orders have on various claims settlements acts (which discuss iwi boundaries) and particularly relating to Ngāi Tahi and Tainui (but not limited to these claim settlement acts)?" and "How to address concerns that clause 12(2) is not consistent with the purpose of the Bill which is to preserve the public foreshore and seabed in perpetuity for all New Zealanders (eg entrenchment)?"
Response to Question 4 of the Select Committee: "Provide advice on the types of concepts that could be included in the preamble to the Bill."
Response to Question 5 of the Select Committee: "Provide advice on the combined effect of clauses 74 and 93 of the Bill on the granting of resource consents under the Resource Management Act. In particular, consider this issue in light of the case law on the weight given to the term "protection" in section 6(b) and (c) of the Resource Management Act."
Response to Question 6 of the Select Committee: "Provide advice on potential amendments that could be to TTWMA 1993 to recognise interests in the public foreshore and seabed that are less than fee simple."
Response to Question 7 of the Select Committee: "What are the common law rules and principles under the doctrine of aboriginal title that relate to the recognition of non-territorial customary rights? Provide advice on the rationale underpinning the current tests in clauses 42 and 61".
Response to Question 8 of the Select Committee: "What are the common law rules and principles under the doctrine of aboriginal title in relation to establishing the rights outlined in clauses 28 and 29?"

Title
Response to Questions 9, 10, 11 & 12 of the Select Committee:
Response to Question 9 to the Select Committee: "Provide a report on any issues contained in the Aquaculture Reform Bill that may have relevance for the Foreshore and Seabed Bill".
Response to Question 10 to the Select Committee: "Provide information of Professor Mutu's assertion that the Māori Land Court ruled that Ninety Mile Beach is Māori customary land."
Response to Question 11 to the Select Committee: "Whether the Bill is consistent with the draft Declaration on the Rights of Indigenous Peoples; International Covenant on Civil and Political Rights; and Convention on the Elimination of all Forms of Racial Discrimination".
Response to Question 12 to the Select Committee: "Whether in general coastal lakes and lagoons are caught by the definitions of"foreshore and seabed" and "public foreshore and seabed"? Specifically whether the coastal lakes outlined in submission 8111 [sic] (around Whakaki) are caught by the definitions of"foreshore and seabed" and "public foreshore and seabed"?
Response to Question 13 of the Select Committee: "Provide the Committee with a table of all the current applications before the Māori Land Court."
Response to Question 14 of the Select Committee: "A copy of notes taken by the departmental advisors of the key issues raised by Dr Paul McHugh in his oral submission to the Committee on Monday 13 September"
Response to Question 15 of the Select Committee: "Accession provisions – including a mores specific list of minimum access rights (eg pedestrian access, motorbike access, access on horseback) and including specific subject areas for which regulatory authorities can restrict access eg sustainability, public health and safety"
Response to Question 16 of the Select Committee: "Provide advice on "interested person" status and how other bodies like the Environment Court have interpreted this?"
Response to Question 17 of the Select Committee: "A summary of the key changes made to the government's policy underpinning the Bill made in light of the Waitangi Tribunal's report the December 2003 policy framework was not consistent with the Treaty and its principles".
Response to Question 18 of the Select Committee: "How can clause 3(c) be strengthened to demonstrate the Crown recognises that whānau, hapū and iwi have an ancestral connection in accordance with tikanga Māori (rather than as an expression of kaitiakitanga) with specific parts of the public foreshore and seabed?"
Response to Question 19 of the Select Committee: "Copies of the Taranaki Māori Trust Board's and Te Rūnanga o Ngāi Tahu's complaints to the CERD committee; the CERD committee's response; the government's response to any CERD committee communications".
Response to Question 20 of the Select Committee: "A copy of the Department of Conservation's guideline on valuing reclaimed land (2000)".

Legal Cases

New Zealand cases
Attorney-General v Ngāti Apa [2003] 3 NZLR 643 (CA)
Auckland City Council v Ports of Auckland Ltd [2000] 3 NZLR 614 (CA)
Hume v Auckland Regional Council [2002] 3 NZLR 363 (CA)
Marlborough District Council v Valuer-General [2008] 1 NZLR 690 (HC)
R v Symonds (1847) NZPCC 387 (SC)
Re The Ninety Mile Beach [1963] NZLR 461 (CA)
Te Runanganui o Te Ika Whenua Inc Society v Attorney-General [1994] 2 NZLR 20 (CA)
Te Weehi v Regional Fisheries Officer [1986] 1 NZLR 680 (HC)
Wi Parata v Bishop of Wellington (1877) 3 NZ Jur NS 72 (SC)
Australian cases
Commonwealth v Yarmirr (2001) 208 CLR 1 (CHR)
Daniel v State of Western Australia [2003] FCA 666 (FCA)
Fejo v Northern Territory (1998) 195 CLR 96 (HCA)
Mabo v Queensland (No 2) (1992) 175 CLR 1 (HCA)
Members of the Yorta Yorta Aboriginal Community v Victoria (2002) 194 ALR 538 (HCA)
Western Australia v Ward (2002) 191 ALR 1 (HCA)
Yanner v Easton (1999) 201 CLR 351 (HCA)
Canadian cases
Baker Lake v Minister of Indian Affairs and Northern Development (1979) 107 DLR (3d) 513 (FC)
R v Marshall R v Bernard [2005] 2 S.C.R. 220
Delgamuukw v British Columbia [1997] 3 SCR 1010
Haida Nation v British Columbia (Minister of Forests) [2004] 3 SCR 511
J A Pye (Oxford) Ltd & Anor v Graham & Anor [2003] 1 AC 419
Mitchell v M.N.R. [2001] 1 SCR 911
R v Gladstone [1996] 2 SCR 723
R v Marshall [2003] NSCA 105
R v Sparrow [1990] 1 SCR 1075
R v Van der Peet [1996] 2 SCR 507
Roberts v. Swangrove Estates Ltd and Others [2008] EWCA Civ 98
Roger William v British Columbia [2008] 1 CNLR 112

United Nations

Title
Te Rūnanga o Ngāi Tahu and Treaty Tribes Coalition Response to the New Zealand Governments' Reply to the Committee on the Elimination of Racial Discrimination's Request for More information on the Foreshore and Seabed Bill; 17 December 2004
New Zealand's submission to the Committee on the Elimination of Racial Discrimination; undated
New Zealand response to further questions of the Chair of Committee on the Elimination of Racial Discrimination; 9 March 2005
Committee on the Elimination of Racial Discrimination: Decision 1 (66): New Zealand; 27 April 2005
Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen; 13 March 2006
Committee on the Elimination of Racial Discrimination addendum to report on New Zealand; 18 July 2006
Tribal Collective of Tai Tokerau shadow report to the Committee on the Elimination of Racial Discrimination; 1 March 2007
Māori Party shadow report to the Committee on the Elimination of Racial Discrimination; May 2007
Treaty Tribes Coalition shadow report to the Committee on the Elimination of Racial Discrimination; undated (2007)
Peace Movement Aotearoa shadow report to the Committee on the Elimination of Racial Discrimination; undated (2007)
Aotearoa Indigenous Rights Trust shadow report to the Committee on the Elimination of Racial Discrimination; July 2007
Action for Children and Youth Aotearoa Incorporated shadow report to the Committee on the Elimination of Racial Discrimination; July 2007
Committee on the Elimination of Racial Discrimination summary record of the 1821st meeting; 31 July 2007
Committee on the Elimination of Racial Discrimination summary record of the 1822nd meeting; 2 August 2007
Committee on the Elimination of Racial Discrimination concluding observations on the report submitted by New Zealand; 15 August 2007
New Zealand's state report to the Committee on Civil and Political Rights; 18 February 2008
New Zealand's report to the Committee on the Elimination of Racial Discrimination; 21 January 2009

FM (Jock) Brookfield

Journal Articles
F.M. Brookfield "Māori customary title to foreshore and seabed" (2003) NZLJ 295.
F.M. Brookfield "Māori customary title to foreshore and seabed" (2004) NZLJ 34.
F.M. Brookfield "Māori Claims and the "Special" Juridical Nature of Foreshore and Seabed" (2005) NZLR 179.
F.M. Brookfield "Communal Ownership of (non-Māori) Sea Land" (2006) NZLJ 253.
Books
F.M. Brookfield Waitangi & Indigenous Rights: Revolution, Law and Legitimation, (Auckland University Press, Auckland, 2006) 133-5, 164, 188-94.
F. M. Brookfield "Water, Sea and Foreshore" in Laws of New Zealand (Butterworths, 1997) 1-38.
Select Committee Submission
F. M. Brookfield "Submission to the Fisheries and Other Sea-related Legislation Select Committee on the Foreshore and Seabed Bill 2003).

Select Committee Submissions

Submissions made to the Fisheries and Other Sea-related Legislation Committee on the Foreshore and Seabed Bill (2004)

5 Record of Inquiry

Consultation hui and public meetings

The Panel conducted a comprehensive consultation process across the country. A total of 21 consultation hui and public meetings were held at the following venues:

Bluff	Monday 20 April 2009	Te Rau Aroha Marae
Invercargill	Monday 20 April 2009	Civic Theatre
Christchurch	Tuesday 21 April 2009	Rēhua Marae
Christchurch	Tuesday 21 April 2009	Christchurch Town Hall
Wellington	Wednesday 22 April 2009	Wellington High School
Wellington	Thursday 23 April 2009	Pipitea Marae
Hamilton	Friday 24 April 2009	Rangiaowhia Marae
Hamilton	Friday 24 April 2009	Waikato Stadium
Maketū	Monday 27 April 2009	Whakaue Marae
Tauranga	Monday 27 April 2009	Tauranga Racecourse
Tokomaru Bay	Tuesday 28 April 2009	Pākirikiri Marae
Hastings	Wednesday 29 April 2009	Ōmahu Marae
Napier	Wednesday 29 April 2009	Taradale Town Hall
Auckland	Thursday 7 May 2009	Aotea Centre
Auckland	Saturday 9 May 2009	Ōrākei Marae
Moerewa	Friday 15 May 2009	Ōtiria Marae
Whangarei	Friday 15 May 2009	Barge Show Grounds Events Centre
Waitara	Saturday 16 May 2009	Ōwae Marae
Wanganui	Sunday 17 May 2009	Pūtiki Marae
Wanganui	Sunday 17 May 2009	Wanganui Racecourse
Blenheim	Tuesday 19 May 2009	Ōmaka Marae

List of all submitters

In total the Panel received 580 written submissions and 236 oral submissions. The following is a list of all submitters who made either an oral or written submission to the Panel.

Every effort has been made to ensure that the spelling of the names of submitters are recorded accurately. However, not all names could be verified as a result of the oral transcription of certain submissions and the handwriting on the written submissions. Usually, where there was doubt, alternative spelling was used.

Submitters' submissions in the text of the report have been referenced in the format [Name, record of proceedings number]. The Record of Proceedings numbering system was used by the Panel to group all 580 submitters into 7 different categories.

Name	Organisation / Group	Format	Submission No.
Te Rūnanga o Te Rarawa	Te Rūnanga o Te Rarawa	Oral	1-1-1
		Written	1-1-2
Haami Piripi (at Moerewa)		Oral	1-1-3
Te Rūnanga o Ngāti Porou	Te Rūnanga o Ngāti Porou	Oral	1-2-1
		Written	1-2-2
Matanuku Mahuika (Kahui Legal)		Written	1-2-3
Te Rūnanga o Te Whānau	Te Rūnanga o Te Whānau	Oral	1-3-1
		Written	1-3-2
		Written	1-3-3
Ngāti Pahauwera	Ngāti Pahauwera Development Trust	Oral	1-4-1
		Written	1-4-2
		Written	1-4-3
Te Uri o Hau	Te Uri o Hau	Oral	1-5-1
		Written	1-5-2
Ngāti Porou ki Hauraki ki Harataunga Ki Matāora	Ngāti Porou ki Hauraki Trust	Oral	1-6-1
		Written	1-6-2
Tihi Anne Daisy Noble	Nga Ruahine hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai	Written	2-1-1
		Oral	2-1-2
		Written	2-1-3
Emeritus Professor FM (Jock) Brookfield		Written	3-1-1
		Written	3-1-2
		Written	3-1-3
Dr P G McHugh		Written	3-2-1
Bluff 20 April 2009			
Maria Pera	Te Rūnanga o Te Awarua	Oral	4-1-1
		Written	4-1-2
John Ryan		Oral	4-2-1
Graham (Tiny) Metzger		Oral	4-3-1
Rakihia Tau		Oral	4-4-1
		Written	4-4-2
Barney Hikutai Barret		Oral	4-5-1
		Written	4-5-2
Gail Thompson		Oral	4-6-1
Aaron Leith		Oral	4-7-1
Edward Ellison	Te Rūnanga o Ōtākau	Oral	4-8-1
Rena Naina Peti Kihau-Fowler		Oral	4-9-1
		Written	4-9-2
Cyril Gilroy (Invercargill)		Oral	4-10-1
Cyril Gilroy (at Bluff)		Oral	4-10-2

Name	Organisation / Group	Format	Submission No.
Christchurch held 21 April 2009			
Tim Rochford	Te Rūnanga o Ngāi Tahu	Oral	4-11-1
		Written	4-11-2
James Daniels	Te Rūnanga o Ngāi Tahu	Oral	4-12-1
Te Marino Lenihan		Oral	4-13-1
Megen McKay		Oral	4-14-1
Sacha McMeeking	Te Rūnanga o Ngāi Tahu	Oral	4-15-1
		Written	4-15-2
		Written	4-15-3
Rānui Ngarimu		Oral	4-16-1
Charles Crofts		Oral	4-17-1
		Written	4-17-2
Wellington held 23 April 2009			
Dr Patrick McCombs		Oral	4-18-1
		Written	4-18-2
		Written	4-18-3
John Mitchell	Ngāti Tama ki Te Tau Ihu	Oral	4-19-1
Paul Harman		Oral	4-20-1
Morris Te Whiti Love	Te Atiawa ki te Upoko o te Ika a Mauī Pōtiki Trust	Oral	4-21-1
		Written	4-21-2
Michael Doogan		Oral	4-22-1
Werata Akuhata Aranga		Oral	4-23-1
Mamae Warnes		Written	4-24-1
Hamilton held 24 April 2009			
J Stevenson		Oral	4-25-1
Peter H Barrett		Oral	4-26-1
John Kaati	Hauturu Waipuna C Farm Trustees, Te Motu Island Reserve Trustees, Apakura Recreation Reserve Trustees, Riu Riua Farm Trustees, Mokaiō Marae Trustee, Nga Tai O Kawhia Regional Management Committee	Oral	4-27-1
		Written	4-27-2
		Written	4-27-3
Shane Solomon		Oral	4-28-1
Stan Nepia		Oral	4-29-1
Mihirawhiti Searancke	Ngāti Maniapoto, Ngāti Rora	Oral	4-30-1
		Written	4-30-2
Piripi Winiata		Oral	4-31-1
Nania Mahuta	MP Hauraki/Waikato	Oral	4-32-1
Tom Moke		Oral	4-35-1
Vera van der Voorden Hannah Bright Vera van der Voorden Vera van der Voorden and Nora van der Voorden	Kiwis against Seabed Mining	Oral	4-36-1
		Written	4-36-2
		Written	4-36-3
		Written	4-36-4

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Name	Organisation / Group	Format	Submission No.
Malibu Michael Hamilton	Te Ngaru Roa aa Maui	Oral	4-37-1
		Written	4-37-2
Tommy Moana		Oral	4-38-1
Ted Douglas		Oral	4-39-1
Doreen Wilson		Oral	4-40-1
Maketu held 27 April 2009			
Tauirioterangi Pouwhare	Tuhoe	Oral	4-41-1
		Written	4-41-2
Kiri Tuia Tumarae	Tuhoe	Oral	4-42-1
		Written	4-42-2
Te Ariki Morehu	Ngāti Makino	Oral	4-43-1
		Written	4-43-2
		Written	4-43-3
Jimi McLean	Ngāti Makino	Oral	4-44-1
		Written	4-44-2
Pakitai Raharuhi	Ngāti Makino	Oral	4-45-1
		Written	4-45-2
Tame MacCausland	Waitaha Waitaha, Te Arawa	Oral	4-46-1
		Written	4-46-2
Punoho MacCausland	Waitaha	Oral	4-47-1
Jeremy Gardiner	Te Rūnanga o Ngāti Awa	Oral	4-48-1
		Written	4-48-2
Hamuera Hodge	Ngāti Turipuku (WAI 1141)	Oral	4-49-1
Terekaunuku Whakarongotaimoana (Dean) Flavell	Tapuika	Oral	4-50-1
Ken Dinsdale		Oral	4-53-1
Maanu Paul		Oral	4-54-1
Cleem Tapsell	Tapuika	Oral	4-55-1
Christopher Neave Brayshaw		Oral	4-56-1
		Written	4-56-2
Maru Haere Po Tapsell		Oral	4-57-1
Judge Heta Kenneth Hingston		Oral	4-59-1
		Written	4-59-2
Eru Potaka-Dewes		Oral	4-60-1
Kiri Potaka-Dewes		Oral	4-61-1
Hohepa (Joe) Mason	Te Rūnanga o Te Arawa	Oral	4-118-1
Moerewa held 15 May 2009			
Owen Kingi		Oral	4-51-1
Te Kitohi Pikaahu		Oral	4-52-1
[Unknown] (at Moerewa)		Oral	4-33-1
Anahera Herbert		Oral	4-58-1
		Written	4-58-2

Name	Organisation / Group	Format	Submission No.
Tokomaru Bay held 28 April 2009			
Jason Koia	Ruawaipu Tribal Authority	Oral	4-62-1
		Written	4-62-2
		Written	4-62-3
Sir Henare Kohere Ngata		Oral	4-63-1
		Written	4-63-2
Sue Nikora		Oral	4-64-1
		Written	4-64-2
Raymond Thompson		Oral	4-65-1
Matanuku Mahuika	Te Rūnanga o Ngāti Porou	Oral	4-66-1
Atareta Poananga		Oral	4-67-1
Lou Tangaere	Ruawaipu	Oral	4-68-1
Tui Marino	Te Aitanga a Hauiti Iwi Inc	Oral	4-69-1
		Written	4-69-2
Dr Koro (Te Kapunga) Dewes		Oral	4-70-1
Linda Thornton	Te Whānau a Te Aotawārirangi, Te Whānau a Tapaeururangi	Oral	4-71-1
		Written	4-71-2
Barney Tupara		Oral	4-72-1
		Written	4-72-2
Wiremu Akuhata Evans	WAI 1294	Oral	4-73-1
		Written	4-73-2
Agnes Walker		Oral	4-741
		Written	4-74-2
Rapata Kaa		Oral	4-75-1
		Written	4-75-2
Na Raihania	Ngai Tāmanuhiri Whanui Trust	Oral	4-76-1
		Written	4-76-2
Ani Pahuru-Huriwai and Rongo Jensen		Oral	4-77-1
Lorraine Akuhata	Ruawaipu	Oral	4-78-1
Dennis Akuhata		Oral	4-79-1
Marijke Warmenhoven		Oral	4-80-1
		Written	4-80-2
Robbie Cooper		Oral	4-81-1
Barney Dewes		Oral	4-82-1
Kahutia Houkamau		Written	4-83-1
Hastings held 29 April 2009			
Moana Jackson	Ngāti Kahungunu Iwi Authority	Oral	4-84-1
		Written	4-84-2
Randolph Whaanga	Hapu Mauri Wairoa	Oral	4-85-1
Jerry Hapuku	Te Hauake	Oral	4-86-1
Des Renata	Tuhoe, Hine Kura	Oral	4-87-1

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Name	Organisation / Group	Format	Submission No.
Waipa te Rito	Rongomaiwahine, Ngāti Hikairo Rongomaiwahine Iwi Trust, Ngāti Hinemanu hapū	Oral	4-88-1
		Written	4-88-2
Dick Hawea	Ngāti Porou	Oral	4-89-1
Horowai Puketapu	Ngāti Porou, Ngāti Tahu, Tainui, Rongomaiwahine	Oral	4-90-1
Erina Renata	Ruapani, Block 36 + 37 Trust	Oral	4-91-1
Lester White	Ngāti Poporo	Oral	4-92-1
		Written	4-92-2
Jean McLean-Young	Ngāti Wiremu	Oral	4-93-1
Dennis Thompson	Ngāti Kahungunu	Oral	4-94-1
Lucky Smith	Ngāti Kahungunu	Oral	4-95-1
Waru Allen		Oral	4-96-1
Auckland held 9 May 2009			
Merata Kawharu and Don Wackrow	Ngāti Whatua o Ōrākei Trust Board	Oral	4-97-1
		Written	4-97-2
Toko Renata	Hauraki Māori Trust Board	Oral	4-98-1
Liane Ngamane	Hauraki Māori Trust Board	Oral	4-99-1
		Written	4-99-2
Yvonne Dainty		Oral	4-100-1
Daniel Ngakete-Bennett	Tauranga Moana	Oral	4-101-1
Margaret Kawharu	Ngāti Whātua o Kaipara	Oral	4-102-1
		Written	4-102-2
Atawhai Teneti	Ngāti Whātua ki Ōrākei	Oral	4-103-1
Cameron Hunter		Oral	4-104-1
		Written	4-104-2
Mapuna Turner	Hauraki	Oral	4-105-1
Pamera Warner		Oral	4-106-1
Blenheim held 19 May 2009			
Bernard Hadfield		Oral	4-107-1
		Written	4-107-2
		Written	4-107-3
		Written	4-107-4
		Written	4-107-5
Fred Te Miha	Ngāti Tama Manawhenua ki Te Tau Ihu Trust	Oral	4-108-1
		Written	4-108-2
		Written	4-108-3
Thomas Harrison		Oral	4-109-1
		Written	4-109-2
Raymond Smith	Te Rūnanga o Ngāti Kuia	Oral	4-110-1
		Written	4-110-2
Paia Riwaka-Herbert	Ngāti Apa ki Te Waipounamu Trust	Oral	4-111-1
		Written	4-111-2

Name	Organisation / Group	Format	Submission No.
Selwyn Katene		Oral	4-112-1
		Written	4-112-2
Buna Riwaka		Oral	4-113-1
Richard Bradley	Te Tau Ihu Fisheries Forum	Oral	4-114-1
		Written	4-114-2
Matiu Rei		Oral	4-115-1
John Morgan	Ngāti Rarua Trust	Oral	4-116-1
		Written	4-116-2
Steffan Browning		Oral	4-117-1
Moerewa held 15 May 2009			
Jason Pou	Hokianga Collective	Oral	4-119-1
		Written	4-119-2
		Written	4-119-3
Dr Patu Hohepa		Oral	4-120-1
Paulina Tuimavave Wirihana-Mau		Oral	4-121-1
Tommy Murray	NZ Māori Council	Oral	4-122-1
		Written	4-122-2
Ngapera Kelly		Oral	4-123-1
Merehora Taurua		Oral	4-124-1
Kala White		Oral	4-125-1
Colt Gregory		Oral	4-126-1
Sharon Kaipo		Oral	4-127-1
		Written	4-127-2
Kara George	Waikare Marae Committee (Te Kapotai)	Oral	4-128-1
		Written	4-128-2
Timoti Flavell	Māori Party of Te Hiku o Te Ika	Oral	4-131-1
		Written	4-131-2
Joe Everitt		Oral	4-151-1
		Written	4-151-2
Waitara held 16 May 2009			
Maraekura Horsfall		Oral	4-129-1
		Written	4-129-2
Haumoana White	Ngā hapū o Poutama	Oral	4-130-1
		Written	4-130-2
		Witten	4-130-3
Aroha Houston		Oral	4-132-1
Grant Knuckey		Oral	4-133-1
Peter Moeahu		Oral	4-134-1
Rata Pue		Oral	4-135-1
		Written	4-135-2
Greg White	Te Rūnanga o Ngāti Tama and Ngāti Mutunga	Oral	4-136-1

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Name	Organisation / Group	Format	Submission No.
David Doorbar		Oral	4-137-1
		Written	4-137-2
Te Huirangi Waikerepuru		Oral	4-138-1
		Written	4-138-2
Wanganui held 17 May 2009			
Nancy Tuaine	Whanganui River Māori Trust Board	Oral	4-139-1
		Written	4-139-2
Ken Mair		Oral	4-140-1
George Matthews	Te Hiku o Papamoa	Oral	4-141-1
Aaron Mataamua		Oral	4-142-1
Te Tiwha Puketapu		Oral	4-143-1
Brent Scott Packer (Willie)		Oral	4-144-1
Che Wilson		Oral	4-145-1
Rangi Wills		Oral	4-146-1
Potonga Nielson		Oral	4-147-1
Auckland held 9 May 2009			
Jane Sherard		Oral	4-148-1
Haahi Walker		Oral	4-149-1
Tewi Nicholls		Oral	4-150-1
Invercargill held 20 April 2009			
Robert Paraki		Oral	5-1-1
Mana Te Whata		Oral	5-2-1
Rosina Wiparata		Oral	5-3-1
Pierre McManus	Rakiura Hananui Whanauka	Oral/written	5-4-1
Christchurch held 21 April 2009			
Katherine Peet	Network Waitangi Otautahi	Oral	5-5-1
Murray Parsons		Oral	5-6-1
Evan McDonald		Oral	5-7-1
John Allen		Oral	5-8-1
John Peet	Network Waitangi Otautahi	Oral	5-9-1
Lavinia Pohata-Johnstone		Oral	5-10-1
Melani Burchett		Oral	5-11-1
		Written	5-11-2
Wellington held 22 April 2009			
Mike Smith		Oral	5-12-1
Madeleine Rose		Oral	5-13-1
Antony Royal		Oral	5-14-1
Robin Boldarin		Oral	5-15-1
Brent Pierson		Oral	5-16-1
		Written	5-16-2
Areti Metuamate		Oral	5-17-1

Name	Organisation / Group	Format	Submission No.
Hamilton held 24 April 2009			
Angeline Greensill		Oral	5-18-1
		Written	5-18-2
Joe Kee	Ngāti Ranginui, Ngāi Tamarawaho	Oral	5-19-1
		Written	5-19-2
Rawiri Bidois		Oral	5-20-1
Matiu Dickson		Oral	5-21-1
Jim Holden		Oral	5-22-1
Hori Manuirirangi		Oral	5-23-1
Nicola Short		Oral	5-24-1
Tauranga held 27 April 2009			
Hauata Palmer	Ngāti te Rangi	Oral	5-25-1
Lance Waaka	Ngāti Ruahine	Oral	5-26-1
Kotene Pihema	Ngāti Kahu, Ngāti te Ranginui	Oral	5-27-1
		Written	5-27-2
Eileen Fox	Ngāti Haua, Ngāti Raukawa	Oral	5-28-1
Jack Stevenson		Oral	5-29-1
John Cronin	Environment Bay of Plenty	Oral	5-30-1
		Written	5-30-2
Tawharangi Nuku	Ngāti Hangarau (hapū of Ngāti Ranginui)	Oral	5-31-1
		Written	5-31-2
Colin Bidois		Oral	5-32-1
Judith Rewa Norris		Oral	5-33-1
Eunice Evans		Oral	5-34-1
Riri Ellis		Oral	5-35-1
Napier held 29 April 2009			
Te Aroha Hiko		Oral	5-36-1
Huriana Lawrence		Oral	5-37-1
		Written	5-37-2
		Written	5-37-3
Arthur Gemmell	Coastal Hapu Collective Society Inc	Napier	5-38-1
		Written	5-38-2
Pauline Tangiora	Mahi Māori Committee	Oral	5-39-1
Mereana Pitman		Oral	5-40-1
Janine Karetai		Oral	5-41-1
Franz Mueller		Oral	5-42-1
		Written	5-42-2
Will Jenkins		Oral	5-43-1
Colin Boock		Oral	5-44-1
Takura Ahuriri		Oral	5-45-1
Benita Wakefield		Oral	5-46-1
John Porter	Grey Power	Oral	5-47-1

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Name	Organisation / Group	Format	Submission No.
Eric Niania		Oral	5-48-1
Monique Tawhiri		Oral	5-49-1
June Graham		Oral	5-50-1
Bayden Barber	Waimarama, Ngāti Kurukuru	Written	5-51-1
Bayden Barber (at Hastings)		Oral	5-51-2
Auckland held 7 May 2009			
Glenys Daley	Tamaki Treaty Workers	Oral	5-52-1
		Written	5-52-2
Dr Susan Healy	Pax Christi and the Bicultural Desk of the Auckland Catholic Diocese Auckland Catholic Diocese Bicultural Desk Pax Christi	Oral	5-53-1
		Written	5-53-2
		Written	5-53-3
John Laurie		Oral	5-54-1
Margaret Jennie (Peggy) Haworth		Oral	5-55-1
		Written	5-55-2
Joan MacDonald Megan Hutching	Women's International League for Peace and Freedom (WILPF) WILPF	Oral	5-56-1
		Written	5-56-2
Jane Hotere	Te Aupouri, Hokianga, Waitemata Taumai	Oral	5-57-1
Bryar Te Hira Inopera	Muriwhenua/Ngapuhi, Ahipara Te Onrea-Tohe Waipareira	Oral	5-58-1
Greg McDonald		Oral	5-59-1
Christine Baines		Oral (mtg)	5-60-1
		Oral (hui)	5-60-2
Whaitiri Mikaere		Oral	5-61-1
Joseph Kiingi		Oral	5-62-1
Charl Hirschfeld		Oral	5-63-1
		Written	5-63-2
Francis-Tihi :Davis (Tass Davis)		Oral	5-64-1
		Written	5-64-2
:Tane :Rakai		Oral	5-65-1
Tauranga held 27 April 2009			
Dee Samuel	Te Rūnanga o Ngaiterangi Trust	Oral	5-66-1
		Written	5-66-2
Whangarei held 15 May 2009			
Moea Armstrong		Oral	5-67-1
		Written	5-67-2
Tajim Mohammed		Oral	5-68-1
		Written	5-68-2
Te Hapae Ashby		Oral	5-69-1
		Written	5-69-2

Name	Organisation / Group	Format	Submission No.
Tim Howard and Leanne Brownie Tim Howard	Northland Urban Rural Mission	Oral	5-70-1
		Written	5-70-2
Reuben Porter		Oral	5-71-1
Hori Parata		Oral	5-72-1
Marie Tautari		Oral	5-73-1
Natasha Clarke		Oral	5-74-1
Ani Pitman		Oral	5-75-1
		Written	5-75-2
Marina Fletcher	Whangarei Harbour Kaitiaki Roopu and Whangarei Claimants Collective Core Group	Oral	5-76-1
		Written	5-76-2
Wanganui held 17 May 2009			
Ian Little		Oral	5-77-1
		Written	5-77-2
Koro Rangi (Buddy) Taiaroa		Oral	5-78-1
		Written	5-78-2
Don Robinson		Oral	5-79-1
Tony Ireland		Oral	5-80-1
Graeme Coates	Marine Farming Association Inc	Oral	7-1-1
Roger Kerr	New Zealand Business Roundtable	Written	7-2-1
Richard A Epstein		Written	7-2-2
Roger Kerr		Written	7-2-3
		Written	7-2-4
Bryce Wilkinson, Richard Epstein		Written	7-2-5
Roger Kerr		Oral	7-2-6
Bruce Chapman	New Zealand Seafood Industry Council Limited	Oral	7-3-1
		Written	7-3-2
Camilla Owen	Resource Management Law Association of NZ Inc	Oral	7-4-1
Camilla Owen	Environmental Law Committee of the NZ Law Society	Oral	7-5-1
Richard Gardner, Jacob Haronga	Federated Farmers New Zealand Inc	Oral	7-6-1
		Written	7-6-2
John Pfahlert	Petroleum Exploration Association of New Zealand	Written	7-7-1
		Oral	7-7-2
The Pacific Institute of Resource Management	The Pacific Institute of Resource Management	Written	7-8-1
Cliff Mason, Kaye Weir		Oral	7-8-2
Connal Townsend	The Property Council New Zealand	Oral	7-9-1
Surf Life Saving New Zealand	Surf Life Saving New Zealand	Written	7-10-1
Geoff Barry		Oral	7-10-2

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Name	Organisation / Group	Format	Submission No.
Council of Outdoor Recreation Associations of New Zealand Inc	Council of Outdoor Recreation Associations of New Zealand Inc	Written	7-11-1
Dr Hugh Barr		Oral	7-11-2
NZ Recreational Fishing Council	NZ Recreational Fishing Council	Written	7-12-1
Keith Ingram		Oral	7-12-2
NZ Marine Transport Association	NZ Marine Transport Association	Written	7-13-1
Keith Ingram		Oral	7-13-2
New Zealand Institute of Surveyors	New Zealand Institute of Surveyors	Written	7-14-1
Mr Bruce A Manners, Dr W (Bill) A Robertson		Oral	7-14-2
Royal Forest and Bird Protection Society	Royal Forest and Bird Protection Society	Written	7-15-1
Kevin Hackwell		Oral	7-15-2
Human Rights Commission	Human Rights Commission	Written	7-16-1
Roslyn Noonan, Judith Prior, Bill Hamilton, Sam Sefuiva, Karen Johansen, Michael White		Oral	7-16-2
Human Rights Commission		Written	7-16-3
Ced Simpson	Human Rights Foundation	Oral	7-17-1
Council of Trade Unions	Council of Trade Unions	Written	7-18-1
Sharon Clair, Kiwhare Mihaka, Muriel Tunoho, Lee Cooper, Karen Bruce		Oral	7-18-2
National Urban Māori Authority	National Urban Māori Authority	Written	7-19-1
John Henry Tamihere		Oral	7-19-2
Irene Clarke, John Cronin	Local Government NZ	Oral	7-20-1
Local Government NZ	Local Government NZ	Written	7-20-2
Alan Jenkins, David Thomkins, Warren Moyes	Electricity Networks Association	Oral	7-21-1
Garth Gulley	Outdoors New Zealand	Oral	7-22-1
Outdoors New Zealand		Written	7-22-2
Mike Burrell	Aquaculture New Zealand	Oral	7-23-1
Edwina Hughes	Peace Movement Aotearoa	Oral	7-24-1
Peace Movement Aotearoa		Written	7-24-2
Hon Dr Michael Cullen	New Zealand Labour Party	Written	7-25-1
Mrs Jean L Hodges		Written	7-26-1
Dr David V Williams		Written	7-27-1
Public Access New Zealand Inc	Public Access New Zealand Inc	Written	7-28-1
Fish and Game New Zealand	Fish and Game New Zealand	Written	7-29-1
Mrs Gilda Lulham		Written	7-30-1
Henry Koia	Takimoana Government	Written	7-31-1
Takimoana Government		Written	7-31-2
Jan and Hutch		Written	7-32-1
Russell Synnott		Written	7-33-1

Name	Organisation / Group	Format	Submission No.
Betty Williams		Written	7-34-1
Betty Williams (Hamilton public meeting)		Oral	7-34-2
Helen Moseley		Written	7-35-1
Matiu Payne		Written	7-36-1
Te Orohi Paul		Written	7-37-1
Stephen Bray	Te Rūnanga o Waitaha me Maata Waka Inc 1991	Written	7-38-1
Te Awanuiarangi Black		Written	7-39-1
Te Awanuiarangi Black (Maketu hui)		Oral	7-39-2
Tim McCreanor		Written	7-40-1
Terekaunuku Whakarongotaimoana (Dean) Flavell	Tapuika	Written	7-41-1
Roimata Moore		Written	7-42-1
Sacha McMeeking, Ngahiwi Tomoana, Moana Jackson, Dawn Pomana, Maria Pera	Treaty Tribes Coalition	Oral	7-43-1
Treaty Tribes Coalition		Written	7-43-2
Treaty Tribes Coalition		Written	7-43-3
Justine Inns, Matiu Rei	Te Ope Mana a Tai	Oral	7-44-1
Te Ope Mana a Tai		Written	7-44-2
Te Ope Mana a Tai		Written	7-44-3
Te Ope Mana a Tai		Written	7-44-4
Craig Lawson, Peter Douglas, Ngahiwi Tomoana, Kirsty Woods	Te Ohu Kaimoana	Oral	7-45-1
Te Ohu Kaimoana		Written	7-45-2
Te Ohu Kaimoana		Written	7-45-3
Dr Charlotte Severne, Kimberley Maxwell	NIWA	Oral	7-46-1
NIWA		Written	7-46-2
Paul Morgan, Rino Tirikatene, Eva Riddell	Federation of Māori Authorities	Oral	7-47-1
Jacqui Te Kani	Māori Women's Welfare League Inc	Oral	7-48-1
Maire Leadbeater		Written	7-49-1
Maxine Erena Richards		Written	7-50-1
Moana Hinekotuku Lawson		Written	7-51-1
Hone Pakihi Peita	Waipuna Marae Trustees	Written	7-52-1
Claudia Haumihi Nicholson		Written	7-53-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-54-1
Natalie Paretera Richards		Written	7-55-1
Robert Willoughby	Hauai 438 Ahu Whenua Trust	Written	7-56-1
Anahera Richards		Written	7-57-1
Monica M Matamua		Written	7-58-1
Patrick Nicholas		Written	7-59-1
Peter Johnston	Ngāti-Hei ki Whitianga	Written	7-60-1

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Name	Organisation / Group	Format	Submission No.
[Anonymous at request of submitter]		Written	7-61-1
[Anonymous at request of submitter]		Written	7-62-1
David Gregory		Written	7-63-1
Merlyn Tily		Written	7-64-1
Merehora Taurua	Ngāti Rahiri ki Te Tii Waitangi	Written	7-65-1
Kahutia Nikora	Ngāti Hingaanga	Written	7-66-1
Walter TeKiita Broadman	Tangata Kaitiaki of Waimarama	Written	7-67-1
Brian Robertson Houliston		Written	7-69-1
Patricia Mill-Poi	Mill Whānau, Hauiti Cluster Group	Written	7-70-1
[No name provided]		Written	7-71-1
Ngarangi Davies, Carol Reddie, Dee Hikairo, Janice Aldridge, Kerry Dougal, Lynda Ryan, Hatea Ruru, Diane Ruru, Chrissy Poi, Tina Karangaroa, Hazel Touruhi, Tina Wallace, Louisa Waikari, Serena Parker, Renee Davies, Liz Raukawa, Jack Beckham, Ann Smith, Tracey Satherley, Sharon Reid, Teresa Louise Olsen, Maraea Rama, Karen Gideon, Janine Pahine, Gabby Soutar, Hemi Goldsmith, Lucie Kennedy, Beverley Parton, Kairoa Tauaneai, Livingston Tauaneai, Tim Wallace, Collin Wallace, Reuben Wallace, Misty Wallace, Paekauri Wallace, Cheryl Davies, John Kingi	Kōkiri Marae Health (Hauora) and Social Services	Written	7-72-1
Te Ao Marama Olsen, Rosemarie Crimie, Jarene Pahina, Kathleen Crimie, Joseph Hirini, John Hickson, Renee Moeahu	Kōkiri Marae Health and Social Services Kereana Olsen Trust	Written	7-72-2
Nyreen Kiriona	Tukuahau Whānau Trust	Written	7-73-1
Nyreen Kiriona	Nohoangaponi and Matahau Kiriuna Whānau Trust	Written	7-74-1
Richard Nelson		Written	7-75-1
Nyreen Kiriona		Written	7-76-1
Ngāti Torehina	Ngāti Torehina	Written	7-77-1
C Bryce Bakor		Written	7-78-1
Beverley Threadwell		Written	7-79-1
Margot Baker		Written	7-80-1
Lawrence Hughes		Written	7-81-1
Henare Tongariro Puawai Ratima	Ngāti Kurumokihi (Ngāti Tatara)	Written	7-82-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-83-1
Helena Yensen		Written	7-84-1
Dennis Bush-King	Tasman District Council	Written	7-85-1
Owen Pickles	Chatham Islands Council	Written	7-86-1
Patrick Smith, Owen Pickles		Oral	7-86-2
Chatham Islands Council		Written	7-86-3
Kahuariki Hancock		Written	7-87-1

Name	Organisation / Group	Format	Submission No.
Rawiri Darcy McGhee jr	Te Aitanga-A-Hauiti Iwi Cluster Group	Written	7-88-1
Sharon Lee Campbell		Written	7-89-1
John Lawson		Written	7-90-1
Peter Tashkoff	Kōrero Māori and Māori Talk Internet Communities, Tashkoff Whānau	Written	7-91-1
Dr Malcolm Paterson		Written	7-92-1
[Anonymous at request of submitter]		Written	7-93-1
Mr A K Carran		Written	7-94-1
Mark S Ammon (Mayor)	Marokopa Community and Waitomo District	Written	7-95-1
Jean Brookes	Auckland Anglican Social Justice Council	Written	7-96-1
Gerald Tait		Written	7-97-1
[Anonymous at request of submitter]		Written	7-98-1
Barrie Saunders, Saunders Unsworth	Northport Ltd, Ports of Auckland Ltd, Port of Tauranga Ltd, Eastland Port Ltd, Port of Napier Ltd, CentrePort Ltd, Port Taranaki, Port Nelson Ltd, Port Marlborough NZ Ltd, Lyttelton Port of Christchurch Ltd, PrimePort Timaru Ltd, Port Otago Ltd, South Port NZ Ltd, Port of Greymouth, Buller Port Services (Westport)	Written	7-99-1
Metiria Turei	Green Party of Aotearoa New Zealand	Written	7-100-1
Green Party of Aotearoa New Zealand (Blenheim hui)		Oral	7-100-2
Green Party of Aotearoa New Zealand (Blenheim hui)		Written	7-100-3
Sr Michelle Hughey rsj, Sr Noelene Landrigan rsj	Josephite Justice Network of the Sisters of St Joseph Aotearoa New Zealand	Written	7-101-1
Waireti Walters, QSM, JP		Written	7-102-1
Rosita Rauhina Dixon		Written	7-103-1
Robert Brodnax	Environment Waikato	Written	7-104-1
Kahuwaiora Hohaia	Ngāti Toa Tupaahau Claim, Marokopa	Written	7-105-1
Des Brennan	Yachting New Zealand	Written	7-106-1
M Morgan, R M Field	Rangiuira Rakera Kipihana Trust	Written	7-107-1
Margaret Hunter	Ngawiki Trust	Written	7-108-1
[Anonymous at request of submitter]		Written	7-109-1
Wendy Henwood	Ngāi Tupoto Marae Trustees	Written	7-110-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-111-1
Bill Bisset	Trans Tasman Resources Ltd	Written	7-112-1
Mr R W Lacey		Written	7-113-1
Wayne Jensen		Written	7-114-1
Rachelle Forbes		Written	7-115-1
Te Rawanake Hemara	Te Hapu o Ngāti o Te Iwi o Ngaruahine	Written	7-116-1
Dorreen Hatch and Barbara Menzies		Written	7-117-1

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Name	Organisation / Group	Format	Submission No.
Monica Fraser	Kapiti Coast District Council	Written	7-118-1
David Taipari	Te Rūnanga a Iwi o Ngāti Maru	Written	7-119-1
Gray Theodore	WAI 966, Ngapuhi Te Tiriti o Waitangi Trust	Written	7-120-1
	Te Roopu Aihe o Te Puke	Written	7-121-1
Ike Trevor Reti	Five Marae of Whangaruru – Mokau Marae, Reti Marae, Ngaiotonga Marae, Whakaturia Tuparehuia Marae, Rawhiti Marae	Written	7-122-1
Rueben Tapara		Written	7-123-1
D W Francis		Written	7-124-1
Frances Mountier		Written	7-125-1
	Dunedin Community Law Centre	Written	7-126-1
Barbara Huia Francis		Written	7-127-1
[Anonymous at request of submitter]		Written	7-128-1
Cynthia Tucker		Written	7-129-1
Richard Dawson		Written	7-130-1
S Thompson and W L Crawford		Written	7-131-1
John Albert Guard		Written	7-132-1
Pereri Tito	Te Taumata o Te Parawhau representing the hapū o Te Parawhau	Written	7-133-1
Motu Ramanui (snr)	Nga Iwi o Te Motu Ramanui	Written	7-134-1
Danielle Harris	Rangitaane O Manawatu	Written	7-135-1
Julia Meek		Written	7-136-1
Robin Lieffering		Written	7-137-1
Christy Parker	Women's Health Action (WHA)	Written	7-138-1
Simon Austin		Written	7-139-1
Vaughn Bidois	Ngaitai	Written	7-140-1
Brian Elmes		Written	7-141-1
Anaria Tangohau		Written	7-142-1
Edward Te Kohu Douglas, Rahera Barrett Douglas		Written	7-143-1
Abigael Vogt		Written	7-144-1
Joan Hardiman	New Zealand Dominican Sisters	Written	7-145-1
John Patrick Wikstrom		Written	7-146-1
Dan Lux	Te Whānau O Te Urikore	Written	7-147-1
Ian Francis Burke		Written	7-148-1
Charles Rudd		Written	7-149-1
Christopher Renwick		Written	7-150-1
Heeni Collins	Ngāti Kikopiri Marae Komiti Society Inc	Written	7-151-1
Huia Forbes		Written	7-152-1
P Rene		Written	7-153-1
Barbara Mountier		Written	7-154-1
Emma Bishop		Written	7-155-1

Name	Organisation / Group	Format	Submission No.
Iris Pahau, Wereta Pahau, Georgina Barrett, Rua Barrett, George Rawiri, Morris Robin, A Shea, L Oneroa, Barney Ransfield, Te Teira Davis, Jim Manu, Horo Wharepapa, Hepetema Taitua, Kingi Murray, Jim Nicholls, Nore Noema, Te Paea Davis, Ihaia Biddle, Hariata Haumate, Penetana Huriwai, Mohi Whai, Faith Tupou, R M TeMara, Gary Reid, T R Morete, Ruiha Pewhairangi, Wikitoria Puhia, Charmaine Peachey, Janie Wichman, Maraea Teepa		Written	7-156-1
Whitiora McLeod	Ngapotiki Hapuu	Written	7-157-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-158-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-159-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-160-1
		Written	7-160-2
R R Brownlee	Te Ruunanga a Iwi o Ngāti Tamatea Incorporated	Written	7-161-1
Richard Drake		Written	7-162-1
Ngaraima Taingahue	Hapu of Tauwhao Te Ngare, Tauranga Moana	Written	7-163-1
Dayle Takitimu		Written	7-164-1
Elizabeth Bang, Joan Macdonald	National Council of Women of New Zealand	Written	7-165-1
Jacinta Ruru		Written	7-166-1
Dunedin Ratepayers and Householders Association Inc	Dunedin Ratepayers and Householders Association Inc	Written	7-167-1
A.L Wells		Written	7-168-1
Kath Coombes	Auckland Regional Council	Written	7-169-1
Mrs O. Ripia		Written	7-170-1
W K Pearson		Written	7-171-1
Peter Morrison MacCallum		Written	7-172-1
J T Ford		Written	7-173-1
[Anonymous at request of submitter]		Written	7-174-1
Verna Waitere		Written	7-175-1
Barbara Marsh	Mokau Ki Runga Regional Management Committee	Written	7-176-1
Emma Paraone Te Wake-Cribb		Written	1-177-1
Jim Dollimore		Written	1-178-1
Kevin Ross (Chief Executive)	Wanganui District Council	Written	7-179-1
David Potter	Te Rangatiratanga o Ngāti Rangitihi Inc	Written	7-180-1
Te Rangatiratanga o Ngāti Rangitihi Inc		Written	7-180-2
Lance Makowharemahihi		Written	7-181-1
Matiu Haitana	Ngāti Ruakopiri (also known as Patutokotoko)	Written	7-182-1

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Name	Organisation / Group	Format	Submission No.
Greg Skipper	Ngāti Tawhirikura Hapu (Environmental and Monitoring Division)	Written	7-183-1
Diane Sharma-Winter		Written	7-184-1
Bruce Menteath		Written	7-185-1
Suzanne Te Tai	Ngāti Manu	Written	7-186-1
Suzanne Te Tai	Whānau of Judith Marion Te Tai	Written	7-187-1
Elder Te Reo, Grant Knuckey, Rowena Gotty, Jenni Moore	Health Care Aotearoa	Written	7-188-1
Denis McNamara, Partner, Simpson Grierson	Pauanui Canal Management Limited and Hopper Developments Limited	Written	7-189-1
[Anonymous at request of submitter]		Written	7-190-1
Christine Beach and Stephen Beach	Ruawaipu	Written	7-191-1
Elliot Constantine Roberts		Written	7-192-1
Greg Fife	Fife/Topi Whānau	Written	7-193-1
Mahara Te Aika	Te Aika Whānau and Ngāi Tuahuriri Rūnanga	Written	7-194-1
Pete and Takutai Beech		Written	7-195-1
Maiki Marks	Kororareka Marae Society Incorporated (Te Roopu Taiao Kororareka Marae)	Written	7-196-1
Kelly Bevan (Chairperson)	Te Iwi o Ngāti Tukorehe Trust	Written	7-197-1
Hayden Potaka and Ngapari Nui	Te Kaahui o Rauru Trust and Te Rūnanga o Ngāti Ruanui Trust	Written	7-198-1
Kathy Ertel	Te Atiawa Manawhenua Ki Te Tau Ihu Trust	Written	7-199-1
Suzanne Ellison (Runaka Manager)	Kati Huirapa Runaka ki Puketeraki	Written	7-200-1
George Elkington (Vice Chair)	Ngāti Koata Trust Board	Written	7-201-1
Grant Powell and Jennifer Braithwaite	Powell and Webber Associates	Written	7-202-1
John MacRae and Caroline Halliday (DLA Phillips Fox)	Northport Limited	Written	7-203-1
Raymond Smith	Waimarie Branch of the Māori Party	Written	7-204-1
The New Zealand Refining Company	The New Zealand Refining Company	Written	7-205-1
Sharon Gemmel		Written	7-206-1
Adrianne Taungapeau	Ngāti Wai Iwi and Ngāi Tawake of Ngapuhi Iwi	Written	7-207-1
Piri Prentice	Mana Ahuriri Incorporated	Written	7-208-1
Mana Ahuriri Incorporated		Written	7-208-2
Mana Ahuriri Incorporated		Written	7-208-3
Emily Baily and Urs Signer		Written	7-209-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-210-1
Atareiria Heihei	Ngai Tawake (hapū), Ngapuhi Iwi	Written	7-211-1
Jim Holdom		Written	7-212-1
Waiatarangi Williams	Te Taumata Rūnanga Society Inc	Written	7-213-1

Name	Organisation / Group	Format	Submission No.
Trudee Thomas	Ngāti Mutunga o Wharekauri Iwi Trust	Written	7-214-1
George Coombes, Alan Harvey, Pauline Page, Hererua Salmond		Oral	7-214-2
Ngāti Mutunga o Wharekauri Iwi Trust		Written	7-214-3
Les & Pat Gray	Women's Resource Network (Te Tai Tokerau)	Written	7-215-1
William Greening	Rongomaiwahine	Written	7-216-1
Ngarongo Iwikatea Nicholson	Ngāti Raukawa ki Tonga	Written	7-217-1
Peter McLuskie		Written	7-218-1
Susan Wallace	Te Rūnanga o Makaawhio	Written	7-219-1
[Anonymous at request of submitter]		Written	7-220-1
Lisa Beech	Caritas Aotearoa New Zealand	Written	7-221-1
Wayne W Peters and Associates	Ngatiwai Trust Board	Written	7-222-1
Frank Kingi Thorne	Ngāti Hikairo	Written	7-223-1
Gillian Southey	Christian World Service	Written	7-224-1
David MacClement		Written	7-225-1
Pehitahi Michael Nuku	Te Rangihouhiri Marae, Tauranga Moana	Written	7-226-1
Andrew Stephens	Huria Matenga Trust	Written	7-227-1
Josephine (Josie) Ann Smith	Ocean Bay Protection Society Inc	Written	7-228-1
Tania Kingi	Te Roopu Waiora Trust	Written	7-229-1
Olivia Rope	Amnesty International Aotearoa New Zealand	Written	7-230-1
Matt Todd	Eastland Port Limited	Written	7-231-1
Lisa Marie McKay		Written	7-232-1
Bera MacClement		Written	7-233-1
Whatarangi Winiata	Ngāti Raukawa	Written	7-234-1
Janise H Eketone	Maniapoto Māori Trust Board	Written	7-235-1
[Anonymous at request of submitter]		Written	7-236-1
Allan M Pivac	Te Rūnanga o Ngāti Whatua	Written	7-237-1
Tony Kake & Tania Kingi	Te Ora o Manukau	Written	7-238-1
Maui Solomon	Hokotehi Moriori Trust	Written	7-239-1
Shirley King, Amanda King, Hauri Kua		Oral	7-239-2
Anne MacLennan		Written	7-240-1
[Anonymous at request of submitter]		Written	7-241-1
Dr Kenneth Palmer		Written	7-242-1
James Allen Marcum	Ngāti Te Wehi	Written	7-243-1
Anna Parker	Corso Dunedin	Written	7-244-1
Ngareta Delamere		Written	7-245-1
Martha Gilbert	Ngāti Tama ki te Upoko o Te Ika	Written	7-246-1
Tim Manukau	Waikato-Tainui Te Kauhanganui Inc	Written	7-247-1
Friday Rountree	Ngapuhi ki Waitemata	Written	7-248-1
Jean Hera, Jenni Rockcliffe	Palmerston North Women's Health Collective	Written	7-249-1

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Name	Organisation / Group	Format	Submission No.
Joseph Maurirere		Written	7-250-1
Adrienne Ross	Corso Inc	Written	7-251-1
Verna Gate		Written	7-252-1
Patricia Ann Gray	New Zealand Association of Counsellors Inc (Te Tai Tokerau)	Written	7-253-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-254-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-255-1
Roku Mihinui	Te Arawa Lakes Trust	Written	7-256-1
Marie Jean Tautari		Written	7-257-1
Vivienne Taueki & Richard Takuira	Muaupoko	Written	7-258-1
Dr Jeanne Guthrie		Written	7-259-1
Emma Gibbssmith	Te Pātāka Matauranga Charitable Trust	Written	7-260-1
Patricia Stebbing		Written	7-261-1
Murray Short	Treaty Relationships Group of the Religious Society of Friends in Aotearoa (Quakers)	Written	7-262-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Oral	7-263-1
		Written	7-263-1
Mark C Farnsworth	Northland Regional Council	Written	7-264-1
Northland Regional Council		Written	7-264-2
Tim Cossar, Sarah Berry	Tourism Industry Association New Zealand	Written	7-265-1
Michael Lane		Written	7-266-1
Jenny Rankine		Written	7-267-1
Sonny Kauika-Stevens and Whānau		Written	7-268-1
Raymond Scrampton		Written	7-269-1
Rachele Tiopira	Te Rūnanga o Moeraki Inc	Written	7-270-1
Stephen Town	Tauranga City Council	Written	7-271-1
Stewart Bull	Oraka-Aparima Runaka	Written	7-272-1
Oraka-Aparima Runaka		Written	7-272-2
Richard Horton Mckay	Justice Association of New Zealand	Written	7-273-1
Gertrude Mamae Warnes	Tangata whenua of Papatea Island	Written	7-274-1
Abby Suszko		Written	7-275-1
Dan Te Kanawa		Written	7-276-1
Hugh Thorpe		Written	7-277-1
[Anonymous at request of submitter]		Written	7-278-1
Cheryl Turner	Pakanae Hapu Management Committee	Written	7-279-1
Michelle Marino	Ngāti Wai o Ngāti Tama	Written	7-280-1
Leonie Morris	Auckland Women's Centre	Written	7-281-1
Irihapeti Campbell & Hori Elkington		Written	7-282-1
Bob Parker and Anthony Marryatt	Christchurch City Council	Written	7-283-1
Liz Connelly		Written	7-284-1
Rev Maurice Manawaroa Gray	Te Runaka ki Otautahi o Kai Tahu	Written	7-285-1

Name	Organisation / Group	Format	Submission No.
Mihi Retimana	Pahewa Patrick Fairlie Whānau	Written	7-286-1
		Written	7-286-2
Sione Pasene		Written	7-287-1
Liz Springford		Written	7-288-1
M & I Britnell		Written	7-289-1
Hilda Te Hirata Sykes	Ngāti Makino	Written	7-290-1
Diana Frances Thomas	Nga Whaea Atawhai o Aotearoa (Sisters of Mercy New Zealand)	Written	7-291-1
George Day		Written	7-292-1
Wikitoria Beamish		Written	7-293-1
Wikitoria Beamish (Waitara hui)		Oral	7-293-2
Noel Oriwa Harris	Ngāti Te Whiti (hapū), Te Atiawa	Written	7-294-1
Donald Ngahina Harris	Moturoa Residents' Group; Ngāti Te Whiti (hapū), Te Atiawa	Written	7-295-1
Billie Rongomaimira Biel		Written	7-296-1
Karamea Insley	Awanui Hāparapara No. 1 Trust	Written	7-297-1
Oliver Hoffman		Written	7-298-1
George Riley	Te Rūnanga a Iwi o Ngapuhi	Written	7-299-1
Robert Warrington	Muaupoko Tribal Authority	Written	7-300-1
Abigael Vogt	ARC Auckland (Aotearoa Reality Check)	Written	7-301-1
Tracey Whare de Castro	Aotearoa Indigenous Rights Charitable Trust	Written	7-302-1
Manahi Paewai	Rangitane o Tamaki nui a Rua	Written	7-303-1
Anne-Marie Jackson		Written	7-304-1
Tui Warmenhoven	He Oranga Mo Nga Uri Tuku Iho Trust	Written	7-305-1
Moana Herewini	Maniapoto ki roto Tamaki Makaurau	Written	7-306-1
Rongoheikume Simon		Written	7-307-1
Anonymous		Written	7-308-1
Erick Albert Nuku and Whānau		Written	7-309-1
Jaimee Kirby-Brown	Te Hunga Roia Māori o Aotearoa (Māori Law Society Inc)	Written	7-310-1
Heeni Mangu		Written	7-311-1
Peter Clark		Written	7-312-1
Hohepa Pikari Pickering		Written	7-313-1
Te Koroi Rupapera Moa		Written	7-314-1
Hinewhare Harawira		Written	7-315-1
[Anonymous at request of submitter]		Written	7-316-1
[Anonymous at request of submitter]		Written	7-317-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-318-1
Clive Harris	Ngapuhi	Written	7-319-1
Hoani Langsbury	Te Rūnanga o Ōtākou	Written	7-320-1
Gavin Cross	Pewhairangi hapū	Written	7-321-1
Ngai Tahu Māori Law Centre		Written	7-322-1

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Name	Organisation / Group	Format	Submission No.
Clinton Allan James Thompson	Ngāti Kimihia, Ngāti Te Maunu and Ngāti Koata of Ngāti Toa Rangatira	Written	7-323-1
Hemi Whakaeke Ritete		Written	7-324-1
Isaac Rongo Kidwell		Written	7-325-1
Christine Kidwell		Written	7-326-1
Margaret Story		Written	7-327-1
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-328-1
Pehitahi Michael Nuku	Te Rūnanga o Ngaiterangi Iwi Trust	Written	7-329-1
Diane Ratahi	Taranaki Iwi	Written	7-330-1
Potatutatu Bill Ruru	Te Aitanga a Mahaki Trust	Written	7-331-1
Barbara Marsh	Wai 788 Mokau Mohakotino and other blocks (Maniapoto Claim)	Written	7-332-1
Mitai Paraone-Kawiti (Chairperson), Chantez Connor (Administrator) and Dene Green (Manager)	Te Waiariki Ngāti Korora Ngāti Takapare Hapu Iwi Trust	Written	7-333-1
Margaret Stuart	Waikato Anti-Racism Coalition (WARC)	Written	7-334-1
John Wanoa	Na Atua e Wa Ltd	Written	7-335-1
Na Atua e Wa Ltd		Written	7-335-2
[Anonymous at request of submitter]	[Anonymous at request of submitter]	Written	7-336-1
Rangimaria Couch / Suddaby Whānau		Written	7-337-1
Karina TePou	Whakakotahi Community Development o Taiwhakaea	Written	7-338-1
Mr I Kelly		Written	7-339-1
Karen Herbert	Te Kapotai	Written	7-340-1

This volume, as well as Volumes 1 and 3, is available from www.justice.govt.nz