Pākia ki uta pākia ki tai

Report of the Ministerial Review Panel

Ministerial Review of the Foreshore and Seabed Act 2004

Volume 3: Summary of Submissions

Contents

Overview

Purpose

This volume sets out an overview of the consultation process and provides a summary of the submissions received by the Ministerial Review Panel (the Panel) on the review of the Foreshore and Seabed Act 2004 (the Act).

Background

The Terms of Reference for the Ministerial Review (the Review) require the Panel to undertake consultation with Māori and the general public through a series of public meetings and hui. The Panel strived to ensure that wherever possible, given the timeframe, everyone who wanted to share their views on the Act had the opportunity to do so.

Summary of the consultation process

This part sets out an overview of the process undertaken to obtain submissions on the Foreshore and Seabed Act.

Process

The consultation process was open for submissions from 30 March 2009 until 19 May 2009.

A total of 21 consultation hui[1] and public meetings were held at 16 locations throughout the country between 20 April 2009 and 19 May 2009.

The Panel also met with:

- 30 significant interest groups [2] between 6 April 2009 and 2 June 2009;[3]
- the five groups who have been in negotiations with the Crown for recognition of former territorial customary rights under section 96 of the Foreshore and Seabed Act 2004;[4]

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[1] The Secretariat to the Ministerial Review Panel (the Secretariat) would like to acknowledge the significant and invaluable support and assistance that Te Puni Kōkiri provided in arranging and supporting the consultation hui.

[2] New Zealand Marine Farming Association; New Zealand Business Roundtable; New Zealand Seafood Industry Council Ltd; Resource Management Law Association of New Zealand Ltd; Environmental Law Committee of the New Zealand Law Society; Federated Farmers New Zealand Inc; Petroleum Exploration Association of New Zealand; The Pacific Institute of Resource Management; The Property Council; Surf Life Saving New Zealand; Council of Outdoor Recreation Associations of New Zealand; NZ Recreational Fishing Council; NZ Marine Transport Association; NZ Institute of Surveyors; National Urban Māori Authority; Human Rights Commission; Royal Forest and Bird Protection Society; Human Rights Foundation; Council of Trade Unions; Local Government New Zealand; Electricity Networks Association; Outdoors New Zealand; Aquaculture New Zealand; Peace Movement Aotearoa; Treaty Tribes Coalition; Te Ope Mana a Tai; Te Ohu Kaimoana; Federation of Māori Authorities; NIWA, Māori Women's Welfare League Inc; Saunders Unsworth representing 15 Port Companies.

[3] The Panel met with the Human Rights Commission on 7 April 2009 and 2 June 2009.

[4] Ngāti Pahauwera Development Trust (representing the confederation of hapū of Ngāti Pahauwera); Te Rūnanga o Ngāti Porou (representing

- the group [5] who has lodged a section 33 application in the High Court under the Foreshore and Seabed Act 2004 for recognition of former territorial customary rights;
- a group that has a Customary Rights Order application currently proceeding before the Māori Land Court;[6] and
- groups on the Chatham Islands via teleconference.[7]

The Panel held conversations with key commentators on the Act including academics, members of the judiciary and people who have been published on the subject. Some of these meetings were held in confidence. Only those who spoke at the nationally significant interest group meetings,[2] the public consultation meetings and/or hui, or who made written submissions have been included in the total submission numbers outlined below.

Meetings with Departments

The Panel met with relevant government departments who are responsible for administering legislation that intersects with the Act. These departments were:

- Ministry of Justice (Foreshore and Seabed Act 2004);
- Te Puni Kōkiri (Te Ture Whenua Māori Act 1993);
- Ministry of Fisheries (fisheries legislation including the Treaty of Waitangi (Māori Fisheries) Settlement Act;
- Department of Conservation (Resource Management Act 1991 coastal issues, and conservation-related legislation);
- Ministry for the Environment (the Resource Management Act generally); and
- Ministry of Economic Development (Crown Minerals Act 1991).

While the record of proceedings includes meetings between departments and the Panel, these meetings have not been included in the total number of submissions received.

Increasing awareness

A dedicated website (http://www.justice.govt.nz/ministerial-review) was established to raise awareness of the Review. Along with providing background information on the Act and the Review, this website invited submissions from interested parties and included an on-line submission form. In addition, the consultation hui and public meetings were advertised in newspapers, broadcast on radio and distributed to marae and other community networks. These publications/pānui encouraged people to attend the hui and meetings and to make oral and/or written submissions.

The Panel developed and distributed an issues paper and discussion paper on the key themes. The purpose of those documents was to inform people about the Act and to focus submissions on particular topics. A further document on the principles of consultation outlined the Panel's expectations of the consultation process.

ngā hapū o Ngāti Porou); Te Rūnanga o Te Whānau (representing the hapū of Te Whānau a Apanui); Ngāti Porou ki Hauraki Trust (representing the iwi of Ngāti Porou ki Hauraki); and Te Rūnanga o Te Rarawa (representing participating hapū of Te Rarawa).

[5] Te Uri o Hau Settlement Trust (in confidence).

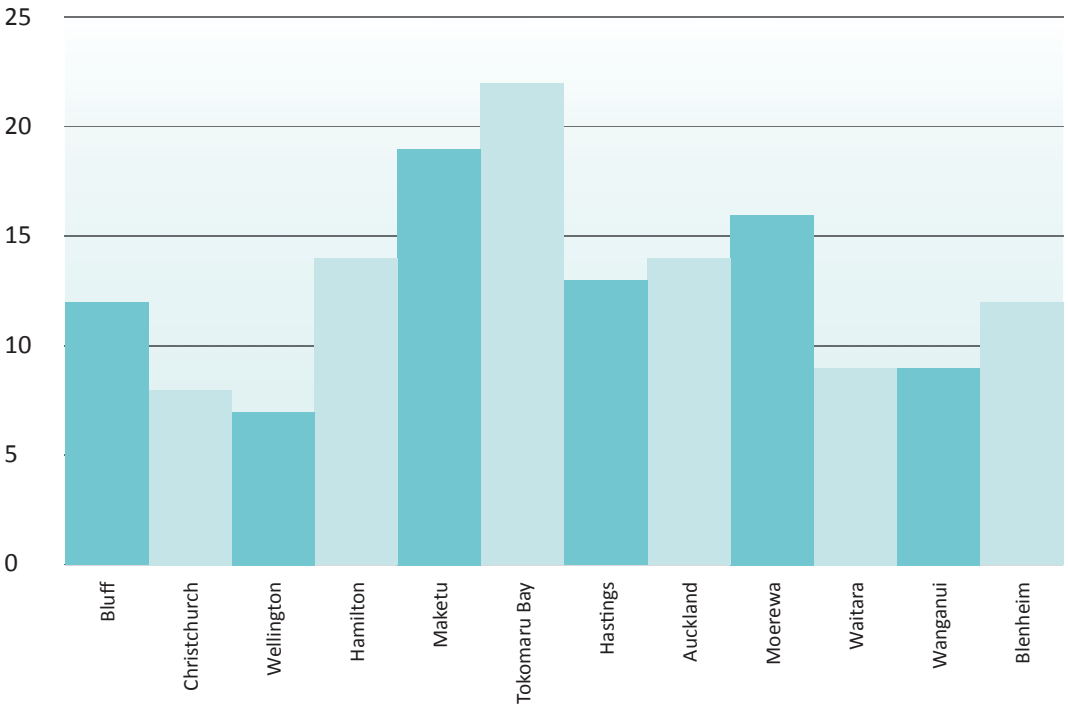
[6] Tihi Anne Daisy Noble on behalf of Kanihi-Umutahi whānau of Ngā Ruahine (2-1-2).

[7] Chatham Island Council (7-86-1); Hokotehi Moriori Trust (7-239-1); Ngāti Mutanga o Wharekauri Iwi Trust (7-214-1);Te Rūnanga o Wharekauri Rekohu Inc (7-263-1).

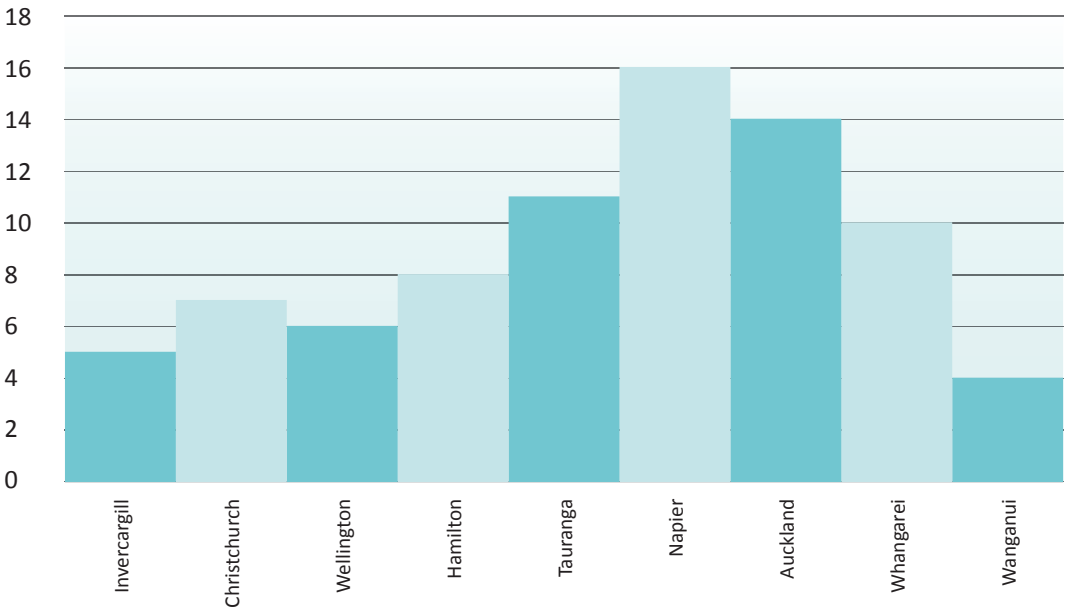
High level summary material

In total the Panel heard from 580 individual or group submitters. This included 236 oral presentations. 155 were presented at hui and 81 at the public meetings. Some submitters spoke at both hui and public meetings which is reflected in the number of speakers at the meetings but not in the overall submitter number or category. The following graphs depict the number of speakers at the various venues:

Number of Oral Submitters – Hui

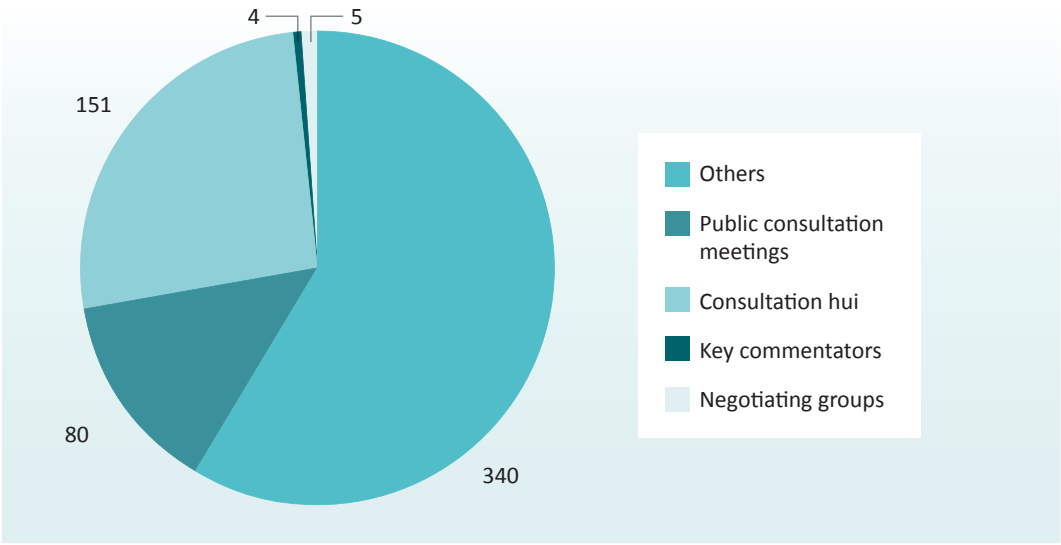


Number of Oral Submitters – Public Meetings



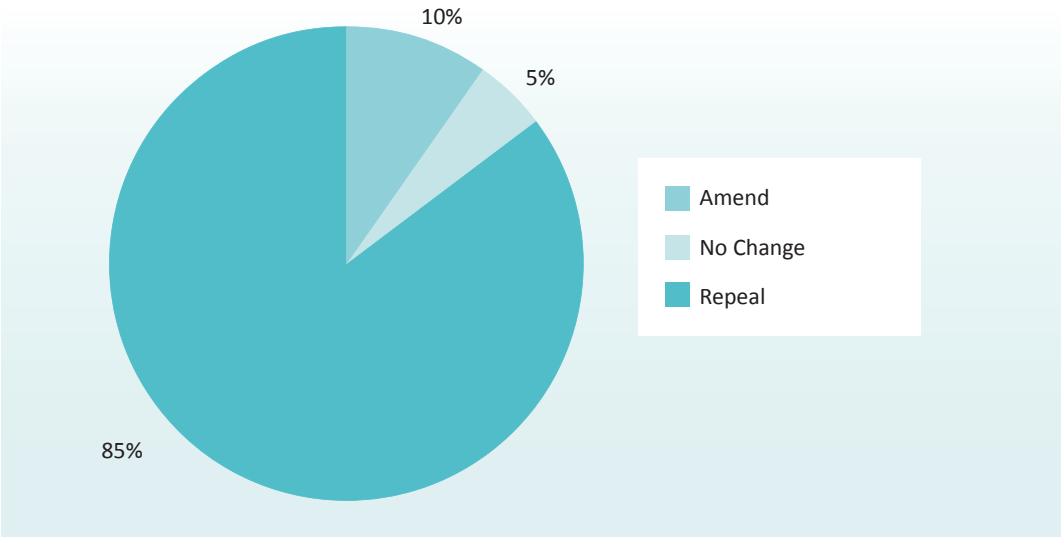
The following diagram depicts the composition of the submitter by sector:

Submitter Category



Of those submitters that expressed an opinion on the outcome of the Review (359 submitters) 85 percent of them would like the Act repealed and either a reversion to the 2003 status quo or replacement of the Act with a new framework. Even though 10 percent sought amendment a number of those submitters also expressed a desire to have the Act repealed. Some submitters proposed a range of options for the outcome of the review such as amend, or repeal and replace or repeal and revert to the post *Ngāti Apa* position. The following diagram depicts what submitters would like to see happen to the Act:

What should happen to the Foreshore and Seabed Act 2004



Submitters have not been categorised according to ethnicity because it was not possible to reliably assess the submissions in this way. While provision was made for submitters to specify their ethnicity, this option was not always used, or people chose to select more than one ethnicity.

Comment

Submission formats and styles

Submissions were received in a multitude of formats and were based on several different documents. For example, some submitters based their submissions on the questions and options contained in the *Issues Paper*. These options asked whether the Foreshore and Seabed Act 2004 should be:

a retained unchanged;

b amended;

c wholly repealed, and the status quo after the *Ngāti Apa* decision in 2003 reverted to; or

d repealed but replaced with something new, such as a new kind of title or investigative process.

Other submitters followed the more technical questions contained in the *Discussion Document*. Additionally, the Māori Party posted a submission template and information on their website which appears to have been adopted and used by some submitters. The oral submitters tended to take a more 'free flow style' to the submissions. The resulting divergence complicated the task of collating and summarising submissions.

Breadth of issues

The Secretariat to the Ministerial Review Panel (the Secretariat) has identified a wide range of information and views to be included in this report. There is a question as to whether all of the material that has been identified fits within the scope of the Terms of Reference for the review of the Act. For example, some submitters commented on the government's 2014 deadline for the settlement of historical Treaty claims and discussed why they were participating in the Treaty claims process more broadly.[8] This may be reflective of the divergence of submission styles received by the Panel. In addition, it seems that on face value, Māori submitters and submitters who gave oral submissions took a more holistic approach to responding to the review.

Due to the breadth of the material identified for inclusion in the report, it was necessary to make some subjective judgements about how to divide the submissions into succinct themes. Once the issues were organised by theme, further subjective decisions were required to reference specific submissions to each of those themes. As a result there may be some duplication, with some themes being referenced across a number of the issues.

Mixture of opinions and facts

Many submissions were a reflection of the submitter's views on the Act and the processes that operate in the foreshore and seabed, and so they often contain opinions rather than facts.

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[8] Including Kahutia Nikora (7-66-1); Tom Moeke (4-35-1); Rata Pue (4-135-2); Te Huirangi Waikerepuru (4-138-1); Greg White on behalf of Te Rūnanga o Ngāti Tama and Ngāti Mutunga (4-136-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); and Tim McCreanor (7-40-1).

For example, some submitters had an incorrect understanding of the law and did not realise that prior to the *Ngāti Apa* decision a number of private titles were held, and continue to be held in the foreshore and seabed.

Range of models presented by submitters

Despite the constrained timeframe allocated to the consultation phase of the Review, the Secretariat considers that the consultation process was undertaken in a robust and thorough manner. The process that the Panel employed resulted in many valuable and well developed submissions being presented. Many submitters made useful contributions and included suggested models, frameworks and options for reform.

Underlying theme

A clear underlying theme runs through the majority of the submissions of a strong sense of grievance associated with the process by which the Act was developed, and the effects of the Act itself. Many submitters commented that this had fundamentally affected how they viewed the Crown and its engagement with Māori on a broad range of issues.

Rather than simply airing their concerns or grievances, many submitters saw the Review as an opportunity to provide constructive comment or ideas about how the Act could be changed, and by extension, how their sense of grievance could be ameliorated. This is borne out by the fact that 62 percent of submitters (359 of the total 580 submitters) expressed an opinion about what they would like to see happen to the Act.

Summary of submissions

How Submission Summaries were structured

There were a number of ways that the submissions could have been summarised in this Report. They have been categorised based on the questions and options contained in the Issues Paper. The submissions summary that follows, is therefore divided into five parts:

a ***Part One:*** Tests and procedures.

b ***Part Two:*** Whether the Foreshore and Seabed Act 2004 should be:

  i Option one: Retained unchanged.

  ii Option two: Amended.

  iii Option three: Wholly repealed and the status quo after *Ngāti Apa* decision in 2003 reverted to.

  iv Option four: Repealed but replaced with something new.

c ***Part Three:*** Relation of Act to other law.

d ***Part Four:*** Terms of Reference comments.

e ***Part Five:*** Submissions on other matters have been grouped into ten key themes summarised in the table below.

Human Rights	Submitters discussed international and domestic human rights norms and laws, in particular the Convention on the Elimination of Racial Discrimination. Many submitters also mentioned the findings of the United Nations Special Rapporteur, including his view that the Act constituted racial discrimination. Other submitters discussed the discriminatory aspects of the Act and the impact it has had on race relations.
Treaty of Waitangi	The Treaty of Waitangi theme was raised by the vast majority of submitters. In general, the consensus was that the Act breached the Treaty of Waitangi, and in particular Article 2 of the Treaty. Submitters took the opportunity to speak more generally about the Treaty, the rights it provides, and its status in New Zealand. Many submitters said they believed that the Treaty of Waitangi should form the basis of a new regime for the foreshore and seabed.
Natural Resources	Submissions relating to natural resources considered aquaculture, conservation matters, fisheries, environmental sustainability and the development of an oceans policy.
Property	Submitters raised issues including inalienability, ownership (including Crown, Māori, and other models), the right to property, the discriminatory impact of the Act on Māori property rights and a proposal to reverse the assumption of the Crown ownership of the foreshore and seabed.
Cultural Matters	Submitters discussed concepts of mana whenua, mana, kaitiakitanga, tikanga Māori from different angles.
Current Foreshore and Seabed negotiations	Submitters commented on specific foreshore and seabed negotiations between the Crown and iwi and hapū. Other submitters made general comments about foreshore and seabed negotiations.
Rights and interests	Submitters commented on the issue of public access. They expressed the view that the Act was passed as a response to ill-founded Pākehā concerns that Māori would limit access to beaches. Others thought that public access should be guaranteed to the public foreshore and seabed. Navigation was also an issue. There was comment on the need for rights of navigation to be protected. Others proposed that restrictions be placed on such rights. Submitters talked about issues relating to mining. The view expressed that the Crown was alienating areas of the foreshore and seabed for mining purposes. Several submitters emphasised concerns relating to resource consent process. In particular, they addressed the right of veto that holders of customary rights orders had, the need to ensure customary rights did not override district/regional plans, the rights of those already exercising consent and the broader implication for resource management.
Technical issues	Submitters addressed issues relating to certain definitions, structures, fixtures and reclamations.
Development of the Act	Many submitters stated that the enactment of the Act was inappropriately rushed.

Miscellaneous	Other matters raised by submitters included Te Whaanga lagoon and the definition of "foreshore and seabed". Submitters welcomed the Review, however, several expressed the view that the time allowed for the Review was too short and that a longer conversation on the issues needed to occur.

Each part of this volume (or in some cases, sub-part) is structured into:

a an overview of the submissions received on that particular issue; and

b a summary of the submissions on that issue.

While every effort has been made to identify the submissions related to each part this was not always easy to do because of the number of submissions and the ways that the submitters chose to structure their submissions. No analysis of the submissions has been undertaken in this report. Rather, the submissions have been summarised and categorised in the manner described above.

Part 1
Tests and procedures

PART 1 Tests and procedures

This section provides an overview and summary of the submissions received about whether the tests and procedures in the Act are appropriate.

Overview

Although a large number of submissions were received on this issue, many of them followed similar themes and included similar comments. One of the main themes to arise was that the tests in the Act, in particular the tests for territorial customary rights, are too difficult to meet. Submitters argue that these tests are unfair because they do not take into account the role that the Crown has historically played in the alienation of land contiguous to the foreshore and seabed. Another main theme was that the tests do not reflect the nature of Māori customary interests in the foreshore and seabed.

Other significant themes included the appropriateness or otherwise of non-Māori applying for customary rights orders, redress available under the Act, and the jurisdictions of the Māori Land Court and High Court set out in the Act.

Tests and procedures are appropriate

Tests

The National Council of Women of New Zealand (7-165-1) on behalf of their members, submitted that two of their constituent groups and one individual agrees with the test for territorial customary rights.

Tanenuiarangi Manawatu Incorporated (7-135-1) on behalf of Rangitaane O Manawatu, submitted that they are in broad agreement with the tests for territorial customary rights and customary rights orders set out in the Act, (they consider that Rangitaane o Manawatu are able to meet the tests), but that the body conducting the tests should follow tikanga. Tanenuiarangi Manawatu Incorporated also considered that whatever rights the Act purports to offer, it is premised on the removal of land from Rangitaane o Manawatu, which contradicts the inherent right of Rangitaane o Manawatu to the foreshore and seabed.

The Resource Management Law Association of New Zealand Inc (7-4-1) and the Environmental Law Committee of the New Zealand Law Society (7-5-1) submitted that the tests and procedures in the Act are appropriate from a Treaty perspective, but not appropriate if the government is seeking to develop a coherent body of environmental law. In their opinion this is because the "Act is grafted on" to the Resource Management Act, which precludes an integrated approach to environmental law.

Hon Dr Michael Cullen on behalf of the Labour Party of New Zealand (7-25-1) submitted that there should continue to be statutory tests for the recognition of territorial customary rights, subject to any changes that might be made. The Labour Party considers that "to wait upon protracted legal arguments developing a New Zealand jurisprudence in this respect would defeat the purpose of what many are seeking: both certainty and equity".

Richard Drake (7-162-1) submitted that the tests are partly appropriate, but because the rights already exist, successful applications to the court could only confirm that the rights existed, and not confer rights themselves.

Procedures

A few submitters considered it appropriate that non-Māori groups of New Zealanders be able to apply to the High Court for recognition of customary activities.[9] Richard Drake (7-162-1) submitted his view that there are certain groups who would be able to meet the tests - for example, the Guard family at Kakapo Bay and the Webber family at D'Urville Island.

Tests and procedures are not appropriate

Not Appropriate: Generally

A large number of submitters considered that the tests for territorial customary rights and customary rights orders set out in the Act were too difficult to meet. [10] The tests were described as "impossible" by several submitters, including Ngāitai Iwi Authority (7-140-1).[11] Amnesty International Aotearoa New Zealand (7-230-1) who considered that the thresholds in the Act are much higher than set out in other common law countries, such as Australia and Canada.

Numerous submitters have focussed on the requirement of continuity of ownership of land and exclusive use and occupation since 1840. Submitters considered that this part of the test is particularly unfair where the Crown's actions through raupatu (confiscation) or some other form of alienation of land have caused a break in continuity of ownership.[12] For example, Morris Love on behalf of Te Atiawa ki te Upoko o te Ika a Mauī Pōtiki Trust (4-21-1, 4-21-2), submitted that the test for territorial customary rights requiring the applicant group to have substantially uninterrupted use and occupation from 1840 is too high a test given New Zealand's history of aggressive government-supported land alienation policies. Mr Love stated that the large-scale alienation of Māori land, which began prior to 1840, means that the provision for uninterrupted use and occupation is extremely difficult to maintain. Eastland Port Ltd (7-231-1) suggested that use and occupation simply needed to be for a significant amount of time.

Anonymous (4-22-1) submitted that the tests for both territorial customary rights and customary rights orders lead towards potentially endless academic debate as to whether they accurately reflect how the common law in New Zealand may have developed had the Act not been passed. The submitter considered that the tests set out in the Act demonstrate "low trust" in the jurisdiction of the High Court and the Māori Land Court, and are possibly more conservative than the jurisprudence

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[9] Including Richard Drake (7-162-1) and Theo Van Kampen on behalf of the Dunedin Ratepayers and Householders Association Inc (7-167-1).

[10] Including John Henry Tamihere on behalf of the National Urban Māori Authority (7-19-1); Eastland Port Ltd (7-231-1); James Allen Marcum (7-243-1); Haami Piripi on behalf of Te Rūnanga o Te Rarawa (1-1-2); Te Rūnanga o Ngāti Porou (1-2-3); Ngāti Porou ki Hauraki Trust (1-6-1 and 1-6-2); Anonymous (4-22-1); Anahera Herbert-Grace on behalf of Te Rūnanga o Ngāti Kahu (4-58-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Te Rūnanga o Ngāi Tahu (4-15-2); Treaty Tribes Coalition (7-43-1); Te Ope Mana a Tai (7-44-1); Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3, 7-45-4); Hohepa (Joe) Mason on behalf of Te Rūnanga o Ngāti Awa (4-118-1); and Human Rights Commission (7-16-1).

[11] Including Alan Pivac on behalf of Te Rūnanga o Ngāti Whātua (7-237-1); Potatutatu Bill Ruru on behalf of Te Aitanga a Māhaki Trust (7-331-1); Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3); Vera van der Voorden on behalf of Kiwis Against Seabed Mining (4-36-1); Rangimarie Couch on behalf of the Suddaby whānau (7-337-1); Hokotehi Moriori Trust (7-239-2); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Suzanne Ellison on behalf of Kāti Huirapa Rūnaka ki Puketeraki (7-200-1); Metiria Tūrei on behalf of the Green Party (7-100-2); Susan Wallace on behalf of Te Rūnanga o Makaawhio (7-219-1).

[12] Including Waikato-Tainui Te Kauhanganui Inc (7-247-1); Ngāti Wai Trust Board (7-22-1); Shane Solomon (4-28-1); Richard Drake (7-162-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Barbara Mountier (7-154-1); Suzanne Ellison on behalf of Kāti Huirapa Rūnaka ki Puketeraki (7-200-1); Mahara Te Aika on behalf of Ngāi Tuahuriri Rūnanga (7-194-1); Christine Beach and Stephen Beach on behalf of Ruawaipu (7-191-1); Greg Fife (7-193-1); Powell Webber and Associates (7-202-1); Ngāti Koata Trust Board (7-201-1); Terekaunuku Whakarongotaimoana (Dean) Flavell (4-50-2, 7-41-1); Lance Waaka (5-26-1); Ian Francis Burke (7-148-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-213-1); Stewart Bull on behalf of Oraka-Aparima Rūnaka Inc (7-272-1); Lisa Beech on behalf of Caritas Aotearoa New Zealand (7-221-1); Edward Te Kohu Douglas and Rahera Barrett Douglas (7-143-1); Morrie Love on behalf of Te Atiawa ki te Upoko o te Ika a Mauī Pōtiki Trust (4-21-1, 4-21-2); Hokotehi Moriori Trust (7-239-2); James Allen Marcum (7-243-1); Tihi Anne Daisy Noble on behalf of Kanahi-Umutahi hapū, Okahu Inuawai hapū and Ngāti Manuhiakai hapū of Ngā Ruahine (2-1-1, 2-1-2 and 2-1-3); Ngātiwai Trust Board (7-222-1); George Riley on behalf of Te Rūnanga a iwi o Ngāpuhi (7-299-1); Te Rūnanga o Ngāti Porou (1-2-3); Ngāti Porou ki Hauraki Trust (1-6-1 and 1-6-2); Chris Karamea Insley (7-297-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Māori o Aotearoa (7-310-1); Anahera Herbert-Grace (44-58-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Māori Women's Welfare League (7-48-1); Joe Kee (5-19-1); Greg White on behalf of Te Rūnanga o Ngāti Tama (4-136-1); Metiria Tūrei on behalf of the Green Party (7-100-2); John Kaati (4-27-1); Linda Thornton (4-71-1); Human Rights Commission (7-16-1); and Peace Movement Aotearoa (7-42-2).

that would have developed. Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3) and Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1) submitted that the territorial customary rights orders test "illustrates the danger of importing foreign jurisprudence into New Zealand without careful thought". Dayle Takitimu (7-164-1) said that the tests were an inappropriate importation of Canadian and Australian jurisprudence.

Tests

Emeritus Professor FM (Jock) Brookfield (3-3-1, 3-3-3) has suggested that evidence of continuity should only be required when continuous occupation is relied upon by the applicant as evidence of occupation as at 1840.

Submitters such as Te Orohi Paul (7-37-1) and Roimata Moore (7-42-1), were concerned that the tests do not reflect the nature of customary interests held by Māori.[13] Manahi Paewai (7-303-1) submitted that the Act does not recognise that Māori customary title to the foreshore and seabed existed before the passage of the Act.

Ngāti Porou ki Hauraki Trust (1-6-1, 1-6-2) submitted that the tests for continuous ownership of contiguous land do not take into account the peculiarities of Māori custom, tradition and spiritual connection to land and sea. For example, it submitted that the continuous-contiguous test does not accommodate situations where land was alienated and later purchased back, gifted by tuku, or which ended up in the hands of neighbouring iwi through intermarriage.

Several submitters considered that the tests should take into account spiritual and cultural association of the group with the area.[14] Some submissions suggested that the test for territorial customary rights should be "a tikanga Māori test", reflective of the "held in accordance with the tikanga Māori test" for Māori customary land status as set out in Te Ture Whenua Māori/Māori Land Act 1993.[15]

Martha Gilbert on behalf of Ngāti Tama ki te Upoko o te Ika (7-246-1), submitted that the tests and procedures in the Act are evidence of the discriminative hurdles that Māori have to overcome to exercise their tino rangatiratanga. Ngāti Tama ki te Upoko o te Ika consider that it is unacceptable that Māori must prove their pre-settlement customary rights and interests to non-Māori.

Some submitters were concerned that the requirement for customary activities or practices have been carried out since 1840 fails to acknowledge or take into account developments in customary practices since 1840.[16] For example, Lisa Beech on behalf of Caritas Aotearoa New Zealand (7-221-1), said that they do not agree, in principle, with the tests for customary rights orders, because they "appear to require that Māori are fossilized into customs and practices which have operated without change or venue since 1840" and deny indigenous people the right to develop their culture. Likewise, Eastland Port Ltd (7-231-1) considered that customary activities need not have been carried out continuously since 1840.

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[13] Including Emma Gibbssmith on behalf of Te Pataka Matauranga Charitable Trust (7-260-1); Anonymous (7-158-1); Susan Wallace on behalf of Te Rūnanga o Makaawhio (7-219-1); Janise H Eketone (7-235-1); Hoani Langsbury (7-320-1); Te Rūnanga o Ngāti Porou (1-2-3); Dee Samuel (5-66-1); Joe Kee (5-19-1); Te Ope Mana a Tai (7-44-1); Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3, 7-45-4); and Linda Thornton (4-71-1).

[14] Including Anne-Marie Jackson (7-304-1) and Margaret Kawharu on behalf of Ngāti Whātua o Kaipara (4-102-1).

[15] Including Kenneth Palmer (7-242-1); Suzanne Ellison on behalf of Kāti Huirapa Rūnaka ki Puketeraki (7-200-1); Greg Fife (7-193-1); Anonymous (7-328-1); Nanaia Mahuta (4-32-1); John Henry Tamihere on behalf of the National Urban Māori Authority (7-19-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-213-1); Anonymous (7-158-1); Hoani Langsbury on behalf of Te Rūnanga o Ōtākau (7-320-1); Tame McCausland on behalf of Waitaha (4-46-1); Ngāti Mutunga o Wharekauri Iwi Trust (7-214-2); and Joe Kee (5-19-1).

[16] Mahara Te Aika on behalf of Ngāi Tuahuriri Rūnanga (7-194-1); Ngāti Porou ki Hauraki Trust (1-6-1 and 1-6-2); Edward Te Kohu Douglas and Rahera Barrett Douglas (7-143-1); Frances Mountier (7-125-1); Anne-Marie Jackson (7-304-1); and Peace Movement Aotearoa (7-42-2).

Concerns were raised about the rights acquired by successful applicants for customary rights orders and findings of former territorial customary rights. For example, Raymond Smith on behalf of the Waimarie Branch of the Māori Party (7-204-1), submitted that the Act effectively delivers nothing in the sense that any rights it delivers are actually granted by the Crown and essentially subject to it.[17]

Procedures

A number of submitters considered that the High Court's jurisdiction to consider customary rights matters was inappropriate, and that the Māori Land Court is the appropriate venue to consider customary rights matters.[18] Professor David V Williams (7-27-1) submitted that the jurisdiction of the Māori Land Court to consider customary rights should be enhanced to "ensure that both public interests and customary rights are properly taken into account." Professor Williams submitted that "the Land Court has a particularly strong and well-qualified bench and all members of the public should have confidence that the Land Court will exercise its judicial functions with care and will pay rigorous regard to evidence presented in Court."

Several submitters considered that the cut-off date of 2015 for making an application for a customary rights order was inappropriate.[19]

Submitters were also concerned that non-Māori groups can make applications for customary rights orders.[20] Dorreen Hatch and Barbara Menzies (7-117-1) submitted that the ability for non-Māori groups to apply for customary rights orders undermines indigenous rights and the status of tāngata whenua. Emeritus Professor FM (Jock) Brookfield (3-3-1, 3-3-3) submitted that "the provisions actually create rights where non [sic] existed before".

Hone Pākihi Peita (7-52-1) on behalf of the Waipuna Marae Trustees, submitted that it is not appropriate that Māori have to set out their whakapapa tapū in order to demonstrate ownership of their taonga. Instead, the onus should be on the Crown to demonstrate ownership. A number of submissions supported this stance.[21]

A few submitters had concerns about the effects of a customary rights order. The Resource Management Law Association of New Zealand Inc (7-4-1) considered that customary rights orders are poorly integrated into the Resource Management Act, because the Act gives customary rights orders a heightened status above resource consents. Keith Ingram (7-12-2) on behalf of the New Zealand Recreational Fishing Council, submitted that the tests in the Act should be robust and should include the wider community. The New Zealand Recreational Fishing Council was concerned that granting customary rights orders may give the ability of the customary rights order holders the ability to override Resource Management Act processes and veto proposals such as public wharves and may require a koha in order to facilitate a proposal.

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[17] Including Frances Mountier (7-125-1); Hokotehi Moriori Trust (7-239-2); and Cheryl Turner on behalf of the Pakanae Hapū Management Committee (7-279-1).

[18] Including Dee Samuel (5-66-1); Patrick Nicholas (7-59-1); Marie Jean Tautari (7-257-1); Hon Dr Michael Cullen on behalf of the Labour Party (7-25-1); Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1, 4-99-2); Ngāti Whātua ki Kaipara (4-102-1); Anne-Marie Jackson (7-304-1); Te Rūnanga o Ngāti Whātua (7-237-1); Te Rangatiratanga o Ngāti Rangitihi Inc (7-180-1); Ngāi Tahu Māori Law Centre (7-322-1); Kathy Ertel (7-199-1); Te Whānau o Te Urikore (7-147-1); Tame McCausland (4-46-1); Amnesty International Aotearoa New Zealand (7-230-1); Sharon Gemmell (7-206-1); Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3); Margaret Kawharu on behalf of Ngāti Whātua o Kaipara (4-102-1); and Liane Ngamane (4-99-1).

[19] Including Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1, 4-99-2); Ngāi Tahu Māori Law Centre (7-322-1); Te Rūnanga o Ngāti Whātua (7-237-1); and Sharon Clair on behalf of the New Zealand Council of Trade Unions Te Kauae Kaimahi (7-18-2).

[20] Including Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1, 4-99-2); Anne-Marie Jackson (7-304-1); Te Rūnanga o Ngāti Whātua (7-237-1); Anonymous (7-336-1); Hon Dr Michael Cullen on behalf of the New Zealand Labour Party (7-25-1); Ngāti Hikairo (7-223-1); Marie Jean Tautari (7-257-1); Theo Van Kampen on behalf of the Dunedin Ratepayers and Householders Association Inc (7-167-1); and Fred Te Miha on behalf of Ngāti Tama Manawhenua ki Te Tau Ihu Trust (4-108-1, 4-108-2, 4-108-3).

[21] Including Te Rūnanga o Awarua (4-7-1); Ngāti Wai Trust Board (7-237-1); Shane Solomon (4-28-1); Anne-Marie Jackson (7-304-1); Ngāti Hikairo (7-223-1); Barbara Marsh on behalf of Wai 788 (Mokau Mohakotino and other blocks) claimants (7-332-1); and Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-213-1).

Several submissions were concerned about the costs involved in taking applications through the courts, particularly given the limited recognition obtained through the process.[22] For example, Morris Love (4-21-1, 4-21-2) on behalf of Te Atiawa ki te Upoko o te Ika a Mauī Pōtiki Trust, submitted that Te Atiawa ki te Upoko o te Ika had considered applying to the court for a customary rights order in relation to waka activities such as for waka ama, but no application was lodged because it was thought that the process would be too long, complex and expensive with little certainty of achieving the desired result.

Tihi Anne Daisy Noble (2-1-1, 2-1-2 and 2-1-3) made a submission on behalf the three groups who have current customary rights order applications before the Māori Land Court: Kanihi-Umutahi hapū, Okahu Inuawai hapū and Ngāti Manuhiakai hapū of Ngā Ruahine. The groups' submission focused on their concern that the lack of well-established processes in the Māori Land Court for dealing with customary rights orders applications had resulted in unnecessary delays in progressing their applications. The groups submitted that their experiences demonstrate that the Māori Land Court is not the appropriate body to deal with customary rights order applications under the Act.

Powell Webber and Associates (7-202-1) considered that where an agreement is reached through negotiations with the Crown under section 96 of the Act, the hapū should not be required to also apply for recognition of territorial customary rights in the High Court.[23]

Some submitters considered that it is inappropriate for Māori to be able to apply for customary rights orders at all. For example, Margot Baker (7-80-1) submitted that Māori should not be able to claim customary rights in the foreshore and seabed because they no longer depend on the foreshore and seabed as a food source or for their livelihood. Beverley Threadwell (7-79-1) submitted that no customary rights claims by Māori should be upheld.

An anonymous submitter (7-236-1) submitted that allowing territorial customary rights claims to form the basis of redress will create a whole new grievance industry, which is not in the national interest.

[22] Including Te Rūnanga o Ngāti Porou (1-2-3); Lance Waaka (5-26-1); Willow-Jean Prime and Dion Prime (4-128-3); Jacinta Ruru (7-116-1); Te Rūnanga o Ngāi Tahu (4-15-2); anonymous submitter (7-278-1); Anonymous (7-158-1); Christine Beach and Stephen Beach on behalf of Ruawaipu (7-191-1); Barbara Marsh (7-332-1); Hoani Langsbury (7-320-1); Ngāti Mutunga o Wharekauri Iwi Trust (7-214-2); and Tame McCausland on behalf of Waitaha (4-46-1).

[23] Including Anonymous (4-22-1) and Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3).

Part 2 What should happen to the Act?

PART 2 What should happen to the Act?

This part provides an overview and summary of what submitters said in relation to what they would like to see happen to the Act as a result of the Review.

Overview

Approximately 359 of 580 of the total number of submitters expressed an opinion about what they would like to see happen to the Act. Of that:

a 5 percent submitted that the Act should be retained unchanged;

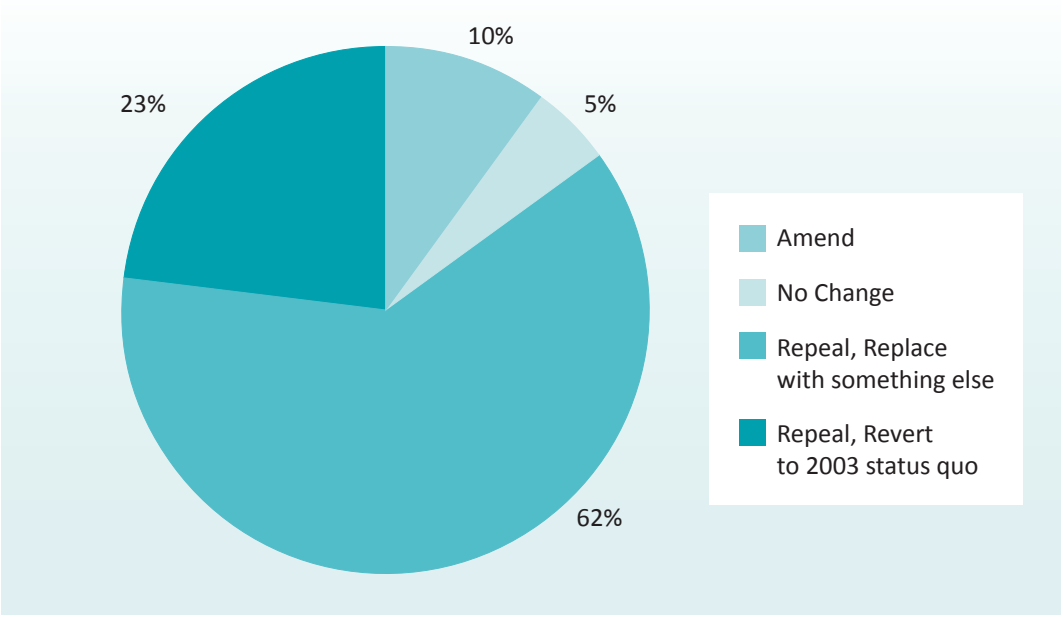
b 10 percent submitted that the Act should be amended;

c 23 percent submitted that the Act should be wholly repealed and the status quo after Ngāti Apa decision in 2003 reverted to; and

d 62 percent submitted that the Act should be repealed and replaced with something new.

The following diagram depicts the split of submissions based on what submitters would like see happen to the Act. This information is only approximate and reflects those submissions that specifically addressed this issue.

What should happen to the Foreshore and Seabed Act 2004



Option 1: Retain unchanged

This section summarises those submissions (5 percent of the 358 submissions that expressed an opinion about what should happen to the Act) that support the Foreshore and Seabed Act 2004 (the Act) being retained unchanged.

Overview

Submitters considered that the Act should be retained unchanged for four reasons:

a the Act recognises equal rights over the foreshore and seabed;

b the Act ensures access in the foreshore and seabed;

c the Crown should retain ownership; and

d avoiding issues in the future.

Summary

Recognises equal rights over the foreshore and seabed

John Albert Guard (7-308-1) said he views the foreshore and seabed as belonging to all New Zealanders and believes that the government should always be in control of decisions about it.

Thomas Harrison (4-109-2, 4-109-1) agreed with the legislation one hundred percent. He noted that the foreshore and seabed is the birthright of all New Zealanders.

Merlyn Tily (7-64-1) believes that the foreshore and seabed is for all New Zealanders and that the government is dividing New Zealand by not standing up to Māori groups.

Anonymous (7-93-1) believes retention of the Act and vesting of the foreshore and seabed in the Crown provides equality for all.

Ensuring access in the foreshore and seabed

Theo van Kampen on behalf of the Dunedin Ratepayers and Householders Association (7-167-1), supported Crown ownership of the foreshore and seabed to ensure equal access for everyone.

Yachting New Zealand (7-106-1) said it supports the Act and its principles because it provides for freedom of navigation in the coastal marine area and access to sheltered bays. They said they support Crown ownership of the foreshore and seabed and believe the Act has dealt with a number of complex issues.

Bryce Johnson on behalf of Fish and Game New Zealand (7-29-1), supported continuation of the four main principles of the Act. He noted that Crown ownership provides a right of passage for all New Zealanders.

Bernard R Hadfield (4-107-1, 4-107-2, 4-107-3, 4-107-4) submitted that the Act has worked for the benefit of all in that it provides for public access for all New Zealanders to the foreshore and seabed including that currently in private ownership. It also provides for Māori cultural and customary interests in the foreshore and seabed and compensates Māori via the Māori Commercial Aquaculture Settlement Act 2004.

Crown should retain ownership

Submitters such as Margot Baker (7-80-1) believe the Act should remain and the Crown should have custody of the foreshore and seabed to protect the rights of all New Zealanders.[24] She believes that Māori customary rights are racist as Māori have not depended on the sea as a food source or for their livelihood within the last one hundred years.

Beverley Treadwell (7-79-1) stated that the Act should remain in the hands of the Crown and that no customary rights of Māori should be upheld.

Bryce Bakor (7-78-1) stated that the Act should stand and ownership should be with the Crown only.

Avoiding issues in the future

Helen Moseley (7-35-1) submitted that the foreshore and seabed should be vested in the Crown at all costs, "as New Zealanders have always thought it was and that any licences granted over the foreshore and seabed should not be granted along racial lines". She indicated some concern that revisiting the Act will cause further controversy.

An anonymous submitter (7-308-1) said they viewed the foreshore and seabed as belonging to all New Zealanders and thought it would be a waste of taxpayers money reviewing the issue. The submitter stated that "we are all one nation and this issue is dividing the country".

Peter and Anne McPartlin on behalf of the McPartlin family and the Lightwood Trust (7-210-1), said that he believes that although the Act is not perfect (no law is), he fears tampering with the Act may make it even less perfect.

John Pfahlert on behalf of the Petroleum Exploration and Production Association of New Zealand (7-7-1, 7-7-2) noted that the Act has had minimal impact on his members who are involved in oil and gas exploration and production throughout New Zealand. He supported the Act because iwi holding title in multiple ownership or complex ownership arrangements in the coastal marine area would create barriers for foreign investors to negotiate developments. He noted that the Association wishes to preserve and protect their ability to gain access in and over the foreshore and seabed and sees that happening through the Act (he has no issue with settling Treaty claims so long as public access is preserved). He said he believes that no one should have a privileged position in the foreshore and seabed beyond the 12 mile limit.

[24] Including Yachting New Zealand (7-106-1); Bryce Johnson (7-29-1); and Helen Moseley (7-35-1).

Option 2: Amend the Act

This section summarises those submissions (10 percent of 358 submissions that expressed an opinion about what should happen to the Act) that seek amendments to the Act.

Overview

This section sets out how and why submitters consider amendments to the Act should occur.

One of the key issues was ownership of the foreshore and seabed, and submitters offered various proposals on this point. Submitters also focused on the tests for territorial customary rights and customary rights orders in the Act, and how these recognise customary interests in the foreshore and seabed. Submitters suggested alternative ways to recognise territorial customary rights, particularly through various forms of title.

A number of submitters were also concerned about alienation of the foreshore and seabed, with most submitters seeking a strengthened regime. Other themes included the principles underlying the Act, access and navigation, interaction with historical Treaty settlements, the availability of legal aid and protection of wāhi tapu. There were also specific issues canvassed relating to the Wanganui port and Pauanui canals.

Some submitters who proposed amendment rather than 'repeal and replace' noted that they would support either option but believed that amendment may be an easier or more expeditious method of achieving the outcome they sought.

Why amend the Act and how it should be done

A number of submitters commented on their preference for repealing the Act, but realised that for certainty, amending the Act might be a more realistic option. Ngāti Whātua ki Kaipara (4-102-1) put it this way: "While we wish the Act had not been passed, going back to a position before the Act does not give us any certainty re the recognition of our customary rights and interests and we want certainty".

Ngāti Porou ki Hauraki Trust (1-6-2) considered that the Act should be repealed and replaced with something new; or repealed and the status quo post Ngāti Apa reverted to; or a substantial amendment made.

Powell Webber and Associates (7-202-1) considered that "the most effective and expeditious way forward is to amend the Act to provide a Treaty consistent framework for recognition of Māori customary rights to, and interests in, the foreshore and seabed".[25]

Hon Dr Michael Cullen on behalf of the Labour Party (7-25-1) suggested that any changes should recognise enduring Māori customary rights, maintain existing public rights and ensure there is no new freehold title to, or alienation of, the foreshore and seabed.

Ngāi Tahu Māori Law Centre (7-322-1) considered that the Crown should engage directly with Māori to ensure that any amendments recognise tino rangatiratanga, do not expropriate Māori property rights and are not discriminatory.

Eastland Port Ltd (7-231-1) considered that any changes should provide certainty for port operators over their existing rights to operate and control port assets.

[25] Including Ngāti Pahauwera Development Trust (1-4-3) and Margaret Kawharu on behalf of Ngāti Whātua o Kaipara (4-102-1).

Principles

Several submissions addressed the principles underlying the Act. Richard Drake (7-162-1) proposed that there should be a principle of "protection", not regulation, of the rights of New Zealanders, and that there should be "clarity" not certainty, in respect of rights and interests.

Anonymous (7-336-1) considered that the principles underlying the Act could include the principles of the Treaty of Waitangi and/or co-management principles. Eastland Port Ltd (7-231-1) submitted that one of the principles should be protection of commercial activities with an identifiable historical basis.

The Ōraka-Aparima Rūnaka (7-272-1) suggested that the following principles replace those currently employed: the Treaty of Waitangi; recognition of rangatiratanga; simplified and unified legislative regime; reconciliation of economic and environmental interests and power sharing decision making.

Ownership of the foreshore and seabed

Distinction between private and public foreshore and seabed

Submitters proposed various options for ownership of the foreshore and seabed. They proposed that if the Crown retained ownership of the public foreshore and seabed, this should be extended to include private foreshore and seabed, for example Anne-Marie Jackson (7-304-1) and Lee-Cherie King (7-238-1) considered there was inequity between treatment of Māori customary title and privately held title.

Māori ownership

Richard Drake (7-162-1) considered that if there was to be ownership of the foreshore and seabed, it should be held by Māori. Mr Drake considered "The concept of ownership is a European concept upon which our law, lives and commerce depend today. However my understanding is that it is foreign to Māori lore".

Te Ora o Manukau (7-238-1) submitted that rights over the foreshore and seabed are inherent in Māori and the Act should be amended to reflect this.

Joint ownership

Some submissions including the submission by the Ngāti Pahauwera Development Trust (5-38-1) proposed that there be joint ownership of the foreshore and seabed between the local hapū and the Crown.[26]

Ownership by "everyone"

JT Ford (7-173-1) considered that everyone has an equal share of ownership and responsibility for land, sea and air. Brent Pierson (5-16-1) submitted that the Act should be strengthened to ensure that all the foreshore and seabed is public and therefore owned by everyone. He considered that this should include land that is already in private ownership, except for certain circumstances such as ports.

Crown ownership

Powell Webber and Associates (7-202-1) considered there should be further conversation between the Crown and Māori about whether the Crown would have interim ownership of the foreshore and seabed pending the resolution of applications for coastal customary title.

[26] Including NWK Pearson (7-171-1) and Anonymous (7-336-1).

The submission by Hauraki Māori Trust Board (4-99-1, 4-99-2) considered that the Crown does not own the foreshore and seabed: "The idea that the Crown owns the foreshore and seabed rests uneasily with Hauraki, in short, because it is not true".

Hon Dr Michael Cullen on behalf of the New Zealand Labour Party (7-25-1) proposed that the section relating to Crown ownership could remove the reference to the Crown owning the foreshore and seabed as its "absolute property" and could instead provide that the vesting occurred so that the Crown can administer the area for the common use and benefit of all New Zealanders.

Te Rangatiratanga o Ngāti Rangitihi Inc (7-180-1) considered that the amended legislation should acknowledge that the Crown assumption of ownership has altered, prevented or destroyed customary practices and destroyed or prevented economic development.

The National Urban Māori Authority (7-19-1) considered that section 13 of the Act should be repealed and that there should be a return to the legal position in place after *Ngāti Apa*.

Tauranga City Council (7-271-1) submitted that local authority land in the foreshore and seabed should not be vested in the Crown as public foreshore and seabed. The submission noted the Act creates uncertainty as to the ownership of structures on foreshore and seabed formerly owned by local authorities, and whether the council can let or lease those structures. (This is also discussed later specifically in relation to Wanganui port.)

Access and navigation

A number of submitters have agreed there should be some public access, but possibly in a qualified manner.[27]

Te Ora o Manukau (7-238-1) proposed that the Crown should recognise Māori rights, in return for which Māori would guarantee access over the foreshore and seabed.

Anonymous (7-336-1) considered that access and navigation should only be exercised with the agreement of the co-owners (assuming co-ownership of the foreshore and seabed). Similarly, the National Urban Māori Authority (7-19-1) considered that these rights must be read in light of the underlying Māori rights and title, and Richard Drake (7-162-1) considered that navigation should be exercised in consultation with those holding mana whenua and mana moana.[28]

The Pahewa Patrick Fairlie whānau (7-286-1, 7-286-2) considered that the Act should provide an alternative way of securing public access for recreational fishers to the foreshore and seabed. The submitter considered that the Department of Conservation should work in partnership with whānau to explore how whānau could exercise authority and decision making over the environmental sustainability of marine life.

WK Pearson (7-171-1) considered that public access should be "enshrined" in the law.

[27] Including Ngāti Whātua ki Kaipara (4-102-1) and Ngāti Wai Trust Board (7-22-1).

[28] Including Ngāti Pahauwera Development Trust (5-38-1).

Customary rights orders

Cut off date

A number of submissions considered that the cut off date of 2015 for making an application for a customary rights order was inappropriate.[29]

Non-Māori applications

A number of submissions were also concerned about non-Māori groups making applications for customary rights orders. Emeritus Professor FM (Jock) Brookfield (3-3-1; 3-3-3) wrote in his submission "The provisions actually create rights where non [sic] existed before" (emphasis in original).[30]

Nature of customary rights

Anne-Marie Jackson (7-304-1) considered that there should be the ability for customary activities to change over time, rather than be required to be "substantially uninterrupted". The submitter also considered that the ability to gain commercial benefit from a customary activity was inconsistent with the distinction in fisheries legislation between customary and commercial use[31].

An anonymous submitter (7-316-1) considered that all Māori interests should be included in customary rights orders.

Nanaia Mahuta (4-32-1) considered there should be an agency or person responsible for protecting customary interests, once these interests were recognised under the Act.

Interaction with the Resource Management Act 1991

The Resource Management Law Association of New Zealand Inc (7-4-1) considered that the customary rights order provisions should integrate better with the objectives of the Resource Management Act.[32] In particular, the submitters considered that there should be a greater focus on environmental sustainability and that customary rights orders should not provide a veto over resource consent applications[33]. The New Zealand Refining Company Ltd (7-205-1) agreed there should not be a right of veto over resource consent applications, particularly as it would not be fair to those applying for new resource consents on the expiry of existing resource consents.

Territorial customary rights

Jurisdiction

Most submitters who discussed jurisdiction considered that the Māori Land Court should be the court hearing territorial customary rights applications in the first instance.[34]

Paul Harman (4-20-1) considered that the jurisdiction should be exercised equally by the Māori Land Court, the High Court and local authorities in their consent role capacity.

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[29] Including Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1, 4-99-2); Ngāi Tahu Māori Law Centre (7-322-1); and Te Rūnanga o Ngāti Whātua (7-237-1).

[30] Including Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1; 4-99-2); Anne-Marie Jackson (7-304-1); Te Rūnanga o Ngāti Whātua (7-237-1); Anonymous (7-336-1); Hon Dr Michael Cullen on behalf of the Labour Party (7-25-1); and Ngāti Hikairo (7-223-1).

[31] Including Caritas Aotearoa New Zealand (7-221-1).

[32] Including the Environmental Law Committee of the New Zealand Law Society (7-5-1).

[33] Including New Zealand Recreational Fishing Council (7-12-2).

[34] Including Hon Dr Michael Cullen on behalf of the Labour Party (7-25-1); Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1; 4-99-2); Ngāti Whātua ki Kaipara (4-102-1); Anne-Marie Jackson (7-304-1); Te Rūnanga o Ngāti Whātua (7-237-1); and Te Rangātiratanga o Ngāti Rangitihi Inc (7-180-1).

Tests

Concerns raised in submissions relating to the tests for territorial customary rights and possible alternatives are discussed in detail in the chapter relating to "whether the tests and procedures in the Foreshore and Seabed Act are appropriate". It is worth noting here that some submissions suggested the test for territorial customary rights should be "a tikanga Māori test".[35] This reflects the test for Māori customary land in Te Ture Whenua Māori Act/Māori Land Act 1993. That test is that the land is held by Māori in accordance with tikanga Māori.

Anne-Marie Jackson (7-304-1) considered there was an inconsistency given the clear process for redress provided to local authorities compared with the process for redress to Māori. The submitter considered the Act should be clear about the process for providing redress to Māori.

Onus

A number of submitters proposed that the onus be on the Crown to disprove customary interests, rather than the onus being on the hapū or iwi to prove the customary interest.[36]

Title as recognition of territorial customary rights

In a number of submissions, a "coastal customary title" was described as an ideal outcome of obtaining recognition of territorial customary rights.[37] Powell Webber and Associates (7-202-1) expanded on what this could include as follows:

a hapū would be on the title to the area of foreshore and seabed (either solely, or together with the Crown);

b the holder of the title could nominate an entity to undertake specified rights; and

c the specified rights would include a right of veto over development, modification, coastal permits, permanent alteration and sand extraction.

Another version of customary title was proposed by Dr Michael Cullen on behalf of the New Zealand Labour Party (7-25-1). He considered that there should be further consideration of what rights a customary title would consist of, but considered that it should be stated as being held on behalf of all New Zealanders. He considered there should be a ban on charging fees for access, navigation and non-commercial usage over customary title over the foreshore and seabed. The submission proposed that customary title should not be able to be transferred into freehold title.

Other submitters proposed that exclusive title, sometimes described by submitters as Māori freehold title, be granted as recognition of territorial customary rights.[38] Still other submissions proposed a return to the post *Ngāti Apa* position of applying for a Māori customary title under Te Ture Whenua Māori/Māori Land Act 1993.[39]

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[35] Including Kenneth Palmer (7-242-1); Suzanne Ellison on behalf of Kāti Huirapa Rūnaka ki Puketeraki (7-200-1); Greg Fife (7-193-1); Anonymous (7-328-1); Nanaia Mahuta (4-32-1); John Henry Tamihere on behalf of the National Urban Māori Authority (7-19-1); and Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society (7-213-1).

[36] Including Te Rūnanga o Awarua (4-7-1); Ngāti Wai Trust Board (7-237-1); Shane Solomon (4-28-1); Anne-Marie Jackson (7-304-1); and Ngāti Hikairo (7-223-1).

[37] Including Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Hauraki Māori Trust Board (4-99-1, 4-99-2); Ngāti Whātua ki Kaipara (4-102-1); Te Rūnanga o Ngāti Whātua (7-237-1); and Ngāti Pahauwera Development Trust (1-4-3).

[38] Including Anonymous (7-336-1) and Ngāi Tahu Māori Law Centre (7-322-1).

[39] Including John Henry Tamihere on behalf of the National Urban Māori Authority (7-19-1).

A trust model

Emeritus Professor FM (Jock) Brookfield (3-3-1, 3-3-3) submitted that a trust model could be an appropriate outcome of a finding of territorial customary rights. The foreshore and seabed would be held by the Crown in trust for the hapū. If there was any development or use of the foreshore and seabed held by the trust, the proceeds of that would be provided to the hapū.

Result of section 33 order

Anne-Marie Jackson (7-304-1) considered that the result of an order of territorial customary rights under section 33 of the Act was not sufficiently clear. In particular, the submitter considered the nature of a foreshore and seabed reserve could be made clearer.

High Court requirement

Powell Webber and Associates (7-202-1) considered that where an agreement is reached through negotiations with the Crown under section 96 of the Act, the hapū should not be required to also apply for recognition of territorial customary rights in the High Court. Instead, the Crown and hapū should be able to file a consent order.[40]

An anonymous submitter considered that a hapū should not have to apply for recognition of territorial customary rights in the High Court.

Interaction with the Public Works Act

Kenneth Palmer (7-242-1) submitted that if the foreshore and seabed has been taken under the Public Works Act, it may be useful to determine whether the foreshore and seabed had Māori customary land status immediately before the taking. The submitter considered this may facilitate the return of the land under the Public Works Act.

Interaction with Historical Treaty settlements

Powell Webber and Associates (7-202-1) proposed that foreshore and seabed negotiations could be "fast tracked" through settlement of claims for historical breaches of the Treaty of Waitangi. The submitter also proposed that the recognition set out in the Deed of Agreement reached between the Crown and Ngā Hapū o Ngāti Porou could be used in historical Treaty settlements.

Waikato-Tainui Te Kauhanganui Inc (7-247-1) considered that any amendments to the Act should reflect the outcomes of the Deed of Agreement between the Crown and Waikato-Tainui settling claims for historical breaches of the Treaty of Waitangi.

Nanaia Mahuta (4-32-1) proposed that in the event of a conflict the provisions in an historical Treaty settlement should have precedence over the Foreshore and Seabed Act 2004, if there is a conflict.

Legal Aid

A number of submitters suggested there should be financial assistance to those making applications under the Act.[41] Most of these submitters referred specifically to the availability of legal aid.[42]

Alternatively, Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1) suggested that the cost of the courts be "removed".

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[40] Including Anonymous (4-22-1); Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3); and Anonymous (7-34-1).

[41] Including Anne-Marie Jackson (7-304-1) and Nanaia Mahuta (4-32-1).

[42] Including Ngaitai Iwi Authority (7-140-1); Powell Webber and Associates (7-202-1); Ngāti Whātua ki Kaipara (4-102-1); Te Rūnanga o Ngāti Whātua (7-237-1); and Hauraki Māori Trust Board (4-99-1, 4-99-2).

Wāhi tapu

A number of submitters raised concerns that recognition of wāhi tapu in the Act is only in relation to a customary rights order, and relies on the discretion of the Judge making the order to refer the matter to the Minister of Conservation and the Minister of Māori Affairs, and on the discretion of those Ministers to restrict access to the wāhi tapu. These submitters suggested there be a separate order that could be applied for under the Act, a "wāhi tapu protection order".[43]

Emeritus Professor FM (Jock) Brookfield (3-3-1, 3-3-3) considered that the protection of wāhi tapu should not be a "political decision", that is, a decision made by Ministers. In contrast, Anonymous (7-336-1) proposed that Ministers could make the decision, if hapū were consulted. Te Rūnanga o Awarua (4-7-1) considered that hapū themselves should control access and manage wāhi tapu.

Alienation

Limiting alienation

The majority of submissions relating to alienation of the foreshore and seabed considered that provisions restricting alienation should be strengthened. Some submissions considered the foreshore and seabed should not be sold at all.[44]

Nanaia Mahuta (4-32-1) considered that the foreshore and seabed should not be able to be sold where customary interests had been recognised in that area.[45] Anonymous (7-431-1) submitted that alienation should only occur after extensive discussions between co-owners (assuming the Crown and the hapū as co-owners).

Kiwis Against Seabed Mining (7-129-1; 4-36-2) would like section 14 of the Act repealed, as part of their submission that the Crown should not own the foreshore and seabed.

Alienation of ports

Eastland Port Ltd (7-231-1) considered that there should be an option to lease or sell the foreshore and seabed if the purpose is proven to benefit the community or if the activity has existed for a long time and is likely to continue. The submitter also considered that if title is granted for an activity and that activity ceases to exist, then title should revert to the Crown.

Northport Ltd (7-203-1) also considered that alienation of reclaimed foreshore and seabed could occur in limited circumstances. The submitter considered that because of the need for certainty and the high significance of the port, reclamations should be able to be sold in freehold title to port companies and those who have reclaimed foreshore and seabed. The submitter also proposed the removal of any encumbrances by the Minister of Conservation on the licences to port companies. This was supported by a submission by Saunders Unsworth on behalf of 15 port companies (7-99-1).

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[43] Including Ngaitai Iwi Authority (7-140-1); Ngāti Whātua ki Kaipara (4-102-1); Anne-Marie Jackson (7-304-1); Powell Webber and Associates (7-202-1); and Te Rūnanga o Ngāti Whātua (7-237-1).

[44] Including Anne-Marie Jackson (7-304-1); Richard Drake (7-162-1); and Ngāi Tahu Māori Law Centre (7-322-1).

[45] Including Hon Dr Michael Cullen on behalf of the Labour Party (7-25-1).

Specific issues

Wanganui Port

Wanganui District Council (7-179-1) provided a history of the port facilities which were built on Harbour Board land in Wanganui. The Harbour Board titles were then vested in the Wanganui District Council and subsequently the Crown under the Act. The submitter considers this has created uncertainty for the council regarding the structures and their obligations. The submitters would like the Act amended to resolve these legal uncertainties.

Pauanui Canals

The man-made canals at Pauanui were vested in the Thames Coromandel District Council as a reserve. The Foreshore and Seabed Act 2004 placed the canals in Crown ownership. The submission by Pauanui Waterways Management Company Ltd (7-189-1) request that any amendment to the Foreshore and Seabed Act 2004 exclude the canals from Crown ownership as they consider this was an unintended consequence of the Act. The submission also seeks that the vesting of the canals as a reserve be altered by placing the canals in ownership of a management company.

Pania Reef

Charl Hirschfeld (5-63-1, 5-63-2) submitted that reefs should be excluded from the definition of foreshore and seabed in the Act. He argues that the Act fails to recognise that Māori customary land can be within the foreshore. He gave the example of the Pania Reef whose rocks sit permanently above the water. The current definition of “foreshore and seabed” effectively means that dry customary land located in the foreshore has been vested in the Crown.

Option 3: Repeal and revert to post-Ngāti Apa decision

This section of the report summarises the submissions made by individuals and groups who supported the Act being wholly repealed and a reversion made to the status quo after the *Ngāti Apa* decision in 2003 reverted to ("repeal and revert"). The status quo after the *Ngāti Apa* decision was that the Māori Land Court had jurisdiction to determine whether any areas of foreshore and seabed were Māori customary land.

Overview

Submissions favouring repeal and reversion of the Act followed three themes:

a preference for repeal and reversion to the status quo after *Ngāti Apa*;

b support for repeal even if they do not specifically state that they wanted the situation to revert or did not present an alternative to the *Ngāti Apa* status quo. It is assumed that these submitters preferred repeal and reversion; and

c considered repeal and revert to be one of the options available and also suggested other options.

Submitters explicit in their preference for repeal and reversion

A number of individuals and groups were explicit in their preference for repeal and reversion. For example:[46]

> "That the status quo after the *Ngāti Apa* decision 2003 be reverted to. That is that Māori are entitled to seek 'customary title' over the areas of New Zealand's foreshore and seabed in the Māori Land Court" – Anonymous (7-61-1).

> "Gross legislative over-reaction to an issue that should be resolved through mechanisms that were available to all parties at the time the issue arose" – David Gregory (7-63-1).

> "It is the role of the courts to determine property rights… There was no compelling argument from the government as to why Māori couldn't pursue their claims through the Court" – Roger Kerr on behalf of the Business Roundtable (7-2-1).

> "there is no doubt about it, it's theft, and it must be repealed and thrown out … should be put right back where it was before they did it" – Hori Parata on behalf of Te Whānau o Te Hinetapu (5-72-1).

[46] Including Dean Flavell (7-41-1); Anonymous (7-54-1); Patricia Mill-Poi (7-70-1); Simon Austin (7-139-1); Hohepa Pīkari (Pickering) (7-313-1); Diane Ritahi (7-330-1); Selwyn Katene (4-112-1, 4-112-2); Joe Everitt (4-151-1, 4-151-2); Matiu Rei on behalf of Te Ope Mana a Tai (4-115-1); Eunice Evans (5-34-1); Peter MacCullum (7-172-1); Franz Mueller (5-42-1, 5-42-2); Hugh Thorpe (7-277-1); Abby Suszko (7-275-1); Peter Mcluskie (7-281-1); Kahu Nikora (7-66-1); Anonymous (7-128-1); and Madeleine Rose (5-13-1).

Submitters who wanted repeal but did not specifically state reverting to the status quo

A number of individuals and groups submitted that they wanted a repeal of the Act but either did not specifically state that they wanted it to revert to the status quo after *Ngāti Apa* or did not present alternatives to indicate that what they were seeking was a new regime.[47] For example:

> "The Foreshore and Seabed Act 2004 does not recognise Māori rights under Te Tiriti o Waitangi and should be revoked" – Pereri Tito (7-133-1).

> "The legislation is wrong and must be rescinded. Restore my people's customary rights and usage" – Barbara Huia Francis (7-127-1).

> "Act denies Iwi Māori the same rights as non-Māori to protection of their property rights… Dunedin Community Law Centre believe is must be repealed in its entirety, as soon as is practicable" – Dunedin Community Law Centre (7-126-1).

> "Act should be repealed in its entirety as being in contravention of international law, New Zealand law, and the Treaty of Waitangi" – Te Whānau o te Uriokore (7-147-1).

> "Should have left it alone everything was kapai" – Verna Waitere (7-175-1).

> "The Act should be scrapped! Me whakakorengia te piere!" – Bayden Barber on behalf of Ngā hapū o Waimarama (5-51-1 5-51-2).

Submitters who considered repeal and reversion to be one of many options

A few submitters considered that repeal and reversion was just one appropriate option. Mostly the alternative given was to amend the Act. Submitters who suggested a number of options, of which repeal and reversion was one option included Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1), Ngāti Porou ki Hauraki Trust (1-6-1) and Jacqui Te Kani on behalf of the Māori Women's Welfare League (7-48-1).[48]

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[47] Including Walter Te Kiita Broadman (7-67-1); Emily Bailey and Urs Singer (7-209-1); Adrianne Taungapeau on behalf of Hikihiki of Ngāti Wai Iwi and Ngāti Tawake of Ngapuhi (7-201-1); Pāia Riwaka-Herbert on behalf of Ngāti Apa ki te Waipounamu Trust (4-11-1); Barney Tupara (4-72-1); Wiremu Akuhata Evans (4-73-1); David Doorbar (4-137-1,4-137-2); Marijike Warmenhover on behalf of Ngāti Rangi ki Reporoa (4-80-1, 4-80-2); Gertrude M Warnes (7-274-1); Hikutai (Barney) Barrett (4-5-1); Cameron Hunter (4-104-1, 4-104-2); John Ryan (4-2-1); George Matthews (4-141-1); Sue Te Huinga Nikora (4-64-1, 4-64-2); Brent (Willie) Scott Packer (4-144-1); Pōtonga Nielsen (4-147-1); Barbara Menzies and Dorreen Hatch (7-117-1); Gail Thompson on behalf of Te Rūnanga o Awarua (4-6-1); E Cribb (7-177-1); Dick Hāwea on behalf of Ngāti Kere Rohe Trustees (4-89-1); Rosina Wiparata (5-3-1); Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1); Bentia Wakefield (5-46-1); Rangi Willis (4-146-1); Te Mariho Lenihan on behalf of the Reuban family of Tuaiwi (4-13-1); Frances Mountier (5-125-1); Te Aroha Hiko (5-36-1); Lorraine Akuhata (4-78-1); Robbie Cooper (4-81-1); and Charl Hirschfeld (5-63-1, 5-63-2).

[48] Including Frank Kingi Thorne (7-223-1) and Rena Kihau-Fowler on behalf of the whānau o Tohu Waiki (4-9-1, 4-9-2).

Option 4: Repeal and replace with something new

This section summarises those submissions that recommended repealing the Act and replacing it with something new.

Overview

Submitters proposed comprehensive frameworks, while others noted particular features they would like to see reflected in any outcomes arising from the review including broad sweeping reform of the coastal marine legislation.

The submissions can be divided in to nine key themes:

Constitutional change	Submitters proposed consideration or changes to New Zealand's constitutional arrangements.
Onus on the Crown	Submitters discussed the onus placed on Māori to prove their foreshore and seabed rights under the Act and suggested that this shift to the Crown. Other submitters stated that there should be an assumption that iwi and hapū own the foreshore and seabed rather than the Crown.
Human Rights and Waitangi Tribunal recommendations	Submitters referred to the Waitangi Tribunal's recommendations on the Foreshore and Seabed policy framework in 2003. Several submitters discussed human rights in their submissions and how these rights should be considered when developing a replacement for the Act.
Formal processes to replace the Act	Submitters proposed that the Act be repealed and replaced with a different type of formal process. These proposed replacements includes: • a Foreshore and Seabed Tribunal • a Foreshore and Seabed Panel • a Foreshore and Seabed Supreme Council • negotiations between the Crown and Māori groups • a Foreshore and Seabed Authority • a new Foreshore and Seabed Framework • a Foreshore and Seabed Working Party • a process involving the Courts • an investigative process.
Treaty of Waitangi principles	Submitters proposed that any replacement to the Act should comply with, incorporate or be based on the principles of the Treaty of Waitangi.
Further dialogue and consultation between the Crown and Māori	Submitters proposed that a replacement to the Act should include further dialogue with Māori and a robust consultation process.
Tikanga/kawa title and cultural frameworks	Submitters discussed the recognition of title, including: • tikanga title • customary title • underlying title • kawa title • tipuna title • other submitters discussed developing a cultural framework to replace the Act.

Co-management and hapū/iwi based management frameworks	Submitters recommended that the replacement regime for the Act include elements of co-management and/or a focus on hapū and iwi management
Features of a replacement to the Act	Rather than suggest a replacement for the Act, some submitters recommended particular features that should be incorporated into a replacement regime. These included: • cost-effective process • educational programmes • funding

Constitutional change

Many submitters proposed consideration or changes to New Zealand's constitutional arrangements.[49] Jason Pou (4-119-1) submitted that the repeal of the Act should be seen as a step in a series of processes which would ultimately change the constitution of New Zealand. The Waikato Antiracism Coalition (7-334-1) considered that the repeal of the Act and any solutions agreed upon should become the first steps toward constitutional reform, rather than solutions being delayed while the total constitutional reform process is agreed upon.

Hilda Te Hirata Sykes (7-290-1) noted that the ultimate goal of the review should be constitutional change. The Treaty Tribes Coalition (7-43-1, 7-43-2, 7-43-3) proposed that the repeal of the Act should be accompanied by wider constitutional reform that institutes fitting human rights safeguards and recognises the Treaty of Waitangi.[50]

Daniel Te Kanawa (7-276-1) proposed that future foreshore and seabed legislation should not be developed until the constitutional review has been undertaken. He noted that this would require the subsequent constitutional status of Māori to be confirmed in accordance with the Treaty of Waitangi and substantial support from the Māori community.

Some submitters noted that the constitution should be founded on a document signed in good faith.[51] Te Waiariki Ngāti Kororā Ngāti Takapere Hapū Trust (7-333-1) recommended that the government establish a New Zealand constitution with the Treaty of Waitangi recognised and provided for. This would establish a foundation for resolving foreshore and seabed issues.[52]

The Ruawaipu Tribal Authority represented by Jason Koia (4-62-1) recommended honouring the Treaty of Waitangi as a founding constitution.

Pierre McManus (5-4-1) supplied his own constitutional regulations for the Panel's consideration.

Onus on Crown

Several submitters discussed the onus placed on Māori to prove their foreshore and seabed rights under the Act. A number of submitters suggested starting from the assumption that the foreshore and seabed is owned by iwi and hapū, rather than by the Crown. For example, Barbara Marsh (7-332-1) submitted that the government should have to disprove customary rights rather than Māori prove that customary rights exist.[53]

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[49] The Women's International League for Peace and Freedom (5-56-2).

[50] Including Gillian Southey on behalf of the Christian World Service (7-244-1).

[51] Including Angeline Greensill (5-18-1, 5-18-2).

[52] Including Natasha Clarke (5-74-1) and Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Incorporated (7-213-1).

[53] Including (Maiki Marks) on behalf of Kororareka Marae Society Inc (7-196-1); Liz Springfield (7-288-1); Te Roopu Aihe O Te Puke (7-121-1); and The Womens International League for Peace and Freedom (5-56-2).

Anonymous (7-190-1) suggested that the Crown recognise Māori rights, in return for which Māori guarantee access to the foreshore and seabed. He noted that the rights to the foreshore and seabed are inherent in Māori. Other submitters supported the proposal that the Crown prove its claim to the foreshore and seabed.[54]

Te Rūnanga o Ngāi Tahu (4-15-1, 4-15-2, 4-15-3) supported an alternative statutory regime presuming that iwi hold the foreshore and seabed under tikanga and that the Crown has to prove any lawful extinguishment.

John Mitchell (4-19-1) considered that a 'vestable' customary title lies with the relevant Māori group until proven otherwise. He considered that this could be considered in the Māori Land Court with the Crown being the applicant.

Tim McCreanor (7-40-1) submitted that the rights to the foreshore and seabed are inherent to Māori. He considered that the Crown should be required to prove any claim that it makes or accept that it must negotiate access in return for full recognition of te tino rangatiratanga Māori over the foreshore and seabed.

Human rights and Waitangi Tribunal Recommendations

Many submitters referred back to the Waitangi Tribunal's recommendations on the Foreshore and Seabed policy framework issued in December 2003.

Several submitters suggested undertaking a longer conversation between tāngata whenua and the Crown to explore options available as recommended by the Waitangi Tribunal.[55] Mana Ahuriri Incorporated (7-208-1) submitted that a new regime should provide for a presumption of co-management arrangements for coastal hapū consistent with recommendations of the Waitangi Tribunal. Abigael Vogt (7-144-1) stated that the starting point after the repeal of the Act should be the findings of the Waitangi Tribunal, as this would allow the parties to engage in a focussed, and measured dialogue to find just, equitable solutions that meet the needs of communities. Moana Jackson on behalf of Ngāti Kahungunu Iwi Incorporated (4-84-1, 4-84-2) recommended that there should be discussions similar to those in the joint working parties established during the early stages of the fisheries negotiations in the 1980s.

Other submitters proposed that all recommendations by the Waitangi Tribunal be taken into consideration.[56] For example, Adrienne Ross (7-251-1) proposed a return to the findings of the Waitangi Tribunal, supported by a facilitated dialogue and community conversation process. Anonymous (7-109-1) suggested following the Waitangi Tribunal's "primary and strong" recommendation to go back to the drawing board and engage in proper negotiations with Māori about the way forward." Frances Mountier (7-125-1) submitted that the Waitangi Tribunal report should form a basis for the development of something new.

Many submitters discussed human rights in their submissions. Some submitters recommended that human rights should be considered when thinking of something new to replace the Act.[57] Ced Simpson on behalf of the Human Rights Foundation (7-17-1) proposed that foreshore and seabed issues be considered through a human rights lens to mediate a solution. Lisa Beech on behalf of Caritas Aotearoa/New Zealand (7-221-1) stated that respect and recognition of rights under the

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[54] Including Elliot Roberts (7-192-1); Anaria Tangohau (7-142-1); Chris Renwick (7-150-1); Verna Gate (194 7-252-1); Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1); Whaitiri Mikaere (5-61-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1); Ngaraima Taingahue (7-163-1); and Ngāti Mutunga o Wharekauri Iwi Trust (7-252-1, 7-252-2, 7-252-3).

[55] Including Patricia Ann Gray (7-253-1); Joseph Maurirere (7-250-1); Peggy Howarth (5-55-1); The Women's International league for Peace and Freedom (5-56-2); and Moana Jackson on behalf of Ngāti Kahungunu Iwi Incorporated (4-84-1, 4-84-2).

[56] Including Abigael Vogt on behalf of the Aotearoa Reality Check (7-301-1); Ngāti Tahu Māori Law Centre (7-322-1); and Professor David V Williams (7-27-1).

[57] Including the Human Rights Commission (7-16-1); Tania Kingi (7-229-1); Josephite Justice Network of the Sisters of St Joseph Aotearoa New Zealand (7-101-1); and Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-1).

Treaty of Waitangi and internationally agreed Human Rights norms needed to be considered. Tui Aroha Warmenhoven on behalf of He Oranga Mō Ngā Tuku Iho Trust (7-305-1) proposed that any new legislation must have regard to human rights and international law. The Waikato Antiracism Coalition (7-334-1) submitted that the review would benefit by revisiting the Waitangi Tribunal and the United Nations Committee on the Elimination of Racial Discrimination (CERD Committee).

Formal processes to replace the Act

Many submitters proposed that the Act be repealed and replaced with a different type of formal process. These new processes would include the establishment of new bodies, processes carried out in the courts and other investigative processes.

Submitters proposed the following new processes to replace the Foreshore and Seabed Act 2004:

Foreshore and seabed tribunal

Mana Ahuriri Incorporated (7-208-1) proposed that a specialist, well resourced, foreshore and seabed tribunal be set up. This tribunal would have defined powers and processes to recognise the customary rights of coastal hapū. Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1) proposed that a new tribunal, properly resourced with specialist research staff and case managers, should replace the Māori Land Court as the body for determining customary rights to the foreshore and seabed. She noted that the tribunal could provide a range of options such as coastal recognition instruments to acknowledge the traditional association of hapū with their coastal lands and waters. She considered that this new regime could roughly parallel coastal statutory acknowledgements and statements of association. She noted that a new foreshore and seabed tribunal could also oversee a revised, transparent and well organised process for granting legal recognition of customary rights.

Foreshore and Seabed Panel

Te Awanuiarangi Black (7-39-1) proposed that a panel be set up to discuss the way forward with iwi throughout the country. The terms of reference for the panel would be based on tikanga Māori.

A Commission of Inquiry (or a similar body)

Tui Aroha Warmenhoven on behalf of He Oranga Mō Ngā Uri Tuku Iho Trust (7-305-1) proposed that a Commission of Inquiry (or similar body) with at least 50 percent Māori be established in the seven Māori electoral districts. The body would research, investigate and make recommendations on how the foreshore and seabed be governed and managed equitably, fairly and in the spirit of partnership and the Treaty of Waitangi. This body would have particular regard to human rights and international law.

Monica Fraser on behalf of the Kapiti Coast District Council (7-118-1) recommended the establishment of an independent commission or tribunal including the Crown and tāngata whenua. The body could address and determine access, customary title, and kaitiaki responsibilities.

Foreshore and seabed supreme council

Colin Bidois (5-32-1) proposed that a supreme council which includes Māori representation be established to address foreshore and seabed issues.

Negotiations

Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Incorporated (7-213-1) submitted that the Act be repealed and that the Crown should engage in historical Treaty settlement negotiations with Māori to recognise the inherent rights of Māori in the foreshore and seabed. The submission noted that there is a need to establish a regulatory mechanism that allows for free and full access by the general public.[58]

[58] Including Clinton Allan James Thompson (7-323-1).

Wendy Henwood (7-110-1) suggested that the Crown enter into negotiations with all Māori groups simultaneously.[59] John Wanoa from Te Rūnanga o Ngaiterangi Iwi Trust (7-335-1) proposed that Manawhenua Historic Land Claims be considered when developing a new regime to replace the Act.

Rachel Tiopira (7-270-1) proposed that the Crown engage in Treaty negotiations with Māori to recognise their inherent rights in the foreshore and seabed and to restore the rights of Māori extinguished by the Act.

Foreshore and seabed authority

Jason Pou (4-119-1) proposed that an authority, similar to that of the Food Standards Authority and the joint regulating agency New Zealand has with Australia for therapeutic products, be established. The Authority should have the ability to develop laws pertaining to particular places in conjunction with the relevant hapū. Barbara Marsh (7-332-1) proposed that the role of the authority will be to determine rights and enable practices to be negotiated or affirmed by those with mana whenua interests and the community who seek to enjoy benefits from the enduring relationship between Māori and the foreshore and seabed.

Foreshore and seabed framework

Among other submitters, Te Rūnanga o Ngāi Tahu (4-15-1, 4-15-2, 4-15-3) proposed that the Act be replaced with a framework that ensures mana moana, resulting in effective decision making and authority over the marine environment for iwi. The submitter considered that a statutory tool is required to integrate and bring together rights and interests in the marine environment.

Te Rūnanga o Te Whānau on behalf of the hapū Te Whānau a Apanui (1-3-2) submitted that a new framework is required to cast aside any assumptions created by principles of the Treaty. The Rūnanga submitted that a Treaty relationship needs to be based on the Treaty itself. This they considered would create space for honest dialogue.

Foreshore and seabed working party

Koro Potaka Dewes (4-61-1) submitted that a working party be established consisting of experts in tikanga, Māori history and Māori law to discuss ideas on the way forward. The submitter considered this working party should draw on the experiences of other indigenous people.

Courts

Submitters noted the rights to due process.[60] Many submitters stated that Māori should not have to go to Court to determine their rights in the foreshore and seabed.[61] Others noted that the courts were not an be appropriate forum for resolving foreshore and seabed issues.[62]

Several other submitters proposed solutions that involved court processes. These submitters proposed that the Waitangi Tribunal or the Māori Land Court be the appropriate avenue to establish rights in the foreshore and seabed.[63]

Ngāi Tahu Māori Law Centre (7-322-1) submitted that the Crown should engage directly with Māori and that the jurisdiction for recognising rights should sit with the Māori Land Court. Judge Heta Kenneth Hingston (4-59-1, 4-59-2) considered that after a repeal of the Act, the Māori Land Court

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[59] Including Dee Samuel (5-66-1).

[60] Including Melani Burche (5-11-1) and Ian Little (5-77-1).

[61] Including Hokotehi Moriori Trust (7-239-2); Greg Fife (7-193-1); John Morgan on behalf of the Ngāti Rarua Iwi Trust (4-116-1) Gail Thompson (4-6-1); Clinton Allan James Thompson (7-323-1); Rangimarie Couch on behalf of the Suddaby whānau (7-337-1); Anne Wells (7-168-1); and Te Rūnanga o Moeraki Inc (7-270-1).

[62] Including Terekaunuku Whakarongotaimoana (Dean) Flavell (4-50-1).

[63] Including Greg McDonald (5-59-1) and Sharon Gemmel (7-206-1).

should be allowed to proceed to determine titles. He suggested that the Māori Land Court should continue to exercise a jurisdiction to determine title to customary land where title is sought. He also suggested allowing the Court to provide public access to the beaches on application from a local body.

Moana Herewini (7-306-1) proposed that the Waitangi Tribunal be granted specific powers and authority to consider Crown claims to areas of the foreshore and seabed that may be coveted by the Crown to ensure that Māori rights to kaitiakitanga of these areas is upheld.

Margaret Hunter (7-108-1) submitted that Māori should be afforded the opportunity to test their ownership of the areas at issue through an unobstructed judicial process. The submitter considered that applications should be made to the Māori Land Court and if necessary its Appellant Court to determine the ownership and or control over the areas at issue.

Investigative process

A couple of submitters proposed that an investigative process be undertaken.[64] Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1) recommended an investigation into the applicability of common law assumptions, without reference to the rights protected under the Treaty of Waitangi, in New Zealand. The submitter considered that there is a valid argument that tikanga displaces English Common law in matters specifically referenced in Article 2 of the Treaty.

Other models

Submitters such as Emeritus Professor FM (Jock) Brookfield (3-3-1, 3-3-2), Powell Webber and Associates (7-202-1) and Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3) proposed new regimes for recognising title. For example Brookfield proposed a 'trust' model and Powell Webber and Associates proposed a 'coastal customary title' model. These new regimes have been discussed in Part Two Option 2 – Amend the Act because these submitters have suggested it would be preferable to amend the Act to provide for the new regimes to recognise title rather than repeal the Act and develop an entirely new framework.

Treaty of Waitangi principles

Many submissions proposed that any replacement of the Act should comply with the principles of the Treaty of Waitangi.[65] Abigael Vogt (7-301-1) urged the government to return to its findings of the Waitangi Tribunal in relation to the foreshore and seabed and was in favour of creating a new Act that was Treaty based. Garth Gulley from Outdoors New Zealand (7-22-1) submitted that any proposed amendments to the Act or any proposed new legislation should not only fully comply with the principles of the Treaty of Waitangi but that the Crown had obligations to these principles. Among other submitters, Lance Waaka (5-26-1) highlighted that any new legislation should specifically consider article 2 of the Treaty of Waitangi while Edward Ellison on behalf of Te Rūnanga o Ōtakau (4-8-1) proposed that any new process should be guided by the Treaty of Waitangi.

Several submitters proposed that new legislation should be based on rights afforded to Māori as Tāngata Whenua as highlighted under the Treaty of Waitangi.

Many submitters such as Kara George (4-128-1) proposed that Māori could exercise rangatiratanga over any new regulatory framework over the foreshore and seabed as a right guaranteed by the

[64] Including Gavin Cross (7-321-1); Kelly Bevan on behalf of Te iwi o Ngāti Tukorehe Trust (7-197-1); and Terekaunuku Whakarongotaimoana (Dean) Flavell (4-50-1).

[65] Including Leonie Morris (7-281-1); Gail Thompson (4-6-1); Whatarangi Winiata (7-234-1); Tania Kingi (7-229-1); Judith Rewa Norris (5-33-1); Lou Tangaere (4-102-1); Rachelle Forbes (7-115-1); Waikato Antiracism Coalition (7-334-1); Katherine Peet (5-5-1); Te Ope Mana a Tai (7-44-1, 7-44-2, 7-44-3, 7-44-4); Hauata Palmer (5-25-1); Te Tiwha Puketapu (4-143-1); Colin Bidois (5-32-1); Reuben Tāpara (7-123-1); and Reverend Maurice Manawaroa Gray on behalf of Te Rūnaka ki Otautahi o Kai Tahu (266 7-285-1).

Treaty of Waitangi.[66] Both Jason Pou (4-119-1) and Hilda Te Hirata Sykes (7-290-1) proposed that the exercise of rangatiratanga should allow Māori the ability to develop and enforce regulatory frameworks. An anonymous submitter proposed that under the Treaty of Waitangi, Māori should be able to exercise rangatiratanga over the coastal marine area.

Submitters Sharon Lee Campbell (7-89-1), Nancy Tuaine (4-139-1), Lisa Beech (7-221-1) and Ngāti Mutunga o Wharekauri Iwi Trust (7-214-1) all proposed that any legislation should at the very least recognise that Māori rights are a key feature of the Treaty of Waitangi.

Ruawaipu Tribal Authority (4-62-1) proposed that the Act be replaced with the Māori version of the Treaty.

Dayle Takitimu (7-164-1) submitted that the Act should be repealed and in doing so that the customary and property rights that the Act extinguished must be restored as a matter of law. She went further and stated that the government needs to engage in meaningful dialogue with hapū, based on Treaty relationship using a process developed in partnership.

Tui Aroha Warmenhoven (7-305-1), Janise H Eketone (7-235-1), and Greg McDonald (5-59-1) proposed that a replacement process should comprise of a joint Māori and Crown partnership so both parties work under the principles of the Treaty of Waitangi.

More dialogue and consultation between Crown and Māori

Many submitters proposed that any new replacement legislation should develop and incorporate a more thorough and robust consultation process between Māori and the Crown.[67] For example, the Women's Health Action Trust (7-138-1) submitted that the Act should be repealed and that an in-depth dialogue was needed with whānau, hapū and iwi to adequately develop a fair model.

Te Rūnanga o Ngāi Tahu (4-15-2) proposed that the government should undertake a full and considered process of consultation with iwi through their properly constituted representative entities and explore appropriate mechanism(s) for recognising inherent rangatiratanga and rights held by iwi. Likewise Richard Dawson (7-130-1) proposed the establishment of the Waitangi Tribunal's 'longer conversation' to give effect to the 'indigenous interest' principle in the Treaty of Waitangi.

Rawiri Bidois (5-20-1) noted that more consultation was required to separate the Westminster and economic system and consider longer term principles of tikanga and kawa.

Many submitters proposed that any new replacement should include more robust and productive dialogue between Crown and Māori.[68] Te Kaahui o Rauru Trust and Te Rūnanga o Ngāti Ruanui Trust (7-198-1) proposed a new framework in which iwi are able to enter into dialogue with the Crown so that key issues pertaining to the Act can be resolved.

Jim Holdom (7-212-1) recommended repealing the Act and beginning a respectful extended dialogue with the tāngata whenua and tāngata tiriti to 'create a document' that encapsulates their understandings of 'kaitiakitanga/care/ownership', and enshrines it in the laws of Aotearoa New Zealand.

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[66] Including Karen Herbert on behalf of Kapotai hapū (4-128-3); William Greening (7-216-1); Te Hapae Ashby (5-69-1, 5-69-2); Peggy Howarth (5-55-1); Clinton Allan James Thompson (7-323-1); and Anonymous (7-201-1).

[67] Including Andrew David Stephens (7-227-1); Te Rūnanga o Moeraki Inc (7-270-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1); Clinton Allan James Thompson (7-323-1); Billie Rongomaimira Biel (7-296-1); James Daniels (4-12-1); Helen Yensen (7-84-1); Outdoors New Zealand (7-22-1); Ani Pahuru-Huriwai (4-77-1); Ian Francis Burke (7-148-1); Matiu Payne (7-36-1); Hoani Langsbury (7-320-1); Rangimarie Couch (7-337-1); Tawharangi Nuku (5-31-1, 5-31-2); and Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-1).

[68] Including Adrienne Ross (7-251-1); Caritas Aotearoa (7-221-1); Angeline Greensill (5-18-1, 5-18-2); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-1); Te Ope Mana a Tai (7-44-1, 7-44-2, 7-44-3, 7-44-4); Anne Wells (7-168-1); Anonymous (7-158-1); Women's Resource Network (7-215-1); Joseph Maurirere (7-250-1); Leonie Morris (7-281-1); Katherine Peet (5-5-1); and Sharon Clair (7-18-2).

Patricia Ann Gray (7-253-1) submitted that the whole Act be repealed and the 'longer conversation' recommended by the Waitangi Tribunal in 2004 between the tāngata whenua and the Crown be used to properly explore the options that are genuinely available.

Tikanga/kawa title or cultural framework

Cultural framework

A number of submitters proposed that the Act be repealed and replaced with new legislation that returns customary rights to mana whenua.[69] Te Rūnanga o Ngāi Tahu (4-15-1, 4-15-2, 4-15-3) submitted that the Act be repealed and rights that the Act extinguished had to be restored. Te Rūnanga submitted that this restoration of rights be reconstituted inherently rather than be derived from statute. Te Rūnanga proposed that the Act be replaced with a framework that ensures the foreshore and seabed has effective decision-making and that there is authority over the marine environment for iwi. Te Rūnanga considers that there is a need to have a broader review of the management of the marine environment. It supports developing an alternative statutory regime that:

a recognises and provides for the rights of iwi where tikanga Māori is the only source of law that defines the nature and extent of iwi rights and that no further common law and no statutory criteria should be placed above tikanga;

b presumes that the iwi holds the whole foreshore and seabed under tikanga and that the Crown positively prove that lawful extinguishment has occurred;

c Ngāi Tahu rights are recognised as developing and evolving over time. Rights should not be simply recognised, but need to be given practical effect, and to give effect to kaitiakitanga;

d provides rights to make decisions over the marine environment and actively participate in management;

e provides the right to develop as a people and hold a preferential right to partner in commercial development occurring in the marine environment; and

f provides the right to continue practices, relationships and associations that have been passed down *mai ra ānō*.

Greg Fife (7-193-1) submitted that the Act should be repealed and the rights of Māori extinguished by the Act should be restored as a matter of law. The government should consult properly with iwi, hapū and whānau to develop an appropriate framework that fully recognises tino rangatiratanga and responsibilities under kaitiakitanga. It should ensure the ancestral relationship with the marine environment are recognised and protected by law.

Te Ope Mana a Tai (7-44-1 to 4) recommended developing a newly defined status for tāngata whenua rights in the coastal marine area.

Jason Pou (4-119-1) argued that the answer is not just about removing the Act. Rather it is about removing the ways in which the Crown suppresses the ability of Māori to exercise rangatiratanga and mana. He does not want to see the Act repealed and replaced by another with similar effects. He does not want to have the determination of rights left with the judiciary. He seeks a system that will empower hapū to create regulations over the foreshore and seabed and enable them to enforce such regulations. It would enable them to work together while protecting the integrity of the respective hapū.

[69] Including Nyreen Kiriona (7-76-1); Rawiri Bidois (5-20-1); and Hauata Palmer (5-25-1).

Leonie Morris on behalf of Auckland Women's Centre (7-281-1), suggested that the way forward is to fully respect the extent of Māori title and base the rights of ownership with hapū and iwi.

Among other submitters, Barbara Marsh (7-332-1) submitted that customary rights, including property rights, should be determined solely according to tikanga Māori.[70] A number of other submitters including Te Awanuiarangi Black (7-39-1), Keriana Olsen, Kōkiri Marae Health and Social Services (7-72-1), George Riley on behalf of Te Rūnanga A Iwi o Ngāpuhi (7-299-1) and Sharon Lee Campbell (7-89-1) submitted that terms of reference for a replacement model should originate from Māori tikanga so that all decisions and recommendations are based on tikanga. Tania Kingi of Te Roopu Wairoa Trust (7-229-1) stated that the foreshore and seabed should be reconstituted as a Māori cultural or tikanga right vested in the appropriate iwi and/or hapū.

Joe Kee on behalf of Ngāti Ronginui and Ngāi Tamarāwaho (5-19-1, 5-19-2) suggested that there should be a formal process based on tikanga to rationalise mana moana status and where it transcends areas in private ownership, it needs to acknowledges the equity of that tenure.

Mapuna Turner (4-105-1) would also like any new legislation to acknowledge that tikanga is of value to Pākehā and noted that tikanga should not be replaced with a Pākehā version of tikanga.

Anonymous (7-71-1) and Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-1) submitted that the replacement framework should be a tikanga right vested in the appropriate iwi and/or hapū.

Iris Pāhau on behalf of the Wainuiomata marae (7-156-1) took this theme further and would like the Act repealed and in its place a tikanga right vested in the appropriate iwi and/or hapū. The new legislation should recognise and protect Māori customary, recreational and commercial right and interests such as aquaculture, fishing, and gathering. She submitted it should give veto rights to hapū over exploration permits, mining and development of the coastal marine area.

Koro Potaka-Dewes (4-61-1) submitted that tikanga issues need to be rethought in new legislation. The submitter suggested that a new process should develop stronger tikanga issues and that the models should include the principles of customary title and customary usage. The submitter noted that tikanga Māori should be pulled to the surface, explained, communicated and endorsed, along with the principles of customary title and customary usage.

Kawa

Betty Williams (7-34-1) thought it was necessary to repeal the Act and replace it with the principle of kawa. She noted that kawa encapsulates the principle that we are all connected by whakapapa to everything in Te Taiao, and that everyone should individually and collectively take the responsibility to make sure that everyday practices (tikanga) ensure that our whakapapa connections remain intact.

George Elkington on behalf of Ngāti Koata Trust (7-201-1) wanted to repeal the Act to ensure Ngāti Koata iwi can exercise tino rangatiratanga, tikanga Māori and kawa over coastal marine areas.

Anonymous (7-328-1) said the Crown should "repeal the Act to ensure that Māori can exercise tino rangatiratanga, tikanga Māori kawa over coastal marine areas as guaranteed by the Treaty of Waitangi". Similarly, William Greening (7-216-1) submitted that the Act should be repealed "to ensure that Rongomaiwāhine can exercise tino rangatiratanga, tikanga Māori and kawa over our foreshore and seabed, as guaranteed by the Treaty".

[70] Including Greg Fife (7-193-1); Clinton Allan James Thompson (7-323-1); and Hoani Langsbury (7-320-1).

Te Iwi o Ngāti Tukorehe Trust (7-197-1) would like to see the Act repealed and replaced with something new such as a new kind of title or investigative process that conclusively determines customary/ancestral rights for respective iwi and hapū.

Underlying title

Judge Heta Kenneth Hingston (4-59-1, 4-59-2) suggestted that when foreshore and seabed titles are dealt with, they are communal titles, rather than titles that could be individualised such as a hapū title with no succession and no partition. He used an example of a model in Niue whereby communal title is called mangafaoa, which means family. The land is looked after by a leveki mangafaoa and they have an obligation to look after the land and protect it.

Similarly, Koro (Buddy) Rangi Taiaroa (5-78-1, 5-78-2) would like replacement model to recognise iwi/hapū as 'owners' of underlying title in the foreshore and seabed.

Kawenata (covenant)

Several submitters such as Margaret Story (7-327-1), Anonymous (7-71-1) and Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-1) submitted that if the Māori right to the foreshore and seabed was reconstituted as a tikanga right it could include a kawenata (covenant) guaranteeing access.

Tīpuna title

A number of submitters such as Tim Howard and Leanne Brownie (5-70-1, 5-70-2) raised the concept of a tipuna title. They submit that the Act should be repealed and any new legislation should affirm tipuna title.

Lester White (4-92-1) stated whatever legal mechanism is developed it should be handed over to Māori in total, under tīpuna title. Treaty Tribes Coalition (7-43-1, 7-43-2, 7-43-3) suggested that a tikanga based title be explored. The Coalition supports a tīpuna title model as it recognises the inherent nature of rangatiratanga and manawhenua mana moana. It also noted that this would pose challenges to the government as it represents a greater level of iwi autonomy than current models.

Co-management, or a hapū / iwi based management framework

Many submissions suggested that the replacement regime for a repealed Act include elements of co-management of the foreshore and seabed between the Crown and Māori.

Some of these submissions made mention of co-management regimes or hapū management plans as part of the replacement for a repealed Act. Mana Ahuriri Incorporated (7-208-1) submitted that the new regime should provide for a presumption of co-management arrangements for coastal hapū consistent with recommendations of the Waitangi Tribunal. Jacinta Ruru (7-166-1) suggested that the government be given a mandate to enter into collaborative management agreements with the local iwi and hapū to manage the land. Kay Maree Dunn (7-278-1) suggested using common hapū co-management processes where whānau hapū and iwi are supported trained and equipped to monitor and protect the Takutai moana. Merehora Taurua on behalf of Ngāti Rahiri (7-65-1) submitted that the Act should be repealed and that new legislation give cognisance to the hapū management plans. Metiria Turei (7-100-1, 7-100-3) noted that the Green Party supports the development of collaborative management in the coastal marine area as part of a replacement regime. Moea Armstrong for Network Waitangi Whangarei (5-67-1) supported this point in their submission.

Haami Piripi on behalf of Te Rūnanga o Te Rarawa (1-1-2) noted that in relation to giving effect to a right to active management /kaitiakitanga of the coastal marine area, Te Rūnanga o Te Rarawa considers that the criteria set out in the Territorial Customary Rights provision, including the continuity test, should be used as criteria to ascertain eligibility for groups to enter into co-management regimes with the Crown.

Some submitters referenced existing co-management models as examples. Dr Malcom Paterson (7-92-1) and Te Rūnanga o Ngāi Tahu (4-15-1, 4-15-2, 4-15-3) both suggested the co-management of the Orakei Reserves in Auckland as a good model. Dr Paterson and Mana Ahuriri Incorporated (7-208-1) also pointed to the co-management arrangements over the Waikato River, with Dr Paterson further noting the international example of the Kakadu National Park in Australia.

Barbara Mountier (7-154-1) stated that she would like new or existing models of partnership between the Crown and Māori explored and established. Ken Mair (4-140-1) suggested joint management with a Treaty based model, and more emphasis at local iwi and hapū level. Waiatarangi Williams for Te Taumutu Rūnanga Society Incorporated (7-213-1) submitted that a similar arrangement to that over Te Waihora/Lake Ellersmere could apply to the foreshore and seabed.

Dee Samuels on behalf of Ngāi Te Rangi Iwi (5-66-1, 5-66-2) and Michael Pehitahi Nuku on behalf of Te Rūnanga o Ngaiterangi Iwi Trust (7-329-1) suggested a customary fisheries model of management with the ability to write by laws, noting this worked well for Tauranga iwi.

Some submissions were in favour of provision in the replacement regime for hapū/iwi to play a regulatory decision making role in managing the foreshore and seabed. Many of the submitters noted that iwi and hapū should be able to exercise authority and undertake greater decision making roles over the foreshore and seabed and marine environment.[71]

Nancy Tuaine (4-139-1) submitted that the replacement regime should provide for iwi to work with local and regional bodies to establish a task force of equal iwi and non-iwi representation, have greater say in control of lands and foreshore and seabed, and have direct engagement in a decision making processes over land. Hilda Te Hirata Sykes (7-290-1) and Jason Pou (4-119-1) both called for a system that would empower hapū to create regulations over the foreshore and seabed, enable them to enforce these regulations, and provide for hapū to work together while protecting the integrity of respective hapū.

The Waikato Antiracism Coalition (7-334-1) submitted that iwi and hapū must be accorded decision making rights with respect to environmental sustainability of the marine environment, including use and allocation of the marine space as well as protecting the quality of sea water from discharges and other pollutants. Te Ope Mana a Tai (7-44-1, 7-44-2, 7-44-3, 7-44-4) also mentioned usage rights, submitting that iwi/hapū should have full rights to allocate the use of space and resources, and to determine all regulatory decisions in partnership with the Crown.

One submitter, Riki Ellis (5-35-1) noted that they would prefer legislation that does not include a co-management regime.

Features of the "something new"

Rather than suggest a replacement for the Foreshore and Seabed Act 2004, some submitters suggested features that any outcomes from the Review and/or resulting new legislation should incorporate. These include:

a a process that is less resource intensive and lengthy than the current processes set out in the Act;[72]

b a sustainable development approach;[73]

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[71] Including Greg Fife (7-193-1); Josie Smith (7-228-1); Suz Te Tai (7-187-1); Anne Wells (7-168-1); Suzanne Ellison for Kāti Huirapa Rūnaka ki Puketeraki (7-200-1); and Te Rūnanga o Ngāi Tahu (4-15-1, 4-15-2, 4-15-3).

[72] Including Te Kapotai (4-128-3) and Suz Te Tai (7-186-1).

[73] Including Bill Robertson on behalf of the New Zealand Institute of Surveyors (7-14-1, 7-14-2).

c a more equal political and economic partnership in new legislation;[74]

d a process that is cost effective;[75]

e recognition that customary rights and obligations include rights to develop commercial development and access to new resources as they are discovered;[76]

f recognition of mana whenua, mana moana;[77]

g improvement of the management of the marine environment;[78]

h trust in judicial process, by New Zealanders[79] and the Executive;[80]

i ensuring that decision makers have tikanga expertise;[81]

j some form of an apology from the Crown for the wrongdoings the Act has caused;

k incorporation of the core principles of inalienability so that the government can not sell it and any freehold title recognising Native or customary or Aboriginal Title is inalienable;[82]

l educational programmes for the general public on the Māori perspective and on the events leading up to the Act;[83]

m simpler legislation so people can understand the ramifications and a more friendly law that benefits the future generations;[84]

n the removal of uncertainty for local authorities with respect to their districts;[85]

o funding for Māori representation and research;[86]

p an holistic approach;[87]

q a broader discussion - for example, one that includes rivers, lake and creek beds, in order to achieve consistency across water bodies; [88]and

r a process that takes a human rights approach and considers internationally agreed Human Rights norms.[89]

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[74] Including Mihirawhiti Searancke (4-30-1).

[75] Including Te Rūnanga o Moeraki Inc (7-270-1).

[76] Including Barbara Marsh (7-332-1); George Riley on behalf of Te Rūnanga a Iwi o Ngāpuhi (7-299-1); and Te Rūnanga o Ngāi Tahu (4-15-1, 4-15-2, 4-15-3).

[77] Including Megan McKay (4-14-1); Anonymous (5-76-1, 5-76-2); George Riley on behalf of Te Rūnanga a Iwi o Ngāpuhi (7-299-1); Chris Karamea Insley on behalf of Awanui Hāparapara No. 1 Trust (7-297-1); Anonymous (7-201-1); Nyreen Kiriona (7-76-1); Rawiri Darcy McGhee Jnr on behalf of Te Aitanga-A-Hauiti iwi Cluster Group (7-88-1); and Josie Smith (7-228-1).

[78] Including Chris Karamea Insley on behalf of the Awanui Hāparapara No. 1 Trust (7-297-1) and Rachel Tiopira (7-270 -1).

[79] Including Margaret Hunter (7-108-1).

[80] Including Mike Doogan (4-22-1).

[81] Including Judge Heta Kenneth Hingston (4-59-1, 4-59-2).

[82] Including the Human Rights Commission (7-16-1); Judith Rewa Norris (5-33-1); Lance Waaka (5-26-1); Josie Smith (7-228-1); Michael Pehitahi Nuku for Te Rūnanga o Ngaiterangi Iwi Trust (7-329-1); Dee Samuel of Te Rūnanga o Ngaiterangi Iwi Trust (5-66-1); and Atareiria Heihei (7-211-1).

[83] Including Dee Samuels of Ngāi te Rangi Iwi (5-66-1, 5-66-2); Michael Pehitahi Nuku on behalf of Te Rūnanga o Ngaiterangi Iwi Trust (7-329-1); Nicola Short (5-24-1); and Lester White (4-92-1).

[84] Including Greg Skipper (7-183-1) and Riki Ellis (5-35-1).

[85] Including Christchurch City Council (7-140-1).

[86] Including Kathy Ertel on behalf of Te Atiawa Manawhenua ki te Tau Ihu Trust (7-199-1) and Sharon Gemmel (7-206-1).

[87] Including Katherine Peet (5-5-1).

[88] Including Metiria Turei on behalf of the Green Party (7-100-1, 7-100-2, 7-100-3).

[89] Including Human Rights Commission (7-16-1); Treaty Tribes Coalition (7-43-1, 7-43-2, 7-43-3); Tui Aroha Warmenhoven for He Oranga Mō Ngā Tuku Iho Trust (7-305-1); Ced Simpson on behalf of Human Rights Foundation (7-17-1); Lisa Beech on behalf of Caritas Aotearoa/New Zealand (7-221-1); and Tania Kingi on behalf of Te Roopu Wairoa Trust (7-229-1).

Broader solutions to replacing the Act

174 Some submitters suggested repealing the Act and also other legislation that covers the coastal marine area so that a more comprehensive reform can take place.

175 Te Rūnanga o Ngāi Tahu (4-15-1) considered that there is a need to have a broader review of the management of the marine environment.

176 Mapuna Turner (4-105-1) proposed that the Resource Management Act 1991 (Resource Management Act) be amended as a starting point for whatever replaces the Act. Turner felt the Resource Management Act acknowledges where Māori fit into the world and delegates authority to Māori.

177 Edward Ellison on behalf of Te Rūnanga o Otakau (4-8-1) said new arrangements needed to be made after the Act was repealed. A new Act needed to go further than the Resource Management Act provisions and be based on true partnership.

178 Some submissions commented that the review of the Act provide an opportunity to review all legislation that dealt with coastal marine area to ensure an integrated 'seamless' approach.[90]

179 Dr Michael Cullen on behalf of the New Zealand Labour Party (7-25-1) suggested that a review of the Act might provide a useful opportunity to consider a comprehensive approach to general resource utilisation in the coastal marine area.

180 Hori Elkington and Irihapeti Campbell (7-282-1) submitted that the Conservation Act also needed to be reviewed.

181 Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1) also noted that better integration between the Crown Minerals Act 1991, the Resource Management Act and any future regime for foreshore and seabed rights would need to ensure that tāngata whenua issues are addressed and do not fall in-between the regimes.

[90] Including Te Rūnanga o Ngāi Tahu (4-15-2); Te Ope Mana a Tai (7-43-1); Paul Harmon (4-20-1); Nanaia Mahuta (4-32-1); Doreen Wilson (4-40-1); Joe Kee (5-19-1); and Morris Love on behalf of Te Atiawa ki te Upoko a Ika a Maui Pōtiki Trust (4-21-1).

Part 3
Relation of Act to other law

Part 3 Relation of Act to other law

This section summarises those submissions that made comment on how well the Foreshore and Seabed Act 2004 relates to other laws for the management of coastal areas.

Overview

Submitters commented on the Foreshore and Seabed Act's interaction with the following areas of law:

- aquaculture;
- conservation;
- customary fishing rights;
- minerals;
- resource management; and
- other legislation.

There were no specific comments received regarding the Foreshore and Seabed Act's interaction with the law relating to common law recreational fishing rights and navigation.

Aquaculture

Te Ohu Kaimoana (7-43-3) submitted that a key issue is to reconcile the rights already granted in aquaculture and fishing settlements with the customary rights provided for in the Act.

Graeme Coates on behalf of the Marine Farming Association (7-1-1) noted that the existing aquaculture legislation is unworkable and hard to follow because of its connection to the Fisheries Act and the 'undue adverse effects' test. He noted clear parallels between the Treaty of Waitangi settlement component of the aquaculture legislation and the Act and that since 2004 there have been no applications for aquaculture management areas which means that the Treaty of Waitangi benefits designed to accrue as a result of aquaculture legislation have not arisen. He also noted that the Act has not created issues for the marine farming industry.

Mike Burrell on behalf of Aquaculture New Zealand (7-23-1) wanted to ensure that the review of the Foreshore and Seabed Act 2004 did not impact on an independent review of aquaculture legislation which is currently being undertaken.

Conservation

Anonymous (4-22-1) viewed the relationship between the Act and the management framework for the coastal marine areas as poor, due in part to the haste with which the Act was passed and added onto the existing legislative framework for the coastal marine area.

Peter Moeahu (4-134-1) noted that the Act has had no bearing on the already good relationship that he has established with the Department of Conservation and the New Plymouth District Council over Sugar Loaf Islands. This relationship has protected interests and ensured involvement in the management of the Islands.

Customary fishing rights

Fifteen submitters agreed that the Act should not affect fishing rights (customary, commercial and/or recreational) as they are already set out in other legislation such as the Fisheries Act[91]. It was noted that including fishing rights under the Foreshore and Seabed Act also created confusion and unnecessary bureaucracy. The New Zealand Seafood Industry Council Limited (7-3-1) was comforted by section 9 of the Foreshore and Seabed Act 2004 which protects existing fishing rights. Kahu Nikora (7-66-1) noted that regulation 27 of the Fisheries Act already provided for protecting customary rights.

Richard Drake (7-162-1) was unsure whether the Act should affect fishing rights as set out in other legislation.

Te Ohu Kaimoana (7-43-3) noted that the Fisheries Settlement has conferred customary fisheries rights as well as commercial aspects of fisheries on Māori. Te Ohu Kaimoana also noted questions about the ability of the mataitai system to meet iwi aspirations. Janine Karetai (5-41-1) also questioned how the Act's provisions reconcile with the mataitai system.

Te Rūnanga a Iwi a Ngā Puhi (7-299-1) stated that customary rights in the marine area including rights to exercise kaitiakitanga and development of assets are weakened by the Act. Christine Kidwell (7-326-1) also noted that the Act takes away mana rights to Tangaroa.

Owen Kingi (4-51-1) said that he believes that the rules around customary fishing keep changing in legislation. 'Our people are getting charged for taking fish. The rules keep changing through Acts, and regulations. I'm just worried about going home and having a feed of fish. I'm willing to share my fish with the Pākehā always'. Richard Takuira and Vivienne Taueki (7-258-1) also note conflicting laws regarding Māori customary fishing rights and the rights to gather kaimoana which were provided for in s18 of the Reserves and Other Land Disposal Act.

Tanenuiarangi Manawatu Incorporated (7-135-1) noted the need for the law pertaining to the environment, the coast and other matters to be consistent with the 1992 Fisheries Deed of Settlement, the Tainui settlement and the Treaty of Waitangi. Tanenuiarangi Manawatu Incorporated noted that the Act is hampering Rangitāne regarding where and when they might want to fish and what resources they can explore.

Minerals

Five submitters asserted that the Act was brought about by government's desire to own and access minerals in the foreshore and seabed, including sand, and that the Act redefines the title of the seabed removing the possibility of any challenge or legal objection from Māori customary owners to mineral exploitation and seabed mining.[92]

Nancy Tuaine on behalf of the Whānganui Māori Trust Board (4-139-1) said there is a lack of support for Crown ownership or alienation of minerals in the foreshore and seabed. She suggested that ownership of minerals should be part of the foreshore and seabed discussion. Sharon Lee Campbell (7-89-1) cautioned that as the Crown has auctioned off areas of the seabed under the Crown Minerals Act this could also happen under the Act.

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[91] Including Elizabeth Bang and Joan MacDonald (7-165-1); Robin Lieffering (7-137-1); Lisa Marie McKay (7-232-1); Pehitahi Michael Nuku, Te Rūnanga o Ngaiterangi Iwi (7-329-1); Eastland Port Limited (7-231-1); Te Rūnanga a Iwi o Ngāti Maru (7-119-1); Fred Te Miha (4-108-1); Lisa Marie McKay (7-232-1); Tanenuiarangi Manawatu Incorporated (7-135-1); Anonymous (7-336-1); Te Ohu Kaimoana (7-43-3); Te Ope Mana a Tai (7-41-1); Anonymous (7-336-1); Arthur Gemmell on behalf of a number of groups (5-38-1); and Mrs O Ripia (7-170-1).

[92] Including Reuben Tāpara (7-123-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Brian Elmes (7-141-1); Metiria Tūrei (7-100-1); and Vera van der Voorden on behalf of Kiwis Against Seabed Mining (4-36-1).

Pip Winiata (4-31-1) expressed concern that the Act might prohibit title for minerals being part of a future settlement and queried whether the Act allowed a raupatu settlement to include ownership of minerals, specifically oil.

Other legislation

Impact on councils

Kevin Ross of the Wanganui District Council (7-179-1) noted that there is legal uncertainty regarding local authorities' rights and obligations in the foreshore and seabed.

Local Government New Zealand (7-20-1) and Mark Farnsworth of the Northland Regional Council (7-264-1) both said that agreements reached under the Act must be compatible with the Local Government Act and the Resource Management Act and not compromise the purpose and role of local government under those Acts. Local Government New Zealand noted that there are tensions between the aspects of the proposed Ngāti Porou Deed of Agreement and instruments and councils' responsibility under the Local Government Act and Resource Management Act to ensure public participation in decision making.

Mark Farnsworth (7-264-1) noted that the Deed of Agreement between Ngā Hapū o Ngāti Porou and the Crown includes a permission right instrument that will provide the hapū with the right to approve or withhold approval for any resource consent for activity that will, or is likely to, have a significant adverse effect on the relationship of the hapū with the environment in the territorial customary rights area.

Patrick McCombes (4-18-2) noted that Wellington City Council is forbidden from selling the title of Queen's Wharf and the overseas passenger terminal but can lease them. He does not agree that the Wellington City Council should be allowed to do what Māori are not allowed and sees the review as a way to address this unique situation.

Relationship with Treaty Settlements

Roku Mihinui of Te Arawa Lakes Trust (7-256-1) submitted that the Te Arawa Lakes Settlement Act 2006 contains statutory acknowledgements which are recognised under the Resource Management Act 1991 and the Historic Places Trust and which relevant consenting authorities must have regard for in forming an opinion in accordance with the Resource Management Act.

Robert Broadnax (7-104-1) submitted that it is critical that there is alignment between principle and governance arrangements and functions of entities resulting from Treaty settlements and the review outcome. The submitter drew attention to the review of co-management entities for the Waikato River Settlement reached with Waikato Tainui that had recently been undertaken for the Minister of Treaty Negotiations.

Other legislation that has affected rights

John Henry Tamihere (7-19-1) submitted that certain legislation prevents Māori from asserting their rights (e.g. taking land under the Public Works Act) and the Act reaffirms these unfair laws.

Te Rūnanga a Iwi o Ngāti Maru (17-119-1) noted the impact of other pieces of legislation (e.g. Public Works Act, Harbour Board Act, on the ability of Māori to meet the tests in the Act. Te Rūnanga's original submission to the Fisheries and other sea-related Legislation Select Committee on the Foreshore and Seabed Bill noted the Hauraki Gulf Marine Park Act 2000 which had a provision that the Waitangi Tribunal recorded "Crown Counsel saw this provision as 'positively' preserving all existing rights, including any claims to the foreshore and seabed". Te Rūnanga a Iwi o Ngāti Maru noted that it was ironic for them to see the Crown about to pass retrospective legislation to extinguish existing rights, when it so quickly enacted retrospective legislation for the Whitianga Waterways project to protect "existing rights".

Peter Johnston (7-60-1) noted that the government took control of the coastal environment with the Harbours Act 1878, protecting the public and taking away Māori rights. He indicated that this was a case of the 'legislative bludgeon' in action. The result was a:

- loss of control over foreshore and sea by legislative actions;
- loss of coastal names by coastal surveys;
- loss of access to the foreshore as a result of Crown grants and Crown purchases; and
- loss of customary fisheries as a consequence of the effect of timber milling and mining on the main river catchments."

Jason Koia (4-62-1) submitted that the Governor General's powers were repealed under the 1988 Imperial Laws Application Act which makes the Governor-General's assent to the Act illegal.

Oceans Policy

A number of submitters noted that the Act requires interaction with a complex array of other legislation,[93] and does not interact well within the complex web of other legislation that relates to the management of coastal areas.[94] Camilla Owen on behalf of the Environmental Law Committee of the New Zealand Law Society (7-5-1) submitted that the Act prevents an integrated coherent approach to environment law. Mana Ahuriri Incorporated (7-208-1) noted the Oceans Policy stocktake completed in 2002 which identified 26 statutes involved in the coastal environment and regarded this as a failure on the part of the Crown to acknowledge and do something about the situation.

Other

Dee Samuels on behalf of Ngāi te Rangi Iwi (5-66-1, 5-66-2) submitted that a solution would be a new Customary Title and noted that the enforcement powers in existing legislation relating to Police, Fisheries and Māori Land Court may be sufficient.

Resource Management Act

A number of submissions considered that issues that the Act sought to be addressed would be better dealt with through the Resource Management Act. [95]

Caritas Aotearoa New Zealand (7-221-1) believed the best place to address environmental issues was under the Resource Management Act and not the Act. Chris Karamea Insley on behalf of Awanui Hāparapara No. 1 Trust (7-297-1) noted that the Act did not offer any more protection than was already provided under the Resource Management Act and Treaty settlement process.

The New Zealand Refining Company Limited (7-205-1) wanted to ensure that rights of access and navigation pursuant to the Act did not detract from the rights of holders of resource consents under the Resource Management Act.

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[93] Including Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1) and Hilda Te Hirata Sykes on behalf of the Ngāti Makino Heritage Trust (7-290-1).

[94] Including Te Awanuiarangi Black (7-39-1); Bill Robertson on behalf of the New Zealand Institute of Surveyors (7-142-1); Federation of Māori Authorities (7-47-1); and NIWA (7-46-1).

[95] Including Chris Karamea Insley on behalf of Awanui Hāparapara No. 1 Trust (7-297-1); Jacinta Ruru (7-166-1); Paul Harmon (4-20-1); Ngā Hapū o Himatangi (7-83-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (7-320-1); Eastland Port Limited (7-231-1); and Bentia Wakefield (5-46-1).

Agnes Walker (4-74-1) noted that the Act affected the regulatory management regime placed on whānau, hapū and individuals who would sometimes have little experience working with different agencies and legislations that are involved in managing these.

Camilla Owen on behalf of the Resource Management Law Association of New Zealand (7-4-1) noted that the Act changed the Resource Management Act and inserted a new provision (section 6(g)) where the protection of customary activities are recognised. She also noted the effect that customary rights orders had on resource consents and was concerned that the Act did not align with section 107 of the Resource Management Act.

Part 4 Comments on the Terms of Reference

Part 4 Comments on the Terms of Reference

Overview

This part summarises submissions that have made general comments on the Terms of Reference for the Ministerial Review of the Foreshore and Seabed Act 2004 (Terms of Reference) or have specifically addressed the Terms of Reference questions.

The questions in the Terms of Reference were:

- What were the nature and extent of mana whenua and public interests in the coastal marine area prior to *Attorney General v Ngāti Apa*?
- What options were available to the government to respond to the Court of Appeal decision in the *Attorney General v Ngāti Apa*
- Whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary or aboriginal title and public interests (including Māori, local government and business) in the coastal marine area and maintains and allows for the enhancement of mana whenua
- If the panel has reservations that the Foreshore and Seabed Act does not provide for the above, outline options on what could be the most workable and efficient methods by which both customary and public interests in the coastal marine area could be recognised and provided for; and in particular, how processes of recognising and providing for such interests could be streamlined.

General comments about the Terms of Reference

Jason Pou (4-119-1) submitted that the Terms of Reference are either improper or have already been answered in other forums. He noted that it would be improper for the Ministerial Review Panel to undertake a forensic analysis of the interests in the coastal marine area stating that "such processes always end up in disempowerment of Māori as their traditional connections are redefined and templated within a framework constructed within a western legal calculus. Tāngata whenua connection becomes a bundle of rights that can be separated".

Nanaia Mahuta (4-32-1) submitted that the review process should consider the interplay between the Act and Treaty settlements. She states "cognisance of the complexity of Treaty settlements is a real issue. Even though it is not a question before your Panel, it is a real issue".

What were the nature and extent of mana whenua and public interests in the coastal marine area prior to *Attorney General v Ngāti Apa*?

Professor David Williams (7-27-1) submitted that in answering the first question in the Terms of Reference the Panel could not "possibly do justice to this item in the time available". He noted that due to the 2004 Act the courts have not heard any evidence as to the nature and extent of customary interests.

Professor Williams also noted that although the Panel would be able to outline an "informed perspective on the general nature of such rights", which may help avoid future litigation on factual matters that this exercise might be counter-productive. He was concerned, on the basis of Canadian and Australian examples, with "notions of pre-culture contact that are idealised and essentialised as cultural norms unaffected by post-contact change and development." He suggested that the Ministerial Review Panel should limit answering the first question by noting that there were pre-contact rights, that they will differ from place to place and that in some cases the rights may actually have been strengthened post-contact.

Wayne Peters and Associates on behalf of Ngātiwai Trust Board (7-222-1), submitted that if the Panel is to recommend amendment or repeal of the Act, then an answer to the first question in the Terms of Reference should "recognise that sufficient time and resources must be allocated to a rigorous investigation if a comprehensive statement of the nature and extent is to be determined". Mr Peters considered that the Panel could "express the nature and extent in general terms, but recommend that a rigorous investigation was provided for on a case by case basis."

Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3) submitted that the first question in the Terms of Reference reveals a "fundamental misunderstanding" of the *Ngāti Apa* litigation. He suggested that this question assumes that the case changed the extent of mana whenua and public interest in the public foreshore and seabed. He noted that the case was in fact limited to considering whether the Māori Land Court had jurisdiction to investigate whether certain foreshore and seabed area was Māori Customary Land.

Specific comments about Mana whenua

George Riley on behalf of Te Rūnanga a Iwi o Ngāpuhi (7-229-1), submitted in answer to the first question of the Terms of Reference, that pre-Treaty of Waitangi "all of Te Ikanui nā Maui, Te Waipounamu and outlying islands Wharekauri, Rēkohu and Manawatawhi were wholly owned and in places occupied under customary law and rights of first peoples by hapū/iwi of tāngata whenua for the collective benefit of the hapū interest." Mr Riley noted in regards to the foreshore and seabed post treaty, that the Crown "continually implemented legislative mechanisms designed to circumvent valid claims". He states further that "despite these intrusions there were continual protestations and ongoing claims of ownership

Emeritus Professor FM (Jock) Brookfield (3-1-1) submitted that based on his limited understanding the term 'mana whenua' would extend over the actual sea water and include internal waters such as bays and possibly beyond 12 nautical miles. He noted that common law provided for jurisdiction over internal waters and coastal foreshore, and was then extended by statute to three and then 12 nautical miles. He assumed that mana whenua would include the right to exclude other Māori groups from the area.

Professor Brookfield noted that, in regards to mana whenua over dry and sea land that has been acquired by the Crown, that mana whenua "continued to exist in the new order, though somewhat faintly, from its original recognition in the general practice of the crown of buying and obtaining conveyances from Māori of land whether above or below high watermark. This was notwithstanding the refusal of the courts to recognise and enforce at common law the element of mana whenua that corresponds to ownership in common law".

Professor Brookfield further submitted that at common law the Crown is presumed to be the owner of the foreshore and seabed, except where the Crown has granted an area to a person. He noted, however, that "long possession by a person in adverse possession of sea land under the 60 year limitation period would give good (prescriptive) title against the Crown, even when it is know that there was in fact no grant". He noted that obtaining title by prescription depended on "Acts of possession performed on the sea land itself e.g. by excluding others from mooring their ships permanently on it, as well as using or exploiting the land (subject to the public rights)". He said this test made acquiring prescriptive title easier in inland waters, compared to deeper waters further out to sea. He further noted that under common law, and presumably under tikanga Māori, possession of land surrounding internal waters – such as a harbour, would extend to the seabed of those internal waters.

Professor Brookfield also submitted that on the basis of the similarities between prescriptive title under common law and mana whenua that "mana whenua exercised, over the foreshore, the beds of internal waters even if deep and the bed of shallow territorial waters, by performance of possessory acts, should found aboriginal title in the underwater land at common law by analogy

with the prescriptive title of an adverse possessor". He further noted that mana whenua seems to differ to common law by possibly extending further out to sea and recognising no difference between sea land and the water above.

Comments about Public Interest

Emeritus Professor FM (Jock) Brookfield (3-1-1) noted that "public interest" at common law extends to "public rights of fishing, navigation and very doubtfully public recreational use". He noted that public rights of fishing and navigation prevail over ownership of the foreshore and seabed, as granted by the Crown.

George Riley on behalf of Te Rūnanga a Iwi o Ngāpuhi (7-229-1) noted that, in the context of Ngāpuhi rohe, "navigation and access rights for the general public have been maintained. Infrastructure requirements such as cables are ongoing and under no threat from Māori interests." He noted that public fishing rights are regulated under the Fisheries Act.

What options were available to the government to respond to the Court of Appeal decision in *Attorney General v Ngāti Apa*

Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3) submitted that this "has little relevance to the issues facing whānau, hapū and iwi because it is backward rather than forward looking." He states that it is clear, particularly from the Waitangi Tribunal report, that there were a number of options and that the government chose the option that breached the Treaty and was inconsistent with international and domestic law.

Emeritus Professor FM (Jock) Brookfield (3-1-1) noted that the option chosen by the government addressed the concerns that had been identified by the government post *Ngāti Apa*, but that it did so "at the unnecessary and quite unjustifiable cost of extinguishing all customary title and rights in sea land". He characterised the redress for Māori under that option as "very weak" and noted that the details of redress are left until the end of negotiations, to the discretion of the Crown. He noted that the former Attorney General justified this option for redress on the basis of the difficulty in assessing the value of the interests extinguished, and that she drew comparison with Crown fixing compensation on claims upheld in the Waitangi Tribunal. Professor Brookfield rejected this analogy on the basis that the breaches of the principles of the Treaty of Waitangi are not actionable in the courts, for a number of reasons.

Professor David Williams (7-27-1) submitted that the Foreshore and Seabed Report by the Waitangi Tribunal was "one of the best Waitangi Tribunal reports ever written". He noted that the report offered a range of reasonable and feasible options, which were all rejected by the government. He suggested that the Panel should carefully go through all those options and offer views on which option may now suit.

George Riley on behalf of Te Rūnanga a Iwi o Ngapuhi (7-229-1) noted that the first requirement of the government response to Ngāti Apa was to act "lawfully and in line with the Crown treaty duties including active protection of tāngata whenua interests". He submitted that the Crown failed to do this. Mr Riley noted that allowing Te Ture Whenua Māori/Māori Land Act to operate, post *Ngāti Apa* would have meant Māori had redress to the Māori Land Court to convert customary rights into fee simple title. He noted, however, that this fee simple title is a "reduction of the bundle of customary rights and does not include the ability of tāngata whenua hapū to exercise kaitiakitanga".

Whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary or aboriginal title and public interests (including Māori, local government and business) in the coastal marine area and maintains and allows for the enhancement of mana whenua

Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3) submitted that the answer is "clear from the analysis undertaken in 2004 by Te Ope Mana a Tai and the Waitangi Tribunal and in subsequent Tribunal inquiries".

Professor David Williams (7-27-1) submitted that the third question cannot be answered without a deeper inquiry into the nature and extent of customary rights and public interest, based on real evidence. He noted that the nationwide consultation by the Panel is a process that should have occurred earlier.

Emeritus Professor FM (Jock) Brookfield (3-1-1) noted that some provisions of the Act, such as the provision for reserves when the High Court have found in favour of a claimant group under section 33 restore to a very modest degree an element of mana whenua. Professor David Williams (7-27-1) noted that a statutory regime by definition is a solution imposed from above, and noted that a resolution of this issue can not be satisfactory to either Māori or Pākehā unless there is a 'bottom-up' decision making process.

George Riley on behalf of Te Rūnanga a Iwi o Ngapuhi (7-229-1) noted that the Act "does not support our rights. Instead it tries to redefine them in order to reduce them".

If the panel has reservations that the Foreshore and Seabed Act does not provide for the above, outline options on what could be the most workable and efficient methods by which both customary and public interests in the coastal marine area could be recognised and provided for; and in particular, how processes of recognising and providing for such interests could be streamlined.

A number of submitters suggested options for alternative methods to recognise customary and public interest in the coastal marine area. These options are described in Part 5, particularly in Sections A, D and E.

Part 5
Other Matters

Section A – Human Rights

This section provides an overview and summary of the submissions received about human rights issues.

Overview

Human rights issues were a common theme discussed in submissions. Submitters expressed the view that the passage of the Foreshore and Seabed Act 2004 (the Act) was a breach of human rights. These human rights include rights to equality, freedom from discrimination, the right to cultural development, the right to due process, the rights associated with ownership of property and the right to effective remedy for breach of one's rights.

Human rights can be broadly split into four key areas:

- *International human rights:* submitters considered that the Act breaches international human rights conventions (including the International Convention on the Elimination of All forms of Racial Discrimination and the Draft Declaration of the Rights of Indigenous Peoples). Submitters supported international findings on the Act by the United Nations Committee for the Elimination of Racial Discrimination, and also supported the Report of the United Nations Special Rapporteur in 2006;
- *Domestic human rights:* submitters considered that the Act breaches domestic human rights law and norms;
- *Discrimination:* submitters explained that they viewed the Act as discriminatory to Māori; and
- *Race relations:* submitters expressed their views about the impact that the Act has had on race relations in New Zealand.

International human rights

Many submitters supported the numerous findings by the United Nations Committee for the Elimination of Racial Discrimination (CERD Committee), and in particular the findings by the CERD Committee that the Act:[96]

- contains aspects that are discriminatory; and
- fails to provide the right of redress.

[96] Including Roimata Moore and Anahera Richards (7-42-1); Te Orohi Paul (7-37-1); Tim McCreanor (7-40-1); Malibu Michael Hamilton (4-37-1; Moana Jackson on behalf of Ngāti Kahungunu Iwi Authority (4-84-1); Adrianne Taungapeau (7-207-1); Caritas Aotearoa New Zealand (7-221-1); Atareiria Heihei on behalf of Ngāi Tawake of Ngaphui iwi (7-221-1); Tim McCreanor (7-40-1); Clinton Thompson (7-323-1); Ced Simpson on behalf of the Human Rights Foundation (7-17-1); Anahera Richards (7-57-1); Natalie Paretera Richards (7-55-1); Maxine Erena Richards (7-50-1); Maire Leadbeater (7-49-1); Anonymous (7-71-1); Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-1); Ngāti Torehina ki Mataka (7-77-1); Sharon Lee Campbell (7-89-1); Maxine Erena Richards (7-50-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Reverend Maurice Manawaroa Gray on behalf of Te Rūnaka ki Otautahi o Kai Tahu (7-285-1); Sione Pasene (7-287-1); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1); Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-231-1); Tracey Whare de Castro on behalf of Aotearoa Indigenous Rights Trust (7-302-1); Potatutatu Bill Ruru on behalf of Te Aitanga a Māhaki Trust (7-331-1); Tajim Mohammond on behalf of Te Rūnanga o Ngāti Rehia (5-68-1); Sacha McMeeking, Ngahiwi Tomoana and Maria Pera on behalf of the Treaty Tribes Coalition (7-43-1); Rata Pue (4-135-2); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); Tanenuiarangi Manawatu Incorporated on behalf of Rangitaane o Manawatu (7-135-1); Diane Sharma-Winter (7-184-1); and Elder Te Reo, Grant Knuckley, Rowena Gotty and Jenni Moore on behalf of Health Care Aotearoa (7-188-1).

Many submitters commented on the Report of the United Nations Special Rapporteur in 2006.[97] Some submitters in their submissions summarised a statement by the Special Rapporteur that "the Act can be seen as a step backward for Māori".

Many other submitters considered that the Act is a breach of the Declaration of the Rights of Indigenous Peoples, and stated their support for the Declaration.[98] For example, Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui submitted that "it is arguable that the Declaration of the Rights of Indigenous Peoples has now become customary international law."

Other submitters made general comments about how the Act breaches international human rights norms and laws or commented about how recommendations made by international bodies have not been taken on board by the Crown.[99] Caritas Aotearoa New Zealand (7-221-1) noted that internationally agreed human rights norms should be one of the most important principles considered by the Panel in making recommendations for future action. Franz Mueller (5-42-1) submitted that by protecting non-tāngata whenua rights but not tāngata whenua rights, the Act breaches international human rights norms.

The Human Rights Commission (7-16-1, 7-16-2, 7-16-3) noted that the Human Rights Commissioner recommended in May 2009 that the government should engage with Māori and the wider community to promote greater recognition and realisation of indigenous rights as set out in the Declaration on the Rights of Indigenous Peoples.

Sacha McMeeking, Ngahiwi Tomoana and Maria Pera on behalf of the Treaty Tribes Coalition (7-43-1), noted that there are three key human rights at issue (and that these are the highest standard in international law):

a the right to equality and freedom from discrimination;

b the right to culture; and

c the right to development.

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[97] Including Moana Jackson on behalf of Ngāti Kahungunu Iwi Authority (4-84-1); Caritas Aotearoa New Zealand (7-221-1); Ced Simpson on behalf of the Human Rights Foundation (7-17-1); Josephite Justice Network of the Sisters of St Joseph Aoteroa New Zealand (7-101-1); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1); Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-231-1); Tracey Whare de Castro on behalf of Aoteaoroa Indigenous Rights Trust (7-302-1); Potatutatu Bill Ruru on behalf of Te Aitanga a Māhaki Trust (7-331-1); Sacha McMeeking, Ngahiwi Tomoana, Maria Pera on behalf of the Treaty Tribes Coalition (7-43-1); and Elder Te Reo, Grant Knuckley, Rowena Gotty and Jenni Moore on behalf of Health Care Aotearoa (7-188-1).

[98] Including Tim McCreanor (7-40-1); Susan Healy on behalf of Pax Christi Aotearoa New Zealand (5-53-3); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1; Mereana Pitman (5-40-1); and Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2).

[99] Including Te Orohi Paul (7-37-1); Tim McCreanor (7-40-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-231-1); Linda Thornton (4-71-1); George Matthews (4-71-1); Malibu Michael Hamilton (4-37-1); Francs Mountier (7-125-1); Margaret Story (7-327-1); Matiu Haitana (7-182 -1); Lance Makowhaemahihi (7-181-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); Agnes Walker (4-74-1); Cynthia Ticker on behalf of Kiwis Against Seabed Mining (7-129-1); Anonymous (7-71-1); Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-1); Sharon Lee Campbell (7-89-1); John Lawson (7-90-1); Maxine Erena Richards (7-50-1); Jimi McLean (4-44-1); Brian Elmes (7-141-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Eru Pōtaka Dewes (4-60-1); A. L. Wells (7-168-1); Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1); Rosina Wiparata (5-3-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Dick Hawea (4-89-1); Angeline Greensill (5-18-1, 5-18-2); Tracey Whare de Castro on behalf of Aoteaoroa Indigenous Rights Trust (7-302-1); Oliver Hoffmann (7-298-1); Robert Warrington on behalf of Muaupoko Tribal Authority (7-300-1); Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1); Adrienne Ross on behalf of CORSO Inc Aotearoa (7-251-1); Kiri Tuia Tumarae (4- 42-1); Tommy Murray on behalf of the New Zealand Māori Council (4-122-1); Te Rūnanga o Ōtakou (7-320-1); Te Kitohi Pikaahu (4-52-1); Patu Hohepa and Jason Pou on behalf of Ngā Hapū o Hokianga (4-119-2); Liz Springford (7-288-1); Vera Van Der Voorden on behalf of the Kiwis Against Seabed Mining (4-36-1); Sacha McMeeking on behalf of the Treaty Tribes Coalition (7-43-1); Stewart Bull on behalf of the Oraka-Aparima Rūnaka Inc (7-272-1); Rangimāria Couch on behalf of the Suddaby whānau (7-337-1); Rata Pue (4-135-2); Liane Ngamane on behalf of Hauraki Māori Trust Board (4-99-1, 4-99-2); Atareta Poananga (4-67-1); Edwina Hughes on behalf of Peace Movement Aotearoa (7-24-1); Megan Hutching on behalf of Women's International League for Peace and Freedom (5-56-2); Glenys Daley on behalf of Tāmaki Treaty Workers (5-54-1); Randolph Whaanga (4-85-1); Piri Prentice on behalf of Mana Ahuriri Inc (7-208-1); and Elder Te Reo, Grant Knuckley, Rowena Gotty and Jenni Moore on behalf of Health Care Aotearoa (7-188-1).

Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1), expressed concern that the government has never implemented the recommendations of the CERD Committee and the United Nations Special Rapporteur.

Susan Healy on behalf of Pax Christi Aotearoa New Zealand (5-53-3) submitted that the Act was a breach of the International Covenant on Civil and Political Rights.

The Dunedin Community Law Centre (7-126-1) noted that international law accepts that Māoridom is/was a sovereign nation entitled to determine the laws of Aotearoa pre-colonisation. The Law Centre also noted that in Rarotonga, Fiji, China, Japan and other countries, the only people who can have legitimate title to the land and/or the foreshore and seabed are the indigenous people of that country.

Domestic human rights

As well as commenting on international human rights, submitters discussed New Zealand's domestic human rights issues. Some submitters considered that the Act contravenes domestic human rights laws and norms.[100]

Among other submitters, Ani Pitman and Deborah Harding on behalf of Patuharekeke hapū (5-75-1, 5-75-2) noted that the Act fails to recognise development within the common law and the common law's recognition of Māori rights.[101]

Many submitters noted that the Act took away the right to due process.[102] Te Awanuiarangi Black (7-39-1) noted that the right of Māori to have their claims heard and tested in a court of law was denied and removed by law without proper engagement with Māori.

Abby Suszo (7-141- 1) submitted that the Act breached the rule of law and doctrine of separation of powers, because the legislature interfered with due process and decisions of the judiciary.

Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1) stated that the Act violates the human rights of Māori to hold property and to retain culture and denies the status of Māori as indigenous New Zealanders.

Some submitters discussed the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and considered that the Act did not align with these pieces of legislation.[103] Peter Tashkoff (7-91-1) states that the Act is a violation of domestic human rights and the Bill of Rights Act 1990, particularly the right to the enjoyment of property and the right to effective remedies at law.

Others discussed the New Zealand constitution, constitutional rights and the potential need for a review of New Zealand's constitutional arrangements.[104] Submitters' comments on this topic are covered in *Part 2 Option 4*: Repeal and replace of this report.

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[100] Including Brian Elmes (7-141-1); Liz Springford (7-288-1); Sacha McMeeking, Ngahiwi Tomoana and Maria Pera on behalf of the Treaty Tribes Coalition (7-43-1); Ani Pitman and Deborah Harding on behalf of Patuharekeke hapū (5-75-1, 5-75-2); Abby Suszko (7-275-1); Piri Prentice on behalf of Mana Ahuriri Inc (7-208-1); and Brian Elmes (7-141-1).

[101] Including Elder Te Reo, Grant Knuckley, Rowena Gotty and Jenni Moore on behalf of Health Care Aotearoa (7-188-1).

[102] Including Ngāi Tahu Law Centre (7-322-1); Te Awanuiarangi Black (7-39-1); Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1, 4-62-2, 4-62-3); Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1); Tracey Whare de Castro on behalf of Aotearoa Indigenous Rights Trust (7-302-1); Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1); Stewart Bull on behalf of the Oraka-Aparima Rūnaka Inc (7-272-1); Rangimarie Couch on behalf of Suddaby whānau (7-337-1); P Rene (7-153-1); Michael Pehitahi Nuku on behalf of Te Rūnanga o Ngaiterangi Iwi Trust (7-329-1); Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-2); Terekaunuku Whakarongotaimoana (Dean) Flavell (7-41-1); and Hokotehi Moriori Trust (7-239-2).

[103] Including Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1, 4-62-2, 4-62-3); Stewart Bull on behalf of the Oraka-Aparima Rūnaka Inc (7-272-1); and Anonymous (7-109-1).

[104] Including Daniel Te Kanawa (7-276-1); Hokotehi Moriori Trust (7-239-2); Moana Jackson on behalf of Ngāti Kahungunu Iwi Authority (4-84-1); and J Stevenson (4-25-1).

Discrimination

Submitters noted that the Act was discriminatory in some way. A number of submitters implied this when they stated their support for international and domestic human rights norms and laws. Other submitters explicitly stated that the Act was discriminatory.

A key issue discussed in many submissions was the idea that the Act denies Māori rights in the foreshore and seabed, while protecting other rights.[105] This included discussion about the right to freedom from racial discrimination, the right to access to justice, and the view that the Act protects owners that own private pieces of the foreshore and seabed.

Waiatarangi Williams of Te Taumutu Rūnanga Society Incorporated (7-213-1) noted, that by referring to the public foreshore and seabed, the Crown excludes all areas that are privately owned. The submitter considered that non-Māori rights are protected and Māori customary rights were extinguished.

Other submitters stated that the Act was in some way racist, discriminatory or constituted prejudice.[106] For example, the Ngāi Tahu Law Centre (7-322-1) noted that the Act discriminates against Māori on the basis of ethnicity. Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1) noted that the Act is discriminatory against Māori, in particular because the Act extinguishes Māori title without guarantee right of redress. Claudia Haumilin Nicholson (7-53-1) noted that the Act is discriminatory against Māori, as they have lost their right to have claims heard. This submitter also states that the Act is a racist act that specifically identified one race of people and denied them the right to the judicial system that other New Zealanders could access.

Cheryl Turner on behalf of Pakanae Hapū Management Committee (7-279-1) described the Act as discriminatory because there is no restriction on Pākehā rights to develop for commercial benefit. The submitter noted that the Act denies Māori a right to development.

Other submitters submitted that the Act discriminates against non-Māori.[107] For example, John Patrik Wikstrom (7-146-1) noted that the Act is discriminatory because it applies to a particular race and it overrules the rights of other New Zealanders. Other submitters noted that all New Zealanders should be treated equally and that there should be no special treatment based on ethnicity.[108] Colin Boock (5-44-1) believes that there is inequality between Māori and non-Māori and that non-Māori carry the burden of providing for Māori.

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[105] Including Terekaunuku Whakarongotaimoana (Dean) Flavell (7-41-1, 4-50-1); Anonymous (7-128-1); Dunedin Community Law Centre (7-126-1); Dee Samuel (5-66-1); Franz Mueller (5-42-1); Gertrude Warnes (7-274-1); Hikutai (Barney) Barret (4-5-1); Roimata Moore and Anahera Richards (7-42-1); Anahera Richards (7-57-1); Natalie Paretera Richards (7-55-1); Robert Willoughby on behalf of Hauai Trust (7-56-1); Maire Leadbeater (7-49-1); Pahewa Patrick Fairlie whānau (7-286-1); Reverend Maurice Manawaroa Gray on behalf of Te Rūnaka ki Otautahi o Kai Tahu (7-285-1); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1); Lynda Sutherland on behalf of National Council of Women of New Zealand (7-165-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Incorporated (7-231-1); Te Rūnanga a Iwi O Ngapuhi (7-299-1); Adrienne Ross on behalf of CORSO Inc Aotearoa (7-251-1); David Doorbar (4-137-1); Marijke Warmenhoven (4-80-1); Stewart Bull on behalf of Oraka-Aparima Rūnaka Incorported (7-272-1); and Anonymous (7-278-1).

[106] Including Tim McCreanor (7-40-1); Terekaunuku Whakarongotaimoana (Dean) Flavell (7-41-1); Anonymous (17-128-1); Te Whānau o Te Urikore (7-147-1); Frances Mountier (7-125-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); Clinton Thompson on behalf of Tamihana Whānau (7-323-1); Cameron Hunter (4-104-1); John Kaati (4-27-1); Susan Healy on behalf of Pax Christi Aotearoa New Zealand (5-53-3); Peter Tashkoff (7-91-1); Te Awanuiarangi Black (7-39-1); Patrick Nicholas (7-59-1); David Gregory (7-63-1); Maxine Erena Richards (7-50-1); Anonymous (7-158-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Patricia Stebbing (7-261-1); Abigael Vogt on behalf of ARC Auckland (Aotearoa Reality Check) (7-301-1); Rosina Wiparata (5-3-1); Angeline Greensill (5-18-1, 5-18-2); Waipa Te Rito (4-88-1, 4-88-2); Tracey Whare de Castro on behalf of Aoteaooa Indigenous Rights Trust (7-302-1); Les and Pat Gray on behalf of Women's Resource Network (7-215-1); Liz Springford (7-288-1); Sacha McMeeking, Ngahiwi Tomoana and Maria Pera on behalf of Treaty Tribes Coalition (7-43-1); Abby Suszko (7-275-1); Council of Trade Unions (7-18-2); Ian Francis Burke (7-148-1); Mereana Pitman (5-40-1); Ani Pitman and Deborah Harding on behalf of Patuharekeke hapū (5-75-1, 5-75-2); Michael Pehitahi Nuku on behalf of Te Rūnanga o Ngaiterangi Iwi Trust (7-329-1); Rata Pue (4-135-2); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1,4-110-2); and Megan Hutching on behalf of Women's International League for Peace and Freedom (5-56-2).

[107] Including P Rene (7-153-1).

[108] Including John Patrik Wikstrom (7-146-1); Peter and Ann McPartlin on behalf of the McPartlin family and Lightwood Trust (7-210-1); Thomas Harrison (4-109-1).

Race Relation

Several submitters felt that the Act harmed race relations.[109] Tania Kingi on behalf of Te Roopu Waiora Trust (7-229-1) said she believes that the negative impact on race relations was caused by the political manipulation of public opinion. In her view, the claims that Māori would restrict access to the beach were unwarranted.

Reverend Maurice Manawaroa Gray on behalf of Te Rūnaka ki Ōtautahi o Kai Tahu (7-285-1) noted that the Act is a contributory factor to the erosion of Māori confidence in an equal and bicultural society and it discouraged engagement in the legal system and its process. He considers the Act to be a source of harmful and unnecessary division in the country.

Jan and Hutch (7-32-1) considers that for race relations to prosper and grow the issues in the Act need to be finalised and brought to an end. New Zealand will not be able to move forward until that has happened.

Elder Te Reo, Grant Knuckley, Rowena Gotty and Jenni Moore on behalf of Health Care Aotearoa (7-188-1) considered that race relations are generally moving from assimilation model to bi-cultural model based on Treaty principles and partnership.

[109] Including Peter Tashkoff (7-19-1); Helen Mosely (7-35-1); Anonymous (7-69-1); Che Wilson (4-145-1); Ken Mair on behalf of Tūpou Pūtiki Marae (4-140-1); Jean McLean Young (4-93-1); John Patrik Wikstrom (7-146-1); Peter MacCallum (7-172-1); and Peter and Ann McPartlin on behalf of the McPartlin family and Lightwood Trust (7-210-1).

Section B – Treaty of Waitangi

The following section provides an overview and summary of what submitters said in relation to the Treaty of Waitangi.

Overview

Most of the submitters said they believe the Act breached the Treaty of Waitangi, particularly Article 2. Submitters also took the opportunity to speak more generally about the Treaty, the rights it provides, and its status in New Zealand.

This section has been divided into the following parts:

a the Act breached the Treaty;

b the process of developing the Act breached the Treaty;

c the Crown's role and the Treaty partnership;

d Treaty rights and the recognition thereof;

e the Treaty as the starting point;

f Treaty claims;

g general comments on the Treaty; and

h other Treaty matters.

Act breached the Treaty

Many submitters considered that the Act breached the Treaty of Waitangi.[110] Many submitters, particularly, commented that the Act breached Article 2 of the Treaty.[111] A few submitters stated that the Act breached Article 3 of the Treaty.[112]

Dr Susan Healey for Bicultural Desk of the Catholic Diocese of Auckland and Pax Christi (5-53-1) said that the spirit of the covenant of the Treaty was broken, while Charl Hirschfeld (5-63-1) said that the Act was not compliant with the Treaty.

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[110] Including Agnes Walker (4-74-1); Dunedin Community Law Centre (7-126-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Te Whānau o Te Urikore (7-147-1); Frances Mountier (7-125-1); Hokotehi Moriori Trust (7-239-2); Abigael Vogt (7-144-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1, 4-62-2, 4-62-3); Moana Jackson on behalf of Ngāti Kahungunu Iwi Authority (4-84-1); Linda Thornton (4-71-1); Nancy Tuaine on behalf of Whanganui River Māori Trust Board (4-139-1); Rueben Tapara (7-123-1); Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1, 2-1-2, 2-1-3); Rongoheikume Simon (7-307-1); Sione Pasene (7-287-1); Abigael Vogt on behalf of Aotearoa Reality Check Auckland (7-301-1); Josephite Justice Network of the Sisters of St Joseph Aotearoa New Zealand (7-101-1); Kiri Tuia Tumarae on behalf of Te Umutaoroa (4-21-1); Richard Bradley on behalf of Te Tau Ihu Customary Fisheries Forum (4-114-1, 4-114-2); Margaret Kawharu on behalf of Ngāti Whatua o Kaipara (4-102-1); Caritas Aotearoa New Zealand (7-221-1); Margaret Story (7-327-1); Malibu Michael Hamilton on behalf of Te Ngaru Roa a Maui (4-37-1); Noel Oriwa Harris (7-294-1); A L Wells (7-168-1); Moea Armstrong (5-67-1, 5-67-2) , Tania Kingi on behalf of Te Roopu Waiora Trust (7-229-1); Oliver Hoffmann (7-298-1); Marijke Warmenhoven (4-80-1); Whatarangi Winiata (7-234-1); Rangimaria Couch on behalf of the Suddaby whānau (7-337-1); Betty Williams (7-34-1); S Thomson and WL Crawford (7-113-1); James Daniels (4-12-1); Sisters of Mercy New Zealand (5-48-1); Judith Newa Norris (5-33-1); Billie Rongomaimira Biel (7-296-1); Donald Ngahina Harris on behalf of Moturoa Residents Group, Ngāti Te Whiti Hapū and Te Atiawa (7-298-1); Marina Fletcher on behalf of the Whangarei Harbour Kaitiaki Ropi, the Whangarei Claimant's Core Collective Claims Group (5-76-1); Barbara Marsh on behalf of Mōkau ki Runga Regional Management Committee (7-176-1); Ngareta Delamere (7-245-1); Anna Parker on behalf of Corso Dunedin (7-244-1); Jean Hera on behalf of the Palmerston North Women's Health Collective Inc (7-249-1); Richard Takuira and Vivienne Taueki on behalf of Muaupoko (7-258-1); Punoho McCausland (7-47-1); Karina Te Pou on behalf of Whakakotahi Community Development o Taiwhakaea (7-338-1); Edwina Hughes for Peace Movement Aotearoa (7-24-1); Whaitiri Mikaere (5-61-1); Megan Hutching for Women's International League for Peace and Freedom (5-56-2); Glenys Daley for Tāmaki Treaty Workers (5-54-1); and Anonymous (7-254-1).

[111] Including Te Kani Williams on behalf of Te Rūnanga a Iwi o Ngāti Kahu (4-58-1, 4-152-2); Ngāi Tahu Māori Law Centre (7-322-1); Sharon Lee Campbell (7-89-1); Betty Williams (7-34-1); Te Orohi Paul (7-37-1); Roimata Moore and Anahere Richards (7-42-1); Terekaunuku Whakarongotaimoana (Dean) Flavell on behalf of Tapuika Iwi (7-41-1) and (4-50-1); Peter Johnston on behalf of Ngāti Hei ki Whitianga (7-60-1); Anahera Richrds (7-57-1); Walter Te Kiita Broadman on behalf of ngā tāngata kaitiaki of Waimarama (7-67-1); Anonymous (7-128-1); Anonymous (7-109-1); Franz Mueller (5-42-1); Erick Albert Nuku (7-309-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Potatutatu Bill Ruru on behalf of Te Aitanga a Mahaki Trust (7-331-1); and David Doorbar (4-137-1).

[112] Including Ced Simpson on behalf of the Human Rights Foundation (7-17-1).

The view of many of the submitters, such as Tracey Whare de Castro on behalf of Aotearoa Indigenous Rights Trust (7-302-1), was that the Crown was not allowing Māori to "full exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties" or "taonga" such as the foreshore and seabed, as guaranteed by Article 2. Some submitters considered that the Act breached the Treaty by confiscating the land, and said this was similar to Crown actions in the 1800s and 1900s.[113] Several submitters called the Act an act of raupatu (confiscation).

There was a group of submitters who argued that they had never given up their taonga[114] such as ownership of the foreshore[115] and self-governance.[116] On the other hand, another group of submitters considered that the Act clearly extinguished ownership and therefore the Act had extinguished a Treaty right.[117]

One submitter assumed that the Crown gained ownership of the foreshore and seabed under Article 1 of the Treaty, and therefore was confused about the intent of the Act.[118]

A few submitters such as Brian Elmes (7-141-1) considered that this Act was just one of many Acts that breach the Treaty of Waitangi.[119]

Process of developing the Act breached the Treaty

Some of the submitters such as Dunedin Community Law Centre (7-126-1) considered that the process by which the Act was developed was also a breach of the Treaty.[120] In particular, people such as Abby Suszko (7-275-1) believed that Treaty rights were removed without consultation, consent or compensation.

Dayle Takitimu (7-164-1) submitted that the Act was passed into law whilst its provisions remained in breach of the Treaty of Waitangi. She contends that the process for developing the legislative policy was fundamentally flawed, and the principles upon which the legislation was to be based were inconsistent with the principles of the Treaty of Waitangi.

Another matter Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1) considered to be a breach was the removal of the right to claim a breach of the Treaty to the Waitangi Tribunal as either a historical or contemporary claim.[121]

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[113] Including Dunedin Community Law Centre (7-126-1); Frances Mountier (7-125-1); Abigael Vogt on behalf of Aotearoa Reality Check (7-301-1); Moea Armstrong (5-67-1, 5-67-2); Robert Warrington on behalf of Muaupoko Tribal Authority (7-300-1); Marijke Warmenhoven (4-80-1); Haumoana White (4-130-1, 4-130-2, 4-130-3); Maraekura Horsfall (4-129-1, 4-129-2); Peter Tashkoff (7-91-1); Roimata Moore and Anahere Richards (7-42-1); Monica Matamua on behalf of Ngāti Hotu and Ngāti Hinewai (7-58-1); and Maxine Erena Richards (7-50-1).

[114] Including Cheryl Turner on behalf of Pakanae Hapū Management Committee (7-279-1); P Rene (7-153-1); Michael Pehitahi Nuku on behalf of Te Rūnanga o Ngaiterangi Iwi Trust (7-329-1); Barbara Huia Francis (7-127-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); and Te Rūnanga a Iwi o Ngapuhi (7-299-1).

[115] Including Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1); Lance Makowharemahihi (7-181-1); and Dee Samuel (5-66-1).

[116] Including Stan Nepia (4-29-1).

[117] Including Justine Inns and Matiu Rei on behalf of Te Ope Mana a Tai (7-44-1); Anonymous (7-62-1); Maxine Erena Richards (7-50-1); Walter Te Kiita Broadman on behalf of ngā tāngata kaitiaki of Waimarama (7-67-1); Rachelle Forbes (7-115-1); Pahewa Patrick Fairlie whānau (7-286-1); Tajim Mohammond on behalf of Te Rūnanga o Ngāti Rehia (5-68-1); Atareiria Heihei on behalf of Ngāi Tawake of Ngapuhi Iwi (7-221-1); Tim Howard and Leanne Brownie on behalf of Northland Urban Rural Mission (5-70-1); Sue Nikora on behalf of Ngāti Uepohatu Iwi (4-64-1); Roku Mihinui on behalf of Te Arawa Lakes Trust (7-256-1); and Karina Te Pou on behalf of Whakakotahi Community Development o Taiwhakaea (7-338-1).

[118] Including A L Wells (7-168-1).

[119] Including Brian Elmes (7-141-1); Reuben Porter on behalf of Nga Hapū o Ahipara (5-71-1); and Kahutia Nikora (7-66-1).

[120] Including Dunedin Community Law Centre (7-126-1); Rosina Wiparata (5-3-1); Abby Suszko (7-275-1); and Anonymous (7-328-1).

[121] Including Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1).

Crown's role as Treaty partner

Many people, including Madeleine Rose (5-13-1), Potatutatu Bill Ruru Te Aitanga a Māhaki Trust (7-331-1) and Anonymous (7-120-1) believed that the Act was an abrogation of the Crown's obligations under the Treaty.[122] Some submitters such as Mārie Tauturi (5-73-1), Ngāti Torehina ki Mataka (7-77-1), Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2) considered that the Crown lacked good faith in enacting the Act, and furthermore did not act as a good Treaty partner.[123]

Other submitters looked at the Crown's actions generally, and were of the opinion that the Crown does not recognise or provide for the Treaty.[124]

Recognition of rights and the rights guaranteed

Many individuals including Frank Kingi Thorne on behalf of Ngāti Hikairo (7-223-1), Madeleine Rose (5-13-1) and Rena Fowler (4-9-1) considered the Treaty guarantees customary rights.[125] A number of submitters went further and said that there should be recognition of the customary rights guaranteed by the Treaty.[126]

Several people such as Kahutia Nikora (47-66-1) and Gail Thompson on behalf of Te Rūnanga o Awarua (4-6-1) considered that tāngata whenua had greater or special rights because of their status under the Treaty.[127] Emeritus Professor FM (Jock) Brookfield (3-3-1) further considered that mana whenua was a right under the Treaty.

Treaty as starting point

Submitters also looked to the Treaty as a starting point to restart discussions about the Act and considered the Treaty to be a model for solutions.[128] Submitters pointed to the Waitangi Tribunal's Report on the *Crown's Foreshore and Seabed Policy* as a place where solutions could be found.[129]

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[122] Including Whatarangi Winiata (7-234-1).

[123] Including Anonymous (7-120-1); Clinton Thompson on behalf of the Tamihana Whānau (7-323-1); Mrs O Ripia (7-170-1); Te Rūnanga a Iwi o Ngapuhi (7-299-1); Marie Tautari (5-73-1); Stewart Bull on behalf of the Oraka-Aparima Rūnaka Inc (7-272-1); Thomas Harrison (4-109-1); Haumoana White (4-130-1, 4-130-2, 4-130-3); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); Ngāti Torehina ki Mataka (1-77-1); Gerald Tait (7-97-1); Kahuariki Hancock (7-87-1); Paul Harmon (4-20-1); and Peter Moeahu on behalf of Ngāti Tewhiti (4-134-1).

[124] Including Barney Tupara (4-72-1); Justice Association of New Zealand (7-273-1); and Te Kitohi Pikaahu (4-52-1).

[125] Including M and I Britnell (7-298-1); John Albert Guard (7-132-1); Vaughan Bidois on behalf of Ngaitai Iwi Authority (7-140-7); Robin Lieffering (7-137-1); Linda Thornton (4-71-1); Matiu Rei (4-115-1); Wiremu Te Kino Evans (434 / 4-73-1); Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Matiu Rei (4-115-1); Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1); David Doorbar (4-137-1); William Greening (7-261-1); Sharon Gemmell (7-206-1); and Kelly Bevan on behalf of Te Iwi o Ngāti Tukorehe Trust (7-197-1).

[126] Including Frank Kingi Thorne on behalf of Ngāti Hikairo (7-223-1); Madeleine Rose (5-13-1); Rena Fowler (4-9-1); Te Ora a Manukau (7-238-1); Monica Fraser on behalf of Kapiti Coast District Council (7-118-1); John Morgan on behalf of Ngāti Rarua Iwi Trust (4-116-1, 4-115-2); Waiatarangi Willaims on behalf of Te Taumutu Rūnanga Society Inc (7-231-1-); Walter Te Kiita Broadman on behalf of ngā tāngata kaitiaki of Waimarama (7-67-1); Matiu Haitana on behalf of Te Hapū o Ngāti Ruakopiri (7-182-1); Karina Te Pou on behalf of Whakakotahi Community Development o Taiwhakaea (7-338-1); and Merata Kawharu and Don Wackrow for Ngāti Whātua o Orakei Māori Trust Board (4-97-1, 4-97-2).

[127] Including Kahutia Nikora (7-66-1); Mahara Te Aika (7-194-1); Hokotehi Moriori Trust (7-239-2); Gail Thompson on behalf of Te Rūnanga o Awarua (4-6-1); and Anne MacLennan (7-240-1).

[128] Including Matiu Rei (4-115-1); Abigael Vogt (7-144-1); Jenise H Eketone on behalf of Maniapoto Māori Trust Board (7-235-1); Anna Parker on behalf of Corso Dunedin (7-244-1); Jean Hera on behalf of the Palmerston North Women's Health Collective Inc (7-249-1); and Joan Hardiman on behalf of the New Zealand Dominican Sisters Leadership Team (7-145-1).

[129] Including Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-231-1); Peter Tashkoff (7-91-1); Professor David D Williams (7-27-1); John Henry Tamihere (7-19-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Marina Fletcher on behalf of the Whangarei Harbour Kaitiaki Ropi, the Whangarei Claimant's Core Colelctive Claims Group and her Whānau interests in Te Uri o Hau Incorporation (5-76-1); Frances Mountier (7-125-1); Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); Clinton Thompson on behalf of the Tamihana Whānau (7-323-1); and Moana Herewini on behalf of Maniapoto ki roto Tamaki Makaurau (7-306-1).

Furthermore, submitters such as Kelly Bevan on behalf of Te Iwi o Ngāti Tukorehe (7-197-1) considered the Treaty to be a key reference for the Act[130]. Specifically, Christy Parker on behalf of the Women's Health Action Trust (7-138-1) said that members of the Trust consider that the Treaty is a valuable part of women's lives.

Treaty claims

Submitters were also interested in the overlap between the Act and the historical Treaty settlements process. John Wanoa (Nā Atua e Wā Limited) (7-335-1) and Tim McCreanor (7-40-1) made submissions about Treaty claims generally,[131] and some submitters such as Rata Pue (4-135-1), commented on the government's 2014 deadline for the settlement of historical Treaty claims.[132]

A number of people in their written and oral submissions referenced the Treaty claims made either by themselves or by their whānau, hapū or iwi.[133] Submitters referred to the impact of their Treaty claims, the historical evidence for the claims and the reasons why they continued in the Treaty claims process.

General comments on the Treaty

Several submitters such as Linda Thornton on behalf of Te Whānau a Te Aotawairangi and Te Whānau a Tapaeururangi (4-71-1), Judith Rewa Norris (5-33-1) and Haahi Walker (4-149-1), considered that the Treaty should be protected and recognised for itself.[134] A large number of submitters, including Natasha Clark in support of Patukiha, Ngāti Puha and Hauai Trust (5-74-1), Lynda Sutherland National Council of Women of New Zealand (7-165-1) and Gerald Tait (7-97-1), considered that the Treaty should form part of the constitution of New Zealand, if not the founding document.[135]

Other submitters made comments about the place of the Treaty. For instance, some made comments about the interaction of the Treaty with other legislation.[136] Madeleine Rose (5-13-1) considered that the government should stop tinkering with the Treaty. Maria Pera Te Rūnanga o Awarua (4-1-1, 4-1-2) thought that the principles of the Treaty needed integration. Yvonne Dainty (4-100-1) believes the Treaty to be a legally binding document. Jenise H Eketone on behalf of the Maniapoto Māori Trust Board (7-235-1) and Tommy Murray on behalf of the New Zealand Māori Council (4-122-1) both submitted that all legislation should be tested for consistency with the Treaty.

Barney Dewes (4-82-1) and Eric Niania (5-48-1) both noted the historical commentary on the Treaty and considered it to be misleading.

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[130] Including Kelly Bevan on behalf of Te Iwi o Ngāti Tukorehe Trust (7-197-1); Marie Tautari (7-257-1); Caritas Aotearoa New Zealand (7-221-1); Emma Gibbs on behalf of Te Pātaka Mātauranga Charitable Trust (7-260-1); Jean Hera on behalf of the Palmerston North Women's Health Collective Inc (7-249-1).

[131] Including John Wanoa on behalf of Nā Atua E Wa Ltd, Tom Moeke (4-35-1); Te Huirangi Waikerepuru (4-138-1); Greg White on behalf of Te Rūnanga o Ngāti Tama and Ngāti Mutunga (4-136-1); Kahutia Nikora (7-66-1).

[132] Including Rata Pue (4-135-2); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); Tim McCreanor (7-40-1).

[133] Including Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1); Mihirawhiti Searnacke (4-30-1); Shane Solomon (4-28-1); Angeline Greensill (5-18-1, 5-18-2) and Irihapeti Campbell and Hori Elkington (7-282-1); Matiu Haitana on behalf of Te Hapū o Ngāti Ruakopiri (7-182-1); Tim Manukau on behalf of Waikato-Tainui Te Kauhanganui Incorporated (7-247-1).

[134] Including Linda Thornton (4-71-1); Judith Newa Norris (5-33-1); Sue Nikora on behalf of Ngāti Uepohatu Iwi (4-64-1); Haahi Walker (4-149-1); Matiu Haitana on behalf of Te Hapū o Ngāti Ruakopiri (7-182-1).

[135] Including Natasha Clarke in support on Patukiha, Ngāti Puha and Hauai Trust (5-74-1); Ani Pitman and Deborah Harding on behalf of Patuharekeke hapū (5-75-1, 5-75-2) , Nicola Short (5-24-1); Jimi McLean (4-44-1); Kahuariki Hancock (7-87-1); Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Christopher Brayshaw (4-56-1); Colin Bidois (5-32-1); Lance Waka (5-26-1); Verna Waitere (7-175-1); Barney Tupara (4-72-1); Franz Mueller (5-42-1); Hikutai Barney Barret (4-5-1); Moana Jackson on behalf of Ngāti Kahungunu Iwi Authority (4-84-1); Verna Waitere (7-175-1); Hilda Sykes on behalf of Ngāti Makino (7-290-1); Jean McLean Young (4-93-1); Te Waiariki Ngāti Korora Ngāti Takaparehapū Iwi Trust (7-33-1).

[136] Including Cliff Mason and Kaye Weir for the Pacific Institute of Resource Management (7-8-2).

Other Treaty matters

Sue Nikora on behalf of Ngāti Uepohatu iwi (4-64-1) considered that the Treaty had been extinguished because of the Crown's actions. Further, Sue Nikora said that if it was not for the Treaty, non-Māori could not remain in New Zealand.

Daniel Ngakete Bennett (4-101-1) said he believes that he and his tribe are not covered or bound by the Treaty because his tribal ancestors did not sign the Treaty.

Peter and Anne McPartlin on behalf of the McPartlin family and Lightwood Trust (7-210-1), Theo van Kampen on behalf of Dunedin Ratepayers and Householders Association (7-167-1) and Russell Synott (7-33-1) all believed that New Zealanders should not, and are not, responsible for breaches of the Treaty which were committed in the past.

Section C – Natural Resources

This section summarises submissions that expressed an opinion about natural resources.

This section should be read in conjunction with Part 3 "How well the Foreshore and Seabed Act 2004 relates to the other law for the management of coastal areas".

Overview

Submissions relating to natural resources considered aquaculture, conservation matters, fisheries and environmental sustainability. A wide range of views on each of these issues was presented. A recurring theme was the need for effective co-management of natural resources.

Some submitters raised the issue of aquaculture, pointing out that the *Ngāti Apa* case was originally pursued as a response by Māori to the conduct of aquaculture resource consent applications. Other views were expressed on the following:

a the aquaculture settlement and the view that aquaculture is a development right for tāngata whenua under the Treaty of Waitangi;

b the urgent need for reform of aquaculture law and the concern that the aquaculture review currently underway should not be detrimentally affected by the review of the Foreshore and Seabed Act; and

c the environmental degradation caused by marine farms and the need for sustainable aquaculture.

Conservation matters addressed included the need for the development of meaningful co-management of the foreshore and seabed between the Crown and Māori. Some submitters stated that existing legalisation, including the Conservation Act, does not enable effective Māori involvement in conservation. Some submitters expressed a view on the appropriate hierarchy of rights, stating that conservation rights should come before customary rights.

Some fisheries submissions stated that an improved and more efficient fisheries management regime is necessary for the sustainability of the resource. A number of submitters queried whether the current system is able to provide for customary fishing interests. Positive and negative views on the mataitai regime were presented. Some submitters suggested that an integrated management regime needs to be developed to incorporate customary rights into fisheries management.

Environmental sustainability was an issue for submitters who stated that any new foreshore and seabed regime must improve the environment. Some stated that the resource management system generally works well for Māori, while others presented the opposite view.

Aquaculture

Development

Some submitters addressed the development and economic aspects of aquaculture. Pāia Riwaka-Herbert on behalf of Ngāti Apa ki Te Waipounamu Trust (4-111-1) noted that when iwi took the *Ngāti Apa* case to the Māori Land Court they were looking for the opportunity to participate and be consulted on and share the management decisions for the rohe in which they are kaitiaki. The boom in aquaculture in the mid 1990s saw space for marine farming in short supply and the customary rights of Ngāti Apa and other iwi were essentially ignored through the processes of the Resource Management Act. Edward Ellison on behalf of Te Rūnanga o Ōtakau (4-8-1) submitted that aquaculture is a development right for tāngata whenua under the Treaty of Waitangi.

Aquaculture New Zealand (7-23-1) noted that there is no incentive for councils to allocate aquaculture space as the process is complex, time consuming and sometimes involves controversial

issues. They estimate that Māori interests in aquaculture is between 30-38 percent of the industry and that these interests were likely to grow because of the obligation to provide 20 percent of new and existing aquaculture space to Māori under the aquaculture settlement. They also noted there was a strong alignment of Māori and non-Māori interests in aquaculture but that the aquaculture settlement is essentially worthless without growth.

Pete and Takutai Beech (7-195-1) believed that the Marlborough District Council has made a 'backroom' deal with the aquaculture industry and is attempting to remove the tendering process and allow aquaculture companies to apply for private plan changes to select aquamarine areas without public consultation. This would result in the seabed being "owned" by large multi national companies.

Thomas Harrison (4-109-1) noted that the Marlborough District Council does not collect rent from marine farms. Wharf charges are collected by the Port of Marlborough which is not owned by the District Council.

Yachting New Zealand (7-106-1) noted there is a need to ensure shelter in the coastal marine area and that extensive and poorly located aquaculture structures can be navigationally hazardous and obstructive of access to shelter in stormy conditions.

Anthony Royal (5-14-1) submitted that problems arise when mussel farms are erected but no one has spoken with Māori about those farms or the resulting water quality.

Environmental Impacts

Some submitters raised issues about the effect of aquaculture on resources. Merata Kawharu and Don Wackrow on behalf of Ngāti Whātua o Ōrākei Māori Trust Board (4-97-1, 4-97-2) submitted that "I have seen for the past two years that the Europeans at Kaipara have gone over our beds and have taken the fish, shells and oysters without our permission. We only look on".

Others noted caution should be taken against a rush into unsustainable aquaculture. Marine farms need to be part of broader environmental sustainability and a balance is needed with the Resource Management Act 1991.[137]

Customary Interests

Some submitters considered the effect of aquaculture on customary rights and also what effect the legislative recognition of customary rights has on the development potential for aquaculture.

Aquaculture New Zealand (7-23-1) had a neutral position on iwi making claims of customary rights under the Act, provided that aquaculture is not affected. They stated that the progress made in the recent aquaculture review should not be "knocked sideways" by the review of the Act. They suggested that aquaculture should be dealt with in the Resource Management Act 1991 or the Fisheries Act 1996 but not both as it is now.

Tommy Murray on behalf of the New Zealand Māori Council (4-122-1) expressed concern that legislation, including the reform of aquaculture regulation, may be prejudiced against Māori customary lore.

[137] Including Merehora Taurua on behalf of Ngāti Rāhiri ki Te Tii Waitangi (7-65-1); Steffan Browning (4-117-1); and Kiri Tuia Tumarae (4-42-1).

Conservation matters

A number of submitters addressed the role of tāngata whenua in the conservation of the foreshore and seabed. These submitters also commented that neither the Conservation Act 1987 nor the Resource Management Act provide a meaningful mechanism for input by Māori.[138]

Maanu Paul (4-54-1) submitted that Crown has failed Māori in looking after the takutai moana. He considered that the conservation practices and kaitiakitanga was inadequate and that Māori could do it better.

Kevin Hackwell on behalf of the Royal Forest and Bird Protection Society (7-15-2) stated that the Crown needs to work with Māori to explore an equitable method of co-management to help restore and sustain the foreshore and seabed. He stated that "this precious taonga is currently being polluted by commercial activities allowed by the Crown and local government without meaningful consultation, consent or planning". The Society is concerned with the potential for removing the role of the Minister of Conservation in determining restricted coastal activities during the Resource Management Act reforms. The Society sees the Minister as the owner who should veto rights. On the other hand, Nanaia Mahuta (4-32-1) disputed the role of the Minister of Conservation to exercise interests on behalf of the public in the coastal marine area.

M and I Britnell (7-298-1) stated that conservation rights should come first over customary rights, for example, whaling was once a customary right but local iwi hunted whales and whale populations have taken a long time to recover from this.

Fisheries

Current fisheries management regime

Several submitters addressed the current fisheries management regime and whether it achieved an appropriate equilibrium and integration between commercial, recreational and customary fishing. Some submitters stated there was a need for a better management regime for fisheries to ensure sustainability of the resource and that this might require a review which includes customary fishing.[139]

Anonymous (7-263-2) noted that the combined impact of the Treaty of Waitangi Fisheries Settlement and the various legislative changes associated with the marine environment had implemented a confusing disparate proliferation of inappropriate and inefficient management systems.

Some submitters noted that under the current management system there had been a decline in fisheries and oyster supply and also water degradation.[140] Gail Thompson for Te Rūnanga o Awarua (4-6-1) noted that the foreshore had been mismanaged ever since it had been under government control. George Matthews (4-141-1) noted that the Ministry of Fisheries' quota management system is not working and does not protect the resource. Ngarongo Iwikatea Nicholson on behalf of Ngāti Raukawa ki Tonga (7-217-1) noted that fishing quotas are being reduced and it is a common view that some species will never recover.

Marie Tautari (7-257-1) noted that she does not accept that the coastal marine area out to the 12 mile limit should be considered for any other usage than recreational fishing, customary kaimoana gathering and seeding renewal, providing access for small marine vessels to harbour and inlets and certain sports in restricted and well marked area. She considered that the Crown having a monitoring role in the management for a specified period of time rather than a senior role in

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[138] Including Mana Ahuriri Incorporated (7-208-1) and Margaret Kawharu on behalf of Ngāti Whātua o Kaipara (4-102-1).

[139] Including John Allen (5-8-1); Stewart Bull on behalf of Oraka Aparima Rūnaka Inc (7-272-1); Anonymous (7-336-1); Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (5-38-1); and Cleem Tapsell (4-55-1).

[140] Including Rangi Wills (4-146-1); Pōtonga Nielsen (4-147-1); Robert Parakai (5-1-1); Jerry Hapūku (4-86-1); and Ike Trevor Reti (7-122-1).

management. She also noted that Māori are respectful of the resources of the sea and coastline. Māori have not built big developments in the area nor created sewage.

Agnes Walker (4-74-1) suggested that an amendment could be made to fishing regulations that would stop commercial fishermen from fishing within *kapatakai* areas of whānau and hapū.

Customary interests

Submitters also raised issues about the ability of the current regime to provide for customary interests[141] and their ability to exercise their customary rights.[142]

Richard Takuira and Vivienne Taueki (7-258-1) noted that Māori fishing rights were established by statute in 1898 and allow for fishing at all times in the stream from its outlet from Lake Horowhenua to the sea. These rights cannot be overruled by other laws or restrictive fishing regulations. They asserted that the Ministry of Fisheries ignores the customary rights of iwi.

Clem Tapsell (4-55-1) noted that the Crown is inconsistent as it asks coastal iwi and hapū to manage their coastline but then will not enforce or police rāhui that iwi put in place to preserve kaimoana.

Te Ohu Kaimoana (7-43-3) questioned the ability of the mataitai system to meet iwi aspirations and noted the need for an integrated management regime: "As part of an integrated fisheries system it would be better to focus on reviewing and enhancing the customary regulations as part of the fisheries management regime rather than try to make ad hoc improvements". Fred Te Miha (4-108-1) stated that a mataitai should be a right in certain areas designated by tāngata whenua as there are significant areas that need protecting.

Dee Samuel (5-66-1) proposed managing resources in Customary Fisheries Management Regulations as this management model works well and it has the ability to pass by-laws. The submitter noted that provisions for mataitai are a good place to start and that food gathering, customary practices and aquaculture should all be protected in the coastal marine area.

Several submitters discussed the difficulty in balancing commercial and customary fishing interests.[143] Te Rūnanga a Iwi a Ngā Puhi (7-299-1) noted a willingness to promote fisheries management including kaitiakitanga and the rights to commercial and non-commercial harvesting and fisheries management of either Treaty or indigenous origins. They indicated that customary rights are not confined to subsistence activities.

Some submitters noted they have customary fishing rights.[144] Thomas Harrison (4-109-1) believed his customary rights to fish have been taken away from him through the treaty settlement process.

Rangi Wills (4-146-1) believed that licences should only be available for Māori and only Māori would be able to sell fish.

Environmental sustainability

Some submitters noted that the foreshore and seabed issue began with objection to poor management of the marine environment.[145] Others noted that any solution must improve th management of this environment.[146]

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[141] Including Michael Pehitahi Nuku (7-329-1); Anne-Marie Jackson (7-304-1); and Isaac Rongo Kidwell (7-325-1).

[142] Including Tanenuiarangi Manawatu Incorporated (7-135-1) and Kahutia Nikora (7-66-1).

[143] Including Lance Makowharemahihi (7-181-1) and Tommy Murray on behalf of New Zealand Māori Council (4-122-1)

[144] Including Pāia Riwaka-Herbert (4-111-1); Joe Kee (5-19-1); Marie Tautari (5-73-1); and Marina Fletcher (5-76-1).

[145] Including Te Rūnanga a Iwi a Ngā Puhi (7-299-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-213-1); David Doorbar (4-137-1); David MacClement (7-225-1); and Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (7-320-1).

[146] Including Te Rūnanga a Iwi a Ngā Puhi (7-299-1); Te Hunga Roia Māori o Aotearoa Māori Law Society (7-31-1); Te Rūnanga o Te Whānau

Dr Patu Hohepa and Jason Pou on behalf of Ngā Hapū o Hokianga (4-119-2) stated that the framework of conservation, resource management and public works have oppressed Māori.

Some submitters expressed concern about environmental sustainability in the foreshore and seabed[147] and that this review provided an opportunity to address these issues.

Resource Management Act 1991

Many submitters made comments relating to environmental sustainability and included numerous mentions of the Resource Management Act. Many submitters expressed a desire to have more influence over decision making in their local areas.[148] Other submitters expressed a lack of faith in the Resource Management Act and its processes.[149]

Emma Gibbsmith (7-260-1) noted that Māori sustainable interests and water quality with regard to the food chain on the foreshore and seabed are not encouraged.

Anahera Herbert-Grace on behalf of Te Rūnanga-a-iwi o Ngāti Kahu (4-58-1) said Ngāti Kahu is concerned:

a with the strength and performance of Treaty of Waitangi provisions in the Resource Management Act; and

b that the Māori experience has involved marginalisation of their interests in the face of economic and environmental concerns.

Stewart Bull for Oraka Aparima Rūnaka Inc (7-272-1) noted that the resource management system, while not as strong as they would like it, is working well in Murihiku because the Papatipu Rūnanga has strong relationships with the Department of Conservation and local authorities.

The New Zealand Institute of Surveyors (7-14-2) stated that the role of the Minister for the Environment is hampered as the Resource Management Act lacks the economic, social and cultural provisions which are essential to sustainable management (using the United Nations definition).

Tihi Anne Daisy Noble on behalf of Ngā Ruahine Iwi (2-1-1, 2-1-2, 2-1-3) submitted the current reform of the Resource Management Act could address tāngata whenua issues.

Kaitiakitanga[150]

Katherine Peet (5-5-1) noted that the Resource Management Act states that only mana whenua may interpret kaitiakitanga. This provides the opportunity to have a longer conversation that the Waitangi Tribunal has referred to. Mike Smith (5-512-1) does not think there should be references to kaitiakitanga in the Resource Management Act and Māori need to create their own institutions.

Te Rūnanga a Iwi a Ngā Puhi (7-299-1) noted that they actively engage in the resource management process by supporting and promoting kaitiakitanga.

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on behalf of Te Whānau a Apanui (47-320-1); Emma Bishop (7-155-1); Cliff Mason, Kaye Weir on behalf of the Pacific Institute of Resource Management (7-8-2); Michelle Hughey (7-101-1); Monica Fraser on behalf of the kapiti Coast District Council (7-118-1); Anonymous (7-278-1); Ani Pitman on behalf of Patuharekeke hapū and Deborah Harding (5-75-1 and 5-75-2); W. K. Pearson (7-171-1); Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1, 4-62-2, 4-62-3); and Bryor Te Hira (5-58-1).

[147] Including Metiria Tūrei for the Green Party (7-100-1); Ngāti Porou ki Hauraki Trust (1-6-2); David Potter on behalf of Te Rangatiratanga o Ngāti Rangitihi Inc (7-180-1, 7-180-2); Aroha Houston (4-132-1); Caritas Aotearoa New Zealand (7-221-1); Josephine Smith on behalf of the Ocean Bay Protection Society Inc (7-228-1); Richard Drake (7-162-1).

[148] Including Tom Moeke (4-35-1); Hokotehi Moriori Trust (7-239-2); Irihapeti Campbell and Hori Elkington (7-282-1); Te Rūnanga o Otakou (7-320-1); and Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia Trust (4-110-1).

[149] Including Vera van der Voorden on behalf of Kiwis Against Seabed Mining (4-36-1).

[150] This section should be read in conjunction with Part 5: Other Matters: Section E – Cultural Matters.

Penny Howarth (5-55-1) submitted that indigenous knowledge has the ability to ensure the wellbeing of the foreshore and seabed for generations to come. If Māori have the right to tino rangatiratanga and adequate support, they will ensure that the ecological balance of the foreshore and seabed is protected and kept healthy for generations to come.

Decision making

Benita Wakefield (5-46-1) is particularly concerned about the Resource Management Act and noted that discussion about the Act and other legislation takes away discussion about other important matters regarding co-management.

Matiu Rei (4-115-1) noted the real issue is management of the coastal marine area and better mechanisms for protection of management and development are needed. Co-management could be with councils or other agencies but there was a need to find an effective role in determining the allocation of areas in coastal marine area to different users.

Northland Regional Council (7-264-1) noted the implementation of the Act needs to be reviewed to address potential issues of conflict and ambiguity. Customary rights, orders and deeds of agreement should not be at odds with government and local government regulations which promote sustainability. “Clearly… it is iwi and local government, not the Crown who need to work together into the future in relation to managing natural and physical resources”.

Colin Boock (5-44-1) said he resents people, mostly brown skinned people, plundering the shoreline. He believed that the full weight of the law should be applied in those cases.

Other

The Tourism Industry Association (7-265-1) encouraged the Panel to ensure that conservation and preservation of the foreshore and seabed is taken into consideration when considering other rights and interests. The tourism industry is large and the environment is a major draw card.

Elizabeth Bang and Joan MacDonald (7-165-1) noted that privately owned commercial enterprises should not be given priority over rare ecosystems, endangered species or wetlands.

Bryce Johnson on behalf of Fish and Game New Zealand (7-29-1) oppose any physical modification to foreshore and seabed that could have a detrimental effect on freshwater sports fish and game bird resource.

Fred Te Miha on behalf of Ngāti Tama ki Te Tau Ihu Trust (4-108-1) endorsed marine protected areas for scientific purposes subject to a management plan and scientific results reviewed by tāngata whenua.

Gail Thompson for Te Rūnanga o Awarua (4-6-1) mentioned the Oceans Policy 1999 and that although people were consulted on their views the outcome of consultation was unclear.

Tihi Anne Daisy Noble on behalf of the three hapū of Ngā Ruahine (2-1-1, 2-1-2, 2-1-3) submitted that the New Zealand Coastal Policy Statement should be reassessed.

Doreen Wilson of Ngāti Patipo (4-40-1) noted that there are many agencies and many Acts all dealing with the environment.

Section D – Property

This section of the report summarises the submissions made that relate to property and concepts of property, including inalienability and ownership.

Overview

A number of submitters addressed the issue of property. The property section is divided into the following subheadings:

a *Inalienability:* whether the foreshore and seabed should be wholly inalienable, or alienable only in certain circumstances.

b *Ownership:* Crown, Māori, private and other forms of ownership, and alternatives to ownership.

c *Right to property:* some submitters addressed the fact that there is no recognised right to property in New Zealand and proposed that such a right be recognised.

Other issues addressed by submitters were: the Act's discriminatory effect on Māori property rights; reversing the presumption that the Crown owns the foreshore and seabed; and the fact that the Act constitutes a confiscation of Māori property rights without consent or compensation.

Inalienability

Sale by the Crown

Many submitters objected to section 14 of the Act, which permits sale of the public foreshore and seabed in certain circumstances.[151] Some submitters expressed concern that this opened up the possibility for the public foreshore and seabed to end up in foreign ownership[152] or that the Crown could sell it off to mining interests.[153] For example, Monica Mātāmua (7-58-1) expressed her belief that "since the Foreshore and Seabed Act has been passed, the government has auctioned off areas along the west coast from South Auckland to Whanganui under the Crown Minerals Act, for mineral and petroleum exploration."

The sale of Whangamata Marina was offered by several submitters as an example of what can go wrong under the Act, that is public access has been lost, customary rights have been overridden, and private ownership has passed to those wealthy enough to afford a berth.[154]

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[151] Including Tanenuiarangi o Manawatu on behalf of Rangitaane o Manawatu (7-135-1); John Lawson (7-90-1); Robert Willoughby on behalf of the Hauai Trust (7-56-1); Merehora Taurua on behalf of Ngāti Rahiri ki te Tii Waitangi (7-65-1); and Richard Drake (7-162-1).

[152] Including Greg Skipper on behalf of Ngāti Tawhirikura hapū (7-183-1); Morris Love on behalf of Te Atiawa ki te Upoko a Ika a Mauī Pōtiki Trust (4-21-1); and Malibu Hamilton on behalf of Te Ngaru Roa a Mauī (7-305-1).

[153] Including Roimata Moore and Anahera Richards (7-42-1); Monica Mātāmua (7-58-1); Anahera Richards (7-57-1); Natalie Paretera Richards (7-55-1); Maxine Erena Richards (7-50-1); Adrienne Ross on behalf of Corso Inc Aotearoa (7-251-1); and David Doorbar (4-137-1).

[154] Including Cameron Hunter (4-104-1).

Total inalienability

Many submitters expressed the view that the foreshore and seabed should be inalienable.[155] Some of these submitters stated that leases, for a finite term, would be a preferable option to sale of the foreshore and seabed.[156] Others suggested that the exception to alienation should only apply in exceptional circumstances[157], or where environmental values can be absolutely protected by agreement. [158]

Moana Jackson on behalf of the Ngāti Kahungunu Iwi Authority (4-84-1), stated that prior to the passage of the Act there were allegations that Māori would sell the foreshore and seabed if they had freehold title in the area but he argued that Māori would never do this. Instead, since the Act was passed, the Crown had alienated areas of the foreshore and seabed, which he considered was hypocritical.

Judith Rewa Norris (5-33-1) stated that there should be no sale of land to non-Māori and that all confiscated lands should be returned to Māori. Reverend Maurice Manawaroa Gray on behalf of Te Rūnaka ki Otautahi o Kai Tahu (7-285-1), noted that the Act does not guarantee that the foreshore and seabed will be held in perpetuity any more than it would be held in perpetuity under Māori ownership in fee simple.

Partial inalienability

Some submitters expressed the view that while parts of the foreshore may able to be alienated, special parts, for example wāhi tapu, should not be able to be alienated.[159] An anonymous submitter (7-241-1) suggested that a referendum is needed before decisions are made on individual sales.

Ownership

Submitters presented a range of opinions on the issue of ownership.

Crown ownership

Some submitters[160] stated that the foreshore and seabed should be kept under Crown control. For example, Helen Mosely (7-35-1) submitted that "it is vital that the foreshore and seabed be vested in the Crown, the way New Zealanders always thought it was."

For example, Dr Hugh Barr on behalf of the Council of Outdoor Recreation Associations of New Zealand (7-11-2), advanced the view that the law prior to the *Ngāti Apa* decision was that the foreshore and seabed was a public common for all and that private title could not be issued in respect of the foreshore and seabed. Dr Barr's view was that this position should be defended and strengthened.

Other submitters endorsed the Act and said that ownership should not be granted on the basis of race. For example, Raymond Scrampton (7-269-1) considered that that if the Act is rescinded, the government will be faced with legal claims and public discontent. Grant Knuckey (4-133-1) stated that the Crown should keep some kind of ownership of the foreshore and seabed so that royalties will continue to be paid to Treasury.

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[155] Including Agnes Walker (4-74-1); Dr Hugh Barr on behalf of Council of Outdoor Recreation Associations of New Zealand (7-11-2); Fred Te Miha on behalf of Ngāti Tama Mana Whenua kit e Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Greg McDonald (5-59-1); Ngāti Porou ki Hauraki (1-6-2); and Christine Baines (5-60-1).

[156] Including Dr Hugh Barr on behalf of Council of Outdoor Recreation Associations of New Zealand (7-11-2); Mārie Tautari (7-257-1); and Judge Heta Kenneth Hingston (4-59-1).

[157] Including Dennis Bush-King on behalf of Tasman District Council (7-85-1).

[158] Including Mārie Tautari (7-257-1).

[159] Including Te Aroha Hiko (5-36-1).

[160] Including Emma Bishop (7-155-1); Anonymous (7-93-1); Bryce Johnson (7-29-1); Alan McMillan on behalf of Public Access New Zealand (7-28-1); Beverley Threadwell (7-79-1); Bryce Bakor (7-78-1); Robert Lacey (7-113-1); and Anonymous (7-241-1).

Some submitters stated that the Crown should hold the foreshore and seabed for the benefit of the public and that Crown ownership should be subject to all pre-existing rights which should remain and be recognised and protected.[161]

Not Crown ownership

A number of submitters stated that they do not agree with Crown ownership of the foreshore and seabed.[162] The New Zealand Institute of Surveyors (7-14-2) submitted that the Minister of Conservation is not the appropriate land owner under the Act. Dayle Takitimu (7-164-1) submitted that vesting of ownership in the Crown constituted attempted extinguishment of customary or aboriginal title in the foreshore and seabed. International jurisprudence requires consent of aboriginal title holders for extinguishment to be effective.

Māori ownership

Some submitters expressed the view that Māori should own rights in the coastal marine area.[163] A number of submitters stated that the foreshore and seabed *does* belong to Māori.[164] For example, Te Ariki Mōrehu on behalf of Ngāti Makino (4-43-1) stated that "the takutai moana belongs to me, to the Māori people."

Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1) suggested that ownership of freehold titles in the foreshore and seabed should be reviewed and those held by tāngata whenua should be retained. Matiu Rei (4-115-1) stated that any Crown rights in the coastal marine area should be subject to pre-existing rights of iwi and hapū.

Merlyn Till (7-64-1) objected to the prospect of Māori ownership, on the basis that Māori wanted to restrict access and make a profit.

Private ownership

Some submitters stated that private ownership should be revoked and that the foreshore and seabed should be common property.[165]

Other ownership

Some submitters stated that some specific areas of foreshore and seabed should be owned by private companies. For example, Pauanui Canal Management Limited (7-189-1) expressed this view about the canals at Pauanui. John McRae and Caroline Halliday on behalf of Northport Limited (7-203-1) stated that their industry needs to be able to obtain freehold title over reclaimed land in order to remain viable in the long term and that long term leases do not provide adequate security of tenure.

Some submitters said that they were unconcerned who owned the foreshore and seabed provided no new grievances were created and they could carry on their existing activities in the area.[166]

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[161] Including Richard Gardner and Jacob Haronga on behalf of Federated Farmers NZ Inc (7-64-1).

[162] Including Matiu Rei (4-115-1); Tanenuiarangi o Manawatu on behalf of Rangitaane O Manawatu (7-135-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Anonymous (7-263-2); Sharon Lee Campbell (7-89-1); Moana Hinekotuku Lawson (7-51-1); Brian Elmes (7-141-1); Jason Kee (5-19-1); William Greening (7-261-1); and Anthony Royal (5-14-1).

[163] Including Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Tanenuiarangi o Manawatu on behalf of Rangitaane O Manawatu (7-135-1); Dr Malcolm Paterson (7-92-1); and Christy Parker on behalf of Women's Health Action Trust (7-138-1).

[164] Including Peter Tashkoff (7-91-1); Moana Herewini on behalf of Maniapoto ki roto Tāmaki Makaurau (7-306-1); Anonymous (7-83-1); Henry Koia (7-31-1); Betty Williams (7-24-1); Anonymous (7-111-1); Melani Burchett (5-11-1); and Te Rūnanga a Iwi o Ngāti Tamatera (7-161-1).

[165] Including John Laurie (5-54-1).

[166] Including Graeme Coates on behalf of NZ Marine Farming Association Inc (7-1-1).

Alternatives to ownership

Some submitters offered alternatives to ownership that they believe should be further investigated by the Crown – for example, caveats on titles issued in the foreshore and seabed.[167] Another submitter proposed that a "co-title" should be created so that the foreshore and seabed is held by the Crown and hapū.[168]

Frances Mountier (7-125-1) suggested that the panel should consider ideas including access covenants and non-saleability, consistent with tikanga, being negotiated in relevant areas, which were options raised and discussed at hui and Waitangi Tribunal hearings prior to passage of Act.

Some submitters stated that no one should own the seabed[169] and that it should be common ground without title.[170] Others stated that there should not be any form of ownership, but a partnership instead.[171] One submitter endorsed the models for providing return of ownership of Lake Taupō to Ngāti Tuwharetoa and the Te Arawa Lakes to Te Arawa, and also the Waikato River model. In the submitter's view, these successful models show that iwi ownership does not threaten the interests of other New Zealanders and the models enhance the mana of Māori.[172]

Emeritus Professor FM (Jock) Brookfield (3-1-1) submitted that as an interim measure the Crown could own the foreshore and seabed and hold it on trust, subject to claims by Māori for recognition of customary title being determined by the Courts.[173]

Reversal of assumption of ownership

Several submitters stated that the prima facie assumption should be that Māori own the foreshore and seabed, and that the onus should be on the Crown to prove that they do not own the foreshore and seabed.[174]

Property rights[175]

Breach of property rights

A number of submitters stated that the Act is a breach of common law property rights and that those rights were extinguished without consent or compensation.[176]

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[167] Including Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1, 2-1-2, 2-1-3).

[168] Including Manahi Paewai on behalf of Rangitane o Tāmaki nui a Rua (7-303-1).

[169] Including Gilda Lulham (7-30-1); Jan and Hutch (7-32-1); and Bernard R Hadfield (7-68-1).

[170] Including Mark C Farnsworth on behalf of Northland Regional Council (7-264-2).

[171] Including Bryor Te Hira (5-58-1).

[172] Including Susan Healy on behalf of Pax Christi Aotearoa New Zealand (5-53-3).

[173] This section can also be read in conjunction with Part 2: Option 4 of the Summary of submissions paper.

[174] Including Tanenuiarangi o Manawatu on behalf of Rangitaane O Manawatu (7-135-1); Lee-Cherie King on behalf of Te Ora o Manukau (7-238-1); and Frances Mountier (7-125-1).

[175] This section can also be read in conjunction with Part 5: Other Matters – Section A: Human Rights in this volume.

[176] Including Franz Mueller (5-42-1); Diane Sharma-Winter (7-184-1); Sacha McMeeking, Ngahiwi Tomoana and Maria Pera on behalf of Treaty Tribes Coalition (7-43-1); Tajim Mohammond on behalf of Te Rūnanga o Ngāti Rehia (5-68-1); Ngāi Tahu Māori Law Centre (7-322-1); Waiatarangai Williams on behalf of Te Taumutu Rūnanga Society Inc (7-213-1); Reverand Maurice Manawaroa Gray on behalf of Te Rūnaka ki Ōtautahi o Kai Tahu (7-285-1); Claudia Haumilin Nicholson (7-53-1); Henare Tongariro Puawai Ratima on behalf of Ngāti Kurumokihi (7-82-1); Te Marino Lenihan (4-13-1); and Te Waiariki Ngāti Kororā Ngāti Takaparehapū Iwi Trust (7-33-1).

Discriminatory protection of property rights

A large number of submitters expressed their dissatisfaction that the Act protects owners of non-Māori land,[177] but does not protect owners of Māori land. "Currently private Pākehā ownership is afforded greater authority over their land right to the foreshore and seabed. We want Māori ownership also recognised down to the foreshore and seabed." [178]

The right to property

Some submitters discussed the right to property[179] and pointed out that, in contrast to most other OECD countries, New Zealand does not recognise a right to property. Some submitters expressed the view that this issue is larger than the issue of the foreshore and seabed and a right to property needs to be recognised. [180]

Public Works Act

Kenneth Palmer (7-242-1) proposed, in particular regard to a land claim made by the Wakatu Incorporation that Māori land taken under the Public Works Act should be returned back to the successor of the original occupiers by virtue of section 40 of the Public Works Act 1981. Wakatu assert that if the land had not been reclaimed, a territorial property right could have been established (under section 32 of the Act).

[177] Including Tanenuiarangi o Manawatu on behalf of Rangitaane O Manawatu (7-135-1); Elder Te Reo, Grant Knuckley, Rowena Gotty, Jenni Moore (Health Care Aotearoa) (7-188-1); Robert Parakai (5-1-1); Megan Hutching for Women's Peace International League for Peace and Freedom (5-56-2); Areti Metuamate (5-17-1).

[178] Including Kahutia Houkaumau (4-83-1); Sharon Lee Campbell (7-89-1).

[179] Including Paul Morgan and Rino Titikatene on behalf of Federation of Māori Authorities (7-47-1); Roger Kerr on behalf of the New Zealand Business Roundtable (7-2-6).

[180] Paul Morgan and Rino Titikatene on behalf of Federation of Māori Authorities(7-47-1).

Section E – Cultural Matters

This section summarises submissions that addressed cultural matters.

Overview

Submitters discussed the concepts of mana, mana whenua, kaitiakitanga and tikanga Māori from a range of different angles.

Submitters commented on how the Act demeaned, breached or extinguished mana whenua, kaitiakitanga and tikanga Māori. In particular, they believed that the Act's tests should not determine these cultural concepts because they did not believe that the current articulation of the tests are adequate.

Submitters who provided comment on mana whenua, kaitiakitanga and tikanga Māori considered these concepts to be a core part of their lives. Submitters gave their understanding of how these concepts have a place historically and currently in Māori society. Submitters also called for greater education about these concepts.

Several submitters suggested that these concepts be used to develop a framework or approach to assist with finding solutions to the problems of the Act. However a few submitters noted the difficulties with codifying concepts.

Mana whenua or mana

A number of submitters held different views on the concept of mana whenua or mana. For example:

a some submitters noted that the Act is demeaning to the exercise of mana whenua, particularly the idea of having to go to court to prove customary rights and the right to use taonga tuku iho;[181]

b other submitters noted that the expression of mana whenua for recognising territorial customary rights was undermined by the continuous title to contiguous land criterion in the Act.[182] Merata Kawharu and Don Wackrow on behalf of the Ngāti Whātua o Orakei Māori Trust Board (4-97-1, 4-97-2) submitted that—

> "Ngāti Whatua Orakei and…many other hapū whose rohe is entirely urban, have been almost uniquely disadvantaged, we believe, by law in practice in regard to the foreshore and seabed… We have, for over 150 years, faced an environment with ever decreasing scope to access our mana in regard to the foreshore and seabed. In a rural environment, when tāngata whenua are the major population and own a substantial part of the dry land nearby and adjoining, mana whenua and rangatiratanga can be more readily exercised on physical grounds alone";

c Tui Warmerhoven on behalf of He Orange Mō Ngā Uri Tuku Iho Trust (7-305-1) submitted that "we are closely and significantly connected to the foreshore and seabed environment in ways that are inherent to our culture, customs, values and being. Interests include but are not limited to the spiritual, economic, social and environmental and cultural features of the foreshore and seabed. The Act serves to abrogate the existing aboriginal and customary rights of our hapū members and future generations in the foreshore and seabed area in an unjust and unfair manner";

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[181] Including Glenys Daley on behalf of Tāmaki Treaty Workers (5-54-1); Dunedin Community law Centre (7-126-1); and Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1).

[182] Including Kotene Pihema on behalf of Ngā Hapū o Ngāti Kahu (5-27-1, 5-27-2).

d some submitters noted that the Act undermined the exercise of mana by whānau, hapū or iwi over the foreshore and seabed[183] and that in the development of any new regime the government needed to ensure that mana is recognised;[184]

e Monica Fraser on behalf of the Kapiti Coast District Council (7-118-1) submitted that workable mechanisms which respected and enhanced manawhenua should be developed;

f Ani Pitman on behalf of Patuharekeke hapū (5-75-1) and Deborah Harding (5-75-2) submitted that developments have impacted on and negated mana whenua, mana moana and mana takutaimoana status;

g Emeritus Professor FM (Jock) Brookfield (3-3-1) considered that mana whenua was a right under the Treaty; and

h Timi Manukau on Waikato-Tainui Te Kauhanganui Incorporated (7-247-1) stated that "Waikato-Tainui has a long and significant association with the Waikato River and the West Coast harbours. It is the kaitiaki and has mana whakahaere over these areas".

Kaitiakitanga

Many submissions discussed the relationship between Māori and the environment and the principles of kaitiakitanga.[185] For example, Monique Tāwhiri (5-49-1) noted that customary rights are not just about harvesting, they also include planting and the sustainability of the resource. Cliff Mason and Kay Weir on behalf of the Pacific Institute of Resource Management (7-8-2) noted that "Māori represent a strong community who have demonstrated ability to sustainably manage a resource".

Willow Jean Prime and Dion Prime for Te Kapotai (7-340-1) stated, "Our culture requires that we maintain the principles of conservation and the protection of the environment as did our ancestors for survival."[186]

Monica Fraser on behalf of Kapiti Coast District Council (7-118-1) submitted that the concept of customary rights failed to give recognition to the wide concept of kaitiakitanga and this had implications for resource management. She also submitted that workable mechanisms should be developed to ensure formal recognition of systems such as the use of rāhui which empower iwi and hapū to discharge their kaitiaki responsibilities.

Tikanga Māori

A range of submissions discussed the concept of tikanga Māori in different ways. For example,

a Vaughn Bidois on behalf of Ngaitai Iwi Authority (7-140-1) submitted that the test for determining ownership of the foreshore and seabed should be "held in accordance with tikanga Māori";

b Matiu Dickson (5-21-1) noted the Crown does not have true regard for tikanga Māori; and

c Ani Pitman (5-75-1) noted the Act fails to recognise the nature of tikanga Māori and the status of Māori as tāngata whenua.

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[183] Including Maria Pera on behalf of Te Rūnanga o Awarua (4-1-1, 4-1-2); Kara George (4-128-1); and Anne MacLennan (7-240-1).

[184] Including Te Kitohi Pikaahu (4-52-1); Richard Bradley on behalf of Te Tai Ihu Customary Fisheries Forum (4-114-1, 4-114-2); and Arthur Harawira (4-120-1).

[185] Including Bryor Te Hira (5-58-1); Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1, 2,3); Kelly Bevan on behalf of Te Iwi o Ngāti Tuorehe Trust (7-197-1); Te Waiariki Ngāti Kororā Ngāti Takaparehapū Iwi Trust (7-33-1); Les and Pat Gray on behalf of the Women's Resource Network (7-215-1); Matiu Haitana on behalf of Te Hapū of Ngāti Ruakopiri (7-182-1); Matiu Dickson (5-21-1); Tame McCausland on behalf of Waitaha Iwi (4-46-1); and Timi Manukau on behalf of Waikato-Tainui Te Kauhanganui Incorporated (7-247-1).

[186] Including Greg Skipper on behalf of Ngāti Tawhirikura Hapū – Environmental and Monitoring Division (7-183-1).

Mike Smith (5-12-1) submitted that tikanga Māori could not be codified, as it:

a is determined at the whānau, hapū and iwi level; and

b changes according to the particular social, cultural, environmental factors within that region or area.

Mike Smith (5-12-1) considered that these matters needed to be recognised but should not be legislated for.

In addition, a number of submitters noted that any new regime should be based on principles of tikanga Māori, Māori customary law and the Treaty of Waitangi.[187]

Some submitters indicated that education about tikanga Māori would provide everyone with a better understanding about these issues.[188]

Several submitters noted the Act was a breach of tikanga Māori.[189]

Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3), submitted that "a proper approach for ascertaining the common law of New Zealand must include reference to tikanga Māori and that in fact the relationship created by the Treaty of Waitangi prohibits the importation of common law of England without reference to the tino rangatiratanga over lands, territories and resources contained in Article 2 of the Treaty of Waitangi". They also submitted that tikanga Māori displaces English common law.

Tajim Mohammond of Te Rūnanga o Ngāti Rehia (5-68-1) submitted that Māori have rights to the foreshore and seabed according to tikanga Māori but these rights have been extinguished by the Act. Hauata Palmer (5-25-1) noted that their iwi have been practicing tikanga Māori for eleven generations and have decided to ignore the Act.

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[187] Including Frances Mountier (7-125-1); Clinton Thompson (7-323-1); Matiu Rei (4-115-1); Hori Manurirangi (5-23-1); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1); and Hokotehi Moriori Trust (7-239-1, 7-239-2).

[188] Including Nicola Short (5-24-1); Margaret Kawharau on behalf of Ngāti Whātua o Kaipara (4-102-1); and Nā Raihania on behalf of Ngāi Tamanuhiri Whānui Trust (4-76-1).

[189] Including Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1); David Doorbar (4-137-1); Diane Sharma-Winter (7-184-1); Elder Te Reo, Grant Knuckley, Rowena Gotty and Jenni Moore on behalf of Health Care Aotearoa (7-188-1).

Section F – Foreshore and Seabed Negotiations

This section summarises those submissions that made comment on negotiations under section 96 of the Foreshore and Seabed Act 2004.

Overview

Submitters commented on specific foreshore and seabed negotiations between the Crown and iwi and hapū. Other submitters made general comments about foreshore and seabed negotiations. Some local authorities commented on the process and the implications for councils.

Some submitters expressed the view that the Crown had acted inappropriately in determining the mandate of negotiators in negotiations under section 96 of the Act.

General comments

Eugene Bowen on behalf of Local Government New Zealand (7-20-1, 7-20-2) submitted that the role of local authorities in foreshore and seabed negotiations to date has not reflected our constitutional democracy. This is because the local authority is not a party to the negotiations, but the regime is imposed on the local authority nevertheless. Environment Bay of Plenty (5-30-2) supported this view. The Northland Regional Council (7-264-1) noted that negotiations should result in good integration and interface with the councils purpose and roles, particularly under the Local Government Act 2002 and Resource Management Act 1991, and provide assistance with creating enduring relationships between the council and iwi.

Dr Hugh Barr on behalf of the Council of Outdoor Recreation Associations of New Zealand Inc (7-11-2) submitted that private negotiations between the Crown and interest groups are unhelpful, and stated that discussions should be in public. Jeremy Gardiner on behalf of Te Rūnanga o Ngāti Awa (4-48-1) agreed that the current approach to settling foreshore and seabed issues has led to a reduction in the level of transparency and decision-making.

M and I Britnell (7-298-1) suggested that for negotiations to be successful, a group should be funded so it can negotiate directly with the Crown or apply to the High Court.

Charl Hirchfield (5-63-1) submitted that rights to negotiate with the Crown on foreshore and seabed matters belong to hapū not iwi.

Te Rarawa

Haami Piripi on behalf of Te Rūnanga o Te Rarawa (1-1-1, 1-1-2) submitted that their "experience of the Act and the limitation it places on our ability as applicants to establish the full nature and extent of our customary interests, including proprietary interests, was reminiscent of raupatu legislation which established goals that could never be fully achieved".

Ngā Ruahine

Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1, 2-1-2, 2-1-3) submitted that that they were disappointed with the Crown's failure to respond or engage with Ngā Ruahine to discuss the possibility of negotiations towards recognition of their territorial customary rights.

Ngāti Porou and Te Whānau a Apanui

Matanuku Mahuika on behalf of Te Rūnanga o Ngāti Porou (1-2-3) submitted that:

a Te Rūnanga o Ngāti Porou supports the review of the Act, with the caveat that their Deed of Agreement will form the basis of continued negotiations with the Crown after the Review;

b the Act was not the driver for their negotiations and that the Act has compromised their position due to the Crown adopting the tests in the Act;

c the instruments in the Deed of Agreement stand on their own and are not sourced from the Act; and

d there would be practical difficulties in holding negotiations at the hapū level although these should not be precluded (noting that the negotiated instruments are at the hapū level).

The Council of Trade Unions (7-18-2) noted that, because the Deed of Agreement with Ngāti Porou does not provide for ownership, it does not provide for mana whenua.

Tui Tuakana Makea Marino on behalf of Te Hauiti Incorporated, Hauiti Marae, Karaitiana Koro Poki Ahu Whenua Trust, Tapuwae Whitiwhiti and Te Aitanga Hauiti Iwi Incorporated (4-69-1, 4-69-2) opposes Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill because the negotiations prejudice the continual association of hapū with the foreshore and seabed and privilege Te Rūnanga o Ngāti Porou.

Some submitters stated that the mandating process for the Crown's foreshore and seabed negotiations with Ngāti Porou was flawed and the recognition granted to certain hapū of Ngāti Porou in their agreement is unjust.[190]

Environment Bay of Plenty (5-30-1) submitted that it was "privileged to be asked to assist with the process of negotiations between the Crown and Te Whānau a Apanui". Environment Bay of Plenty also submitted that it—

> "…is keenly aware that it is not a party to the negotiation, but only an advisor to the process. We believe though, that our advice is critical to ensuring that whatever is negotiated can be delivered. Clearly, in Local Government Act and Resource Management Act terms, it is iwi/hapū and Council, not the Crown, who need to work together into the future in managing natural resources."

Eugene Bowen on behalf of Local Government New Zealand (7-20-1, 7-20-2) submitted that there was the potential for conflict under agreements reached with Ngāti Porou and Te Whānau a Apanui.

[190] Including Tui Tuakana Makea Marino on behalf of Te Hauiti Incorporated, Hauiti Marae, Karaitiana Koro Poki Ahu Whenua Trust, Tapuwae Whitiwhiti and Te Aitanga Hauiti Iwi Incorporated (4-69-1, 4-69-2); Mrs O Ripia (7-170-1); Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1, 4-62-2, 4-62-3); Marijke Warmenhoven (4-80-1); Rapata Kaa on behalf of Ngāti Ruawaipu (7-16-1, 7-16-2); Eru Pōtaka Dewes (4-60-1); Patricia Mill-Poi on behalf of the Hauiti Cluster Group (7-70-1); Barney Tupara (4-72-1); and Christine Beach and Stephen Beach on behalf of Ruawaipu (7-191-1).

Section G – Rights and Interests

This section summarises submissions that made general comments on rights and interests in the foreshore and seabed.

Overview

Public access was an issue that many submitters commented on. Many submitters expressed the view that the Act was passed as a response to ill-founded Pākehā concerns that Māori would limit access to beaches. Others expressed the view that public access should be guaranteed to the public foreshore and seabed. Others took the view that qualified public access that recognises Māori rights and interests (e.g., wāhi tapu) in the foreshore and seabed should be provided for.

Navigation was also an issue with several submitters commenting on the need for rights of navigation to be protected. Others proposed that restrictions be placed on such rights.

A number of submitters considered issues relating to mining, expressing the view that the Crown was alienating areas of the foreshore and seabed for mining purposes.

Several submitters emphasised concerns relating to resource consent process. In particular, they addressed the right of veto that holders of customary rights orders had, the need to ensure customary rights didn't override district/regional plans, the rights of those already exercising consent and the broader implication for resource management.

Access rights over the foreshore and seabed

Several submitters recommended that access and navigation in the foreshore and seabed should be available to all of the public, but there needs to be clarity about what access means.[191] Fish and Game New Zealand (7-29-1) indicated that "the coastal marine area is a public domain, and the maintenance and enhancement of public access to and along the coastal marine area must be retained."

Raymond Scampton (7-269-1) said all New Zealanders have equal and free access to the foreshore and seabed and he considers this to be the best possible solution. He submitted that Māori are not denied access to the foreshore and seabed and already enjoy special privileges.

Others submitted that there are areas along the foreshore and seabed that are not accessible, regardless of the Act.[192] Morris Love on behalf of Te Atiawa ki te Upoko a Ika a Mauī Pōtiki Trust (4-21-2) submitted that sometimes limiting access across the foreshore and seabed is justified. He states that "there are possible cases where limitation of access is appropriate particularly in terms of landing rights on areas which are conservation reserves or places such as wāhi tapu where sea access should be limited."

Anonymous (7-159-1) noted that it is important to recognise the infrastructure that is present in the foreshore and its future is in the best interest of the public. It is in the public's interest for Anonymous and other similarly affected businesses to continue to have rights to efficiently operate, maintain and upgrade this infrastructure.

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[191] Including Bryce Johnson on behalf of Fish and Game New Zealand (7-29-1); Dr Hugh Barr on behalf of the Council of Outdoor Recreation Associations of New Zealand Inc (7-11-2); Emma Bishop (7-155-1); and Dr Patrick McCombes (4-18-1).

[192] Including Patricia Mill-Poi (7-70-1) and Areti Metuamate (5-17-1).

Other submitters suggested that a balance needs to be struck between protecting public access rights and protecting customary rights.[193] For example, while the New Zealand Refining Company (7-205-1) considers the rights of access and navigation secured in sections 7 and 8 of Act are appropriate and justified, it also supports the preservation of existing rights of occupation for areas of the public foreshore and seabed secured by sections 16 and 17.

Several submitters commented that because Māori did not restrict access prior to the Act, public access was not an issue.[194] Moana Jackson on behalf of the Ngāti Kahungunu Iwi Authority (4-84-1) noted that "there was a cynical campaign of fear mongering over access which implied that Māori could not be trusted and would stop ordinary Pākehā from having BBQs at the beach". The Hokotehi Moriori Trust (7-239-2) submitted that the "Crown claimed that confiscation of the foreshore and seabed was necessary to preserve public access to the foreshore and seabed so that it wouldn't be denied by tāngata whenua. There is no evidence it would have been denied."

Ngāti Porou ki Hauraki Trust (1-6-2) noted that since the Act was passed there are more people accessing the foreshore and seabed in their rohe. Access is not an issue but what has transpired is the careless disregard for the foreshore and seabed and for the people who live there. The Act does not determine who should look after the beach and it is the locals in their area who did prior to the Act. Since the Act no one has come forward to deal with rubbish.

Common law and statutory rights of navigation

A number of submitters commented on the rights to navigation under the Act. Several submitters noted that navigation in the coastal marine area should be provided for and protected.[195] Tame McCausland on behalf of Waitaha Iwi and Te Arawa (4-46-1) submitted that the current rules around navigation are appropriate.

Richard Drake (7-162-1) submitted that there was a need to establish rights and responsibilities for navigation to ensure the safety of shipping as well as the safety of those who use the sea. He considered that this should be done in consultation with those who hold mana whenua and mana moana. Te Rūnanga A Iwi O Ngāpuhi (7-299-1) submitted that navigation for the general public has been maintained and is under no threat from Māori.

Submitters also commented on the need to restrict rights in navigation. Camilla Owen for Resource Management Law Association of New Zealand Inc and the Environmental Law Committee of the New Zealand Law Society (7-4-1) submitted that common law rights of navigation should be preserved and noted that there are times when navigation needs to be limited.

Anonymous (7-336-1) submitted that navigation rights should not be given without the approval of joint owners. Arthur Gemmell on behalf of the Ngāti Pahauwera Development Trust (1-4-3) suggested amendments to the Act to reflect the idea that access and navigation is subject to restrictions.

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[193] Including Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Robin Boldarin (5-15-1); Matiu Rei (4-115-1); Manahi Paewai on behalf of Rangitāne o Tamaki nui a Rua (7-303-1); Te Rūnanga A Iwi O Ngāti Tamatera (7-161-1); and Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3).

[194] Including Rena Fowler (4-9-1); Tajim Mohammond on behalf of Te Rūnanga o Ngāti Rehia (5-68-1); Te Rūnanga A Iwi O Ngāpuhi (7-299-1); Kahutia Nikora (7-66-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Te Whānau o Te Urikore (7-147-1); Waipa Te Rito (4-88-1, 4-88-2); Mike Smith (5-512-1); Ngāti Porou ki Hauraki (1-6-2); Dee Samuel (5-66-1); Franz Mueller (5-42-1); Hikutai (Barney) Barret (4-5-1); Linda Thornton (4-71-1); Robert Warrington on behalf of Muaupoko Tribal Authority (7-300-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Te Orohi Paul (7-37-1); Roimata Moore and Anahera Richards (7-42-1); Terekaunuku Whakarongotaimoana (Dean) Flavell (7-41-1, 4-50-1); Monica Matamua on behalf of Ngāti Hotu and Ngāti Hinewai (7-58-1); and Natalie Paretera Richards (7-55-1).

[195] Including Dee Samuel (5-66-1); Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Matiu Rei (4-115-1); Gavin Cross (7-321-1); Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3); and Robin Lieffering (7-137-1).

Ora o Manukau (7-238-1) questioned the need to replace the common law of navigation with a codified version.

Common law and statutory rights of fishing

Ora o Manukau (7-238-1) was concerned with the Act's inconsistency with the obligations under section 10 of the Treaty of Waitangi (Fisheries Claim) Settlement Act 1992.

Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3) agreed that fishing rights should not be affected.

Resource consents

Some submitters emphasised concerns over the effect of customary rights on resource consent processes.[196] For example:

a the New Zealand Refining Company (7-205-1) submitted that it was concerned about avoiding inequitable outcomes for applicants for resource consents as a result of the veto rights of holders of customary rights orders. They considered that the ability of a holder of a customary rights order to effectively veto any rule in a plan or application for resource consent is inappropriate in that it is not fair or sensible solution, particularly for existing holders of resource consents. They sought the right of veto be removed from the Resource Management Act 1991. They also submitted that there was a need to ensure that the rights of exclusion secured by resource consents are not hindered by the public access provisions in the Act;

b Eugene Bowen on behalf of Local Government New Zealand (7-20-1, 7-20-2) submitted that he was concerned that protections for customary rights would override district or regional plans without any public input. Graeme Coates on behalf of the New Zealand Marine Farming Association Inc (7-1-1) submitted that there was a need to ensure that marine farmers can carry on the activities they have been given consent to do; and

c John Pfahlert for Petroleum Exploration and Production Association of NZ Inc (7-7-1) also submitted that there was a need to consider the rights of those members already exercising consents within the foreshore and seabed in the main offshore structures and pipelines, and the impact that the Act may have on the ability to renew consents for existing activities, in on or over the foreshore and seabed.

On the other hand, other submitters such as Ian Francis Burke (7-148-1) submitted that he was concerned about the power of local councils to issue resource consents for developments. He was concerned about the rubber stamping of purchases by the Overseas Investment Commission. Tom Moeke (4-35-1) noted that developments on the foreshore in Kāwhia have been based on non-notified consents.

Paul Harmon (4-20-1) submitted that there was a potential for coastal occupation rights (provided for though the Resource Management Act resource consents process) to develop into private property rights. He considered that this would include not only the permits/consents but also the right to be first in the consents queue.

[196] Including the New Zealand Refining Company (7-205-1); Ian Francis Burke (7-148-1); Eugene Bowen on behalf of Local Government New Zealand (7-20-1, 7-20-2); Tom Moeke (4-35-1); Tihi Anne Daisy Noble on behalf of the Ngā Ruahine Hapū of Kanihi-Umutahi, Okahu Inuawai and Ngāti Manuhiakai (2-1-1) (2-1-1, 2-1-2, 2-1-3).

Mining

Crown Minerals

Many submitters expressed views on mining in the coastal marine area.[197] Numerous submitters considered that the Crown had auctioned off either exploration rights or the foreshore and seabed itself, under the Crown Minerals Act 1991.[198]

Tui Warmenhoven on behalf of He Oranga mo ngā Uri Tuku Iho Trust (7-30-51) submitted that the customary and aboriginal rights of Māori in the foreshore and seabed must also relate to the subsurface minerals. They consider that the repeal of the Act should also bring about a review of the Crown Minerals Act.

Maire Leadbeater (7-49-1) submitted that the Crown has alienated areas of the foreshore and seabed without consulting iwi.[199] Raymond Smith on behalf of the Waimarie Branch of the Māori Party (7-204-1) submitted that sales were conducted in secrecy without consultation with tāngata whenua which is against the active protection principle in the Treaty of Waitangi.

Several submitters noted that the sale of prospecting licences under the Crown Minerals Act is contrary to claims made by the Crown that were holding foreshore and seabed on behalf of all New Zealanders.[200]

Impacts of Mining

An anonymous submitter said that oil drilling and oil spills have major ecological impact. She considered that mining companies were being supported by the government and noted that whānau, hapū and iwi are not identified as groups that companies are required to consult and engage with.

Sonny Kauika-Stevens (7-268-1) submitted that the selling of mining rights to the foreshore and seabed by the Crown to other countries was destructive to the preservation of 'ngā maara o Tangaroa'.

Development

Several submitters commented on the relationship between mining and the enactment of the Act, and that the Act was passed to facilitate Crown access to minerals and resources.[201] Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-231-1) submitted that the Crown has undertaken secret deals for mineral and petroleum exploration along the West Coast of the North Island since the enactment of Act.

Barbara Marsh (7-332-1) submitted that the Act denies the right to develop potential off-shore resources. The resources have become the focus of off-shore investment companies who are anxious to exploit the unknown potential of those taonga that Māori maintain relationships with.

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[197] Including Angeline Greensill (5-18-1); Tui Warmenhoven on behalf of He Oranga mo ngā Uri Tuku Iho Trust (7-305-1); Bera MacClement (7-233-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); Sonny Kauika-Stevens (7-268-1); Raymond Scampton (7-269-1); Jenise H Eketone on behalf of Maniapoto Māori Trust Board (7-235-1); John Lawson (7-90-1); Maire Leadbeater (7-49-1); Ngāti Torehina ki Mataka (7-77-1); Bill Bisset on behalf of Trans Tasman Resources Ltd (7-112-1); Eru Pōtaka Dewes (4-60-1); Josephite Justice Network of the Sisters of St Joseph Aoteroa New Zealand (7-101-1); Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1; 4-62-2; 4-62-3); Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-231-1); Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1); Marijke Warmenhoven (4-80-1); Patricia Mill-Poi (7-70-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Frances Mountier (7-125-1); Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1); Agnes Walker (4-74-1); Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Linda Thornton (4-71-1); and Maanu Paul (4-54-1).

[198] Including Bera MacClement (7-233-1); Josephite Justice Network of the Sisters of St Joseph Aotearoa New Zealand (7-101-1); Matiu Haitana on behalf of Ngāti Ruakopiri (7-182-1); and Raymond Smith on behalf of the Waimarie branch of the Māori Party (7-204-1).

[199] Including Linda Thornton (4-71-1).

[200] Including Frances Mountier (7-125-1) and Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1).

[201] Including Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Fred Te Miha on behalf of Ngāti Tama Mana Whenua ki te Tau Ihu Trust and Ngāti Rarua Trust (4-108-1); Eru Pōtaka Dewes (4-60-1); Linda Thornton (4-71-1); and Jenise H Eketone on behalf of Maniapoto Māori Trust Board (7-235-1).

At least two submitters commented on revenue learned from mining. Raymond Scampton (7-269-1) submitted that the Crown should have sole control over the foreshore and seabed and should not be able to sell it. He considers that any money from lease or mining rights should go to the government for the benefit of all New Zealanders. Agnes Walker (4-74-1) submitted that the Act should provide that iwi get a percentage share of any minerals or oil found in territorial customary rights areas.

Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1, 4-62-2, 4-62-3) noted that there were huge profits expected in aquaculture and mining.

Other submitters such as Bill Bisset on behalf of Trans Tasman Resources Ltd (7-112-1) submitted that there was a need to ensure that the review of the Act takes into account the status of licences issued by the Ministry of Economic Development to companies. He noted that companies are investing heavily in prospecting iron-sands with a longer term view of exploration and mining activities off the coastal marine area. This could potentially result in the creation of many new jobs and enhance economic activity in the Wanganui, Taranaki and Waikato regions. He noted that the object of this submission was to ensure that the review took into account the status of licences issued by the Crown to companies and stated that he supported the current protection of existing use rights to continue.

Section H – Technical Issues

This section summarises submissions that commented on technical issues.

Overview

Submitters raised issues about the Act and how it impacts on certain definitions, structures, fixtures and reclamations in the foreshore and seabed.

General

Hon Dr Michael Cullen on behalf of the New Zealand Labour Party (7-25-1) submitted that the sections in the Act dealing with technical issues should be retained.

Definitions

Some submitters suggested the definition of 'foreshore and seabed' should be re-examined. The foreshore and seabed should have a wider scope/definition. Anonymous (7-83-1) stated that "the foreshore begins a long way up our tupuna awa. What happens upstream affects everything down stream".

Structures and fixtures

Two submitters believed that there is uncertainty regarding the legal status of structures including boat ramps, marina, moorings, pontoons, wharves and jetties and ports.[202]

Stephen Town on behalf of the Tauranga City Council (7-271-1) submitted that sections 13 and 14 of the Act should be deleted because they provide uncertainty as to the legal status of structures. This submission indicated that section 15 of Act should be deleted because it is unclear about the extent of local authority title, specifically how far below the roads surface the local authority title extends and whether it includes service beneath the roads.

Kevin Ross on behalf of Wanganui District Council (7-179-1) believed that the uncertainty of the legal status of structures, as well as a more general certainty about the legal rights and obligations of councils in these areas hampers development. Currently, section 16 of the Act merely continues and exacerbates this legal uncertainty regarding the ownership of port facilities. His view is that as the Crown owns the foreshore and seabed under section 13 of the Act, it follows that the Crown should own the port facilities. The Act needs to clarify what Port facilities councils own and clarify council responsibilities in respect to Port facilities. The Act should also clarify whether councils can continue to grant a lease or licence over those Port facilities whose status is unclear. Further, the Act does not actually define 'to reclaim' or 'reclamation'.

Reclamations

John MacRae and Caroline Halliday of DLA Phillips Fox on behalf of Northport Limited (7-203-1) said that long term leases over reclaimed land are not adequate and that in order to remain viable in the long term there is a need to be able to obtain freehold title over reclaimed land.

Barrie Saunders of Saunders Unsworth on behalf of 15 port companies (7-99-1) believed that port reclamations should be able to be converted into fee simple title. The current approach of renewable leases, while better than fixed term leases, inhibits the ability of ports to maximise their assets and maximise efficiency.

Connal Townsend on behalf of the Property Council (7-9-1) submitted that the Act changed the situation with regard to reclamations and marinas but it did not improve the situation. Instead there is a very complicated process that dissuades members from pursing reclamation projects and this impacts on development.

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[202] Including Kevin Ross on behalf of Wanganui District Council (7-179-1); Stephen Town on behalf of the Tauranga City Council (7-271-1); and Saunders Unsworth on behalf of 15 port companies (7-99-1).

Section I – Development of the Act

This section summarises submissions that commented on how the Act was developed.

Overview

Many submitters stated that the enactment of the Act was inappropriately rushed.

Te Ture Whenua Māori Act 1993

Submitters proposed that the development of the Act should have considered Te Ture Whenua Māori/Māori Land Act 1993 (TTWMA). Ngāpera Kelly (4-123-1) highlighted that the government should be considering TTWMA in relation to the Foreshore and Seabed Act. On the other hand, Jacinta Ruru (7-166-1) said that TTWMA should be amended so that all foreshore and seabed land could be defined as Māori customary land.

Consultation and more dialogue

Many submitters proposed that the development of the Act was too rushed.[203] In addition, they proposed that more consultation and a longer dialogue between the Crown and Māori was needed when the Act was being developed.[204] Robert Parakai (5-1-1) submitted that the government did not properly consult with Māori and that the rules and the processes used in the Act are unfair, unworkable, ineffective and restrictive.

Waiatarangi Williams on behalf of Te Taumutu Rūnanga Society Inc (7-213-1) said that the process of enacting the Act was fundamentally flawed due to insufficient consultation with Māori. John Morgan on behalf of the Ngāti Rarua Iwi Trust (4-116-1, 4-116-2) said that because the development of the Act was rushed, it was doomed to failure, and the Trust needed more time to better understand the practical and legislative processes.

Jean Brookes on behalf of Auckland Anglican Social Justice (7-96-1) was concerned at the inadequacy of the process, especially in its short length of time, and recommended that another substantial, in-depth nation-wide consultation and dialogue take place, paying full attention to all voices, particularly those of hapū and iwi.

Waitangi Tribunal report

A few submitters suggested that the Act failed to recognise the advice of the Waitangi Tribunal in its *Report on the Crown's Foreshore and Seabed Policy*.[205] Ngāti Torehina ki Mataka (7-77-1) submitted that the Crown chose not to heed the advice of the Waitangi Tribunal, or the expert advice from iwi forums with regard to tikanga, kawa, and the need to consult with Māori.

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[203] Including S Thomson and WL Crawford (7-113-1); Anonymous (7-158-1); Ian Francis Burke (7-148-1); Rangimarie Couch on behalf of the Suddaby whānau (7-337-1); New Zealand Institute of Surveyors (7-14-2); Potatutatu Bill Ruru on behalf of Te Aitanga a Māhaki Trust (7-331-1); Allan Pivac on behalf of Te Rūnanga o Ngāti Whātua (7-237-1); Adrienne Ross on behalf of CORSO Inc Aotearoa (7-251-1); Rawiri Bidois (8-20-1); Tim Howard and Leanne Brownie on behalf of Northland Urban Rural Mission (5-70-1); Justine Inns and Matiu Rei on behalf Te Ope Mana a Tai (7-44-1); John Kaati (4-27-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); and Edwina Hughes for Peace Movement Aotearoa (7-24-1).

[204] Including Kiri Tuia Tumarae (4-42-1); Tommy Murray on behalf of the New Zealand Māori Council (4-122-1); Te Rūnanga o Ōtakou (7-320-1); Richard Bradley on behalf of the Te Tau Ihu Customary Fisheries Forum (4-114-1, 4-114-2); Patu Hohepa and Jason Pou on behalf of Ngā Hapū o Hokianga (4-119-2); James Daniels (4-12-1); Che Wilson (4-145-1); Tawharangi Nuku on behalf of Ngāti Hanguru (5-3-1, 5-3-2); Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3); Maru Haere Pō Tapsell (4-57-1); Irihapeti Campbell and Hori Elkington (7-282-1); Rawiri Bidois (8-20-1); Tajim Mohammond on behalf of Te Rūnanga o Ngāti Rehia (5-68-1); Tim Howard and Leanne Brownie on behalf of Northland Urban Rural Mission (5-70-1); Sacha McMeeking, Ngahiwi Tomoana and Maria Pera on behalf of the Treaty Tribes Coalition (7-43-1); Justine Inns and Matiu Rei on behalf Te Ope Mana a Tai (7-44-1); Rongoheikume Simon (7-307-1); Patricia Stebbing (7-261-1); Leonie Morris on behalf of Auckland Women's Centre (7-281-1); and Peter Moeahu on behalf of Ngāti Tewhiti (4-134-1).

[205] Including Malibu Michael Hamilton on behalf of Te Ngaru Roa a Mauī (4-37-1); Caritas Aotearoa New Zealand (7-221-1); and Atareiria Heihei on behalf of Ngāi Tawake of Ngapuhi iwi (7-221-1).

Jason Koia on behalf of Ruawaipu Tribal Authority (4-62-1; 4-62-2; 4-62-3) noted that despite the recommendations of the Waitangi Tribunal and the New Zealand Human Rights Commission, the Act was implemented without Māori consent.

Due process

Several submitters proposed that the passage of the Act was undemocratic and nationally divisive.[206] Betty Williams (7-34-1) said that the passage of the Act has added another link in the long chain of history that has attempted to dispossess Māori of their spiritual and cultural heritage, all in the pursuit of commercial gain. She also said that the Crown deliberately manipulated due process to suppress Māori opposition to the Act.

Walter Te Kiita Broadman on behalf of tāngata kaitiaki of Waimarama (7-67-1) said that the 2004 Act process was merely for show and that the actions of Ministers of Parliament and the Crown made it obvious that the Act was a foregone conclusion. Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1) said that the Act was a product of a campaign that was misdirected and manufactured a polarisation of New Zealand.

Some submitters felt that the 2004 Act submission process was flawed.[207] Kahu Nikora (7-66-1) said that the 2004 process did not hear enough submissions and those that were heard were mostly opposed to the Act (94 percent). Kahu Nikora also said that the last time submissions were asked for, 3946 (100 percent) submissions were received however only 234 (6 percent) were actually heard by the Committee.

An anonymous submitter (7-71-1) said that the government's own analysis of the public submissions on the original legislation noted that almost all Māori and many non-Māori considered that the principles and related proposals constituted a major breach of the Treaty and Waitangi, yet the Act was still enacted.

[206] Including Mrs O Ripia (7-170-1).

[207] Including Keriana Olsen on behalf of Kōkiri Marae Health and Social Services (7-72-1).

Section J – Miscellaneous

This section summarises submissions with comments that do not fit into any of the other sections.

Overview

Other matters raised by submitters included Te Whaanga lagoon and the principles of the Act.

Several submitters expressed the view that the time allowed for the review was too short and that a longer conversation on the issues needed to occur.

Te Whaanga lagoon

Submittes who referred to Te Whaanga lagoon, and discussed issues including the status of the lagoon and the Crown's actions in relation to the lagoon when the Act was passed.[208]

The Hokotehi Moriori Trust (7-239-2) referred to the action in the Māori Land Court between Moriori and Ngāti Mutunga over customary ownership of Te Whaanga lagoon, which had been underway prior to passage of the Act. One of the issues in the court was the question of whether the lagoon was an arm of the sea or an inland waterway. The Trust noted that the Act re-classified the lagoon as "foreshore and seabed", thereby interrupting and effectively halting the Māori Land Court process. The Trust submitted that this re-classification of the lagoon took place without consultation with the Hokotehi negotiators.

Owen Pickles on behalf of the Chatham Islands Council (7-86-1, 7-86-2, 7-86-3) noted that the inclusion of the lagoon within the definition of "foreshore and seabed" took place without consultation with the broader Chatham Islands community.

The Chatham Islands Council stated that Te Whaanga is a major water resource occupying 20 percent of the Chatham Island and it is of major significance to iwi. The Hokotehi Moriori Trust commented that they are seeking the return of the ownership of Te Whaanga to Moriori with co-management of the lake to be shared with Ngāti Mutunga and the general community on Rekohu.

Principles underpinning the Act

Several submitters supported the principles underpinning the Act.[209] On the other hand, several submitters did not support the principles at all.[210]

Marie Tautari (7-257-1) and others submitted that the four main principles underpinning the Act do not reflect a prioritisation of Māori interests.[211] She considered that the only valid principle is that of "protecting existing customary rights and interests". She noted that the other principles are not competing principles but they could apply to the foreshore and seabed after all the Māori treaty obligations have been honoured.

Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3) suggested that more comprehensive principles are needed. "The current principles fail to establish a proper foundation and places the rights and interests of the public above Māori. Alternative principles include: self governance including regulating and allocating rights; use and access with Māori having priority to other users; development for commercial and non-commercial benefit; compensation through the Treaty settlement process".

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[208] Including Charl Hirschfeld (5-63-1); Hokotehi Moriori Trust (7-239-2); Owen Pickles on behalf of Chatham Islands Council (7-86-1, 7-86-2, 7-86-3); Metiria Tūrei on behalf of the Green Party (7-100-1); Ngāti Mutunga o Wharekauri Iwi Trust (7-214-1, 7-214-2, 7-214-3); and Te Rūnanga Wharekauri Rekohu Inc (7-263-1).

[209] Including Bryce Johnson (7-29-1); Lynda Sutherland on behalf of the National Council of Women of New Zealand (7-165-1); and W K Pearson (7-171-1).

[210] Including Tanenuiarangi Manawatu Inc on behalf of Rangitaane O Manawatu (7-135-1).

[211] Including Maru Haere Po Tapsell (4-57-1).

Anonymous (7-241-1) suggested that Principle 2 – *"Regulating the rights and interest of all New Zealanders" be changed to "Maintaining the rights and interest of all New Zealanders".*

There were also suggestions for the addition of other principles that covered environmental aspects, and good faith engagement.[212]

Process of review

While many submitters welcomed the review of the Act, several expressed the view that the time allowed for the review was too short and that a longer conversation on the issue needs to occur.[213] Many of these submitters discussed the need for a 'longer conversation' as described by the Waitangi Tribunal, on the issues underpinning the Act, and the way forward.

Some submitters questioned the process of the review, particularly the time set aside to undertake the review.[214]

Professor David V Williams (7-27-1) noted the importance of undertaking consultation with bicultural values in mind. In particular he noted that "No resolution of these issues can be acceptable to Pākehā in general or Māori in general unless there is a bottom up decision-making process."

Others suggested that a short process with quick change was needed to ensure there was limited uncertainty "a long consultation process may create anxiety and risk".[215]

Some submitters suggested that another set of hui be undertaken after the review, and the government take notice of the results of these.[216] Yet another set of submitters suggested that the public should be given the opportunity to participate in identifying and developing potential legislative solutions which are consistent with the constitutional review and the constitutional status of Māori.[217]

A 'concerned New Zealander' (7-308-1) noted that the review of the foreshore and seabed issue is a waste of taxpayer money. It noted that the foreshore and seabed belongs to all New Zealanders and should stay as it is.

Submitters from the Chatham Islands[218] were concerned the Panel did not visit the Chatham Islands as part of the consultation process.

Tim Rochford on behalf of Te Rūnanga o Ngāi Tahu (4-11-1) expressed concern that iwi were not considered to be "nationally significant interest groups", a term developed by the Panel to categorise groups who represented a New Zealand sector/wide interest groups, rather than sub groups.

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[212] Including Gail Thompson for Te Rūnanga o Awarua (4-6-1) and Shane Solomon (4-28-1).

[213] Including Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Monique Tāwhiri (5-49-1); Christopher Brayshaw (4-56-1); Rueben Tāpara (7-123-1); Marie Tautari (5-73-1); Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3); Tommy Moaha (4-38-1); Te Rūnanga o Moeraki Inc (7-270-1); Paul Morgan and Rino Tirikatene on behalf of the Federation of Māori Authorities (7-47-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); Tracey Whare de Castro on behalf of the Aoteaoroa Indigenous Rights Trust (7-302-1); Cynthia Tucker on behalf of Kiwis Against Seabed Mining (7-129-1); Frances Mountier (7-125-1); Abigael Vogt (7-144-1); Leonie Morris on behalf of the Auckland Women's Centre (27-281-1); Pāia Riwaka-Herbert on behalf of Ngāti Apa ki te Waipounamu Trust (4-111-1); Diane Ratahi (7-330-1); Mike Smith (5-12-1); and Moana Jackson on behalf of Ngāti Kahungunu Iwi Authority (4-84-1).

[214] Including Te Rūnanga o Te Whānau on behalf of Te Whānau a Apanui (1-3-3); Monique Tāwhiri (5-49-1); Christopher Brayshaw (4-56-1); Rueben Tāpara (7-123-1); Marie Tautari (5-73-1); Te Ohu Kaimoana (7-45-1, 7-45-2, 7-45-3); Tommy Moaha (4-38-1); Te Rūnanga o Moeraki Inc (7-270-1); Paul Morgan and Rino Tirikatene on behalf of the Federation of Māori Authorities (7-47-1); Raymond Smith on behalf of Te Rūnanga o Ngāti Kuia (4-110-1, 4-110-2); Chris Karamea Insley on behalf of Awanui Hāparapara No 1 Trust (7-297-1); Jaimee Kirby-Brown on behalf of Te Hunga Roia Matua/Māori Law Society (7-310-1); and Tracey Whare de Castro on behalf of the Aotearoa Indigenous Rights Trust (7-302-1).

[215] Including Connal Townsend on behalf of the Property Council (7-9-1).

[216] Including Anonymous (7-98-1).

[217] Including Daniel T Te Kanawa (7-276-1).

[218] Including Hokotehi Moriori Trust (7-239-2); Owen Pickles on behalf of the Chatham Islands Council (7-86-1, 7-86-2, 7-86-3); Ngāti Mutunga o Wharekauri Iwi Trust (7-214-1, 7-214-2, 7-214-3); and Te Rūnanga Wharekauri Rekohu Inc (7-263-1).

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