

30 April 2010

**SUBMISSION ON THE GOVERNMENT'S PROPOSAL  
Reviewing the FORESHORE and SEABED ACT 2004**

*Introduction*

1. This submission is made on behalf of the Treaty Relationships Group of the Religious Society of Friends in Aotearoa/New Zealand, (Te Hāhi Tūhauwiri), also known as Quakers.
2. Our Submission to the Ministerial Review Panel was highly critical of the Foreshore and Seabed Act 2004. We appreciate that the Government's latest proposals are an improvement on that Act. Specifically we note that the Crown would not have title to the foreshore and seabed, and that mechanisms for an iwi and hapū role in marine environmental management have been developed. We appreciate that there has been some consultation with Māori in the course of the review.
3. Government's approach of effectively saying "accept this or the 2004 Act stays" is a cause for concern. However, we agree that it is time to replace the 2004 Act and it is positive that the government is committed to doing this, and offering an improvement.
4. In respect of the options considered by the government in this Review we favour the third option of Māori absolute title. This is on the basis that Māori have not relinquished the interests they have always had as tangata whenua, in the foreshore and seabed of Aotearoa New Zealand.

*The principle of equality*

5. Quakers recognise that this issue is a contentious one because it is about recognising the rights of a section of our community, defined on the basis of their culture. Many New Zealanders consider priority for tangata whenua as "special rights" and are not comfortable with according tangata whenua these rights in the foreshore and seabed. We acknowledge that many New Zealanders see recognition of the rights of tangata whenua as cutting across one of our fundamental values; that of equality. However, while we are all New Zealanders, we are not all the same. Māori are tangata whenua and as such had developed a special cultural relationship with the foreshore and seabed that predates Te Tiriti o Waitangi (Treaty of Waitangi).
6. Quakers have a testimony to equality in community; that each person has a right to have their needs met in order to participate fully and equally in the life of the community. Meeting needs in this case involves developing the law to recognise and allow for differences in worldview and cultural practices. In the modern world where people's

interests in the coastal marine area are expressed in law, it is necessary to provide specifically for the rights of tangata whenua. It is from the insights of this testimony that this submission is addressed to the government.

### *Tangata whenua rights*

7. In some areas, Māori, as the indigenous people, need a priority, and one of those is in relation to the foreshore and seabed; it is a taonga for Māori. One of the points made by iwi leaders is that the issue is about the expression of mana Māori; it is important that the framework developed for the foreshore and seabed is one based on te ao Māori and tikanga.

8. As New Zealanders we share a range of values and one of those is cultural diversity. Government needs to acknowledge that Māori can express their cultural values most fully only in Aotearoa New Zealand. Legal recognition of the priority of tangata whenua in the area of the foreshore and seabed enables a unique and important expression of Māori culture.

### *Assessing the Government's proposal*

9. Our criteria for assessing this proposal is whether it is consistent with the spirit and intent of Te Tiriti, and whether it recognises and protects the rights of Māori as tangata whenua. We identified these criteria in our testimony on *Tangata Whenua Rights and Constitutional Arrangements in Aotearoa*, published in 2008. A copy of this Statement is attached.

10. We consider that the government's proposal is not fully consistent with the spirit and intent of Te Tiriti o Waitangi, and does not adequately recognise and protect the rights of Māori as tangata whenua, for the reasons set out in our comments below.

11. We are aware that frameworks for giving effect to indigenous people's worldviews are in the early stages of development. From the Iwi Leaders *Commentary on the Crown Consultation Document; Takutai Moana*, we note that iwi and hapū are critical of applying current frameworks including the common law, and aboriginal rights. Government needs to be aware that iwi and hapū are looking towards a more transformational approach to the foreshore and seabed.

12. We note that Māori are exploring possible alternative approaches to the Government's model: Māori title, Tipuna title, Treaty-based mana expression model and co-governance model. Until such time as an alternative approach is fully worked out, we ask that the government adopt option three as the approach most consistent with tangata whenua interests in the foreshore and seabed.

*Comment on the Government's Proposal*

13. The government proposal states that customary title extinguished by the Foreshore and Seabed Act 2004 is to be restored. This appears to be a positive change that recognises and protects the rights of Māori.

14. We do not support the government's proposal to name the foreshore and seabed as public domain/takiwā iwi whānui. This is because it is inconsistent with the title that Māori are entitled to have recognised in the foreshore and seabed. In cases where Māori title is recognised by way of award this would have the appearance of being at the expense of the public domain, when in fact the foreshore and seabed is not public domain but belongs to Māori.

15. We think it is important that tangata whenua rights in the foreshore and seabed are fully provided for as a priority. Only those parts of the foreshore and seabed in respect of which government or the court has established there are no customary territorial entitlements, ought to be identified as public domain.

16. The government is concerned to protect the rights of all New Zealanders to access the foreshore and seabed. We point out that in certain places existing private rights have taken away public access to beaches. We just do not believe that Māori will deny the public access to large parts of the foreshore and seabed under option three.

17. The government's proposal to restore to Māori the right to go to court for awards of customary title is generally a positive change. However, going to court is an expensive and time-consuming exercise. We consider that cases seeking recognition of customary rights to the foreshore and seabed should be eligible for legal aid. However, rather than resort of the courts, Māori models for dispute resolution should be used to resolve issues of customary title

18. We are concerned that the awards proposed by the government may be too narrow in scope; we understand that the interests recognised in the Ngāti Porou awards under the 2004 Act are wider than envisaged for the awards which may be made under the current proposal.

19. Recognition of plans prepared by Māori for the environmental management of the foreshore and seabed is another positive aspect of the government's proposal. Carrying though this aspect of the government's proposal may be a demanding process for local authorities and the relevant agencies of government. We think it will need to be properly resourced to make this part of the proposal work. An improved role for iwi and hapū in the management of the coastal marine environment needs to be part of whichever option is adopted.

## *Conclusion*

20. We urge the government to maintain the momentum of this work. In their Paper the Iwi Leaders Group identified five areas in which the government's proposal needs further work and clarification, and we agree. These areas are:

- Public domain definition
- Who holds rights?
- Development right
- To whom do non-nationalised minerals belong?
- Resourcing the process.

21. We have not responded to the questions raised by the government in its submission form because we have indicated our position on the important issues already. Also we consider that the questions are directed at the government's proposal, whereas we favour option three which is Māori absolute title to the foreshore and seabed.

In Peace

Marion Sanson  
for the Treaty Relationships Group  
of the Religious Society of Friends in Aotearoa/New Zealand.