

HOKOTEHI



MORIORI UNITY AND DEVELOPMENT

19 November 2010.

The Chair
Select Committee
Marine and Coastal Area (Takutai Moana) Bill
Parliament House
WELLINGTON

Tena kotou,

SUBMISSION ON MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL

INTRODUCTION AND BACKGROUND

1. Hokotehi Moriori Trust (HMT) is the legally mandated body established in 2001 to represent the interests of Moriori people on Rekohu, mainland New Zealand and wherever else they live.
2. Moriori are the tchakat henu/tangata whenua/indigenous peoples of Rekohu (Chatham Island) and Rangihau (Pitt Island) and have lived in these Islands for upwards of 1000 years.
3. HMT owns and manages assets on behalf of its beneficiaries. Most of these assets are comprised of fishing quota, farms and a tourist lodge.
4. HMT opened a new Marae (Kopinga Marae) for our people on Rekohu in 2005 which opening was attended by the Prime Minister, the late Maori Queen Dame Te Atairangi Kaahu, Te Ariki Tumu Te Heu Heu and other dignitaries and elders from all over the motu.

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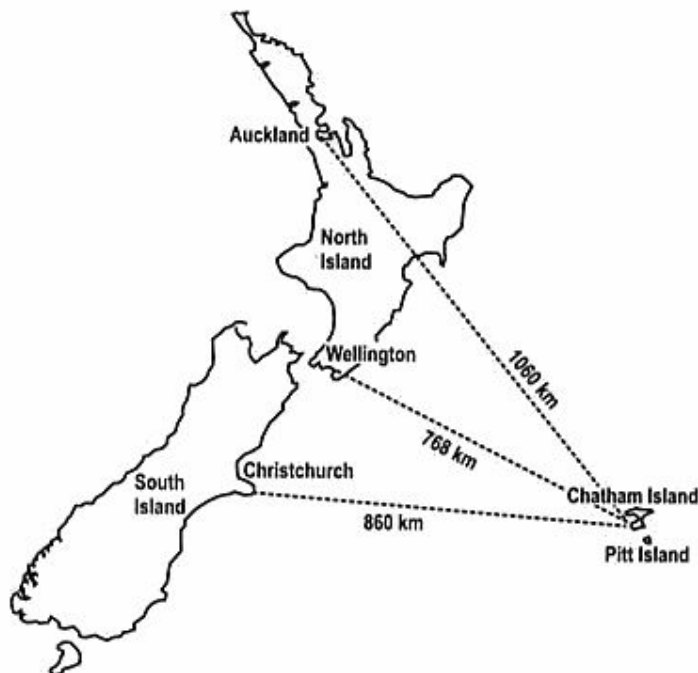
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5. HMT has 1000 registered members but it is thought that there are today on Rekohu, in NZ and overseas, some 6-8,000 people who can trace their ancestry to Moriori. HMT is in the process of helping many of these descendants to reconnect with their Moriori hokopapa and identity which they have lost due to tragic historical events.
6. Rekohu is located 800 kms due east of New Zealand and by virtue of its location, provides NZ with the 5th largest Exclusive Economic Zone in the World. Rekohu therefore has significant strategic as well as economic benefits for NZ. Unfortunately, this is a largely one-way relationship whereby Rekohu resources have been and continue to be exploited by non-island interests for their own benefit with little being returned or invested back into the Islands.
7. The population of Rekohu and Rangihau today is around 600 people (and declining) and the economy is under siege as a result of the historical and contemporary neglect by successive governments. More resources are put into the islands annually to protect the native flora and fauna than there to provide for the basic needs of its people. It is hoped that this current government will do better for the Islands and its people.
8. Although the Islands provide some \$150-200million dollars in revenue per annum to the New Zealand economy from its valuable fisheries and taxes, very little of this money find its way back to Rekohu as most of the quota from Rekohu waters is owned off-shore and most of the profits from these Islands is invested in NZ.
9. The islands have serious infrastructural problems, a declining population (through lack of jobs and housing) an increasing crime rate and social issues.
10. It is for these reasons of neglect and the serious economic situation the Island is currently facing that HMT is advocating greater constitutional and economic independence from New Zealand and separate legislation for the valuable marine resources of our Islands.
11. Rekohu has become a junket to be visited, enjoyed, talked about with fondness but then largely forgotten about by New Zealanders, politicians and government agencies. Even under the allocation of

Maori fisheries quota, mainland tribes ended up receiving a larger share of Rekohu fishing assets (our most valuable resource) than either Moriori or Ngati Mutunga.

12. Rekohu would receive more support from the government if we were not part of New Zealand's sovereign territory. For example, Niue (which is governed in association with New Zealand) has received upwards of \$20million per annum for the past several years in the form of Pacific Aid from NZ but contributes nothing to the economy of New Zealand. By contrast Rekohu receives about \$3million in funding but contribute \$150million to the NZ economy. The Islands can't even afford to seal its roads while Niue's roads are all sealed thanks to the generosity of the New Zealand tax payers. This is not to begrudge Niue financial support but Rekohu is equally, if not more, deserving of government support for our ongoing development and economic sustainability.
13. Moriori seek a fairer and more just deal for our Islands than has been the case to date. This includes under the current Marine and Coastal Area (Takutai Moana) Bill ("the Bill").



EXECUTIVE SUMMARY

14. Hokotehi Moriori Trust supports the Bill to the extent that:

- a. It repeals the 2004 Act;
- b. It removes Te Whaanga Moana from the coastal marine area.

15. However, Hokotehi Moriori Trust (HMT) does not support the Bill to the extent that:

- a. The Bill does not go far enough in recognising customary title of tangata whenua.
- b. The tests under the Bill are too restrictive.
- c. As drafted the Bill “locks in” the so-called ‘1840 Rule’ which effectively excludes Moriori from qualifying for customary marine title whose island home was invaded by Ngati Tama and Ngati Mutunga in 1835 – just 5 years before the Treaty was signed.
- d. The effect of excluding Moriori by virtue of the statutory tests would create a new prejudice and injustice on top of the (as yet) unresolved Treaty grievances Moriori have with the Crown and which were upheld by the Waitangi Tribunal in the Rekohu Report released in 2001.
- e. In any case Moriori are not specifically recognised under the Bill. Moriori do not consider ourselves to be a ‘another Maori tribe’ (as referred to in the Tribunal Report) – rather Moriori are the tchakat henu or tangata of Rekohu (Chatham Island) and Rangihau (Pitt Island) and as such are the indigenous peoples of those islands with significant hokopapa/whakapapa links to Maori tribes of Aotearoa/New Zealand.

16. HMT seek the following acknowledgement and recognition from the New Zealand Parliament:

- a. Separate and distinct legislation for the Islands that would have the following constitutional aims and objectives:

- i. Formal acknowledgment of Moriori as the tchakat henu/tangata of Rekohu and Rangihau (and outlying islands together referred to as “The Islands”);
- ii. Control and management of the islands 200 Exclusive Economic Zone (including seabed) to be vested in a governance body representing Moriori, Pakeha and Maori on the islands;
- iii. The islands to be governed is association with New Zealand in a similar way to Niue Island and Norfolk Island (with Australia);

17. In the event that the Bill continues through the House in its present form and separate legislation is not introduced for Rekohu, HMT seeks the following changes to the Bill:

- a. Removal of the 1840 Rule (as it applies to the Islands) as the criteria for determining customary entitlements;
- b. That Moriori customary entitlements to the coastal marine area (CMA) be determined as if Ngati Tama and Ngati Mutunga had not invaded the Islands in 1835;
- c. A loosening of the statutory tests so that Moriori and Maori are not prevented from successfully claiming customary ownership of the CMA by virtue of acts and omissions of the Crown that are in breach of the Treaty of Waitangi guarantees of protection.

A BRIEF HISTORY OF REKOHU AND MORIORI

18. Moriori settled and lived on the Islands for upwards of 1000 years and during this time banished warfare, killing and cannibalism and uniquely among Polynesian peoples lived in peace for 600 years.

19. Moriori depended upon and continue to depend upon the resources of the sea and coast for 90% of our sustenance.

20. In November 1791, blown off course in a storm, Lieutenant William Broughton of the HMS Brig ‘Chatham’ arrived off the northern coast of Rekohu. He remained long enough to kill a Moriori on the beach with a

musket ball in the back, plant a flag in the ground to proclaim “ownership” of the islands in the name of King George the V, drink a toast to His Majesty’s health and nail a plaque to a tree proclaiming this historic event.

21. This was the first contact that Moriori had had with the outside world for over 500 years. At this time Moriori numbered about 2800 people. Today the Islands support a population of about 600 people.
22. From the early 1800’s sealers and whalers frequented the Islands destroying the seal colonies, a resource upon which Moriori were heavily dependent for food and clothing. These men brought with them diseases which wiped out about 14% of the Moriori population.
23. In 1835, Ngati Tama and Ngati Mutunga who were at that time living in Petone in Wellington, decided to invade Rekohu having heard stories about the land of plentiful kai and that the people were peaceful. 900 men, women and children were taken down to the Islands in two ship loads by an English national, Captain Harewood in his vessel, the ‘Lord Rodney’. They left from Matiu/Somes Island in Port Nicholson in November 1835. Captain Harewood and his crew were paid in guns, pork and potatoes for his mercenary runs.
24. Upon arrival at the Islands, the invaders were seasick and starving and could have been overcome by Moriori (who outnumbered them 2-1) but who instead, true to their peaceful philosophy, welcomed, fed and nurtured the “New Zealanders” (as the new arrivals were called by Moriori at the time) back to health. This kindness was repaid by the two Wellington tribes walking the land, slaughtering and enslaving Moriori as they went.
25. 1000 Moriori men met at Te Awapatiki over 3 days (where the lagoon opens to the sea) in March 1836 to debate and decide what response they would make to these atrocities that were being committed against them. The young men urged resistance but the day was carried by the elders who forbade going back to killing and warfare as they once had been, and instead chose to offer to share the islands and its resources with the Maori invaders. They reaffirmed their ancient covenant of peace and that their mana and the mana of the land would be maintained through peaceful means not warfare.

26. This offer was spurned and those Moriori not killed and eaten were enslaved and used to do hard labour cultivating potatoes for their new masters and performing menial tasks for women and children of the new arrivals. Many Moriori died of “kongenge” or despair believing that as a result of being forced to violate their many tapu (and Moriori were a very tapu people), that their gods had deserted them and they willed themselves to die.
27. The Moriori population fell sharply from about 1700 in 1835 to only 270 in 1850 – a mere 15 years later.
28. Moriori were forbidden to marry and women became barren.
29. Moriori Men, women and children were regularly beaten to death and cooked in hangi.
30. Slavery was not officially abolished on Rekohu until 1863.
31. In 1862, Moriori elders who had survived wrote to Governor Sir George Grey, seeking the intervention of the English Justice System to restore their lands to them. They saw in the English system of law a set of values that resonated with their own equitable laws and looked for the protection of the new laws as introduced to NZ via the Treaty of Waitangi.
32. By the mid 1860s all Ngati Tama and the majority of Ngati Mutunga had left Rekohu and returned to their homes in Taranaki. That left Moriori again the majority population on Rekohu (only a mere 100 people by 1870 – down from 1700 only 35 years earlier).
33. Sadly, the outcome of the 1862 petition to the Crown for Moriori was the establishment of the Native Court on Rekohu in 1870 and the awarding of 97.3% of all land to Ngati Mutunga on the basis of conquest. Moriori were awarded a pathetically small area of land comprising the remaining 2.7%.
34. The Court failed to inquire into or apply the native Moriori custom of ancient peaceful occupation of the land and chose instead to apply the Mainland custom of *take raupatu* (claim by conquest) – despite Maori having only been on Rekohu for 5 years prior to the signing of the Treaty.

35. The Moriori term for what had happened was *take kohuru* or the killing of a people who refused to fight – not take raupatu.
36. There was also a strong suspicion that the decision of the Court had been a foregone conclusion because the Commissioner of Crown Lands (a Mr Parris) had tried to persuade Ngati Tama and Ngati Mutunga to stay on Rekohu rather than returning to Taranaki in 1866 (for the compensation court hearings in Oakura) because of the fear that they would cause trouble for the Crown by returning to Taranaki. Ngati Mutunga were also encouraged to return to Rekohu for the 1870 court hearings and a handful of them did so.
37. The same Magistrate (Judge Rogan) who presided over the Compensation Court hearings in Taranaki in the 1860's was appointed to hear the claims from Ngati Mutunga and Moriori in 1870 on Rekohu. Moriori believe that there was an "understanding" conveyed by the Crown to Ngati Mutunga that if they went back to the Islands they would receive all the land they wanted though the courts down there. The record shows (and this is supported by the findings of the Waitangi Tribunal in the Rekohu Report) that Moriori did not receive a fair hearing from the Judge and that an allocation of land closer to 50:50 as between Moriori and Ngati Mutunga would have been a fairer and more Treaty consistent/tikanga based result.
38. Ngati Tama had decided not to return to Rekohu and remained in Taranaki so did not make any claims in the 1870 hearings.
39. However, immediately upon receiving the allocation of practically all of the land in 1870, those Ngati Mutunga who had returned to Rekohu for the hearings, leased the land out to European farmers and promptly returned back to their homes in Taranaki. When the leases expired years later, there was a gradual return to the islands by Ngati Mutunga families.
40. Meanwhile, those Moriori who survived were left virtually landless and many left the Islands never to return. Others had been taken as slaves to the mainland and were bought up as Maori in Maori families deliberately forgetting about their Moriori identity for fear of ongoing persecution and ridicule as being "weak and inferior to Maori" because they had refused to fight and kill the aggressors.

41. But several Moriori families remained on the Islands and continued to keep the home fires burning. It is these families who have staged the Moriori renaissance over the past 30 years and who are actively seeking to find and reconnect Moriori descendants scattered all over NZ.

THE '1840 RULE'

42. Moriori were seriously prejudiced by the operation of the 1840 Rule in the 1870 Native Land Court hearings. As the Rekohu Tribunal has noted, the rules were Judge made and not imposed by legislation governing the Courts procedures. Indeed the only "rule" as such in Native land legislation at the time was that the Judges had to apply "native custom" in determining Maori free hold title. On Rekohu the court was at least bound to consider ancient Moriori custom alongside that of claim by conquest, but failed to do so.

43. On the issue of "custom" on Rekohu the Waitangi Tribunal concluded that:

On Rekohu, in 1840, Maori had none of the elements to achieve an ancestral right, by incorporation, by intermarriage, or by maintaining control and burying their dead on the land over some generations. At 1870, they had dead on the land, but then the living had largely left. We consider that, both at 1840 and at 1870, as a matter of custom, Maori had no right unless they could prove that they were merely away on business and intended to return.¹[Referring here to their absence in Taranaki as at 1870]

44. The current wording of the Bill is likely to result in Moriori again being prejudiced if a court was to give an interpretation that by virtue of the 1835 invasion that there has been a "*substantial interruption*" of Moriori customary rights which effectively excludes Moriori from claiming customary marine title or rights.

45. Equally, it could be argued that Ngati Mutunga did not acquire customary title or rights in the 5 year period between 1835 and 1840 and that their subsequent abandonment of Rekohu in 1866 for Taranaki amounts to a *substantial interruption* of their *exclusive use and occupation* of the CMA.

¹ Waitangi Tribunal Rekohu Report (Wai 64), Chapter 8 – '*Custom, Court and the 1840 Rule*', page 145

46.HMT **Recommends** that either:

- a. Special legislation is introduced regarding Rekohu/Chatham Island (our preferred option); or
- b. That the 1840 Rule be relaxed in case of Moriori and Rekohu; and
- c. The provision relating to “*substantial interruption*” be removed;
- d. Moriori be specifically recognised in the Bill.

47. HMT wishes to be heard in support of the above submissions.

Me rongo (in peace),

A handwritten signature in blue ink, appearing to read 'Maui Solomon', with a large, stylized initial 'M'.

Maui Solomon
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LOCATION
WHY VISIT REKOHU
HOW TO GET HERE

REKOHU & RANGIAURIA

are islands of unique character and characters.

You'll find us way out in the south pacific ocean where we are first to see the dawn of every new day. Our islands are a wild, beautiful world apart. If you are one of the special ones to get here you will be rewarded.

FLIGHTS FROM CHRISTCHURCH, NEW ZEALAND

