



CHRISTIAN WORLD SERVICE  
PO Box 22652  
Christchurch  
Aotearoa New Zealand  
Phone (03) 366 9274  
Fax (03) 365 2919  
cws@cws.org.nz  
www.cws.org.nz

## **Submission on Marine and Coastal Area (Takutai Moana) Bill**

---

### **Introduction**

1. Christian World Service (CWS) is the development, justice and aid agency of New Zealand churches. Respecting the rights of indigenous peoples is one of the cornerstones of good development and something which the organisation takes very seriously. As an organisation based in Aotearoa New Zealand, CWS is committed to honouring Te Tiriti O Waitangi and 'working alongside Maori for a just and equitable society, which acknowledges in its laws, institutions and public life Maori self-determination' (*Partnership and Letting Go*). It has made submissions and written letters of concern at every stage of the debate on the Foreshore and Seabed and was one of the majority submitters that sought the repeal of the Foreshore and Seabed Act 2004. In this regard CWS welcomes the repeal of the 2004 Act.
2. We note that although the government has undertaken extensive consultation, this Bill has not adequately addressed the major concerns of Maori regarding the ownership of the foreshore and seabed under the 2004 Act. While it is unlikely that a negotiated settlement could meet the aspirations of all, CWS still does not believe this new piece of legislation adequately recognises the rights of Iwi and Hapu or meets international standards of justice for indigenous people. Rather under the guise of recognising and protecting "the rights of all New Zealanders, including Maori, to the common marine and coastal area of this country" (Chris Finlayson), the legislation has once again been formulated at the expense of Iwi and Hapu.

CWS believes in this case that Maori have pre-existing rights that do not necessarily fit with the existing legislation. This Bill puts a high threshold of proof on Iwi and Hapu to prove continuous use since 1840 for a lesser title and role in the care and management of this precious area. Many submitters drew attention to this and similar issues throughout the previous consultation process, and we do not believe this Bill deals with their concerns. This and other difficulties have been clearly highlighted by the UN Committee for the Elimination of Racial Discrimination, the Special Rapporteur on the Rights of Indigenous Peoples and by NGOs as part of the Universal Periodic Review to the Human Rights Council.

## **Specific Matters of Concern**

3. CWS asks that the Select Committee reconsider the notion of the 'Common marine and coastal area' in regards to Part 2 to take account of the broader understanding of customary title and recognition of internationally acknowledged rights of indigenous peoples. We believe that there needs to be further discussion on the rights of Iwi and Hapu before any legislation is passed apart from the repeal of the 2004 Act.
4. In Subpart 2, the requirement to prove the continuous exercising of customary right since 1840 in court is unfair given the long history of colonisation. We are interested the Crown retains ownership of petroleum, gold, silver and uranium despite agreement made under Te Tiriti O Waitangu regarding resources. Any legislation should allow for changing use that would have occurred if Iwi and Hapu had been allowed to develop without interference. Such decisions should be made in full consultation with Iwi and Hapu and may lead to different understandings in different regions depending on what can be agreed with the local people. The new Bill does not address the grievances around the lower status of this right compared with other property rights enshrined in the 2004 Act.
5. In Part 4, subpart one, Clause 93 (2), we object to the six year time limit for registering an application for customary right or customary marine title. This is unjust and puts undue pressure on Iwi and Hapu in a short space of time. Nor does it allow for new information that may come to light as part of ongoing historical research.

## **Conclusion**

6. Christian World Service urges the Select Committee to reconsider the basic premises of the Bill in order to ensure that it falls within the agreements and commitments made in Te Tiriti O Waitangi and does not award lesser rights to the very small number of Iwi and Hapu able to meet the stringent criteria for the lesser title made possible in this Bill. If the Bill cannot meet this standard of basic justice it should not proceed through the Parliamentary process.

Prepared by Gillian Southey  
Christian World Service  
19 November 2010