

10th Nov, 2010

Submission on the Marine and Coastal Area (Takutai Moana) Bill

To: Committee Secretariat
Maori Affairs
Parliament Buildings
Wellington

This submission is from myself, Heeni Collins, an active member of my hapu of Ngati Kikopiri (Ngati Raukawa) and former secretary of the Te Upoko o te Ika branch of the Maori Party. While it may not be representative of the majority of my branch, from my attendance at the Te Tai Tonga electorate AGM, and the approval of a remit I put forward there in relation to this bill, I believe it is also reasonably representative of the majority of people who attended that hui (at Parerarua marae, Wairau, Blenheim, Oct 25, 2010). Our members stated our continued support for our Member of Parliament Rahui Katene, and while we passed a remit urging that further improvements be sought, the majority of those present did not oppose the Bill.

I wish to appear before the committee to speak to my submission.

Submission

I support the intent of this bill, because I believe it moves some way towards remedying the wrongs put in place by the Foreshore and Seabed Act of 2004 which clearly vested the foreshore and seabed in the Crown, and allowed Maori to claim redress for former rights only. This Bill in its preamble and in Part 2, sub-part 1, 15; Part 3, sub-part 1, 49-52; sub-part 2, 53-54; and sub-part 3 – 63, 64, 65, 70 supports the ability of hapu and iwi to claim current and on-going customary rights and customary title in the marine and coastal area.

Part 1, Preliminary Provisions

Under 4, Purpose, I support the following clauses:

- 1.b) recognition of mana tuku iho in the marine and coastal area by iwi and hapu as tangata whenua
- c) provide for the exercise of customary interests in the common marine and coastal area
- d) acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).

I also support the rights that flow from customary marine title as outlined in the sections as above - Part 2, sub-part 1, 15; Part 3, sub-part 1, 49-52, sub-part 2 – 53-54; and sub-part 3 – 63, 64, 65, 70.

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Part 3, Customary Interests, sub-part 3 – customary marine title, Clause 60

“b) has exclusively used and occupied the specified area from 1840 to the present day without substantial interruption”

I oppose the wording of this clause - requiring hapu and iwi to prove that they have had “exclusive” use of an area from 1840 to the present is clearly setting the criteria to prove customary marine title too high. The Crown only needs to prove that a single non-Maori or non-local Maori person has used the area any time, for customary interests to be ruled out. As the Crown has not supported the principle of Maori policing or excluding the general public from their own customary areas it is unreasonable to state that only if they have done so will they be allowed to maintain their rights to those areas. Most of our hapu and iwi support the principle of manaakitanga, and have therefore been generous in allowing shared use of customary rights areas.

I therefore argue for the removal of the word “exclusive” in favour of simple “use”. Without that word I would support the clause.

Sub-part 2, 27 – Public Access

There are serious concerns amongst us as Maori about the requirement that those holding customary Maori title are required to provide public access to foreshore and seabed, when private land-holders adjacent to the beach are not required to provide similar access – to the general public or to Maori. It is contrary to Article 3 of the Treaty of Waitangi to discriminate against Maori in this way. If Maori with customary marine title are required to provide access and are forbidden from charging, that should also be the case for private title holders of land beside the coast. They should be required to provide access, particularly for the local hapu under-taking customary activities.

For example, our hapu of Ngati Kikopiri at Muhunua West Rd, Ohau, has difficulty accessing the beach at the west end of this road because the land between the road end and the beach (approx 2km) is owned by a farmer. I’ve been attending marae committee meetings there every month for 20 years and my experience is that we gained permission and attempted it once, but found there was too much undergrowth on the sand-hills, we had a child with us, and we could not get through. While some hapu members will have found their way through, I don’t know of any recognized, clearly defined access-way across these dunes, and I believe it would be more supportive of our customary identity and practices if one was provided by the farmer. Maintaining these practices are important for our well-being and the maintenance of our traditions.

This situation also affects our ability to argue “continuous use”, though the gathering of kaimoana is still practiced occasionally (see comments below).

There should be no private beaches with access limited eg by land-owners, hotels or other commercial ventures right around the country.

Recommendations:

1. Remove the words “exclusively” and “exclusive” from Part 3, sub-part 3, clause 60, 1. b) and 2.
2. That provision be made for allowing Maori throughout the country to access their customary coastal and marine areas across adjoining land, whether in public or private title.

Comments

- a) Requiring hapu and iwi to prove “continuous” use of their rights will be problematic for some hapu and iwi who have been deprived of their rights of access over several generations (see above re our hapu and difficulty accessing our beach).
- b) I note that the definition of continuous use in the Bill is not specific, in terms of frequency. In our case the gathering of kaimoana would range in frequency, occurring maybe twice a month or twice a year, depending on how often we have hui or tangi etc. It would not normally be done for our ordinary marae committee monthly hui, but could be done for a kaumatua dinner, a Xmas dinner, or a tangi.

Summary

I support the intent and purpose of the Bill, and believe that the improvements I have recommended would settle some of concerns which have been raised within our party and within the wider Maori community.