Northland
URBAN RURAL MISSION

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

Tena koutou, rau rangatira ma!

Northland Urban Rural Mission – or NURM – is a collective of community and church people, working in collaboration with a range of networks throughout the North, which has worked on Community Development, Social Justice and Tiriti Justice for almost 29 years now, with a driving vision of contributing towards building a Tiriti-based society. The first object of NURM, specified in our Constitution, is to "Honour Te Tiriti o Waitangi, particularly acknowledging Te Tino Rangatiratanga as expressed in Article 2 of the Maori Text." This priority impels us to challenge this proposed Bill now in relation to the foreshore and seabed.

We confirm strong church support for this Kaupapa in our work (and beyond), with the conscious adoption of Tiriti alongside the gospel as moral bases for our work.

Alongside many others, NURM made written and oral submissions on the Foreshore and Seabed Bill in 2003 and 2004. We have been actively involved in the various Hikoi on this subject. Since then we have been involved in the Ministerial Review Panel of the Foreshore and Seabed Act, and in other activities directed towards protecting the foreshore and seabed in Te Tai Tokerau, including currently supporting attempts to prevent the regular dumping of sewage in the Harbour of Whangarei Terenga Paraoa.

We wish to be heard by the Select Committee in person, when you come to Whangarei for these hearings.

We seek the full repeal of the Foreshore and Seabed Act 2004, and the withdrawal of the Coastal Marine (Takutai Moana) Bill.

In that context we wish to make the following points in writing now, and to elaborate upon them at the oral hearings:

1. The Bill contravenes the range of interventions made by Iwi and Hapu on the subject of the Takutai Moana since 2003, and thus cannot be seen to reflect any goodwill consultation, including the limited consultation carried out this year.
2. We affirm, with many others, that customary title or aboriginal title is a limited construct, is understood within a colonising context, reduces the meaning of indigenous peoples' rights, and is subject to Crown extinguishment.
3. Further, customary title in this Bill does not meet the requirements of Maori title, nor the moral stance reflected in Te Tiriti o Waitangi's confirmation of *tino rangatiratanga.*
4. The specific definition of 'customary title' in this Bill is so limited that it benefits those who have gained land illegally and immorally – an untenable basis for any law claiming to provide 'justice.'
5. The high test of 'customary title' and 'customary rights' in this Bill – requiring hapu and iwi to prove they have had continuous use of the area in question since 1840 – is unjust. We see this definition of 'customary title' as reflecting a situation whereby I steal your car; drive it around for ten years; agree to hand it (or your favourite part of it) back to you only if you can prove that you continued to drive it around right through those ten years.
6. Most hapu and iwi (98% by one reckoning) would be hardpressed to prove undisturbed possession since 1840. So while the Bill may allow due process, it will be ineffective once this high test is applied. The barriers set make this a dishonest Bill, and make it clear that its purpose is not to restore justice for Maori.
7. This framework of continuous and exclusive occupation does not recognise tikanga Maori, nor fully recognise all Maori rights and interests in the foreshore and seabed areas. This monocultural construct is unacceptable.
8. There is no allowance for where tikanga may not require exclusive occupation (there are many examples of shared use between different iwi and hapu of the takutai moana). Nor for where the exercise of tikanga was prevented by unjust activities like confiscation. Nor for where tikanga was perceived by the Crown to have been extinguished by Act of Parliament or the Executive.
9. This 'customary title' is less than the freehold title that others have. It is embedded in an understanding that Maori rights are subordinate.
10. This 'customary title' concept still leaves it to the Crown to decide what rights Maori might have.
11. The concept of 'common space' continues de facto confiscation of Maori takutai moana areas, by the Crown.
12. 'Common space' is a legal fiction that applies only to areas with Maori interest, echoing the long discredited colonising legal doctrine of 'terra nullius,' 'land belonging to no-one.'
13. This Bill compounds – rather than removes – inequities and racial discrimination, as noted by international UN authorities amongst others.
14. The 'common space' concept, for example, does not apply to the significant areas of foreshore now in private title; just to areas where there is a Maori interest. Maori have always been willing to allow access, and this Bill obliges that to continue, but freehold title owners, predominantly Pakeha and Tauiwi, are not obliged to do so.

15. ‘Common space’ is a legal fiction in that – while Crown title is not asserted – the Crown still controls it, own specific minerals therein, and maintains regulatory authority over it. ‘Common space’ is a deceitful position, as it really means de facto ownership by the Crown.
16. We note the time limit of six years within which a customary right has to be confirmed, and see this as a continuing breach of Te Tiriti and other human rights conventions. Rights are supposed to be universal – though that is apparently not to be the case here. Again, this Bill is discriminatory against Maori.
17. In brief, this Bill is discriminatory and unjust, and continues the damage to the relationships Maori foresaw upon signing Te Tiriti o Waitangi. And we regret the Crown threat that – if this Bill is not passed – the 2004 legislation will remain in place.
18. We of NURM, alongside others, seek:
    a. The Repeal of the Foreshore and Seabed Act 2004
    b. Withdrawal of this Bill
    c. Proper consultation with iwi and hapu in the ‘longer conversation’ of which the Waitangi Tribunal and the Ministerial Review Panel spoke
    d. In the longer term, the only moral outcome we can see is in the full restoration of tino rangatiratanga over the Takutai Moana, and iwi and hapu – whose foreshore and seabed areas were taken – allowed to determine how to achieve restoration in their rohe.

We look forward to addressing these issues at the oral hearings.

Yours sincerely

Paul Doherty
Chairperson
For the NURM Board