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25 April 2010

# National's race-based privatisation of the foreshore and seabed

National's public consultation on the foreshore and seabed, now nearing completion, shows they want a race-based privatisation of the foreshore and seabed from the community to Maori.

Maori groups who are awarded customary title will have sole rights of development for mining and aquaculture, through veto rights. They will also have the right to oppose any new structures or developments on the foreshore and seabed. With the Mokihinui River hydro scheme, Meridian paid West Coast iwi to gain their support. Customary rights holders will enjoy the right to be bought off by developers.

The foreshore and seabed, goes out to sea 22 km from any foreshore. It is a very large area, well over 100,000 square km, or more than a third of New Zealand's 300,000 sq km land area.

This area, and its capability for minerals recovery including iron-sand, aquaculture, recreation and commerce is of major strategic interest to all New Zealanders. In spite of National's desire for certainty, the documents give no estimate of the key issue - how much of this area will receive customary title? All of it? Half of it? Or none of it?

Only Maori can participate in this privatisation. Some coastal occupations by iwi, prior to 1840, who obliterated original tribes, were as short as fifteen years. Non-Maori are not eligible, even though some of their occupations of the foreshore eg the Star Boating Club in Wellington Harbour, have been for over 120 years.

This race-based resource privatisation may be politically popular with iwi/hapu. But not with anyone else, especially the 95% of New Zealanders who abhor Maori separatism.

From 1840 until now, the Crown has owned the foreshore and seabed, as a public common, and has managed it for all New Zealanders. The Court decisions in the Ngati Apa case in 2003 did not say that customary title to the foreshore and seabed existed, only that it MIGHT exist.

Maori concern with Labour's 2004 Foreshore and Seabed Act is that it set the bar too high, so probably no customary title could exist. Now, under National, the bar is very likely to be set so low that almost all unallocated foreshore and seabed will gain customary title.

If the Maori Land Court (MLC) makes the decision, this is almost certain. The purpose of the Maori Land Act, which the Court administers, is to "*promote the retention of (Maori) customary land in the hands of its owners, their whanau, and their hapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners*".

Under the Maori Land Act, there is no *terra nullius* – land owned by no-one, as there was for example in Australia. The Act recognises only six statuses of land. Land belonging to no-one (terra nullius) is not allowed.

The new status National proposes for the foreshore and seabed, is "land owned by no-one". However, the MLC is still able to declare it Maori customary land, so a major and valuable set of Maori property rights, akin to ownership, will attach to it. National's consultation document is silent on what changes, if any, will be made to the Maori Land Act. So National evades the key issue - how difficult it will be to get customary title. In any case, this is a political decision, not a judicial one.

Beds of lakes are normally Maori customary land eg Lake Taupo, Lake Waikaremoana, the Rotorua Lakes. The MLC will similarly allocate customary title to all unallocated foreshore and seabed. An added reason is the MLC's goal is to protect all the land it can in Maori customary title.

This means a 100% privatisation to Maori. Even if the High Court were the decision-maker, the same outcome is likely, as the MLC advises the High Court on which Maori hold Maori rights over unallocated land. Maori at the hearings are pushing for the MLC to have jurisdiction. They hold the same view that they will win every time through the MLC.

National claims that public access and use for fishing, boating etc will be guaranteed to all unallocated foreshore and seabed, and be free. This is not true. Any mining, aquaculture or foreshore or seabed development will block public access, as exclusive leases would be needed. Customary owners could also block necessary facilities for recreation such as boat ramps, jetties, marinas, moorings etc

Wahi tapu – areas sacred to Maori, will also prohibit public access. As Maori define what these are, there is uncertainty over how extensive they will be. The general public will be locked out of having any say in determining wahi tapu, or obtaining public access over them.

Government proposes iwi/hapu can also negotiate with the Minister. So in the unlikely event that iwi/hapu are unable to get customary title through the Courts, they could go to a sympathetic minister. Present Minister Chris Finlayson, cut his teeth as a lawyer on advocating for Treaty claimants, and is especially friendly towards Maori. Or perhaps Peter Sharples or Hone Harawira would be the Minister?

Usually with controversial proposals, there is a very short consultation time. This is true here. **Submissions close at 5 pm this Friday 30 April**.

The best and most urgent action that concerned members of the public can take is simple: vote against repealing the 2004 Foreshore and Seabed Act see http://www.justice.govt.nz/policy-and-consultation/reviewing-the-foreshore-and-seabed-act-2004/key-documents Please vote now. This is the only option that will stop National's privatisation to Maori, of unallocated foreshore and seabed that at present belongs to us all.

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