Maori Ownership of Seabed

MAORI OWNERSHIP OF THE FORESHORE AND SEABED Muriel Newman
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It has now been confirmed that under the new constitutional arrangements National and the Maori Party are planning to push through before Christmas, Maori will become the legal owners of large tracts of New Zealand's foreshore and seabed.

The new rights being planned for the legislation will transfer huge wealth and power to selected Maori. They will have the power to develop the foreshore and seabed and mine it for minerals. They will be free to seek payments from anyone who wants to use the area – oil and gas exploration companies, and power and telecommunication concerns come to mind. They will be able to demand payments from those who presently use the coastal area once their current leases, consents or licences expire – including port companies. They will have the right to block all public access to any area that they consider to be sacred or of special significance only to Maori, and they will have the absolute right of veto over any proposals within their foreshore or seabed area. In some instances they will be given powers that are greater than those of local government – and even central government.

National and the Maori Party have also come up with a consolation prize for those Maori who will not able to get their hands on an ownership right. It is a new universal award called "mana tuku iho" that will bestow blanket participation rights in foreshore and seabed conservation practices by other Maori groups.

No-one except powerful Maori interests – who stand to gain incalculable on-going wealth – was consulted over these decisions. This is despite the National Party claiming in their consultation document that they were going to take into account the rights of all New Zealanders before deciding on the future of the foreshore and seabed. These groups included recreational and conservation interests, business and development interests, and local government, as well as Maori. Through their process of secret deal-making with Maori, National has ignored everyone else. National has totally sold out to Maori and turned their back on everyone else – there's no polite way of putting it.

From beginning to end, this whole foreshore and seabed fiasco has been a jack-up designed to deceive beach-going, coast loving Kiwis. From the rushed review process to their sham consultation, National has gone out of its way to pretend that under their foreshore and seabed deal with the Maori party, nothing much will change. Nothing could be further from the truth.

But to get a clear understanding of what is going on, let's start at the beginning.

Until 2003, the ownership of the foreshore and seabed was vested in the Crown. This settled law was affirmed by a Court of Appeal ruling in 1963. However, in 1997 South Island Maori lodged a foreshore and seabed claim with the Maori Land Court over a marine farming dispute with their council. The Crown argued that the Maori Land Court had no jurisdiction over the foreshore and seabed, but the case went ahead and was found in favour of the Maori claimants. The Crown appealed to the High Court and won, with the Judge ruling that the foreshore and seabed were beneficially owned by the Crown and that the Maori Land Court had no jurisdiction in this area. However, the case was appealed to the Court of Appeal, which, in a bombshell decision, overturned settled law and the earlier Appeal Court decision to rule that the Maori Land Court could hear

customary title claims to the foreshore and seabed.

The proper course of action for the Labour government would have been to have the rogue decision challenged by the independent Justices of the Privy Council, but since they had just cut off access to the Privy Council that course of action was no longer available. To add to Labour's woes, Maori activists were busy fuelling discontent within Maoridom by spreading the word that the Court of Appeal had ruled that Maori owned the foreshore and seabed. Although there was no truth in the rumour, with foreshore and seabed claims flooding in to the biased Maori Land Court, which might well have found in favour of private title, Labour rushed to legislate. Their 2004 Foreshore and Seabed Act reaffirmed Crown ownership of the foreshore and seabed and provided generous rights akin to ownership for Maori who had land contiguous to the foreshore and seabed they were claiming and could prove uninterrupted use since 1840.

In releasing its finding in 2003, the Court of Appeal pointed out that they expected very few (if any) successful customary title claims, since Maori had to satisfy the very high test of continuous and uninterrupted use of the area since 1840. In reality, since the Crown owned the foreshore and seabed from 1840 through to 2003, the chances of succeeding were very slim indeed.

This is a key point. Within New Zealand right now, the parts of the coastline that could meet the high customary title test indicated by that 2003 Court of Appeal ruling, would be minimal. Yet, as a start, National expects to privatise at least 10 percent – over 2,000 kilometres – of coastline to Maori under their new bill.

And here's the reason: after all the talk of Maori deserving their day in court – to prove their customary title claims – National and the Maori party have jacked up a deal which means that under their new law, Maori will not need to go to court

at all! Instead of having to meet a rigorous legal test in an open court (as is required under the current legislation), National has not only dropped a key part of the test – the contiguous land provision – but has decided that claimants can gain their ownership title through direct negotiation with Ministers! This will open up the whole process to political manipulation on a grand scale – with the potential for corruption, given the extent of the wealth that is at stake. Maori can of course, opt to go to court instead of negotiating directly with Ministers, but that is only likely to be used as a last resort.

So when claims are made about the need to change the law so that Maori can have their "day in court" – be mindful that National's proposed legislation will not require a day in court. And, when claims are made that the present law has confiscated property rights – be aware, that apart from a fleeting period after the 2003 Court of Appeal decision, the Crown has always owned the foreshore and seabed.

The reason there is such passion over this issue is that we are dealing with the "jewel in New Zealand's crown". As the chairman of Ngai Tahu recently stated "Maori stand at the gateway of a golden opportunity". At stake are over 10 million hectares – one third of the land area of New Zealand. It is the distance between the average spring high tide waterline and the 12 nautical mile territorial limit. Included are the beds of rivers that belong to the coastal marine area. The area also includes the airspace above this zone and the water, subsoil, bedrock and other matters including mineral wealth below. It is by far the richest natural resource in the country.

Since the election, secret talks and deals over the foreshore and seabed have been on-going between National and Maori. Mike Butler, in his Breaking Views blog Who's Pandering to Whom describes the whole disgraceful process asking, "Who represented the non-iwi sector in Monday's foreshore-seabed

negotiation? (Notice that I wrote “non-iwi”, because this includes the bulk of the Maori population.) Prime Minister John Key was there, of course, with Attorney General Chris Finlayson, who has spent a significant part of his stellar career suing the government on behalf of Ngai Tahu. The Maori Party was there, of course, representing two percent of the party vote. The meeting included Mark Solomon, who is head of the Iwi Leadership Group and represents Ngai Tahu, the tribe that under the agreement could claim virtually the entire South Island foreshore and seabed.”

Who represents the majority of New Zealanders is indeed a very good question. We should have a champion representing us who is not afraid of limiting the influence of a politically powerful minority pressure group, by weighing up their demands against the costs to society as a whole. This role is probably meant to be that of the Attorney General. But how on earth can Chris Finlayson represent non-Maori when he is clearly promoting and representing Maori? The conflicts of interest are surely undeniable.

Local Government NZ is clearly concerned about a lack of representation. They claim that the foreshore and seabed deal will give such superior powers to Maori, that it will “trample on democracy” by overriding coastal planning laws and the rights of coastal citizens to have their say on how their natural resources are used or protected. At stake under the new law are ports, wharves, boat ramps, marinas, roads, structures used for river and coastal flood protection, and land used for reserves and future urban development purposes. At the present time, the ownership rights surrounding these, is settled. But National’s proposed new law throws all of this into disarray – and no doubt along with it, all investment of any type in the coastal marine area.

National is hoping the wider public will not wake up to what is going on. The point is that while the 2004 Act that is currently in place may not be ideal, it is much fairer to all

New Zealanders than the racist privatisation now being planned. The rich public assets that the government is now planning to privatise have always been owned by the Crown on behalf of all New Zealanders. That means the benefits that accrue from technological advancement and development over time are for the public good – as long as the current law stays in place.

Full details of the proposed law change are not expected to be revealed until August, when no doubt a large and complex bill will be tabled in Parliament. The timeframe for submissions will be cut short so the law can be signed and sealed before the ever-important election year rolls around. National is confident that as long as they can get it out of the way by Christmas, any discontent over this outrageous deal will be long forgotten by election day.

This week's NZCPR Guest Commentator, Hugh Barr, a risk analyst and recreation advocate – and spokesman for the Coastal Coalition – expresses it this way: "National's "solution" to ownership of the foreshore and seabed is an ill-thought-out unacceptable race-based shambles. It ignores the interests of the rest of the community. It must be turned down by the rest of us in favour of Crown ownership on behalf of us all, as at present." To read Hugh's article and view the maps he has provided outlining the extent of New Zealand's foreshore and seabed, please click the sidebar link>>>

I know that many of you share a deep despondency over the future of the country under what is increasingly looking like a separatist government – for what else can you call it when their laws and actions entrench racism and division. Well, there are three options: you can leave the country, accept what they are doing, or fight back – because you care. I hope you are willing to join us in doing the latter!

For more information on the foreshore and seabed law changes – and most importantly, what you can do to help, please visit

our Coastal Coalition website at www.CoastalCoalition.co.nz