



TAKUTAI MOANA – FORESHORE AND SEABED REFORM

FORESHORE AND SEABED UPDATE

22 DECEMBER 2009

E ngā mana, a ngā reo, e ngā iwi o ngā hau e wha, ngā mihi o te wā ki a koutou katoa

Introduction:

This pānui summarises discussions at the Foreshore and Seabed hui held over November and December 2009, provides an update on engagement with the Crown over this important *take* and looks forward to the New Year. The hui have confirmed that the passion and commitment of iwi and hapū to secure their rights to their takutai moana remains undiminished. The government's announcement in early November that it had agreed – in principle – to repeal the Foreshore and Seabed Act 2004 and replace it with a regime that better balances the interests of all New Zealanders presented the best opportunity yet see those aspirations realized.

Regional hui:

In November and December, The Iwi Leaders' Group convened hui in Rotorua, Whangarei, Hauraki, Napier, Hawera, Whanganui and Waikawa (Picton) to canvas the views of iwi and hapu on what they would like to see in a replacement regime to the Foreshore and Seabed Act 2004 (a planned hui in Murihiku (Southland) was cancelled due to inclement weather). These hui were attended by more than 200 people and a number of themes were common to them:

- The continuing, deep and abiding *mamae* and offense caused by the 2004 Act;
- The valuable work iwi and hapū have done on alternatives to the 2004 Act, as evidenced in submissions presented in 2003/04 and to the Ministerial review panel this year;
- The need for a replacement to the 2004 Act to fully reflect the rights of iwi and hapū as set out in Te Whakaputanga, Te Tiriti, the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights standards;
- The challenge that any replacement to the 2004 Act should not only undo the wrongs that it did, but be transformative and replace the Act with something better than what existed before it – given that Te Ihu Ihu Iwi only went to the Māori Land Court seeking title because of the failure of the pre-existing regime to adequately protect their rights and interests;
- That carrying over any form of Crown ownership from the 2004 Act will be viewed as an continuation of the *raupatu* effected by that Act, no matter what else the replacement regime might contain;
- That no replacement to the 2004 Act will be acceptable unless it results from meaningful engagement between the Crown and iwi/hapū;
- That a replacement regime must have a number of key characteristics. It should:

- Recognise the mana of Iwi/hapū over their rohe moana in principle and give effect to that recognition in practice;
 - Provide for effective input of Iwi and hapū into all aspects of the management of the marine environment and marine resources;
 - In some cases, recognise Iwi/hapū as decision-makers in the management and allocation of resources;
 - Where it is necessary to apply thresholds or tests to the level of Iwi/hapū involvement in decision-making, source these in tikanga, rather than colonial law; and
 - Recognise that going to court to establish Iwi/hapū mana or rights in respect of their takutai moana is the least preferred option.
- The need for the Iwi Leaders' Group to communicate well with Iwi and hapū, faithfully represent the views of Iwi and hapū to the government and be accountable.

The regional hui also identified a number of regional/technical contact people who will support the work of the Iwi Technicians and assist Iwi Leaders in getting information on this *take* out to Iwi members.

Iwi Leaders' Group/Technical Advisory Group Engagement with the Crown

The Iwi Leaders' Group met with the Attorney-General and other Ministers five times between August and December 2009. In addition, a technical advisory group comprising Iwi and Crown representatives met regularly through November and December. All of these opportunities to influence Crown policy have emphasised the key message set out above.

Following on from the Cabinet decision that the 2004 Act will be replaced, the government appears to be moving in a direction that has the potential to appropriately recognise Iwi/hapū interests. Much work remains to be done in the development of a replacement to the 2004 Act before it becomes apparent whether that replacement will appropriately recognise Iwi/hapū interests. It is in this regard that the messages of Iwi and hapū from the regional hui set out above and as conveyed by Iwi Leaders remain important.

Next steps

Iwi technicians will continue to meet with Crown officials early in the New Year, as Crown policy development continues. To the extent that the Crown policy development programme allows, Iwi Technicians will seek the input of those nominated, through the regional hui, to the Technical Reference Group.

The Iwi Leaders' Group has a commitment from the Attorney-General that he will meet with them before committing to Crown policy that Leaders believe will be unacceptable to Iwi and hapū and attempt to find an acceptable alternative. At this point, it appears likely that a Crown policy proposal on a replacement to the 2004 Act will emerge by the end of February 2010. As indicated at regional hui, the suggestion from the Iwi Leaders' Group is that the Attorney-General (or his delegates) might be invited to present this policy to Iwi-initiated hui to be held in March 2010.