

## BACKGROUND EVENTS RELATED TO FORESHORE/SEABED ISSUE

16-17 <sup>TH</sup> centuries	debate in Spanish court re ownership of land in colonies: indigenous people own land until fairly acquired by others which became the 'aboriginal title' principle in international law and English common law
Proclamation of 1763 (Britain)	British people not allowed to buy land directly from indigenous people, may only be purchased by Crown – to minimise misunderstandings about land
1835 Declaration of Independence	written by British official on behalf of Confederation of United Tribes: hapu have independence, sovereignty and right to make laws; recognised by British king
1839 Brief from British Colonial Office to Hobson	because hapu are sovereign, British must request permission from hapu to colonise; Hobson instructed not to mislead hapu
6 February 1840: Maori Text first signed	Hobson and 50+ chiefs of hapu sign Treaty of Waitangi allowing British to establish government (to control misbehaving Europeans) and promising that hapu will retain control of all they value, that land sales will be voluntary, that Maori have the rights of British people, that Maori culture will be protected; over rest of the year approximately 500 more sign;
March/April 1840: English Version	39 chiefs (but not Hobson) signed English Version of Treaty; they were not told that it stated they ceded sovereignty; by legal principle of <i>contra proferentum</i> , Maori Text prevails over English Version
1852 NZ Constitution Act	established government in NZ; only men who owned land in single title could vote (Maori land title is collective so Maori couldn't vote)
1867 Maori Representation Act	required Maori voters to be on separate Maori electoral roll and restricted their representation to 4 seats, much fewer than they were entitled to (not changed until 1996 with MMP, though Maori could shift to General Roll from 1970's)
1877 <i>Wi Parata v the Bishop of Wellington</i>	Chief Justice Prendergast declared the Treaty a 'simple nullity' because the chiefs/hapu were 'simple barbarians' ( <i>i.e.</i> , not competent to understand what they were doing)
1941 <i>Te Heuheu Tukino v Aotea District Maori Land Board</i>	Privy Council decision acknowledged that the Treaty is valid, but unenforceable unless ratified by the NZ Parliament (overturning Prendergast's interpretation above); still the foundation of decisions today ( <i>i.e.</i> , Treaty only enforceable if in an Act – because an Act has been adopted by Parliament)
1986 Constitution Act	separation of powers: role of Judiciary in relation to Parliament and Executive
1987 <i>NZ Maori Council v Attorney General</i>	Court agreed with NZ Maori Council that government could not sell land 'owned' by a government department if it had a Treaty claim on it because the relevant legislation included reference to respecting Treaty principles
1990 Bill of Rights Act	Human rights that are protected include: freedom from racial and other discrimination, rights of minorities to enjoy their culture, and the right to justice
1990s	Councils administering the Resource Management Act in the Marlborough Sounds rejected every application by iwi for marine farming consent (some identical applications later approved when presented by non-iwi)
1996 -1997	Crown halts all marine farming in order to establish system for selling rights to farm; Marlborough iwi filed case with Maori Land Court to stop the tendering system because they were concerned that this would lead to privatisation; Crown objected that Maori Land Court did not have jurisdiction
2003 (June) <i>Ngati Apa &amp; others v the Attorney General &amp; others</i>	Court of Appeal stated that Maori Land Court does have jurisdiction, that it cannot be assumed that the Crown holds title to the foreshore /seabed because no legislation had extinguished customary ownership; the Crown immediately announced its intention to introduce legislation to override this decision
March 2004 Waitangi Tribunal Report	Proposed foreshore/seabed Policy is substantially in breach of Articles 2 and 3 of the Treaty; it doesn't meet standards of NZ and international law that underpin good government in a democracy including rule of law, principles of fairness and discrimination; there is no overriding, national interest need for a Bill
April/May 2004	Hikoi from Far North to Wellington protesting Foreshore/Seabed Bill – 25,000 gather in Wellington the day before the First Reading of the Bill
November 2004 Parliamentary Select Committee Report	94% of nearly 4000 submissions opposed the Bill, mainly in relation to 1) denying Maori the right to have courts consider their claims to customary seabed/foreshore rights and 2) the Crown's power to sell public foreshore / seabed; no agreement on amendments or on whether Bill should be passed
2005	Treaty Tribes Coalition made complaint to UN Committee on the Elimination of Racial Discrimination; finding: the legislation appears...on balance to contain discriminatory aspects against the Maori

## STAKEHOLDERS in FORESHORE/SEABED ISSUES

NZ Constitution	<ul style="list-style-type: none"> <li>• Rule of Law: Parties in dispute shall have their rights determined by the courts</li> <li>• NZ Statutes – see examples above</li> <li>• Decisions of the Courts – see examples above</li> <li>• Treaty of Waitangi – see handouts</li> </ul>
political parties supporting the Bill	<ul style="list-style-type: none"> <li>• Labour: there needs to be clarity, urgently, on protection of public access and to ensure inalienability (that it can't be sold)</li> <li>• NZ First: it must be in Crown ownership (not public domain) and non-Maori must be able to claim customary rights as well as Maori</li> </ul>
political parties opposing the Bill	<ul style="list-style-type: none"> <li>• United Future – initially supported but after the hearings decided that more time was needed to reach negotiated, rather than imposed, outcome; wants foreshore/seabed to be in the 'public domain' instead of Crown ownership</li> <li>• Greens – must recognise Maori customary title (but they can't sell the land); concern that government could sell seabed/foreshore as they have sold other assets</li> <li>• National – if Maori customary rights are recognised it will give them unfair power to veto uses by other parties; where Maori ancestral connection is recognised they will have the right to co-manage with the Government</li> </ul>
local & port authorities; utilities	implications for reclaimed land owned by local authorities, lack of public consultation, implications in relation to Resource Management Act, lack of clarity
recreational groups	concern about inclusion of air- and water-space as well as the land, about restricting access without public consultation, about the Crown's power to sell public foreshore / seabed
NZ businesses	may provide development opportunities; may create additional problems in getting consent under Resource Management Act; possible political instability
NZ lawyers	poorly drafted legislation means there will be lots of work (questions to be addressed in court); raises constitutional issues (e.g., role of judiciary, due process, significance of Treaty) and human rights issues
hapu/iwi; Maori	loss of their rights to due legal process; Crown ownership of foreshore/seabed; the Crown does not have the authority to define/determine customary rights; there are better and fairer methods for protecting public access and inalienability
indigenous people overseas	implications for foreshore/seabed ownership in their countries; contravention of UN standards in relation to indigenous people such as: it is unacceptable to provide certainty for the majority at the expense of an indigenous minority, decisions about indigenous peoples' rights should not be made without their consent
international law	there are concerns that the Bill contravenes several international agreements which has implications for utility of international agreements and for place of NZ in international affairs; e.g, Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Discrimination, International Covenant on Civil and Political Rights

## FURTHER INFORMATION

Te Ope Mana a Tai, a collective of iwi with customary interests in coastal marine areas: <http://www.arena.org.nz/sbprinc.htm> (especially their submission)

Report of the Parliamentary Select Committee hearing submissions on the Foreshore and Seabed bill: <http://www.clerk.parliament.govt.nz/Content/SelectCommitteeReports/Final%20FS%20Report.pdf>