

## Land Tenure Conflicts in New Zealand

### The Foreshore and Seabed

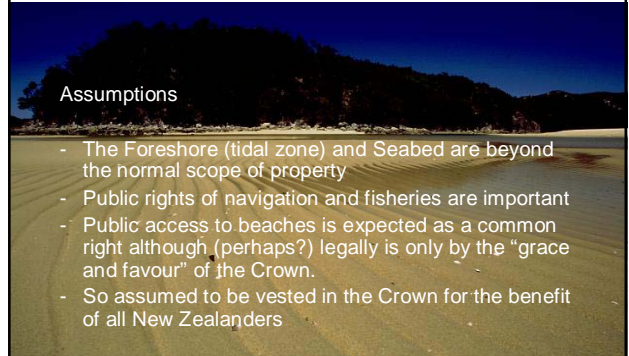
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## New Zealand Common Law

### Assumptions

- The Foreshore (tidal zone) and Seabed are beyond the normal scope of property
- Public rights of navigation and fisheries are important
- Public access to beaches is expected as a common right although (perhaps?) legally is only by the "grace and favour" of the Crown.
- So assumed to be vested in the Crown for the benefit of all New Zealanders



## Maori Customary rights

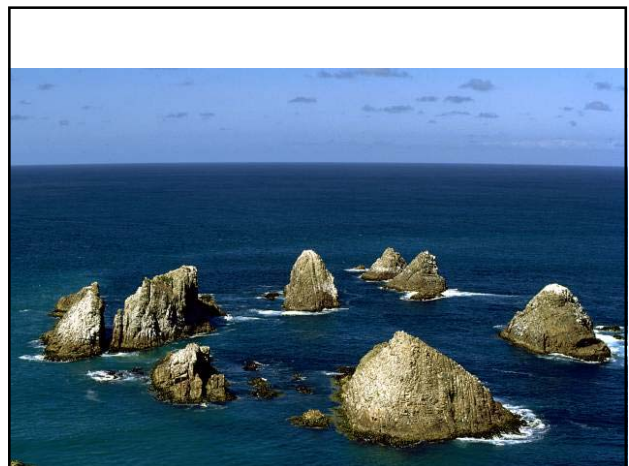
- Recognised in colonial law,
- Protected and guaranteed by the Treaty of Waitangi
  - "full, exclusive and undisturbed possession of their lands estates, forests and fisheries"
- Defined by reference to tikanga Maori - Maori usage and custom.
- Undefined extent but includes the foreshore and perhaps all of the territorial sea.



## Crown Assumptions

If customary rights to the Foreshore and Seabed existed, then they have since been extinguished:

- by direct sale to the Crown
- by the issue of Crown derived title for almost all Maori land
- by overriding legislation (e.g. resource management and territorial sea legislation)
- or by abandonment



## Public expectations

- New Zealanders have become used to open access to open landscapes, wilderness areas, beaches, and the sea.
- Increasing population pressures are starting to put limits on open access
- so access issues are currently contentious.
  
- Government report on Access - recommends the establishment of an Access Authority.
  - to cover access to our mountains, hills, forests, lakes and rivers

## Maori expectations

- Property rights should be protected by law
- and by the guarantees in the Treaty.
- Maori should at least be allowed to make a claim to the competent courts (the Maori Land Court)



## The Dispute

- Maori felt they were getting excluded from marine farm licences.
- These licenses are in effect, providing property rights in the foreshore and seabed.
- If property is to be recognised, Maori rights should first be recognised



## Court of Appeal 2003

- The Court of Appeal has acknowledged that Maori rights to the Foreshore and seabed may exist.
- The Maori Land Court has jurisdiction to hear any claims.
- This overturns 40 year old case law to the contrary



## The Foreshore and Seabed Bill 2004

- The government has introduced legislation providing for Crown ownership of all the Foreshore and Seabed
- Allows for open public access to the Foreshore and Seabed
- Only allows for a limited recognition of Maori customary title.



## Reaction

- Waitangi Tribunal report - recommending that the Crown goes back to the beginning and negotiates with Maori.
- Maori Cabinet Minister forced to resign because she wouldn't support the government Bill.
- Maori Protest – Hiko
- Referral to UN Forum on Indigenous Rights
- Public calls for equal law for all.
- Maori shouldn't be given 'special' rights. Ignorance about the recognition of existing rights.
- Conflict and dispute centred on racial issues.



## Wider issues

- Property rights regime in the sea - offshore cadastre?
- Privatisation of beaches - by licencing?
- Is public access a more important public policy position than (for example) conservation: marine reserves?
- Commercial exploitation of marine resources: fossil fuel and mineral extraction, aquaculture?
- Commercial use of the foreshore: harbours, marinas?
- Recreational facilities: boat sheds, launching ramps, competition infrastructure?
- Recreational and commercial fisheries?

