



**Tourism
Industry
Association
New Zealand**

Tourism Industry Association New Zealand

Foreshore and Seabed: protecting public access

October 2003

About Our Association and Industry

The Tourism Industry Association New Zealand (TIANZ) represents the interests of over 3,500 businesses in the tourism industry.

Tourism is a \$15 billion industry and generates 13% of New Zealand's exports. The tourism industry employs 1 in 10 New Zealanders in a diverse range of businesses – the majority of which are small and medium sized enterprises. Not only is tourism important because of its size. It is also:

- Highly employment intensive;
- Regionally dispersed;
- Has the flexibility to change its target markets quickly as conditions change;
- Can offer a good return on investment.

The tourism industry in New Zealand consists of more than 15,000 small and medium sized businesses. Of these businesses, most employ less than five people.

New Zealand welcomes almost two million overseas visitors to its shores every year. The domestic tourism industry is also important in helping to sustain a vibrant tourism industry. TIANZ estimates that over 75 million visitor nights are spent by New Zealanders every year.

TIANZ welcomes the opportunity to comment on the government's foreshore and seabed policy and to making an ongoing contribution to discussions on transport issues.

This submission has the following content:

- Information on the tourism industry in New Zealand.
- Concerns that the tourism industry has with proposed government policy on the foreshore issue.
- The suggested amendments TIANZ advocates to address our concerns.

The tourism industry is strongly supportive of a framework for the protection of public access rights that enables all New Zealanders, and visitors to New Zealand to have complete access to the foreshore and its seabed as public land.

Government's proposals

A key component of the Government proposals includes clarifying legislation to ensure that the foreshore should be public domain and for use by all New Zealanders. The proposals also state that:

- The Crown should be responsible for regulating the foreshore and seabed on behalf of all present and future New Zealanders.
- That processes should exist to enable the customary rights of whanau, hapu and iwi in the foreshore and seabed to be identified and protected.

Government statements on the proposals (dated 18 August 2003) say that:

“This proposal deliberately says nobody owns the foreshore and the best way to protect the foreshore and seabed from alienation” and to ensure that “no one has fee simple title”.

This same statement suggested this would lead to a *“win-win outcome for all New Zealanders... ”*.

TIANZ position

TIANZ recognises this is a controversial issue and that the Government is attempting to develop a position that achieves a high level of consensus within the community.

At the same time, TIANZ has a number of reservations about the Government proposals.

In particular:

- TIANZ strongly disputes the notion that the foreshore is incapable of being owned by anyone. Further to this, we express concern that the Crown is seemingly withdrawing from any responsibility to “own” the foreshore and seabed on behalf of all New Zealanders.
- TIANZ questions the idea that the foreshore being in the public domain will secure and protect public access and will prevent others moving in to fill this ownership void.
- TIANZ is concerned that public domain status does not sufficiently cement in place true rights of access in some cases. Later on in this submission we will provide examples of rights that do not appear to exist at present, which would not be clarified under public domain status.

Ownership of the foreshore

TIANZ is concerned at the application of the notion that no one can “own” the foreshore and the seabed. This is implicit in government’s proposals that the foreshore and seabed should be public domain access. At the same time, the government appears to be renouncing any role for the Crown in owning the seabed and foreshore on behalf of the New Zealand community. We understand that the concept of non-ownership of the deep ocean floor past the continental shelf is reflected in international law. This would serve as some justification for the government’s position. However, we suggest that the foreshore and seabed are quite different spaces

to the ocean floor in both their potential use and their accessibility. Therefore, any judgement on the most desirable status for the seabed and foreshore must be based on a more practical discussion on the shortcomings of public domain status versus Crown ownership.

Current assumption as to existing rights are doubtful in some cases

TIANZ is aware that while there are rights of navigation and fishing, there are no particular rights of public recreation on the foreshore and seabed.

We share a number of concerns already identified by Public Access New Zealand¹ including:

- That English Common Law, used by New Zealand, makes it an offence to use a beach without the consent of the Crown.²
- Public recreation on Crown land constitutes a trespass under the Land Act³
- It is against the law to walk or bathe below the high water mark. Public use depends on whether the Queens Chain exists.⁴

These examples suggest that continued public access and enjoyment of the foreshore and seabed, if this to be decisive, depends on the Crown having full ownership in trust of the foreshore and seabed. This will ensure that no particular group in our community has exclusive titled or de facto interests (aside from quite specific Maori customary rights which are already encompassed by international law and cannot be traded or sold) and would guarantee access, recreation, and conservation. This option would also ensure that some of the legislative concerns we have raised (as identified by Public Access New Zealand) would be settled and clarified.

Recommendation

That the Government's proposals for public access to the foreshore and seabed be amended so that the Crown has full ownership of the foreshore and the seabed in trust on behalf of the New Zealand community.

*Tourism Industry Association New Zealand
October 2003*

¹see their article 'Public Domain' is no guarantee of public access' prepared by Bruce Mason available on the Public Access New Zealand website www.publicaccessnewzealand.org

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² Blundall vs Catterall 1814-23 Law Report ER REP 39 and new Zealand case 1868 Law Report V1 NZCAP 117

³ section 176 Land Act 1948

⁴ See Blundall vs catterall ibid