

# **Marine and Coastal Area (Takutai Moana) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Marine and Coastal Area (Takutai Moana) Bill (the **Bill**) repeals the Foreshore and Seabed Act 2004 (the **2004 Act**) and restores the customary interests extinguished by that Act. It recognises, through the protection of public rights of access, navigation, and fishing, the importance of the common marine and coastal area for its intrinsic worth for the benefit, use, and enjoyment of all New Zealanders. The Bill recognises the mana tuku iho of iwi and hapū, as tangata whenua, over the foreshore and seabed of New Zealand, and it contributes to the continuing exercise of that mana by giving legal recognition, protection, and expression to the customary interests of Māori in the area.

The proposals in the Bill follow the significant opposition to the 2004 Act when it was enacted, and ongoing national and international criticism of that Act since that time. As a result, the Government agreed to review the 2004 Act. An independent review of the 2004 Act was completed in June 2009. The review panel, after consulting with the public, recommended repealing the 2004 Act and engaging with Māori and the public on their respective rights and interests in the foreshore and seabed. Subsequently, the Government carried out public consultation and stakeholder engagement on the 2004 Act and

its preferred option for a replacement regime that equitably balanced all interests in the foreshore and seabed. The proposals in the Bill reflect the outcome of the independent review and the subsequent consultation process and aim to establish a workable and durable framework.

### **New model for the foreshore and seabed: the common marine and coastal area**

The foreshore and seabed is the area from the high-water mark at mean high-water spring tides extending seawards for 12 nautical miles (the territorial sea). This area includes the subsoil and the waterspace and airspace above this area (but not the air or water itself).

Under the 2004 Act, the public foreshore and seabed (excepting private titles) was vested in the Crown as a way to provide certainty and clarity about rights and responsibilities in the area. The Crown ownership model, however, also had the effect of extinguishing any uninvestigated Māori customary title (a common law concept that allows for the continuation of indigenous systems of law and rights) to the foreshore and seabed. The model had a discriminatory effect on Māori customary interests as compared with other interests in the foreshore and seabed.

The Bill recognises that an ownership model is not the only way to protect the range of interests exercised in the area. It removes Crown ownership of the public foreshore and seabed by repealing the 2004 Act, stating that this area (known as the common marine and coastal area) is not owned, and cannot be owned, by any person. The Bill replaces Crown ownership with a model that recognises that the common marine and coastal area is an area in which all New Zealanders have interests, aside from the small portion that is already privately owned.

### **Protection of the interests of all New Zealanders**

New Zealanders have a broad range of recreational, commercial, conservation, and customary interests in the common marine and coastal area. The Bill protects these interests by providing more certainty about roles and responsibilities.

*Access, fishing, and navigation*

The Bill explicitly continues rights of public access in, on, over, and across the common marine and coastal area. It also provides that nothing in the Bill affects existing commercial, recreational, and customary fishing rights and it preserves rights of navigation in the area. These rights of public access, fishing, and navigation are subject only to restrictions authorised by legislation.

*Management of the common marine and coastal area*

The Bill states that the Minister of Conservation is responsible for managing the common marine and coastal area. This role does not override the roles and responsibilities of other Ministers, local authorities, or other people who are specified in the Bill or other legislation.

*Local authorities*

The Bill provides that any part of the common marine and coastal area owned by a local authority will form part of the common marine and coastal area, divesting local authorities of those areas. The Bill provides that local authorities can apply to the Minister of Conservation for compensation for these divested areas and sets out the criteria that are applicable to these applications.

*Existing interests*

The Bill states that resource consents in the common marine and coastal area that were in existence immediately before the commencement of the Bill are not limited or affected by the Bill. Existing leases, licences, and permits will run their course until expiry. Coastal permits will be available for the recognition of these interests after expiry.

The Crown retains ownership of petroleum, gold, silver, and uranium.

*Structures*

The Bill provides that, while there is no owner of the common marine and coastal area, existing ownership of structures and roads in the area will continue. New structures can be privately owned. Struc-

tures that have been abandoned will vest in the Crown so that it can ensure that health and safety laws are complied with.

#### *Reclaimed land*

To encourage development, the Bill provides that land reclaimed from the common marine and coastal area will vest in the Crown and the reclaimer of the land can apply to the responsible Minister for a fee simple title or other interest in the land (for example, a leasehold or coastal permit). Anyone who plans to sell a fee simple title in reclaimed land will be required, first, to offer it to the Crown. If the Crown decides not to acquire the reclaimed land, the seller will then be required to offer it to any iwi and hapū that exercise customary authority in the area. Once these rights of refusal have been exhausted, the owner of the reclamation will be able to sell it to any third party. Current applicants for an interest in a reclamation can choose whether the regime under the Resource Management Act 1991 or the Bill will apply to them. The Bill also simplifies the legislation applying to reclamations in the common marine and coastal area.

#### **Recognition of Māori customary interests in the common marine and coastal area**

The Bill recognises the traditional importance of the common marine and coastal area to Māori by restoring customary interests that were extinguished by the 2004 Act, and providing for the legal recognition, protection, and expression of customary interests in 3 ways.

#### *Mana tuku iho*

First, the mana tuku iho of iwi and hapū is explicitly recognised in the Bill. This provision was developed in response to submissions during the consultation processes for a clear and simple recognition of tupuna (ancestral) connection to the foreshore and seabed. The mana tuku iho provision is an acknowledgement of the mana-based relationship of iwi and hapū to the marine and coastal area in their rohe. The Bill allows iwi and hapū to take part in the statutory conservation processes within their relevant common marine and coastal area. These processes include the establishment of marine reserves and conservation areas and the management of stranded marine mammals.

*Protected customary rights*

Secondly, the Bill sets out a process by which customary rights (such as launching waka and gathering hāngi stones) that were exercised in 1840 and continue to be exercised today in accordance with tikanga can be given legal effect, and the future exercise of such rights can be protected. Like many other activities in the common marine and coastal area, these customary rights are not exclusionary and do not stop others from legitimately carrying out activities.

*Customary marine title*

Finally, the Bill provides for the right to seek customary marine title to a specific part of the common marine and coastal area if an area has been used and occupied by a group according to tikanga and to the exclusion of others without substantial interruption from 1840 to the present day. Customary marine title recognises the long-standing and continuing connection between a group and a specific part of the common marine and coastal area. The Bill provides for the legal recognition, protection, and expression of this ongoing connection between a group and a place. A customary marine title also provides an interest in land, but that land cannot be sold or otherwise disposed of. A customary marine title group can derive commercial benefit from customary marine title, and may transfer or delegate its rights in accordance with tikanga. A customary marine title will have the following associated rights in respect of the title area, subject to certain exclusions:

- the right to give or withhold permission for applications under the Resource Management Act 1991:
- the right to give or withhold permission for specified conservation activities:
- the right to participate in certain conservation decisions:
- the protection of wāhi tapu or wāhi tapu areas within the title area:
- the presumption of ownership of newly formed taonga tūturu:
- the ownership of minerals (other than petroleum, gold, silver, and uranium):
- the right to create a planning document for the customary marine title area that imposes obligations on local authorities.

Public access is guaranteed to areas in customary marine title except where wāhi tapu and wāhi tapu areas, such as burial caves, require protection and to which access can be restricted.

The Bill provides that protected customary rights and customary marine title can be recognised in 2 ways—by application to the High Court or by agreement with the Crown given effect through Order in Council. The tests for recognition of customary marine title are the same whether title is sought through the courts or through direct negotiation with the Crown.

The Bill also requires a marine and coastal area register to be set up to record all orders made by the High Court and agreements with the Crown granting protected customary rights and customary marine titles.

### **Regulatory impact statements**

The Ministry of Justice has produced 3 regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.justice.govt.nz/policy-and-consultation/regulatoryimpactstatements/marine-and-coastal-area-takutai-moana-bill/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause. The Bill has a dual-language title, but may also be cited by either the English or the Māori title.

*Clause 2* provides for the commencement of *Parts 1 and 2* the day after Royal assent is given; and for *Parts 3 and 4* to be brought into force by Order in Council.

## **Part 1 Preliminary provisions**

### *Outline*

*Clause 3* gives an outline of the Bill.

### *Purpose and acknowledgements*

*Clause 4* sets out the purpose of the Bill and the matters provided for in acknowledgement of that purpose.

*Clause 5* states that in order to take account of the Treaty of Waitangi (te Tiriti o Waitangi), the Bill recognises, and promotes the exercise of, customary interests by providing for the matters set out in *Part 3*.

*Clause 6* confirms, to avoid doubt, the ongoing sovereignty and obligations of the Crown under international law in relation to the marine and coastal area of New Zealand.

*Clause 7* is the interpretation clause. Key definitions include **agreement**, **applicant group**, **common marine and coastal area**, **marine and coastal area**, **specified freehold land**, and the terms identifying the customary interests and rights arising from those customary interests.

*Clause 8* sets out the meaning of **accommodated activities**, being generally existing activities and other existing rights that are not affected by the exercise of rights arising under a customary marine title order made by the High Court.

*Clause 9* sets out the meaning of **deemed accommodated activities**, being new structures, infrastructure, petroleum-related activities, and existing privileges in relation to minerals. These are not affected by the exercise of the RMA permission right arising under a customary marine title order.

*Clause 10* states that the Act binds the Crown.

## **Part 2**

### **Common marine and coastal area**

#### Subpart 1—Interests in the common marine and coastal area

*Clause 11* accords a special status to the common marine and coastal area (the **cmca**), which means that it is incapable of being owned. The Crown and local authorities are divested of their respective titles to the cmca on the commencement of this clause and whenever the landward boundaries of the cmca are extended as a result of erosion or other natural occurrences. The special status of the cmca does not affect the recognition of customary interests in accordance with the Bill, nor does it affect legislation that regulates, prohibits, or restricts

activities in the cmca, or that accords a special status to parts of the cmca, or that provides for the granting of resource consents or permits.

*Clause 12* enables defined areas of the cmca to be vested in the Crown by Order in Council, made on the recommendation of the Minister of Conservation, if the area has become a conservation area, a national park, a reserve, a wildlife management reserve, a wildlife refuge, or a wildlife sanctuary. However, no order may vest a customary marine title area.

*Clause 13* deals with changes to the coastline caused by natural processes, such as erosions or accretions. Changes effected by reclamations are dealt with in *subpart 3*. Where land becomes part of the marine and coastal area as a result of such natural processes, it also becomes part of the cmca, that is, title to the land is lost unless the land has fixed boundaries and is not owned by the Crown or a local authority. Where “dry land” emerges as a result of any such processes, the dry land ceases to be part of the cmca.

*Clause 14* repeals the Foreshore and Seabed Act 2004.

*Clause 15* restores any customary interests in the cmca and gives them legal expression in accordance with this Act.

*Clause 16* provides that any road formed in the cmca as at the commencement of the clause continues to be owned by the owner of the road. Roads formed in the future will be owned by the agency that commissioned it.

*Clause 17* continues the existing Crown ownership of minerals in the cmca. It is also made clear that prospecting, exploration, and mining permits granted under the Crown Minerals Act 1991 (or under its predecessors) are not affected by the no-ownership status of the cmca.

*Clause 18* provides that, in certain cases, parts of the marine and coastal area become part of the cmca. This occurs if the Crown or a local authority acquires any specified freehold land or if the use or construction of a road is discontinued.

*Clause 19* sets out special rules for the ownership of structures in the cmca. It is to be noted that structure is defined in the interpretation clause. Contrary to the position that generally applies under land law, structures fixed to, or under or over, any part of the cmca are considered to be personal property and are not affected by the no-ownership



status of the cmca. Thus the person who owned a structure before the commencement of *Part 2* continues to own it as personal property.

*Clause 20* deems the Crown to be the owner of structures that have been abandoned in the cmca. A structure is **abandoned** if the relevant regional council has been unable to ascertain the identity or the whereabouts of the owner of the structure.

*Clause 21* preserves resource consents granted before the commencement of *Part 2*.

*Clause 22* preserves interests under leases, licences, and permits in respect of land located in the cmca. If the interest was granted by a person other than the Crown, it is deemed to have been granted by the Crown. The Crown may grant a renewal or extension of a proprietary interest only if the interest contains a right of renewal or extension.

*Clause 23* requires the Registrar-General of Land, if requested to do so by the Minister of Conservation, to cancel any freehold register of land that is wholly within the cmca. If that land is subject to an interest, such as a lease, the Registrar-General must issue a separate register for that interest. When that interest comes to an end, the Registrar must, if requested to do so by the Minister of Conservation, cancel the interest register.

*Clause 24* deals with the case where a freehold register contains both land in the cmca as well as adjacent land. In such a case, the Registrar-General must, at the request of the Minister of Conservation or the owner of the adjacent land, cancel the existing register and issue a new freehold register for the adjacent land. Existing interests are preserved by being noted on the new freehold register for the adjacent land or, if they relate to land in the cmca, by the issue of a separate interest register.

*Clause 25* prevents claims to land in the cmca founded on adverse possession or prescriptive title.

*Clause 26* provides for redress to local authorities if, through the operation of *clause 18*, they lose any title to land, acquired by purchase, in the cmca. Applications for redress are made to the Minister of Conservation. The clause sets out the criteria that the Minister of Conservation must apply in considering applications. Claims for redress may not be made to the courts.

## Subpart 2—Public rights and powers over common marine and coastal area

*Clause 27* confers on every individual the right to enter, stay in or on, and leave the cmca, to pass and repass in, on, over, and across the cmca, and to engage in recreational activities in the cmca. These rights are subject to restrictions imposed under enactments, such as the imposition, under *clause 78*, of restrictions for the purpose of recognising wāhi tapu.

*Clause 28* confers on every person certain general rights of navigation within the marine and coastal area. The rights conferred are subject to any authorised restrictions and prohibitions.

*Clause 29* states that the Bill does not prevent the exercise of fishing rights. This provision is subject to the prohibitions or restrictions imposed, under *clause 78*, for the purpose of recognising a wāhi tapu.

*Clause 30* confers managerial powers, duties, and functions on the Minister of Conservation. An authorised delegate of the Minister has the power to direct persons to stop activities if the activities pose a risk to the public in the cmca or to the environment of the cmca, prejudice natural features of the cmca, or are incompatible with the exercise of access rights by members of the public, or detract from the peaceful enjoyment by members of the public of the cmca.

*Clause 31* makes owners of structures in the cmca liable to comply with directions to repair, alter, demolish, or remove structures if they pose or will, if not repaired, pose a risk to human health or safety or if they have an actual or likely adverse effect on the environment of the cmca.

## Subpart 3—Reclaimed land

*Clause 32* sets out definitions used in this subpart. A term of particular significance is **reclaimed land subject to this subpart**. This is “new” reclaimed land, in the sense that the reclamation is completed after the commencement of *Part 2*, as well as existing reclaimed land owned by the Crown and not set apart for a specified purpose (other than reclaimed land subsequently declared to be subject to the Land Act 1948). The clause also states that the purpose of this subpart is to provide certainty to business and development interests in respect of investments in reclamations and to balance the interests of all New Zealanders, including their interests in conservation.

*Clause 33* vests in the Crown the full legal and beneficial ownership in reclaimed land if, where the reclamation is authorised, a regional council approves, after the commencement of this Part, a plan of survey for the land or, where the reclamation is unauthorised, the Minister of Lands certifies to the effect that the reclamation was completed or terminated after the commencement of this Part.

*Clause 34* changes the status of existing reclaimed land owned by the Crown that is not set apart for a specified purpose. The full legal and beneficial ownership of all existing reclaimed land vests in the Crown absolutely, and any reclaimed land subject to the Foreshore and Seabed Act 2004 or the Land Act 1948 ceases to be subject to those Acts. However, the vesting does not affect lesser interests, such as leases, or the ownership in structures.

*Clause 35* empowers the Minister of Lands to declare any existing reclaimed land affected by *clause 34* or any reclaimed land that the Crown has subsequently acquired to be held subject to the Land Act 1948.

*Clause 36* empowers the Minister of Lands to perform and exercise the functions, duties, and powers of the Crown as owner in respect of every area of reclaimed land that is subject to this subpart.

*Clause 37* authorises the Minister of Lands to grant freehold interests and lesser interests (for example, leases or easements) in reclaimed land subject to this subpart. This is the only way that the Crown can grant interests in such reclaimed land.

*Clause 38* sets out who may apply to the Minister of Lands for the grant of an interest in reclaimed land. The persons on whose behalf the reclamations have been undertaken are eligible applicants. Network utility operators may apply for interests required to operate their utilities. In the case of reclaimed land that has been subject to this subpart for more than 10 years and in respect of which no application for a grant has been made, any person may apply for a grant.

*Clause 39* sets out the matters that the Minister of Lands must determine, such as whether an interest is to be granted and, if so, whether that interest should be the freehold or a lesser interest. The clause also sets out the matters the Minister must take into account in making the determination. These include the minimum interest in the reclaimed land that is reasonably needed, public benefit, any histor-

ical claims under the Treaty of Waitangi Act 1975, and the potential public access, amenity, and recreational values of the reclaimed land.

*Clause 40* concerns applications for an interest in reclaimed land that are made by a port company, a port operator, Auckland International Airport, or Wellington International Airport. Such applications must proceed on the basis that the applicant is to be granted a freehold interest in the reclaimed land unless the applicant does not want the freehold or there is a good reason for not granting it.

*Clause 41* requires the Minister to notify the applicant of the Minister's determination and of any subsequent variation of the determination.

*Clause 42* deals with machinery matters by which a determination to grant an interest in reclaimed land is effected. The Minister's grant is gazetted and, if the freehold is granted or the Minister considers it otherwise appropriate, referred to the Registrar-General of Land for registration.

*Clause 43* deals with the renewal of lesser interests in reclaimed land, such as leases. Applications for renewals are made to, and determined by, the Minister of Lands. The Minister takes into account the criteria stated in *clause 39(2)*. The holder of a lesser interest may apply for the grant of the freehold in the reclaimed land. The clause also applies to any renewals of existing interests in land reclaimed from the sea granted under provisions of the Resource Management Act 1991 that are repealed by the Bill.

*Clause 44* concerns pending applications for interests in reclaimed land made under the previous law. These applications were made to the Minister of Conservation under provisions of the Resource Management Act 1991 that are repealed by the Bill. The clause applies the general rule that matters in progress under a repealed enactment are completed under the repealed enactment. However, in some cases, applicants who have made applications that are still pending may opt to have their applications dealt with under this subpart. To exercise that option, an applicant for an interest in reclaimed land must be eligible to apply under this subpart and must not be in competition with any other applicant.

*Clause 45* makes special provision for the case where land has been reclaimed by a customary marine title group from its customary marine title area. In that case, the group may apply to the Minister of

Lands for the grant of an interest in the reclaimed land. The Minister deals with the application by applying the criteria stated in *clause 39(2)*, to the extent that they are applicable, and on the presumption that the customary marine title group is to be granted a freehold interest in the reclaimed land. The freehold granted to a group under this clause is not subject to the restrictions stated in *clauses 46 and 47*.

*Clauses 46 and 47* restrict the ways a proprietor who has been granted the freehold in reclaimed land may dispose of that freehold. Dispositions must comply with the following restrictions, as they become applicable. The proprietor must first offer the reclaimed land to the Crown. If the Crown does not wish to accept the offer, the proprietor must offer the land to the iwi or hapū exercising customary authority over the area in which the reclaimed land is located on terms that are not more favourable than those offered to the Crown. If the iwi or hapū does not wish to accept the offer, the proprietor must, by public notice, invite tenders for the acquisition of the land on terms that are not more favourable than those offered to the Crown. If the freehold interest in the land is disposed of in compliance with these restrictions, the record of the restrictions placed on the register will be removed. The restrictions do not apply to dispositions within a group of companies or otherwise between related companies, but remain applicable for subsequent dispositions to third parties.

### **Part 3** **Customary interests**

#### *Purpose*

*Clause 48* states that the purpose of this Part is to set out the full extent of the legal rights and interests that arise from customary interests in the common marine and coastal area.

#### **Subpart 1—Participation in conservation processes in common marine and coastal area**

*Clause 49* provides for the right of any affected iwi or hapū to participate in the stated conservation processes. The meanings of the terms

**iwi, hapū, and affected iwi and hapū** set out in this clause apply only to this subpart.

*Clauses 50 to 52* set out the notice requirements for, and the obligations on, decision makers in relation to, defined conservation processes, and the particular requirements for the management of stranded marine mammals.

### Subpart 2— Protected customary rights

*Clause 53* sets out the meaning of a protected customary right, and the test that applies to establishing a right. It also clarifies the matters that are not included within the scope of this right. Those exclusions relate to Māori fishery interests that have been provided for in other legislation, and activities regulated by or under the Wildlife Act 1953 and the Marine Mammals Protection Act 1978. Also excluded are activities that are based on a spiritual or cultural association, unless that association is manifested in a physical activity relating to natural or physical resources. The clause clarifies that the applicant group does not need to have an interest in land abutting the relevant part of the cmca to establish a protected customary right.

*Clause 54* states that protected customary rights are able to be exercised in a protected customary rights area (as specified in an order of the Court or in an agreement) without a resource consent, despite any prohibition, restriction, or imposition that would otherwise apply under sections 9 to 17 of the Resource Management Act 1991. The right depends on its being exercised in accordance with tikanga, the requirements of the Bill, the order made by the Court, and any controls that are imposed under *Schedule 2*. The group in whose favour an order or agreement is made has power to delegate or transfer the right, determine who may exercise it, limit its exercise, or derive commercial benefit from its exercise.

*Clause 55* provides for the exercise of the right to delegate or transfer a protected customary right.

*Clause 56* sets out the limitations on protected customary rights and their exercise.

*Clause 57* provides that resource consents must not be granted for an activity to be carried out in a protected customary rights area if that

activity would have more than a minor adverse effect on the exercise of the protected customary right. This prohibition does not apply if—

- the group holding the order of the Court or an agreement gives its written approval; or
- the activity is one allowed under certain exceptions for—
  - coastal permits to enable an existing aquaculture activity to continue; and
  - resource consents necessary for an existing nationally or regionally significant infrastructure and its associated operations (as defined in *clause 8(2)*); and
  - resource consents for activities relating to the exercise of any petroleum privilege (as referred to in *section 9(1)(b)*); and
  - emergency activities (as defined in *clause 8(2)*).

*Part 1 of Schedule 2* applies to certain decisions that must be made under this clause.

### *Controls*

*Clause 58* provides for the Minister to impose controls on the exercise of a protected customary right in certain circumstances. *Part 2 of Schedule 2* applies.

*Clause 59* sets out the notification requirements if controls are imposed under *clause 58*.

### Subpart 3— Customary marine title

#### *Determination of whether customary marine title exists*

*Clause 60* sets out the meaning of customary marine title and the test under which its existence may be established. It also clarifies that the threshold test of no substantial interruption is not failed if a resource consent is granted for an activity in the relevant part of the common marine and coastal area between the commencement of *Part 2* (the date when the status of that area takes effect under this Bill) and the effective date (the date when an applicant group is recognised under *Part 4* as a customary marine title group).

*Clause 61* provides for certain evidentiary matters that may be relevant, but are not necessarily determinative, for the test under *clause*

60. *Clause 62* ensures that customary transfers do not count against a claim for customary marine title.

#### *Rights under customary marine title*

*Clauses 63 and 64* summarise the rights that are exercisable by a customary marine title group under a customary marine title order or an agreement, as set out in *clauses 65 to 91*. These rights are exercisable on and after the effective date (as defined in *clause 7*). The rights provide an interest in land, but that does not include the right to alienate or otherwise dispose of any part of a customary marine title area. Rights may be transferred or delegated in accordance with tikanga, and may be used to derive commercial benefit.

#### *RMA permission right*

*Clauses 65 to 67* describe the scope of this right, which is to empower a customary marine title group to permit or withhold permission for an activity in a customary marine title area at any time before the consent would otherwise commence under section 116 of the Resource Management Act 1991. A resource consent must not commence without that permission. The right does not apply in respect of any accommodated activities. There is no right of appeal against a decision of a customary marine title group, nor of objection.

*Clauses 68 and 69* contain the offence and penalty provisions for enforcement by the High Court of an RMA permission right.

#### *Conservation permission right*

*Clause 70* defines this right as one enabling a customary marine title group to permit or withhold permission for certain activities undertaken within a customary marine title area under specified conservation legislation relating to marine reserves, conservation protected areas, and concessions. The right does not apply in respect of accommodated activities.

*Clauses 71 and 72* describe the obligations on the Minister of Conservation or Director-General, as the case requires, in relation to this right and those on the customary marine title group in exercising a conservation permission right in its customary marine title area.



*Protection principles*

*Clauses 73 and 74* relate to the protection principles that are relevant to a determination that is within the scope of a conservation permission right.

*Marine mammal watching permits*

*Clause 75* sets out obligations on the Director-General in exercising certain powers under the Marine Mammals Protection Regulations 1992 within a customary marine title area.

*New Zealand coastal policy statement*

*Clause 76* provides for the consultation of a customary marine title group in the processes relating to a New Zealand coastal policy statement.

*Wāhi tapu protection right*

*Clauses 77 to 80* provide for the recognition and protection of wāhi tapu or a wāhi tapu area within a customary marine title area. If the customary marine title group establishes its connection with the wāhi tapu or wāhi tapu area in accordance with tikanga, it may exercise the protection right by imposing prohibitions or restrictions on access to the protected place. These conditions must be incorporated into a customary marine title order or agreement. Enforcement of wāhi tapu conditions is provided for by way of a summary offence and penalty provision. There is provision for customary marine title groups to appoint, and be responsible for the functions (and payment) of, wardens, in accordance with regulations made under the Bill.

*Ngā taonga tūturu*

*Clause 81* provides that a customary marine title group is, prima facie, the owner of any taonga tūturu found after the effective date in that group's customary marine title area. This reverses the presumption under section 11(1) of the Protected Objects Act 1975. The other provisions of that section are applied, with certain modifications to accommodate the new presumption of ownership, with provision for application to the Māori Land Court to determine contested ownership.

### *Status of minerals*

*Clause 82* provides that ownership of non-nationalised minerals (that is, minerals other than petroleum, gold, silver, and uranium in their natural state) in a customary marine title area passes to the customary marine title group on the effective date. The reservation of non-nationalised minerals under section 11(1) and (2) of the Crown Minerals Act 1991 ceases to apply to those minerals within a customary marine title area at that date. This provision does not limit or have effect on the matters reserved in *subclause (3)*.

*Clause 83* provides for the continuation of privileges and rights, obligations, powers, and functions under the Crown Minerals Act 1991 arising from privileges in existence immediately before the effective date. The clause also provides that on and after the date when an applicant group first applies to the High Court for an order for customary marine title or gives notice of an intention to seek an agreement, royalties due to the Crown are payable by the Crown to the customary marine title group. This applies in relation to the ongoing exercise of all rights and privileges arising under the Crown Minerals Act 1991 in relation to privilege at the effective date.

### *Planning document*

*Clauses 84 to 86* provide for the right of a customary marine title group to prepare a planning document in relation to its customary marine title area for the purpose of the sustainable management of natural and physical resources within that area and the protection of the cultural identity and historic heritage of the group. A planning document may only relate to the regulatory functions of the relevant local authorities, the Historic Places Trust, the Minister of Conservation or Director-General under the Conservation Act 1987. A planning document must be lodged with the relevant agencies, and their effect is to impose specified obligations on the agencies with which the document is lodged.

### *Recognition of planning documents*

*Clauses 87 to 90* provide particulars as to the obligation to recognise a planning document lodged with the specified agencies.

*Responsibilities of regional councils where  
planning documents lodged*

*Clause 91* sets out the particular obligations on regional councils in relation to examining and, if necessary, amending their own regional documents to reflect the matters included in the planning document of a customary marine title group.

**Part 4**  
**Administrative and miscellaneous matters**

Subpart 1—Procedure for recognition of  
customary interests

*Recognition of customary interests*

*Clause 92* introduces the avenues for recognition of a customary interest: agreement, Court order, or statute.

*Recognition by agreement*

*Clause 93* provides for recognition of a customary interest by agreement between an applicant group and the Crown through the responsible Minister. An important limitation is that an agreement may not be entered into unless the applicant group has given the requisite notice to the Minister not later than 6 years after *Part 4* comes into force. *Clause 94* provides that an agreement comes into force by Order in Council and has no effect before the date appointed by the Order in Council.

*Clause 95* provides for the necessary steps to be taken for registration of the agreement in the marine and coastal area register, for notification to the public via the *Gazette*, and for specific notification to specific parties.

*Recognition by order of Court*

*Clause 96* confers exclusive jurisdiction on the High Court to make an order (a **recognition order**) recognising a protected customary right or customary marine title.

*Clause 97* allows the Court hearing an application for a recognition order to refer a question of tikanga to the Māori Appellate Court or to obtain the opinion of a court expert (a **pūkenga**) on the question.

### *Application for recognition orders*

*Clauses 98 to 107* are the machinery provisions regulating how an application for a recognition order is made. Standing to apply is conferred on an applicant group. However, in line with recognition agreements, an important limitation is the requirement in *clause 98(2)* that the application must be filed not later than 6 years after *Part 4* comes into force. The other clauses in this group are generally unremarkable. Significant details are that any interested person who has duly filed a notice of intention to appear may do so (*clause 103*) and that, although an applicant group bears the onus of proving its entitlement, there is a presumption, in the absence of proof to the contrary, that a customary interest has not been extinguished.

### *Recognition orders*

*Clause 108* provides for the form of a recognition order, that is, what detail the order must contain. The order must be sealed on the application of the applicant group (*clause 109*) and *clause 110* requires the chief executive to notify a recognition order and give notice of the outcome of any appeal against an order.

*Clause 111* provides for the variation and cancellation of a recognition order. The application for variation or cancellation is restricted to the holder of the order or, in limited circumstances, representative of the group to which the order applies. In *clause 111(5)* are set out safeguards that the Court must be satisfied have been observed before it may vary or cancel an order.

### *Appeal rights*

*Clause 112* provides that a party to a proceeding under *Part 4* has an appeal to the Court of Appeal on a matter of fact or law.

### *Registration of recognition order*

*Clause 113* requires the chief executive to register a recognition order in the marine and coastal area register.

## Subpart 2—Marine and coastal area register

*Clause 114* requires the chief executive to keep a marine and coastal area register as a permanent record of the agreements and orders

made under this Part. *Clauses 115 to 117* are standard provisions relating to keeping the register, inspection and copying, and the application of the Privacy Act 1993.

### Subpart 3—Regulations, bylaws, and miscellaneous matters

#### *Regulations and bylaws*

*Clauses 118 to 120* provide regulation-making and bylaw-making powers necessary for and relevant to administrative and management functions.

#### *References*

*Clause 121* provides for the use in any instrument of the term common marine and coastal area in substitution for the term public foreshore and seabed, unless the instrument is a document filed, served, or issued in proceedings commenced under, or in reliance on, the Foreshore and Seabed Act 2004.

#### *Transitional arrangements*

*Clause 122* deals with pending proceedings under the Foreshore and Seabed Act 2004. All pending applications made under that Act to the Māori Land Court for customary rights orders must be transferred from the Māori Land Court to the High Court. The High Court must treat those applications as though they were applications for a recognition order under this Act in respect of protected customary rights. The High Court must give priority to those transferred applications ahead of applications for recognition orders commenced under this Act. An application made under section 33 of the Foreshore and Seabed Act 2004 for a finding that a group would have held territorial customary rights must be treated by the High Court as an application for an order, under this Act, recognising a customary marine title.

#### *Notices*

*Clause 123* provides for how notices may be given and the presumption as to the receipt of a notice.

*Amendments to other enactments*

*Clause 124* provides for the consequential amendments set out in *Schedule 3*.

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*Hon Christopher Finlayson*

# **Marine and Coastal Area (Takutai Moana) Bill**

Government Bill

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### **Preamble**

- (1) In June 2003, the Court of Appeal held in *Attorney-General v Ngāti Apa* [2003] 3 NZLR 643 that the Māori Land Court had jurisdiction to determine claims of customary ownership to areas of the foreshore and seabed. The Foreshore and Seabed Act 2004 (the **2004 Act**) was enacted partly in response to the Court of Appeal’s decision: 5
- (2) In its *Report on the Crown’s Foreshore and Seabed Policy* (Wai 1071), the Waitangi Tribunal found the policy underpinning the 2004 Act in breach of the Treaty of Waitangi. The Tribunal raised questions as to whether the policy complied with the rule of law and the principles of fairness and non-discrimination against a particular group of people. Criticism was voiced against the discriminatory effect of the 2004 Act on whānau, hapū, and iwi by the United Nations Committee on the Elimination of Racial Discrimination and the United Nations Special Rapporteur: 10  
15
- (3) In 2009, a Ministerial Review Panel was set up to provide independent advice on the 2004 Act. It, too, viewed the Act as severely discriminatory against whānau, hapū, and iwi. The Panel proposed the repeal of the 2004 Act and engagement with Māori and the public about their interests in the foreshore and seabed, recommending that new legislation be enacted to reflect the Treaty of Waitangi and to recognise and provide for the interests of whānau, hapū, and iwi and for public interests in the foreshore and seabed: 20  
25

- (4) This Act takes account of the intrinsic, inherited rights of whānau, hapū, and iwi, derived in accordance with tikanga and based on their connection with the foreshore and seabed. It translates those inherited rights into legal rights and interests that are inalienable, enduring, and able to be exercised so as to sustain all the people of New Zealand and the coastal marine environment for future generations: 5

**The Parliament of New Zealand therefore enacts as follows:**

**1 Title**

- This Act is the Marine and Coastal Area (Takutai Moana) Act 2010 and may also be cited as— 10
- (a) the Marine and Coastal Area Act 2010; or
- (b) te Takutai Moana Act 2010.

**2 Commencement**

- (1) The following provisions come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates: 15
- (a) the provisions of **Part 3**; and
- (b) the provisions of **Part 4**. 20
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1**

**Preliminary provisions**

*Outline*

25

**3 Outline of Act**

- (1) This section is a guide to the overall scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act.
- (2) This Part— 30
- (a) sets out the purpose of the Act and acknowledges the importance of the marine and coastal area to all New

- Zealanders and the customary interests of whānau, hapū, and iwi in that area; and
- (b) states that, in order to take account of the Treaty of Waitangi, the Act recognises, and promotes the exercise of, the customary interests of iwi, hapū, and whānau in the common marine and coastal area of New Zealand; and
- (c) records the scope of the Crown’s sovereignty; and
- (d) defines terms used in this Act; and
- (e) provides that the Act binds the Crown.
- (3) **Part 2** sets out the legal arrangements that are to apply to the common marine and coastal area, including,—
- (a) in **subpart 1**, provision for—
- (i) the special status of the common marine and coastal area as an area that is incapable of ownership; and
- (ii) the repeal of the Foreshore and Seabed Act 2004 and restoration of any customary interests extinguished by that Act; and
- (iii) matters relevant to the legal status of existing interests in the area, including roads and minerals; and
- (b) in **subpart 2**, provision for ongoing public rights and powers in the common marine and coastal area, namely,—
- (i) rights of access; and
- (ii) rights of navigation; and
- (iii) rights of fishing; and
- (c) in **subpart 3**, provisions relating to the reclamation of land from the marine and coastal area.
- (4) **Part 3** provides the full extent of the customary interests that may be recognised in the common marine and coastal area of New Zealand, namely,—
- (a) in **subpart 1**, the participation of affected iwi and hapū in the specified conservation processes relating to the common marine and coastal area; and
- (b) in **subpart 2**, the scope and effect of protected customary rights that may be recognised by an order of the High Court or under an agreement; and

- (c) in **subpart 3**, the scope and effect of customary marine title that may be recognised by order of the High Court or under an agreement.
- (5) **Part 4** provides,—
  - (a) in **subpart 1**,—
    - (i) for the responsible Minister, on behalf of the Crown, to enter into agreements with applicant groups for recognition of protected customary rights or customary marine title that may be brought into effect by Order in Council; and 5
    - (ii) for the jurisdiction of the High Court to hear and determine applications for recognition orders; and 10
  - (b) in **subpart 2**, for a marine and coastal area register to be set up for the recording of orders awarded, and agreements made, under **subpart 1**; and 15
  - (c) in **subpart 3**, for regulation-making and bylaw-making powers, the giving of notices, transitional matters, and consequential amendments.
- (6) The 3 schedules set out— 20
  - (a) machinery provisions relevant to—
    - (i) certain accommodated activities; and
    - (ii) decision making concerning resource consent applications that may adversely affect the exercise of protected customary rights; and 25
  - (b) consequential amendments.

*Purpose and acknowledgements*

**4 Purpose**

- (1) The purpose of this Act is to—
  - (a) establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand; and 30
  - (b) recognise the mana tuku iho exercised in the marine and coastal area by iwi and hapū as tangata whenua; and
  - (c) provide for the exercise of customary interests in the common marine and coastal area; and 35



- (d) acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).
- (2) To that end, this Act—
  - (a) repeals the Foreshore and Seabed Act 2004 and restores customary interests extinguished by that Act; and 5
  - (b) contributes to the continuing exercise of mana tuku iho in the marine and coastal area; and
  - (c) gives legal expression to customary interests; and
  - (d) recognises and protects the exercise of existing lawful rights and uses in the marine and coastal area; and 10
  - (e) recognises, through the protection of public rights of access, navigation, and fishing, the importance of the common marine and coastal area—
    - (i) for its intrinsic worth; and
    - (ii) for the benefit, use, and enjoyment of the public 15 of New Zealand.

**5 Treaty of Waitangi (te Tiriti o Waitangi)**

In order to take account of the Treaty of Waitangi (te Tiriti o Waitangi), this Act recognises, and promotes the exercise of, customary interests of Māori in the common marine and coastal area by providing,— 20

- (a) in **subpart 1 of Part 3**, for the participation of affected iwi and hapū in the specified conservation processes relating to the common marine and coastal area; and
- (b) in **subpart 2 of Part 3**, for customary rights to be recognised and protected; and 25
- (c) in **subpart 3 of Part 3**, for customary marine title to be recognised and exercised.

**6 Rights and obligations under international law not affected** 30

To avoid doubt, this Act does not affect the sovereignty of New Zealand under international law over the marine and coastal area, including the airspace above it, the rights and obligations of New Zealand under international law pursuant to that sovereignty, or the provisions in any other enactment relating to any such rights and obligations under international law. 35

- 7 Interpretation**
- In this Act, unless the context otherwise requires,—
- accommodated activity** has the meaning given in **section 8**
- affected iwi or hapū** has the meaning given in **section 49(1)**
- agreement** means an agreement— 5
- (a) made under **section 93** between an applicant group and the responsible Minister on behalf of the Crown to recognise and provide, as the case may be, for—
- (i) protected customary rights; or
- (ii) customary marine title; and 10
- (b) brought into effect under **section 94**
- applicant group**—
- (a) means 1 or more iwi, hapū, and whānau groups that seeks recognition under **Part 4** of their protected customary rights or customary marine title by— 15
- (i) a recognition order; or
- (ii) an agreement; and
- (b) includes a legal entity (whether corporate or unincorporate) or natural person appointed by 1 or more iwi, hapū, and whānau groups to be the representative of that applicant group and to apply for, and hold, an order or enter into an agreement on behalf of the applicant group 20
- aquaculture activities** has the meaning given in section 2(1) of the Resource Management Act 1991
- chief executive** means the Secretary for Justice 25
- coastal permit** has the meaning given in section 87(c) of the Resource Management Act 1991
- common marine and coastal area** means the marine and coastal area other than—
- (a) specified freehold land located in that area; and 30
- (b) any area that, immediately before the commencement of **Part 2**, is both owned by the Crown and also has a status of any of the following kinds:
- (i) a conservation area within the meaning of section 2(1) of the Conservation Act 1987: 35
- (ii) a national park within the meaning of section 2 of the National Parks Act 1980:

- (iii) a reserve within the meaning of section 2(1) of the Reserves Act 1977:
- (iv) a wildlife management reserve, wildlife refuge, or wildlife sanctuary within the meaning of section 2(1) of the Wildlife Act 1953; and 5
- (c) the bed of Te Whaanga Lagoon in the Chatham Islands **concession** means a lease, a permit, a licence, or an easement granted under any of the following enactments:
  - (a) Part 3B of the Conservation Act 1987:
  - (b) section 49 of the National Parks Act 1980: 10
  - (c) section 59A of the Reserves Act 1977:
  - (d) sections 14AA and 22 of the Wildlife Act 1953
- consent authority** has the meaning given in section 2(1) of the Resource Management Act 1991
- conservation permission right** means the permission right 15 that a customary marine title group may exercise under a customary marine title order or an agreement in relation to the conservation activities specified in **section 70(3)**
- conservation process** means any of the conservation processes specified in **section 49** 20
- conservation protected area** means the part of the common marine and coastal area, including fresh water within that area, that is protected, primarily for the purposes of conserving natural resources or the historical and cultural heritage of the area, under 1 or more of the following Acts: 25
  - (a) the Conservation Act 1987:
  - (b) the National Parks Act 1980:
  - (c) the Reserves Act 1977:
  - (d) the Wildlife Act 1953
- contact details**, as applying to an applicant group, protected customary rights group, or customary marine title group, means,— 30
  - (a) in relation to an individual, the full street address where the individual usually lives or where that individual can be contacted; and 35
  - (b) in relation to a body corporate or unincorporated, the full street address of the body's place of business or head office; and

(c) in every case, an email address or telephone numbers

**Court** means the High Court

**Crown** has the meaning given in section 2 of the Public Finance Act 1989

**Crown entity** has the meaning given in section 7 of the Crown Entities Act 2004 5

**customary marine title** means the customary interests—

(a) established by an applicant group in accordance with **subpart 3 of Part 3**; and

(b) recognised by— 10

(i) a customary marine title order; or

(ii) an agreement

**customary marine title area** means the part of the common marine and coastal area where a customary marine title order applies or in respect of which an agreement is made 15

**customary marine title group** —

(a) means an applicant group to which a customary marine title order applies or with which an agreement is made; and

(b) includes a delegate or transferee of the group if the delegation or transfer is made in accordance with tikanga 20

**customary marine title order** means an order of the Court granted in recognition of a customary marine title of a customary marine title group in respect of a customary marine title area 25

**Director-General** means the Director-General of Conservation

**effective date** means the date on which—

(a) a customary marine title order is registered under **section 113**; or 30

(b) an agreement is made and brought into effect in accordance with **sections 91 and 94**

**environment** has the meaning given in section 2(1) of the Resource Management Act 1991

**High Court Rules** has the same meaning as in the Judicature Act 1908 35

**infrastructure** has the meaning given in section 2(1) of the Resource Management Act 1991

**local authority** has the meaning given in section 5(1) of the Local Government Act 2002

**mana tuku iho** means inherited right or authority derived in accordance with tikanga

**Māori Appellate Court** means the court continued by section 50 of Te Ture Whenua Maori Act 1993

**Māori Land Court** means the court continued by section 6 of Te Ture Whenua Maori Act 1993

**marine and coastal area**—

- (a) means the area that is bounded,—  
(i) on the landward side, by the line of mean high-water springs; and  
(ii) on the seaward side, by the outer limits of the territorial sea; and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the airspace above, and the water space (but not the water) above, the areas described in **paragraphs (a) and (b)**; and
- (d) includes the subsoil, bedrock, and other matter below the areas described in **paragraphs (a) and (b)**

**mineral** has the meaning given in section 2(1) of the Crown Minerals Act 1991

**plan** has the meaning given in section 43AA of the Resource Management Act 1991, and also includes any proposed plan

**planning document** means the document that may be prepared by a customary marine title group under **section 84**

**privilege**, in relation to any mineral,—

- (a) has the same meaning as the definition of existing privilege in section 106 of the Crown Minerals Act 1991; and
- (b) also means prospecting, exploration, and mining permits granted under that Act, and their associated mining operations (within the meaning of section 2(1) of that Act)

**proposed plan** has the meaning given in section 43AAC of the Resource Management Act 1991

**protected customary right** means an activity, use, or practice—

- (a) established by an applicant group in accordance with **subpart 2 of Part 3**; and
- (b) recognised by— 5
  - (i) a protected customary rights order; or
  - (ii) an agreement

**protected customary rights area** means the part of the common marine and coastal area where a protected customary rights order or an agreement applies 10

**protected customary rights group**—

- (a) means an applicant group to which a protected customary rights order applies or with which an agreement is made; and
- (b) includes a delegate or transferee of the group if the delegation or transfer is made in accordance with tikanga 15

**protected customary rights order** means an order of the Court granted in recognition of the protected customary rights of a protected customary rights group in respect of a protected customary rights area 20

**public notice** has the meaning given in section 2(1) of the Resource Management Act 1991

**quota management system** has the meaning given in section 2(1) of the Fisheries Act 1996

**recognition order** means a protected customary rights order or a customary marine title order, as the case requires, made under **section 96(1)** 25

**regional council** has the meaning given in section 2(1) of the Resource Management Act 1991

**regional document** has the meaning given in **section 91(1)** 30

**register** means the marine and coastal area register that must be kept by the chief executive in accordance with **subpart 2 of Part 4**

**Registrar** means the Registrar-General of Land appointed under section 4 of the Land Transfer Act 1952 35

**resource consent** has the meaning given in section 2(1) of the Resource Management Act 1991

**responsible Minister** means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**RMA permission right** means the right held by a customary marine title group under a customary marine title order or agreement as provided for in **sections 65 and 67** 5

**road** means—

- (a) a road within the meaning of section 315(1) of the Local Government Act 1974 or section 43(1) of the Government Roding Powers Act 1989; and 10
- (b) a motorway within the meaning of section 2(1) of the Government Roding Powers Act 1989; and
- (c) the supporting subsoil of any road described in **paragraph (a) or (b)**

**ship** has the meaning given in section 2(1) of the Maritime Transport Act 1994 15

**specified freehold land** means any land that, immediately before the commencement of **Part 2**, is—

- (a) Maori freehold land within the meaning of section 4 of Te Ture Whenua Maori Act 1993; or 20
- (b) set apart as a Maori reservation under Te Ture Whenua Maori Act 1993; or
- (c) registered under the Land Transfer Act 1952 and in which a person other than the Crown or a local authority has an estate in fee simple that is registered under that Act; or 25
- (d) subject to the Deeds Registration Act 1908 and in which a person other than the Crown or a local authority has an estate in fee simple under an instrument that is registered under that Act 30

**structure**—

- (a) has the meaning given in section 2(1) of the Resource Management Act 1991; and
- (b) includes any breakwater, groyne, mole or other such structure that is made by people and fixed to land 35

**taonga tūturu** has the meaning given in section 2(1) of the Protected Objects Act 1975

**territorial authority** has the meaning given in section 5(1) of the Local Government Act 2002

**territorial sea** means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

5

**tikanga** means Māori customary values and practices

**wāhi tapu** and **wāhi tapu area** have the meanings given to the terms **wahi tapu** and **wahi tapu area** in section 2 of the Historic Places Act 1993

**warden** means a person appointed under **section 79**.

10

## 8 Meaning of accommodated activity

(1) In this Act, **accommodated activity** means any of the following, to the extent that they are within a customary marine title area:

(a) an activity that can be lawfully undertaken without a resource consent:

15

(b) an application for a resource consent, whenever it is lodged, for a minimum impact activity (as defined in section 2(1) of the Crown Minerals Act 1991) relating to petroleum (as defined in section 2(1) of that Act):

20

(c) an application for a resource consent first lodged before the effective date:

(d) an existing activity that is undertaken in accordance with a resource consent or other lawful approval granted under an enactment that was replaced by the Resource Management Act 1991:

25

(e) an activity for which there is an existing use right under the Resource Management Act 1991:

(f) an existing structure or existing infrastructure that is nationally or regionally significant, and its associated operations:

30

(g) an existing marine reserve and the activities necessary to manage the reserve:

(h) an existing conservation protected area and the activities necessary to manage the area:

35

(i) an existing marine mammal sanctuary and the activities necessary to manage the sanctuary:

(j) an existing concession in a conservation protected area:



- (k) an existing permit issued under regulation 12 of the Marine Mammals Protection Regulations 1992:
  - (l) a coastal permit issued under the Resource Management Act 1991 necessary to enable aquaculture activities to continue in that area, provided there is no change to the area of the coastal space occupied by the aquaculture activity for which the coastal permit was granted: 5
  - (m) an emergency activity:
  - (n) scientific research or monitoring that is undertaken or funded by— 10
    - (i) the Crown:
    - (ii) any Crown agent within the meaning of section 10(1) of the Crown Entities Act 2004:
    - (iii) the regional council with statutory functions in the region where the research or monitoring is to take place: 15
  - (o) a deemed accommodated activity (as defined in **section 9**).
- (2) For the purposes of this section,—
- associated operations** means, in relation to nationally or regionally significant structures and infrastructure, operations that are essential to the function of the structure or infrastructure, including— 20
- (a) the renewal of any existing resource consent; and
  - (b) maintenance, remedial, restoration, and minor upgrading work of an existing structure or existing infrastructure; and 25
  - (c) the upgrading of existing infrastructure, provided the effects on the environment of the upgraded infrastructure, assessed at the date when an application is made to upgrade the existing infrastructure, are the same or similar in character, intensity, and scale as the effects of the infrastructure that is upgraded; and 30
  - (d) the replacement or relocation of an existing structure that is part of existing infrastructure by a new structure of the same or similar nature (whether or not a resource consent is required); and 35
  - (e) the relocation of existing infrastructure, if—

- (i) that is essential to the continuing operation of the infrastructure; and
  - (ii) the effects on the environment of the new location, assessed at the date when an application is made to relocate the existing infrastructure, are the same or similar in character, intensity, and scale as the effects of the infrastructure in its previous location; and 5
  - (f) dredging that is essential to the ongoing operation of a port 10
- emergency activity—**
- (a) means an activity undertaken in a customary marine title area to prevent, remove, or reduce—
    - (i) an actual or imminent danger to human health or safety; or 15
    - (ii) a danger to the environment or property so significant that immediate action is required; and
  - (b) includes all necessary coastal protection work undertaken in a customary marine title area by a local authority; and 20
  - (c) includes any activity authorised by legislation for the purpose of preventing any of the matters referred to in **paragraph (a)**, including an activity in relation to—
    - (i) a state of emergency declared under the Civil Defence Emergency Management Act 2002; or 25
    - (ii) a biosecurity emergency declared under section 144 of the Biosecurity Act 1993; or
    - (iii) an emergency or special emergency declared under section 49B or 136 of the Hazardous Substances and New Organisms Act 1996; or 30
    - (iv) a marine oil spill response under the Maritime Transport Act 1994; or
    - (v) an emergency within the meaning of section 2(1) of the Fire Service Act 1975; or
    - (vi) emergency works described in section 330 of the Resource Management Act 1991 35

**existing**, in relation to the activities listed in **paragraphs (b) to (l)** of the definition of **accommodated activity** and the definition of associated operations, means an activity for which,

before the effective date, all the necessary resource consents (if any) have been granted, whether or not any or all of those consents have been given effect to before the effective date **nationally or regionally significant**, in relation to an existing structure or infrastructure, means a structure or infrastructure and its associated operations that are—

- (a) not unlawful; and
- (b) owned, operated, or carried out by 1 or more of—
  - (i) the Crown, including a Crown entity:
  - (ii) a local authority, including a council-controlled organisation:
  - (iii) a network utility operator (within the meaning of section 166 of the Resource Management Act 1991):
  - (iv) an electricity generator as defined in section 2(1) of the Electricity Act 1992:
  - (v) a port company as defined in the Port Companies Act 1988:
  - (vi) a port operator (as defined in section 650J(6) of the Local Government Act 1974):
  - (vii) Maritime New Zealand (within the meaning of section 429 of the Maritime Transport Act 1994):
  - (viii) the Auckland Regional Transport Authority (as established under section 7 of the Local Government (Auckland) Amendment Act 2004).

## 9 Meaning of deemed accommodated activity

(1) For the purpose of **section 8(1)(o)**,—

**deemed accommodated activity** means—

- (a) a nationally or regionally significant structure or infrastructure and its associated operations that is an essential work the construction of which is, at any time after the commencement of **Part 3**, either—
  - (i) agreed in principle in accordance with **Part 1 of Schedule 1** (subject to all necessary consents being obtained) by the group which holds a customary marine title order in the area relevant to the proposed structure or infrastructure; or

- (ii) classified by the Minister for Land Information as a deemed accommodated activity (subject to all necessary resource consents being obtained) in accordance with **Part 1 of Schedule 1**; or
- (b) any activity— 5
- (i) that, at any time after the commencement of **Part 3**, is necessary for, or reasonably related to, prospecting, exploration, mining operations, or mining (as those terms are defined in section 2 of the Crown Minerals Act 1991) for petroleum under a privilege; and 10
- (ii) for which an agreement or an arbitral award has been made under **Part 2 of Schedule 1**; or
- (c) any activity—
- (i) that, at any time after the commencement of **Part 3**, is required for the exercise of a privilege in existence immediately before the effective date and of the rights associated with that privilege, as provided for in **section 83(1)**; and 15
- (ii) for which an agreement or arbitral award has been made under **Part 2 of Schedule 1** 20
- essential work** means a nationally or regionally significant structure or infrastructure that is essential—
- (a) to the wellbeing of the region in which it is to be located; 25
- or
- (b) to the national interest.
- (2) An agreement that a proposed structure or infrastructure or an activity relating to petroleum is a deemed accommodated activity under **paragraph (a)(i)** or **(b)(ii)** of the definition of deemed accommodated activity in **subsection (1)**, or is classified as such, or is the subject of an arbitral award, under **paragraph (a)(ii)** or **(b)(ii)** of that definition does not limit the discretion of a consent authority— 30
- (a) to decline an application for a resource consent; or
- (b) to impose conditions on the resource consent. 35

## 10 Act binds the Crown

This Act binds the Crown.

## Part 2

### Common marine and coastal area

#### Subpart 1—Interests in common marine and coastal area

- 11 Special status of common marine and coastal area** 5
- (1) The common marine and coastal area is accorded a special status by this section.
- (2) Neither the Crown nor any other person owns, or is capable of owning, the common marine and coastal area, as in existence from time to time after the commencement of this Part. 10
- (3) On the commencement of this Part, the Crown and every local authority are divested of every title as owner, whether under any enactment or otherwise, of any part of the common marine and coastal area.
- (4) Whenever, after the commencement of this Part, whether as a result of erosion or other natural occurrence, any land owned by the Crown or a local authority becomes part of the common marine and coastal area, the title of the Crown or the local authority as owner of that land is, by this section, divested. 15
- (5) The special status accorded by this section to the common marine and coastal area does not affect— 20
- (a) the recognition of customary interests in accordance with this Act; or
- (b) any enactment that regulates the use of, or activities in or under, the common marine and coastal area or provides for the regulation of such use or activities; or 25
- (c) any enactment that imposes a prohibition, limitation, or restriction in respect of any area within the common marine and coastal area or provides for the imposition of such a prohibition, limitation, or restriction; or 30
- (d) any enactment that accords a status of any kind to any area within the common marine and coastal area or that provides for such status to be accorded; or
- (e) any enactment that confers powers or imposes duties to grant resource consents or permits (including the power to impose charges) within any part of the common marine and coastal area. 35

- (6) In this section, **enactment** includes bylaws, regional plans, and district plans.

**12 Areas acquiring status under certain enactments may vest in Crown**

- (1) This section applies to any defined area within the common marine and coastal area, other than a customary marine title area, that acquires a status of any of the following kinds:
- (a) a conservation area within the meaning of section 2(1) of the Conservation Act 1987:
  - (b) a national park within the meaning of section 2 of the National Parks Act 1980:
  - (c) a reserve within the meaning of section 2 of the Reserves Act 1977:
  - (d) a wildlife management reserve, wildlife refuge, or wildlife sanctuary within the meaning of section 2(1) of the Wildlife Act 1953.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Conservation, vest any defined area to which this section applies in the Crown.
- (3) When an Order in Council made under this section comes into force, the defined area to which it relates ceases to be part of the common marine and coastal area.
- (4) Every Order in Council made under this section is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

**13 Boundary changes of marine and coastal area**

- (1) When land is, as a result of natural processes, such as erosion, moved below the line of mean high-water springs, the land becomes part of the common marine and coastal area unless—
- (a) the owner of the land is a person other than the Crown or a local authority; and
  - (b) the owner's title to the land is defined by fixed boundaries.
- (2) When land in the common marine and coastal area is, as a result of natural processes, such as accretion, moved above

the line of mean high-water springs, the land ceases to be part of the common marine and coastal area.

- (3) Any land that ceases to be part of the common marine and coastal area, in the circumstances described in **subsection (2)**, vests in the Crown and is subject to the Land Act 1948. 5
- (4) **Subpart 3** makes provision for reclaimed land.

#### **14 Repeal of Foreshore and Seabed Act 2004**

The Foreshore and Seabed Act 2004 (2004 No 93) is repealed.

#### **15 Customary interests restored**

- (1) Any customary interests in the common marine and coastal area that were extinguished by the Foreshore and Seabed Act 2004 are restored and given legal expression in accordance with this Act. 10
- (2) Any application, under this Act, for the recognition of customary interests must be considered and determined as if the Foreshore and Seabed Act 2004 had not been enacted. 15

#### **16 Continued ownership of roads in common marine and coastal area**

- (1) A road formed in the common marine and coastal area that, as at the commencement of this Part, is owned by the Crown, a local authority, or other person continues to be owned by the Crown, the local authority, or other person. 20
- (2) If, at any time after the commencement of this Part, a road is formed in the common marine and coastal area, the Crown, local authority, or other person that commissioned the formation of the road acquires the ownership in the road. 25
- (3) Structures, such as bridges and culverts, that form part of a road in the common marine and coastal area are—
  - (a) if the owner is the Crown or a local authority, owned as separate property under **section 19**: 30
  - (b) if the owner is a person other than the Crown or a local authority, owned as part of the road.
- (4) This section overrides **sections 11** and **19**.

**17 Continued Crown ownership of minerals**

- (1) Nothing in **section 11 or 82** affects section 10 of the Crown Minerals Act 1991, which provides that all petroleum, gold, silver, and uranium existing in its natural condition in land is the property of the Crown. 5
- (2) For the purposes of section 11 of the Crown Minerals Act 1991, the operation of **section 11 or 18** is deemed to be an alienation from the Crown and, accordingly, every mineral (other than pounamu to which section 3 of the Ngai Tahu (Pounamu Vesting) Act 1997 applies) existing in its natural condition in the common marine and coastal area is reserved in favour of the Crown. 10
- (3) **Section 11** does not affect any privileges and the Crown Minerals Act 1991 continues to apply to those privileges in all respects. 15
- (4) This section is subject to **section 82**.

**18 Additions to common marine and coastal area**

- (1) If, at any time after the commencement of this Part, the Crown or a local authority acquires, whether by purchase, gift, exchange, or by operation of law, any specified freehold land that is wholly or partly within the marine and coastal area, then that land, to the extent that it is within the coastal marine area, becomes on that acquisition part of the common marine and coastal area. 20
- (2) **Subsection (1)** does not apply to any specified freehold land that is accorded a status under an enactment other than this Act. 25
- (3) Any road within the marine and coastal area becomes part of the common marine and coastal area if its use or construction as a road has been stopped or failed to commence. 30

**19 Rights of owners of structures**

- (1) This section applies to any structure that is, on or after the commencement of this Part, fixed to, or under or over, any part of the common marine and coastal area.
- (2) Each structure to which this section applies— 35



- (a) is to be regarded as personal property and not as land or as an interest in land; and
  - (b) does not form part of the common marine and coastal area.
- (3) A person who, immediately before the commencement of this Part, had an interest in a structure to which this section applies continues to have that interest in the structure as personal property until the person's interest is changed by a disposition or by operation of law. 5
- (4) Any authority, in force immediately before the commencement of this Part, by which the Crown, a Minister, an officer, an employee, a department, an instrument of the Crown, or a local authority is authorised to exercise and perform powers, duties, or functions in respect of a structure to which this section applies continues to be in force according to its tenor until it is changed or ceases to have effect by a lawful direction, disposition, or by operation of law. 10 15
- 20 Crown deemed to be owner of abandoned structures**
- (1) The Crown is deemed to be the owner of any structure that is abandoned in the common marine and coastal area. 20
- (2) For the purposes of this section, a structure is **abandoned** if the regional council with statutory functions in the part of the common marine and coastal area in which the structure is located has, after due inquiry, been unable to ascertain the identity or the whereabouts of the owner of the structure. 25
- (3) In this section, **structure** includes a vessel of any description.
- 21 Resource consents to continue in effect**
- Nothing in this Act limits or affects any resource consent granted before the commencement of this Part.
- 22 Certain proprietary interests to continue** 30
- (1) In this section, **proprietary interest**—
- (a) means any interest under a lease, licence, or permit (not being a resource consent) granted in respect of any land that, on the commencement of this Part, is located within the common marine and coastal area; and 35

- (b) includes any right to a renewal or an extension of that interest; but
- (c) does not include a privilege.
- (2) A proprietary interest that, immediately before the commencement of this Part, was in effect continues, so far as it is lawful, to have effect according to its tenor. 5
- (3) Every proprietary interest that is continued by **subsection (2)** and that has been granted by a person other than the Crown is deemed to have been granted by the Crown.
- (4) The Minister of Conservation is authorised to execute on behalf of the Crown any instrument or other document that is required to be executed by the grantor in respect of any proprietary interest. 10
- (5) The Minister of Conservation may enforce any condition to which a proprietary interest is subject by taking any measures, including the taking of proceedings, that the grantor of the interest could take. 15
- (6) The Crown may grant a renewal or extension of a proprietary interest only if the interest contains a right of renewal or extension. 20
- (7) This section overrides **section 11**.

### **23 Provisions relating to certificates of title wholly in common marine and coastal area**

- (1) The Registrar must, at the request of the Minister of Conservation and without further authority than this section, cancel the whole of any computer freehold register that comprises land that is wholly within the common marine and coastal area. 25
- (2) Immediately upon the cancellation under **subsection (1)** of a computer freehold register that is subject to a current registered interest or current registered notification, the Registrar must, without further authority than this section,— 30
- (a) issue a computer interest register under section 9 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 for that registered interest or notification; and 35

- (b) record on that computer interest register that the land to which the registered interest or notification relates is located in the common marine and coastal area.
- (3) When the interest or notification for which a computer interest register has been issued in accordance with **subsection (2)(a)** expires or is extinguished or is otherwise determined, the Registrar must, at the request of the Minister of Conservation and without further authority than this section, cancel the computer interest register. 5
- 24 Provisions relating to computer freehold register to land in common marine and coastal area and land above line of mean high-water springs** 10
- (1) If any computer freehold register comprises any land that is part of the common marine and coastal area as well as any adjacent land (the **adjacent land**) above the line of mean high-water springs, either the Minister of Conservation or the owner of the adjacent land may apply to the Registrar for the issue of a computer freehold register for the adjacent land. 15
- (2) On presentation of the application, the Registrar, on payment of the appropriate fee, must, despite anything in the Land Transfer Act 1952,— 20
- (a) cancel the computer freehold register that comprises the land within the common marine and coastal area and the adjacent land; and
- (b) issue a computer freehold register under section 7 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 in the name of the owner of the adjacent land for the adjacent land; and 25
- (c) note any current registered interest or current registered notification that relates to the adjacent land against that computer freehold register in the order in which it appears on the computer freehold register cancelled under **paragraph (a)**; and 30
- (d) issue a computer interest register under section 9 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 for any registered interest or current registered notification that relates to land within the common marine and coastal area that 35

- was part of the certificate of title or computer freehold register cancelled under **paragraph (a)**.
- (3) The Registrar may require the deposit of any survey plan necessary for the issue of a computer freehold register under **subsection (2)(b)**. 5
- (4) To avoid doubt, no action taken under this section is subject to Part 10 of the Resource Management Act 1991.
- 25 Exclusion of interests in common marine and coastal area founded on adverse possession or prescriptive title**
- (1) Despite any other enactment or rule of law, no person may claim an interest in any part of the common marine and coastal area on the ground of adverse possession or prescriptive title. 10
- (2) No relief may be claimed by any person for any loss or damage arising from this section.
- 26 Local authorities may apply to Minister for redress for loss of divested areas** 15
- (1) A local authority that, as a result of the operation of **section 18**, loses its title to any land in the common marine and coastal area that it had acquired by purchase may apply to the Minister of Conservation for redress. 20
- (2) In considering an application by a local authority under **subsection (1)**, the Minister of Conservation must be guided by whichever of the following criteria is applicable:
- (a) if the local authority purchased the relevant land at full market value, compensation is to be paid at current market value: 25
- (b) if the local authority did not purchase the relevant land at full market value, redress is limited to compensation for direct financial loss to the local authority arising from the loss of ownership, including loss of— 30
- (i) any income that the local authority would, but for the operation of **section 18**, have derived from the relevant part of the marine and coastal area; and
- (ii) any investment that the local authority made in the land after purchase. 35

- (3) No application under **subsection (1)** may be made later than 12 months after the occurrence of the loss to which the application relates.
- (4) No court has jurisdiction to hear any claim in respect of any loss suffered by a local authority as a result of the operation of **section 18**. 5
- (5) Any application made under section 25 of the Foreshore and Seabed Act 2004 that, on the commencement of this Part, has not yet been finally determined by the Minister of Conservation must be treated as if this Act (other than this subsection) had not been enacted. 10

Subpart 2—Public rights and powers over  
common marine and coastal area

*Rights of access*

- 27 Rights of access** 15
- (1) Every individual has the right—
  - (a) to enter, stay in or on, and leave the common marine and coastal area; and
  - (b) to pass and repass in, on, over, and across the common marine and coastal area; and 20
  - (c) to engage in recreational activities in or on the common marine and coastal area.
- (2) The rights conferred by this section are subject to any authorised prohibitions or restrictions that are imposed under **section 78**, or by or under any other enactment. 25
- (3) A prohibition or restriction of the kind described in **subsection (2)** may, subject to the enactment in which it is contained or by which it is authorised, apply to—
  - (a) any or all of the rights conferred by this section:
  - (b) 1 or more ways of exercising those rights: 30
  - (c) 1 or more defined periods, or an indefinite period, or recurring periods of a stated kind:
  - (d) 1 or more specified areas.
- (4) In this section, **enactment** includes bylaws, regional plans, and district plans. 35

*Rights of navigation***28 Rights of navigation within marine and coastal area**

- (1) Every person has the following rights:
- (a) to enter, and pass and repass through, the territorial sea by ship: 5
  - (b) to temporarily anchor, moor, and ground within the marine and coastal area:
  - (c) to load and unload cargo, crew, equipment, and passengers within the marine and coastal area:
  - (d) to remain in a place within the marine and coastal area for a convenient time: 10
  - (e) to remain temporarily in a place within the marine and coastal area until wind or weather permits departure or until cargo has been obtained or repairs completed.
- (2) The rights conferred by **subsection (1)** include anything reasonably incidental to their exercise. 15
- (3) The rights conferred by **subsection (1)** may be exercised subject to any authorised restrictions and prohibitions that are imposed by or under an enactment.
- (4) A restriction or prohibition of the kind described in **subsection (3)** may, subject to the enactment in which it is contained or by which it is authorised, apply to— 20
- (a) 1 or more of the rights conferred by this section:
  - (b) 1 or more ways of exercising those rights:
  - (c) a definite period or an indefinite period, or recurring periods of a stated kind: 25
  - (d) 1 or more specified areas.
- (5) In this section, **enactment** includes bylaws, regional plans, and district plans.

*Rights of fishing* 30**29 Fishing rights preserved**

- (1) Nothing in this Act prevents the exercise of any fishing rights conferred or recognised by or under an enactment or by a rule of law.
- (2) **Subsection (1)** is subject to **section 80**. 35

*Management of common marine and coastal  
area*

- 30 Minister of Conservation to be manager and to perform management and administrative functions in common marine and coastal area** 5
- (1) The Minister of Conservation is the manager of the common marine and coastal area and exercises and performs, in respect of the common marine and coastal area, all those management and administrative powers, duties, and functions provided for by this Act or any other enactment that are not expressly conferred or imposed on another person. 10
- (2) The Minister of Conservation administers any regulations made under **section 119** and any bylaws made under **section 120**.
- (3) An authorised delegate of the Minister may direct any person 15  
in the common marine and coastal area to stop an activity engaged in by the person if the delegate has reasonable grounds to believe that the activity—
- (a) poses a risk to the safety of members of the public in, or to the environment of, any part of the common marine and coastal area: 20
- (b) prejudices the preservation of the natural features of any part of the common marine and coastal area:
- (c) is incompatible with the rights conferred by **section 27** or substantially detracts from the peaceful enjoyment 25  
by members of the public of any part of the common marine and coastal area.
- (4) Before giving a direction under **subsection (3)**, the authorised delegate must produce his or her warrant of appointment or other evidence of his or her authority. 30
- (5) A person who intentionally fails to comply with a direction given under **subsection (3)** commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (6) Nothing in this section or in any regulations or bylaws made 35  
under **section 119 or 120** limits any power conferred on a local authority under an enactment that may be exercised in respect of the common marine and coastal area.

- (7) In performing and exercising the functions, duties, and powers under this section and under **sections 119 and 120**, the Minister of Conservation must act consistently with the purpose stated in **section 4**.
- (8) Every person who fails to comply with a direction given by an authorised delegate of the Minister may be arrested without warrant by any constable. 5

### 31 Notices regarding dangerous structures

- (1) This section applies if—
- (a) a structure is located within a part of the common marine and coastal area; and 10
  - (b) an authorised delegate of a local authority with responsibilities for that part of the common marine and coastal area believes on reasonable grounds that the structure poses, or if not repaired will pose, a risk to human health or safety or has an actual or likely adverse effect on the environment of the common marine and coastal area. 15
- (2) The authorised delegate may issue a notice to the owner of the structure requiring the owner, at the owner's expense,—
- (a) to repair or alter the structure so as to eliminate or minimise the risk or the adverse effect of the structure; or 20
  - (b) to demolish or remove the structure.
- (3) The authorised delegate may, at the expense of the owner of the structure, take any course of action described in **subsection (2)** in an emergency or if the owner of the structure fails or refuses to comply with the notice issued under that subsection. 25
- (4) Any expenses incurred by the local authority concerned under **subsection (3)** may be recovered from the owner as a debt due to the local authority.
- (5) An owner of a structure who, without reasonable excuse, fails or refuses to comply with a notice issued to the owner under **subsection (2)** commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.
- (6) This section does not limit—
- (a) the exercise of any power under the Resource Management Act 1991 or the Building Act 2004: 35
  - (b) section 249 of the Maritime Transport Act 1994:



- (c) section 10 of the Submarine Cables and Pipelines Protection Act 1996.

### Subpart 3—Reclaimed land

#### 32 Interpretation

- (1) In this section and in **sections 33 to 47**, unless the context otherwise requires,—
- developer**, in relation to any reclaimed land, means the person (including a customary marine title group) who holds the resource consent for the reclamation by which the land is formed
- dispose of** includes sell, exchange, gift, and transfer
- freehold interest** means an estate in fee simple
- interest** means a freehold interest or a lesser interest
- lesser interest** means an interest in reclaimed land that is less than a freehold interest and includes a lease, licence, or other right or title to occupy or use the land
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Land Act 1948
- reclaimed land** means permanent land formed from land that formerly was below the line of mean high-water springs and that, as a result of a reclamation, is located above the line of mean high-water springs, but does not include—
- (a) land that has arisen above the line of mean high-water springs as a result of natural processes, including accretion; or
- (b) structures such as breakwaters, moles, groynes, or sea walls
- reclaimed land subject to this subpart** means reclaimed land vested in the Crown under **section 33 or 34**, but does not include reclaimed land that is subject to a declaration under **section 35**.
- (2) The purpose of this subpart is to provide certainty to business and development interests in respect of investments in reclamations and to balance the interests of all New Zealanders, including their interests in conservation.

**33 Certain reclaimed land to vest in Crown**

- (1) **Subsection (2)** applies to any reclaimed land that is formed from the common marine and coastal area as a result of an authorised reclamation, whether the reclamation was completed before or after the commencement of this Part. 5
- (2) The full legal and beneficial ownership in any reclaimed land to which this subsection applies vests in the Crown absolutely if, after the commencement of this Part, a regional council approves a plan of survey, under section 245(5) of the Resource Management Act 1991, in respect of that land. 10
- (3) **Subsection (4)** applies to reclaimed land that is formed from the common marine and coastal area as a result of an unauthorised reclamation that has been completed or terminated after the commencement of this Part.
- (4) The full legal and beneficial ownership in any reclaimed land to which this subsection applies vests in the Crown absolutely if the Minister signs a certificate that— 15
- (a) describes the position and extent of the reclaimed land; and
- (b) states that this subsection applies to the reclaimed land. 20
- (5) A certificate signed under **subsection (4)** is, in the absence of proof to the contrary, sufficient evidence of the matter stated in the certificate.
- (6) The Land Act 1948 does not apply to reclaimed land vested by this section. 25

**34 New status of existing reclaimed land**

- (1) This section applies to reclaimed land (**existing reclaimed land**) that,— 30
- (a) immediately before the commencement of this Part, was—
- (i) part of the public foreshore and seabed under the Foreshore and Seabed Act 2004; or
- (ii) vested in the Crown under the Land Act 1948; or
- (iii) otherwise owned by the Crown; and 35
- (b) is not set apart for a specified purpose.
- (2) On the commencement of this Part, the full legal and beneficial ownership of all existing reclaimed land vests in the Crown

absolutely and, so far as it is, immediately before that commencement, subject to the Foreshore and Seabed Act 2004 or the Land Act 1948, ceases to be subject to those Acts.

- (3) However, this section does not affect—
- (a) any lesser interest held, immediately before the commencement of this Part, by a person other than the Crown in existing reclaimed land; or
  - (b) the ownership in structures fixed to, or under or over, existing reclaimed land.
- 35 Minister may declare reclaimed land to be subject to Land Act 1948** 10
- (1) The Minister may, by notice in the *Gazette*, declare any land of the following kind to be subject to the Land Act 1948:
- (a) reclaimed land vested in the Crown by **section 34**:
  - (b) reclaimed land in which the Crown has, at any time after the commencement of this Part, acquired the freehold interest. 15
- (2) A notice under **subsection (1)**—
- (a) must describe the position and extent of the reclaimed land; and 20
  - (b) takes effect on the 28th day after its publication in the *Gazette*.
- 36 Minister to administer reclaimed land subject to this subpart**
- (1) The Minister may perform and exercise the functions, duties, and powers of the Crown as owner in respect of every area of reclaimed land that is subject to this subpart. 25
- (2) The Minister may sign a certificate that—
- (a) describes the position and extent of any land; and
  - (b) states that the land is, or is not, subject to this subpart. 30
- (3) A certificate signed under **subsection (2)** is, in the absence of proof to the contrary, sufficient evidence of the matter stated in the certificate.

**37 Granting and disposition of interests in reclaimed land subject to this subpart**

- (1) The Minister may, in accordance with **sections 38 to 44**, grant interests in reclaimed land subject to this subpart.
- (2) The Crown may not dispose of any interest in reclaimed land subject to this subpart otherwise than in accordance with **sections 38 to 44**. 5

**38 Eligible applicants for interests in reclaimed land subject to this subpart**

- (1) The developer on whose behalf reclaimed land subject to this subpart has been, or is being, formed may apply to the Minister for the grant to the developer of an interest in the reclaimed land that has been, or is being, formed by the reclamation. 10
- (2) A network utility operator may apply to the Minister for the grant to the developer of a lesser interest in reclaimed land subject to this subpart that has been, or is being, formed by the reclamation on the ground that the lesser interest is required for the purposes of the network utility operation undertaken by the network utility operator. 15
- (3) **Subsection (4)** applies if— 20
  - (a) reclaimed land has been subject to this subpart for more than 10 years; and
  - (b) no interest has been granted in that land; and
  - (c) no current application for the grant of an interest in that land is awaiting the Minister's determination. 25
- (4) If this subsection applies, any person may apply to the Minister for the grant to the person of an interest in the reclaimed land.
- (5) A developer or other person who makes an application under this section becomes liable to pay any fees payable under regulations made under this Act. 30
- (6) The fees referred to in **subsection (6)** are recoverable as a debt due to the Crown.
- (7) In this section,—
  - (a) **network utility operator** and **network utility operation** have the same meaning as in section 166 of the Resource Management Act 1991: 35

- (b) **reclaimed land subject to this subpart** includes land formed or to be formed that is expected to become reclaimed land subject to this subpart.

**39 Determination of application by Minister**

- (1) If the Minister is satisfied that an application for the grant of an interest in reclaimed land subject to this subpart has been made by an eligible applicant, the Minister must, without limitation, determine the following matters: 5
- (a) whether the applicant is to be granted an interest in the reclaimed land and, if so, whether that interest should be a freehold interest or a lesser interest: 10
  - (b) if a lesser interest is to be granted, the terms and conditions of that lesser interest:
  - (c) any conditions that must be fulfilled before any interest in the reclaimed land is granted: 15
  - (d) the encumbrances, restrictions, or conditions (if any) that should attach to any interest (including a freehold interest) to be granted:
  - (e) any consideration (whether by payment of price, rental or other charge, or by way of set-off, or in whole or partial settlement of any claim, including any claim under the Treaty of Waitangi Act 1975) for the grant of the interest. 20
- (2) In determining the matters specified in **subsection (1)**, the Minister must take into account the following matters, so far as they are applicable: 25
- (a) the minimum interest in the reclaimed land that is reasonably needed to allow the purpose of the grant to be achieved:
  - (b) the public interest in the reclaimed land, including existing or proposed public use of the reclaimed land: 30
  - (c) whether, and the extent to which, the public is benefiting, or is to benefit, from the use or proposed use of the reclaimed land:
  - (d) any conditions or restrictions imposed on the resource consent that authorised the reclamation: 35
  - (e) whether any historical claims have been made (but not yet reported on) under the Treaty of Waitangi Act 1975

- in respect of the reclaimed land or whether there are any pending applications under **Part 4**:
- (f) the cultural value of the reclaimed land and surrounding area to tangata whenua:
  - (g) the financial value of the reclaimed land to the Crown: 5
  - (h) any natural or historic values associated with the reclaimed land:
  - (i) the potential public access, amenity, and recreational values of the reclaimed land:
  - (j) any special circumstances of the applicant, including the amount of any investment made by the applicant in respect of the reclaimed land. 10
- (3) The Minister may determine that several eligible applicants may each be granted a distinct interest in the reclaimed land.
- 40 Presumption that certain applicants to be granted freehold interest in reclaimed land subject to this subpart** 15
- (1) If a person of a kind specified in **subsection (2)** is eligible to apply for the grant of an interest in reclaimed land subject to this subpart and makes such an application under **section 38**, the Minister's determination of the matter specified in **section 39(1)(a)** must proceed on the basis that the person is to be granted a freehold interest in the reclaimed land unless— 20
- (a) the person does not wish to be granted a freehold interest; or
  - (b) the Minister is satisfied, after considering the matters specified in **section 39(2)**, that there is good reason not to grant the person a freehold interest. 25
- (2) The persons are the following:
- (a) any port company (as defined in section 2(1) of the Port Companies Act 1988): 30
  - (b) any port operator (as defined in section 650J(6) of the Local Government Act 1974):
  - (c) the company (as defined in section 2 of the Auckland Airport Act 1987) that operates Auckland International Airport (including any entity that operates all or part of the airport and that is a subsidiary of, or successor to, that company): 35

- (d) the company (as defined in section 2 of the Wellington Airport Act 1990) that operates Wellington International Airport (including any entity that operates all or part of the airport and that is a subsidiary of, or successor to, that company). 5

**41 Notification of determination and variation**

- (1) The Minister must notify the applicant of a determination under **section 39(1)** and of any variation under **subsection (3)** of this section.
- (2) Before the Minister makes a determination under **section 39(1)** or a variation under **subsection (3)** of this section, the Minister must give the applicant a reasonable opportunity to comment on the proposed determination or variation. 10
- (3) If a determination under **section 39(1)** is made before the reclamation concerned has been completed, the Minister may, on the Minister's own initiative or on application by the applicant, vary the determination before an interest in the reclaimed land is granted if that variation is, in the Minister's opinion, necessary or desirable to take account of any of the matters specified in **section 39(2)** or for any other reason. 15 20

**42 Granting of interest in reclaimed land subject to this subpart**

- (1) The Minister may, by notice in the *Gazette*, grant an applicant an interest in reclaimed land subject to this subpart if the Minister is satisfied that— 25
- (a) the grant is in accordance with a determination made under **section 39(1)**, as varied by any variations under **section 41(3)**; and
- (b) any conditions imposed under **section 39(1)(c)** have been complied with or that adequate provision has been made to ensure that those conditions will be complied with. 30
- (2) Every *Gazette* notice published under **subsection (1)** must—
- (a) state the name of the applicant that is granted the interest, and describe the position and extent of the reclaimed land; and 35
- (b) describe the interest granted; and

- (c) describe any encumbrances or restrictions imposed on the interest, including any restrictions that apply under **section 46**; and
- (d) where the interest granted is a freehold interest and in any other case where the Minister considers it appropriate, be sent by the Minister to the Registrar, with a request that a computer register be issued accordingly; and 5
- (e) where the Registrar receives a request under **paragraph (d)**, be registered by the Registrar after receipt from the Minister. 10
- (3) The Registrar must, in accordance with a request made under **subsection (2)(d)**,—
- (a) issue a computer register under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 in respect of the interest in the land granted by the *Gazette* notice; and 15
- (b) record on that computer register—
- (i) that the land is reclaimed land subject to **subpart 3 of Part 2** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and 20
- (ii) where the interest granted is a freehold interest, that the disposition of the freehold interest in that land is restricted by that subpart.
- 43 Application for renewal of interests less than freehold** 25
- (1) The holder of a lesser interest granted under **section 42(1)** may apply to the Minister, not later than 3 months before the expiry of the existing interest, for a renewal of the interest in the same, or part of the same, reclaimed land.
- (2) If an application is made under **subsection (1)**, the holder may continue to operate under the existing interest until the application is determined. 30
- (3) The holder of a lesser interest in reclaimed land may apply to the Minister for the grant of a freehold interest in that land.
- (4) In determining an application under this section, the Minister must take into account the matters specified in **section 39(2)**, so far as those matters are relevant to the application. 35



- (5) This section also applies to a lesser interest vested in a person under section 355 or 355AA of the Resource Management Act 1991 (as in force before the commencement of this Part) in land that has become reclaimed land subject to this subpart.

**44 Pending applications under Resource Management Act 1991 that relate to reclaimed land** 5

- (1) This section applies to any application—
- (a) that was made under section 355(1) of the Resource Management Act 1991, as in force immediately before the commencement of this Part; and 10
  - (b) that is to be, but has not yet been, determined by the Minister of Conservation.
- (2) An application to which this section applies must (subject to **subsections (3) to (6)**) be considered and determined by the Minister of Conservation as if this subpart (other than this section) had not been enacted and as if the Resource Management Act 1991 had not been amended by this Act. 15
- (3) However, an applicant who has made an application to which this section applies may make a request, in accordance with **subsection (5)**, to have the application considered and determined under **section 38** by the Minister (within the meaning of **section 32**), but only if the conditions stated in **subsection (4)** are met. 20
- (4) The conditions referred to in **subsection (3)** are that—
- (a) as at the commencement of this Part, the application is not in competition with any other application to which this section applies; and 25
  - (b) the applicant would (but for having made the application to which this section applies) be eligible to apply under **section 38**. 30
- (5) A request under **subsection (3)** must be made in writing to the Minister of Conservation not later than 90 days after the commencement of this Part.
- (6) On receipt of a request under **subsection (3)**, the Minister of Conservation must refer all the documents relating to the application to the Minister (within the meaning of **section** 35

**32)** and the reference of those documents must be treated as an application under **section 38**.

**45 Land reclaimed from customary marine title areas by customary marine title groups**

- (1) In any case where a customary marine title group is the developer of reclaimed land that has been formed from the group's customary marine title area, this section applies instead of **sections 34 to 44**. 5
- (2) The customary marine title group may apply to the Minister in writing for an interest in the area of reclaimed land, and on making the application becomes liable to pay any fees payable under regulations made under this Act, which are recoverable as a debt due to the Crown. 10
- (3) On receiving an application duly made under **subsection (2)**, the Minister must— 15
- (a) consider the application by applying the criteria stated in **section 39(2)**, so far as they are applicable; and
  - (b) proceed on the basis that the customary marine title group is to be granted a freehold interest in the reclaimed land unless— 20
    - (i) the customary marine title group does not wish to be granted a freehold interest; or
    - (ii) the Minister is satisfied, after considering the matters specified in **section 39(2)**, that there is good reason not to grant the customary marine title group a freehold interest. 25
- (4) The Minister may, by notice in the *Gazette*, grant the customary marine title group an interest in the reclaimed land.
- (5) Every *Gazette* notice published under **subsection (4)** must— 30
- (a) state the name of the customary marine title group, and describe the position and extent of the reclaimed land; and
  - (b) describe the interest granted; and
  - (c) describe any encumbrances or restrictions imposed on the interest; and 35
  - (d) where the interest granted is a freehold interest and in any other case where the Minister considers it appro-

- appropriate, be sent by the Minister to the Registrar, with a request that a computer register be issued accordingly; and
- (e) where the Registrar receives a request under **paragraph (d)**, be registered by the Registrar after receipt from the Minister. 5
- (6) The Registrar must, in accordance with a request made under **subsection (5)(d)**, issue a computer register under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 in respect of the interest in the land granted by the *Gazette* notice. 10

*Rights of first refusal*

**46 Restrictions on disposition of freehold interest**

- (1) If a computer register issued for reclaimed land subject to this subpart contains a record made under **section 42(3)(b)**, the freehold interest in the land may not be disposed of otherwise than in accordance with **section 47**. 15
- (2) However, **subsection (1)** does not apply to a disposition made by a company to another company if both companies are— 20
  - (a) members of the same group (within the meaning of section 2(1) of the Financial Reporting Act 1993); or
  - (b) related companies (within the meaning of section 2(3) of the Companies Act 1993).
- (3) The Minister may sign a certificate stating that the freehold interest in reclaimed land has been disposed of in accordance with **section 47** or that the disposition is permitted by **subsection (2)**. 25
- (4) A certificate signed under **subsection (3)** is conclusive evidence of the matter stated in the certificate. 30
- (5) A transfer instrument purporting to effect a disposition to which **subsection (1)** applies— 35
  - (a) may not be presented for registration under the Land Transfer Act 1952 unless the Minister has signed a certificate in respect of the disposition under **subsection (3)**; and

- (b) must, on being presented for registration under that Act, be accompanied by that certificate.
- (6) If the certificate presented under **subsection (5)(b)** states that the freehold interest in reclaimed land has been disposed of in accordance with **section 47**, the Registrar must on registration of the transfer instrument remove from the computer register the record made under **section 42(3)(b)**. 5
- 47 Offers to Minister, iwi or hapū, or public**
- (1) In order to dispose of a freehold interest in reclaimed land (the **freehold interest**) in compliance with this section, the proprietor of the freehold interest must dispose of the freehold interest in accordance with a written notice that is in effect at the time of the disposition and is given under whichever of **subsection (2), (4), or (6)** is applicable. 10
- (2) A notice under this subsection— 15
- (a) must be given to the Minister; and
- (b) may be given at any time unless a notice under **subsection (4) or (6)** is in effect; and
- (c) must state the following terms on which the Crown may acquire the freehold interest: 20
- (i) the consideration:
- (ii) any other terms and conditions.
- (3) If, within the period that the notice under **subsection (2)** is in effect, the Crown does not enter into a contract to acquire the freehold interest, the proprietor may give a notice under **subsection (4)**. 25
- (4) A notice under this subsection must be given to a representative of an iwi or a hapū exercising customary authority over the area in which the reclaimed land is located that states the following terms on which the iwi or hapū may acquire the freehold interest: 30
- (a) the consideration, which may not be less than the consideration stated in the most recent notice given under **subsection (2)**:
- (b) any other terms and conditions, which may not be more favourable than the terms and conditions stated in the most recent notice given under **subsection (2)**. 35

- (5) If, within the period that the notice under **subsection (4)** is in effect, the hapū or iwi does not enter into a contract to acquire the freehold interest, the proprietor may, before the second anniversary of the day on which the notice was given to the Minister under **subsection (2)**, give public notice under **subsection (6)**. 5
- (6) A public notice under this subsection must invite tenders for the acquisition of the freehold interest and state—
- (a) the minimum consideration for the freehold interest, which may not be less than the consideration stated in the most recent notice given or sent under **subsection (4)**: 10
  - (b) any other terms and conditions, which may not be more favourable than the terms and conditions stated in the most recent notice given under **subsection (4)**. 15
- (7) A notice given under **subsection (2), (4), or (6)** is in effect for the period that commences on the date on which the recipient receives the notice or, in the case of a public notice, the notice is first published and ends with the close of the 90th day after that date. 20

### Part 3 Customary interests

#### *Purpose*

#### 48 Purpose of this Part

The purpose of this Part is to set out the full extent of the legal rights and interests that give expression to customary interests in the common marine and coastal area of New Zealand. 25

#### Subpart 1—Participation in conservation processes in common marine and coastal area 30

#### 49 Participation in conservation processes

- (1) In this section and **sections 50 to 52**, **affected iwi or hapū** means an iwi or hapū (as those terms are each defined in **subsection (2)**) that exercises customary authority in a part of the

- common marine and coastal area where a conservation process is being considered.
- (2) For the purposes of the definition of affected iwi or hapū in **subsection (1)**,—
- hapū** means a hapū listed in the constitutional documents of an iwi or as advised to the Director-General by the iwi
- iwi** means an iwi listed in Schedule 4 of the Maori Fisheries Act 2004.
- (3) An affected iwi or hapū has the right to participate in conservation processes in the common marine and coastal area.
- (4) For the purposes of **subsection (1)**, the conservation processes are—
- (a) applications made under section 5 of the Marine Reserves Act 1971 for the purpose of declaring or extending a marine reserve:
  - (b) proposals under section 22 of the Marine Mammals Protection Act 1978 to define and declare or extend a marine mammal sanctuary:
  - (c) applications made under regulation 12 of the Marine Mammals Protection Regulations 1992 for permits authorising marine mammal watching:
  - (d) proposals under the enactments relevant to conservation protected areas to declare or extend conservation protected areas:
  - (e) applications for concessions under the enactments relevant to the granting of concessions.
- 50 Notification of conservation processes**
- (1) If an application or a proposal is made for a conservation process, the Director-General must use his or her best endeavours to—
- (a) notify, in the manner required by **subsection (3)**, any affected iwi or hapū of the application or proposal; and
  - (b) seek the views of that iwi or hapū on the application or proposal.
- (2) Notice must be given as soon as is reasonably practicable after the application or proposal is received by the Director-General.

- (3) Notices given under this section must—
- (a) be in writing to the affected iwi or hapū; and
  - (b) advise the affected iwi or hapū that an application or a proposal is to be considered; and
  - (c) state the day by which any affected iwi or hapū must provide its views (which must allow 40 working days from the date that the notice given under **subsection (1)** is received); and 5
  - (d) provide sufficient information as to the subject matter and scope of the application or proposal to enable any affected iwi or hapū to provide its views on the application or proposal, including, as appropriate,— 10
    - (i) a copy of any public notice given in accordance with the enactment under which the application or proposal is made; and 15
    - (ii) a copy of any plan or other information prepared by or on behalf of the decision maker in relation to the application or proposal.

**51 Obligations on decision maker**

- (1) If an affected iwi or hapū provides its views to the Director-General in accordance with the notice given under **section 50(1)**, the decision maker must have particular regard to those views in considering the application or proposal. 20
- (2) If a conservation process is not finally determined within 2 years from the date of its notification under **section 50(1)**, the Director-General must give a further notice to the affected iwi or hapū to advise that the iwi or hapū has 20 working days in which to— 25
- (a) confirm its views provided under **section 50**; or
  - (b) set out any further or revised views on the application or proposal. 30
- (3) If **subsection (2)(b)** applies, the decision maker must have particular regard to those further or revised views in considering the application or proposal.

**52 Stranded marine mammals**

- (1) This section applies if marine mammals are stranded in or on the common marine and coastal area. 35

- (2) When making decisions about managing a stranded marine mammal, a marine mammals officer must—
- (a) ensure that the welfare of the marine mammal and public safety are the primary considerations; and
  - (b) have particular regard to the views of any affected iwi or hapū expressed to the officer. 5
- (3) In **subsection (2), marine mammals officer**—
- (a) means a person declared or appointed to be a marine mammals officer under section 11 of the Marine Mammals Protection Act 1978; and 10
  - (b) includes any other person authorised under section 18 of that Act to manage stranded marine mammals.

### Subpart 2—Protected customary rights

#### 53 Meaning of protected customary rights

- (1) A **protected customary right** is a right that— 15
- (a) has been exercised since 1840; and
  - (b) continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group, whether it continues to be exercised in exactly the same or a similar way, or evolves over time; and 20
  - (c) is not extinguished as a matter of law.
- (2) A **protected customary right** does not include an activity—
- (a) that is regulated under the Fisheries Act 1996; or
  - (b) that involves the exercise of— 25
    - (i) any commercial Māori fishing right or interest, being a right or interest declared by section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to be settled; or
    - (ii) any non-commercial Māori fishing right or interest, being a right or interest subject to the declarations in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or 30
    - (iii) any Māori fishing right under section 26ZH of the Conservation Act 1987; or 35
  - (c) that relates to—



- (i) wildlife within the meaning of the Wildlife Act 1953, or any animals specified in Schedule 6 of that Act:
  - (ii) marine mammals within the meaning of the Marine Mammals Protection Act 1978; or 5
  - (d) that is based on a spiritual or cultural association, unless that association is manifested by the relevant group in a physical activity or use related to a natural or physical resource (within the meaning of section 2(1) of the Resource Management Act 1991). 10
  - (3) An applicant group does not need to have an interest in land in or abutting the specified part of the common marine and coastal area in order to establish protected customary rights.
- 54 Scope and effect of protected customary rights**
- (1) A protected customary right may be exercised under a protected customary rights order or an agreement without a resource consent, despite any prohibition, restriction, or imposition that would otherwise apply in or under sections 9 to 17 of the Resource Management Act 1991. 15
  - (2) In exercising a protected customary right, a protected customary rights group is not liable for the payment of coastal occupation charges imposed under section 64A of the Resource Management Act 1991. 20
  - (3) However, **subsections (1) and (2)** apply only if a protected customary right is exercised in accordance with— 25
    - (a) tikanga; and
    - (b) the requirements of this subpart; and
    - (c) a protected customary rights order or an agreement that applies to the customary rights group; and
    - (d) any controls imposed by the Minister of Conservation under **section 59**. 30
  - (4) A protected customary rights group may do any of the following:
    - (a) delegate the rights conferred by a protected customary rights order or an agreement in accordance with tikanga: 35
    - (b) transfer a protected customary rights order or an agreement in accordance with tikanga:

- (c) derive a commercial benefit from exercising its protected customary rights:
- (d) determine who may carry out any particular activity, use, or practice in reliance on a protected customary rights order or agreement: 5
- (e) limit or suspend, in whole or in part, the exercise of a protected customary right.

### 55 Delegations and transfers

- (1) A delegation or transfer may only be made under **section 54(4)** to a person identified in a protected customary rights order or an agreement as a person to whom a right may be delegated or transferred. 10
- (2) A delegation or transfer of a protected customary right must be—
  - (a) notified to each of the persons or bodies referred to in **section 110(1)(b)**; and 15
  - (b) registered in accordance with **section 114**.
- (3) A delegation or transfer does not take effect until—
  - (a) the protected customary rights order is varied in accordance with **section 111**; and 20
  - (b) the variation is registered in accordance with **section 114**.

### 56 Limitations on exercise of protected customary rights

- (1) A protected customary right does not include any right or title over the part of the common marine and coastal area where the protected customary right is exercised, other than the rights provided for in **section 54**. 25
- (2) A protected customary right must be exercised in accordance with—
  - (a) any terms, conditions, or limitations on the scale, extent, and frequency of the activity specified in the order or in the agreement; and 30
  - (b) any controls imposed by the Minister of Conservation under **section 58**.

- 57 Effect of protected customary rights on resource consent applications**
- (1) This section applies to a resource consent for an activity that is undertaken wholly or in part within a protected customary rights area. 5
- (2) A consent authority must not grant a resource consent for an activity (including a controlled activity) to be carried out in a protected customary rights area if the activity will, or is likely to, have adverse effects that are more than minor on the exercise of a protected customary right, unless— 10
- (a) the relevant protected customary rights group gives its written approval for the proposed activity; or
- (b) the activity is one to which **subsection (3)** applies.
- (3) The existence of a protected customary right does not limit or otherwise affect the grant of— 15
- (a) a coastal permit under the Resource Management Act 1991 that is necessary to enable aquaculture activities to continue in that area, provided there is no change to the area of the coastal space occupied by the aquaculture activity for which the coastal permit was granted; or 20
- (b) a resource consent under section 330A of the Resource Management Act 1991 for an emergency activity (within the meaning of **section 8(2)**) undertaken in accordance with section 330 of that Act, as if the emergency activity were an emergency work to which section 330 applies. 25
- (c) a resource consent for—
- (i) an existing nationally or regionally significant infrastructure and its associated operations (within the meaning of **section 8(2)**): 30
- (ii) a deemed accommodated activity within the meaning of **section 9(1)(b)**.
- (4) **Subsection (3)(c)(i)** applies if—
- (a) in the case of infrastructure, any adverse effects of the proposed activity on the protected customary right will be, or are likely to be, the same or similar in character, intensity, and scale as those that existed before the application for the resource consent was made; and 35

- (b) in the case of the associated operations of that infrastructure, any adverse effects of those operations on the protected customary right that are more than minor are temporary in nature.
- (5) In the case of an activity to which **subsection (3)(c)(ii)** applies, the consent authority must, when considering applications for a resource consent relating to that activity, have particular regard to the nature of the protected customary right. 5
- (6) The provisions of **Part 1 of Schedule 2** apply for the purposes of **subsections (2) and (3)**. 10

### *Controls*

#### **58 Controls on exercise of protected customary rights**

- (1) If, at any time, the Minister of Conservation determines that the exercise of protected customary rights under a protected customary rights order or agreement has, or is likely to have, a significant adverse effect on the environment, the Minister may impose controls, including any terms, conditions, or restrictions that the Minister thinks fit, on the exercise of the rights. 15
- (2) Any person may apply to the Minister of Conservation for controls to be imposed on the exercise of a protected customary right, stating the reasons for the application. 20
- (3) If the Minister is satisfied that the application raises reasonable concerns that the exercise of a protected customary right has, or is likely to have, a significant adverse effect on the environment, the Minister must serve the notice, stating his or her intention to consider imposing controls, on— 25
- (a) the protected customary rights group; and
- (b) the local authorities that have statutory functions in the area where the protected customary right applies. 30
- (4) If the Minister is not satisfied that an application under **subsection (2)** raises reasonable concerns that the exercise of a protected customary right has, or is likely to have, a significant adverse effect on the environment, the Minister must advise the applicant accordingly, giving reasons for that decision. 35
- (5) **Part 2 of Schedule 2** applies to making a determination as to whether there is, or is likely to be, a significant adverse ef-

fect on the environment, for the purpose of imposing controls under this section.

**59 Notification of controls**

- (1) The Minister of Conservation must notify in the *Gazette* any controls imposed under **section 58**. 5
- (2) The notice must set out—
  - (a) the name and contact details of the relevant protected customary rights group; and
  - (b) a description of the relevant protected customary rights area; and 10
  - (c) a description of the protected customary right that is subject to the controls; and
  - (d) a description of the controls, including any standards, terms, conditions, or restrictions, to be applied and the reasons for the controls; and 15
  - (e) the date on which the controls take effect (which must be as soon as is reasonably practicable after the date of the notice).
- (3) The Minister of Conservation must, as soon as practicable after giving notice, provide a copy of the notice to— 20
  - (a) the protected customary rights group to which the notice applies; and
  - (b) the Minister of Māori Affairs; and
  - (c) the local authority that has statutory functions in, or relating to, the protected customary rights area; and 25
  - (d) the chief executive.
- (4) The chief executive must record the notice on the register.
- (5) Controls take effect on the date stated in the *Gazette* notice.

Subpart 3—Customary marine title

*Determination of whether customary marine title exists* 30

**60 Meaning of customary marine title**

- (1) Customary marine title exists in a particular part of the common marine and coastal area if the applicant group—
  - (a) holds the specified area in accordance with tikanga; and 35

- (b) has exclusively used and occupied the specified area from 1840 to the present day without substantial interruption.
- (2) For the purpose of **subsection (1)(b)**, there is no substantial interruption to the exclusive use and occupation of a particular part of the common marine and coastal area if, in relation to that part, a resource consent for an activity to be carried out wholly or partly in that area is granted at any time between—
- (a) the commencement of **Part 2**; and
- (b) the effective date.
- (3) Without limiting **subsection (2)**, customary marine title does not exist if that title is extinguished as a matter of law.
- 61 Factors relevant to whether customary marine title exists**
- (1) Factors that may be taken into account in determining whether customary marine title exists in a specified part of the common marine and coastal area include—
- (a) whether the applicant group or any of its members—
- (i) own land abutting all or part of the specified area and have done so, without substantial interruption, from 1840 to the present day;
- (ii) exercise non-commercial customary fishing rights in the specified area, and have done so from 1840 to the present day; and
- (b) if **paragraph (a)** applies, the extent to which there has been such ownership or exercise of fishing rights in the specified area.
- (2) To avoid doubt, section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 does not limit **subsection (1)(a)(ii)**.
- (3) For the purpose of **subsection (1)(a)(i)**, **land abutting all or part of the specified area** means—
- (a) land that directly abuts the specified area; or
- (b) land that does not directly abut the specified area, but does directly abut any of the following:
- (i) a marginal strip (as defined in section 2(1) of the Conservation Act 1987) that directly abuts the specified area:

- (ii) an esplanade reserve (as defined in section 2(1) of the Resource Management Act 1991) that directly abuts the specified area:
- (iii) a reserve (as defined in section 2(1) of the Reserves Act 1977) that directly abuts the specified area: 5
- (iv) a Māori reservation (as defined in section 2(1) of the Reserves Act 1977) that directly abuts the specified area:
- (v) a road that directly abuts the specified area: 10
- (vi) a railway line that directly abuts the specified area.

**62 Customary transfers**

- (1) For the purpose of **section 60**, a customary transfer is not, of itself, evidence of substantial interruption of the exclusive use and occupation by the applicant group of the specified area. 15
- (2) An applicant group relying on **subsection (1)** must prove that the transfer was a customary transfer.
- (3) For the purposes of **subsections (1) and (2)**, **customary transfer** means a transfer of a customary interest in a specified part of the common marine and coastal area after 1840 if— 20
  - (a) the transfer was—
    - (i) between or among members of the applicant group; or
    - (ii) from a group or members of a group who were 25 not part of the applicant group to the applicant group or some of its members; and
  - (b) the transfer was in accordance with tikanga; and
  - (c) the group or members of the group making the transfer had exercised exclusive use and occupation of the specified area from 1840 to the time of the transfer; and 30
  - (d) the group or some of its members to whom the transfer was made have exercised exclusive use and occupation of the specified area from the time of the transfer to the present day. 35

*Rights under customary marine title***63 Scope and effect of customary marine title**

- (1) Customary marine title—
- (a) provides an interest in land, but does not include a right to alienate or otherwise dispose of any part of a customary marine title area; and 5
  - (b) provides only for the exercise of the rights listed in **section 64** and described in **sections 65 to 91**; and
  - (c) has effect on and from the effective date.
- (2) A customary marine title group may— 10
- (a) delegate the rights conferred by a customary marine title order or an agreement in accordance with tikanga; or
  - (b) transfer a customary marine title order or an agreement in accordance with tikanga; or
  - (c) use, benefit from, or develop (including deriving commercial benefit) from exercising the rights conferred by a customary marine title order or an agreement. 15

**64 Customary marine title rights**

- (1) The following rights are conferred by, and may be exercised under, a customary marine title order or an agreement on and from the effective date: 20
- (a) a Resource Management Act 1991 (**RMA**) permission right (*see sections 65 to 69*); and
  - (b) a conservation permission right (*see sections 70 to 74*); and 25
  - (c) a right to protect wāhi tapu and wāhi tapu areas (*see sections 77 to 80*); and
  - (d) rights in relation to—
    - (i) marine mammal watching permits (*see section 75*); and 30
    - (ii) the process for preparing, issuing, changing, reviewing, or revoking a New Zealand coastal policy statement (*see section 76*); and
  - (e) the prima facie ownership of newly found taonga tūturu (*see section 81*); and 35
  - (f) despite **section 63(1)(b)**, the ownership of minerals other than—



- (i) minerals within the meaning of section 10 of the Crown Minerals Act 1991; or
  - (ii) pounamu to which section 3 of the Ngai Tahu (Pounamu Vesting) Act 1997 applies (*see section 82*); and 5
- (g) the right to create a planning document (*see sections 84 to 91*).
- (2) **Subsection (3)** applies if a person applies for a resource consent, a permit, or an approval in relation to a part of the common marine and coastal area in respect of which— 10
  - (a) no customary marine title order or agreement applies; but
  - (b) either—
    - (i) an applicant group has applied to the Court under **section 98** for recognition of customary marine title and notice has been given in accordance with **section 102**; or 15
    - (ii) an applicant group has applied to enter negotiations under **section 93**.
- (3) Before the person applying for a resource consent, a permit, or an approval may lodge an application, that person must consult the applicant group about the person’s proposal to apply for a resource consent. 20
- (4) The functions of a customary marine title group to give or decline permission under a RMA permission right or conservation permission right do not apply to— 25
  - (a) activities for which a resource consent, a permit, or an approval, as the case may be, has been obtained before the effective date, whether or not the consent, permit, or approval has been given effect to or exercised before the effective date; or 30
  - (b) applications made before the effective date for a relevant resource consent or conservation activity, whether or not the application is finally determined before that date. 35

*RMA permission right***65 Scope of Resource Management Act 1991 permission right**

- (1) An RMA permission right applies to activities that are to be carried out under a resource consent, including a resource consent for a controlled activity, to the extent that the resource consent is for an activity to be carried out within a customary marine title area. 5
- (2) A customary marine title group may give or decline permission, on any grounds, for an activity to which an RMA permission right applies. 10
- (3) An activity to which an RMA permission right applies must not commence unless permission is received from the relevant customary marine title group.
- (4) An RMA permission right applies only in the case of a resource consent application lodged on or after the effective date. 15
- (5) Permission given by a customary marine title group cannot be revoked.
- (6) An RMA permission right does not apply to the grant or exercise of a resource consent for an accommodated activity. 20
- (7) An RMA permission right, or permission given under such a right, does not limit the discretion of a consent authority—  
 (a) to decline an application for a resource consent; or  
 (b) to impose conditions.
- (8) In this section, **consent authority** includes the Minister of Conservation and the Minister for the Environment exercising the powers of a consent authority under the Resource Management Act 1991. 25

**66 Procedural matters relevant to exercise of RMA permission right**

- (1) A person seeking to carry out an activity (the **applicant**) to which an RMA permission right applies— 30  
 (a) must make a request for permission by notice to the relevant customary marine title group; and  
 (b) may do so at any time before the relevant resource consent may commence. 35

- (2) The customary marine title group must notify its decision on a request for permission to—
- (a) the applicant who gave notice under **subsection (1)**;  
and
  - (b) the relevant consent authority. 5
- (3) Unless the customary marine title group has already notified its decision to the applicant under **subsection (2)**, it must do so not later than 40 working days after it receives a notice from the applicant that the applicant has been granted the relevant resource consent (whether or not the applicant had previously notified the customary marine title group of the application). 10
- (4) The customary marine title group is to be treated as having given permission if notice of its decision is not received by the applicant in accordance with **subsection (3)**. 15
- (5) In **subsection (3)**, the grant of a resource consent means that the consent has been granted and any appeal rights exhausted, and that the resource consent would, but for the requirement for the permission of the customary marine title group, commence under section 116 of the Resource Management Act 1991. 20
- 67 Effect of RMA permission right**
- (1) The holder of a resource consent for an activity in a customary marine title area to which an RMA permission right applies must not commence the activity to which the consent applied unless— 25
- (a) permission has been given by the relevant customary marine title group under **section 65(2)** for that activity;  
and
  - (b) the permission covers the activity to which the resource consent applies. 30
- (2) To avoid doubt, a decision of a customary marine title group to give or to decline permission for an activity is not subject to—
- (a) a right of appeal; or
  - (b) a right of objection under section 357 or 357A of the Resource Management Act 1991. 35

**68 Offence and penalty provision**

- (1) In relation to an activity to which an RMA permission right applies, it is an offence to commence the activity in the relevant customary title area unless the relevant customary marine title group has given permission under **section 65(2)**. 5
- (2) Every person who commits an offence against **subsection (1)** is liable, on summary conviction,—
- (a) in the case of a natural person, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$300,000: 10
  - (b) in the case of a person other than a natural person, to a fine not exceeding \$600,000.
- (3) A person convicted of an offence under this section is also liable for the full value of—
- (a) any revenue or profits earned by, or accruing to, the offender as a result of the offence; or 15
  - (b) any revenue or profits lost by the customary marine title group as a result of the offence; or
  - (c) any savings in costs made by, or accruing to, the offender as a result of the offence. 20
- (4) If a person is convicted of an offence under this section and a fine is imposed, the Court must—
- (a) deduct 10% from the total sum of the fine imposed and the full amount payable under **subsection (3)**, to be credited to the Crown Bank Account; and 25
  - (b) order that the balance of the total sum described in **paragraph (a)** be paid—
    - (i) in full to the relevant customary marine title group that brought the prosecution; or
    - (ii) if another person or group brought the prosecution, to that person and the relevant customary marine title group in any proportion that the Court directs. 30

**69 Court may make orders**

- A customary marine title group may apply to the Court for orders— 35
- (a) prohibiting a person from continuing the activity:

- (b) requiring a person to remove any structure or other work or materials from the customary marine title area:
- (c) requiring a person to rectify any adverse effects of the activity on the customary marine title area.

*Conservation permission right* 5

**70 Scope and effect of conservation permission right**

- (1) A conservation permission right enables a customary marine title group to give or decline permission, on any grounds, for the Minister of Conservation or Director-General, as the case requires, to proceed to consider an application for a conservation activity under an Act specified in **subsection (3)**. 10
- (2) A conservation permission right applies only in the case of an application or proposal made on or after the effective date.
- (3) The conservation activities to which a conservation permission right applies are activities for which— 15
  - (a) an application is made under section 5 of the Marine Reserves Act 1971 to declare or extend a marine reserve:
  - (b) a proposal is made under the enactments relevant to a conservation protected area to declare or extend a conservation protected area: 20
  - (c) an application for a concession is made under the enactments relevant to the granting of a concession for activities within the relevant customary marine title area.
- (4) Permission given by a customary marine title group cannot be revoked. 25
- (5) A conservation permission right, or permission given under such a right, does not limit—
  - (a) the discretion of the Minister of Conservation or Director-General, as the case may require,— 30
    - (i) to decline an application or a proposal; or
    - (ii) to impose conditions, including conditions not sought by the customary marine title group, or more stringent conditions than those it may have sought; or
  - (b) the matters provided for in **sections 73 and 74**. 35
- (6) Nothing in this section or **sections 71 and 72** applies to an accommodated activity.

**71 Obligation to refer proposals for conservation activity if conservation permission right applies**

- (1) The Minister of Conservation or Director-General, as the case requires,—
- (a) must refer an application or a proposal for a conservation activity to the relevant customary marine title group for its consideration, unless the person making the proposal has already sought permission from the customary marine title group; and 5
  - (b) must not proceed to consider the application or proposal until the written permission of the group for the proposed activity is received by the Minister or Director-General; and 10
  - (c) must not approve an application or a proposal except to the extent that any permission given by the customary marine title group covers the application or proposal. 15
- (2) In referring an application in respect of a marine reserve under **subsection (1)**, the Director-General must include information on—
- (a) any boundary markers that may be placed in the reserve under section 22 of the Marine Reserves Act 1971; and 20
  - (b) any signs that may be erected, or any management that may be carried out, in the reserve under that Act.
- (3) Permission given under **section 70** is to be treated as including permission for the placement of boundary markers, signs, and management activities disclosed to the customary marine title group under **subsection (2)**. 25

**72 Obligations when conservation permission right is exercised**

- (1) A customary marine title group must, not later than 40 working days after it receives an application or a proposal for its consideration under **section 71**,—
- (a) decide whether to give or decline permission for the Minister of Conservation or Director-General, as the case requires, to proceed to determine the application or proposal; and 35
  - (b) give written notice of that decision to the Minister of Conservation or Director-General, as the case requires.

- (2) The group is to be treated as having given permission if advice of its decision under **subsection (1)(a)** is not received under **subsection (1)(b)** within the stated time.
- (3) To avoid doubt,—
- (a) the group is not obliged to comply with any obligations arising under the enactments listed in **section 70(3)**; and 5
- (b) there is no right of appeal against the decision of a customary marine title group in the exercise of its conservation permission right. 10

*Protection purposes*

**73 Priority of protection purposes**

- (1) This section applies to a proposal—
- (a) to declare or extend a marine reserve that is wholly or partly in a customary marine title area; or 15
- (b) to declare or extend a conservation protected area that is wholly or partly in a customary marine title area.
- (2) The Minister of Conservation or the Director-General, as the case requires, may proceed with a proposal described in **subsection (1)** without the permission of the relevant customary marine title group if the Minister or Director-General is satisfied that the proposal is essential for protection purposes. 20

**74 Matters relevant to determining essential protection purposes**

- In making a determination under **section 73(2)**, the Minister of Conservation or the Director-General, as the case requires, must have regard to— 25
- (a) the views of the customary marine title group on the effects of the proposal on the interests of the group; and
- (b) whether the proposal minimises as far as practicable any adverse effects on the interests of the group; and 30
- (c) whether there are no practicable options for achieving a protection purpose that is of national importance, other than within the customary marine title area, because—
- (i) the protection relates to a unique or rare habitat, ecosystem, feature, or area of scientific value; or 35

	(ii)	the area is nationally important for the conservation of a species; or	
	(iii)	protection of the area is essential for the viability, integrity, or effective management of a nationally important—	5
		(A) conservation protected area:	
		(B) marine reserve:	
		(C) network of such protected areas; or	
	(iv)	the protection relates to a habitat, ecosystem, or species that occurs at a number of sites where it is not practicable to achieve the protection purposes; and	10
	(d)	any other matter similar in nature to the matters set out in <b>paragraphs (a) to (c)</b> .	
		<i>Marine mammal watching permits</i>	15
<b>75</b>		<b>Decisions on grant of marine mammal permits</b>	
(1)		Before the Director-General grants a permit under the Marine Mammals Protection Regulations 1992 to watch marine mammals within a customary marine title area, the Director-General must—	20
	(a)	give written notice to the customary marine title group relevant to that area—	
		(i) of the proposed permit; and	
		(ii) that the Director-General seeks its views (which must be given within 40 working days of that notice being received); and	25
	(b)	recognise and provide for the views of the group on the proposed permit, if they are provided within the specified time.	
(2)		The notice must include a copy of the proposed permit and sufficient information to enable the customary marine title group to provide its views on the application.	30
		<i>New Zealand coastal policy statement</i>	
<b>76</b>		<b>Consultation</b>	
		If the Minister of Conservation is proposing to prepare, issue, change, review, or revoke a New Zealand coastal policy state-	35



ment under section 57 of the Resource Management Act 1991, the Minister must seek and consider the views of the customary marine title groups recorded on the register.

*Wāhi tapu protection right*

- 77 Protection of wāhi tapu and wāhi tapu areas** 5
- (1) A customary marine title group may seek to include recognition of a wāhi tapu or a wāhi tapu area—
- (a) in a customary marine title order; or
  - (b) in an agreement.
- (2) A wāhi tapu protection right may be recognised if there is evidence to establish—
- (a) the connection of the group with the wāhi tapu or wāhi tapu area in accordance with tikanga; and
  - (b) that the group requires the proposed prohibitions or restrictions on access to protect the wāhi tapu or wāhi tapu area. 15
- (3) If a customary marine title is recognised under **subpart 1 of Part 4**, the customary marine title order or agreement must set out the wāhi tapu conditions that apply, as provided for in **section 78**. 20
- (4) The responsible Minister must, as soon as practicable after being notified of the order or agreement,—
- (a) give public notice of the conditions; and
  - (b) notify the conditions in the *Gazette*; and
  - (c) notify the conditions in writing to— 25
    - (i) the customary marine title group; and
    - (ii) each local authority in whose region or district the wāhi tapu or wāhi tapu area is located.
- (5) The chief executive must record the notice on the register.
- 78 Wāhi tapu conditions** 30
- (1) The wāhi tapu conditions that must be set out in a customary marine title order or an agreement are—
- (a) the location of the boundaries of the wāhi tapu or wāhi tapu area that is the subject of the order; and
  - (b) the prohibitions or restrictions that are to apply, and the reasons for them; and 35

- (c) any exemption for specified individuals to carry out a protected customary right in relation to, or in the vicinity of, the protected wāhi tapu or wāhi tapu area, and any conditions applying to the exercise of the exemption. 5
- (2) Wāhi tapu conditions may affect the exercise of fishing rights, but must not do so to the extent that the conditions substantially reduce the lawful entitlement of fishers under the fisheries legislation.
- (3) A customary marine title group may seek to vary or revoke a wāhi tapu condition by— 10
- (a) applying to the Court under **section 98** as if the application were for a customary marine title order; or
- (b) making an agreement under **section 93** to amend the agreement. 15
- (4) If an order or an agreement is varied or revoked under **subsection (3)**, the responsible Minister must—
- (a) notify the variation or revocation in accordance with **section 77(4)**; and
- (b) provide a copy of the notice to the chief executive who must record the notice on the register. 20
- (5) In this section, **fisheries legislation** means—
- (a) the Fisheries Act 1983; and
- (b) the Fisheries Act 1996; and
- (c) regulations made under those Acts. 25

#### **79 Appointment of wardens**

- (1) Wardens may be appointed by a customary marine title group with an interest in a wāhi tapu or wāhi tapu area, in accordance with regulations made under **section 118**, to promote compliance with a prohibition or restriction imposed under **section 78**. 30
- (2) A warden appointed under **subsection (1)** is responsible to the customary marine title group for the following functions:
- (a) to assist in implementing any prohibition or restriction:
- (b) to enter a wāhi tapu or wāhi tapu area for the purpose of performing the warden's functions: 35

- (c) to advise members of the public of any applicable prohibition or restriction:
  - (d) to warn a person to leave a wāhi tapu or wāhi tapu area:
  - (e) to record—
    - (i) any failure to comply with a prohibition or restriction if the warden has reason to believe that the failure is intentional; and 5
    - (ii) the name, contact details, and date of birth of a person who the warden has reason to believe is intentionally failing to comply with a prohibition or restriction: 10
  - (f) to report to a constable any failure to comply with a prohibition or restriction in any case where the warden has reason to believe that the failure is intentional.
- 80 Implementation and enforcement of wāhi tapu conditions** 15
- (1) A local authority that has statutory functions in the location of a wāhi tapu or wāhi tapu area that is subject to a wāhi tapu protection right must, in consultation with the relevant customary marine title group, take any appropriate action that is reasonably necessary to implement a prohibition or restriction included in the wāhi tapu conditions. 20
  - (2) Every person commits an offence who intentionally fails to comply with a prohibition or restriction notified for that wāhi tapu or wāhi tapu area, and is liable on summary conviction to a fine not exceeding \$5,000. 25
  - (3) Despite **subsection (2)**, the offence provisions of the Historic Places Act 1993 apply if a wāhi tapu or wāhi tapu area subject to a wāhi tapu protection right—
    - (a) is protected by a heritage covenant under section 6 of that Act; or 30
    - (b) has interim registration under section 26 of that Act.
  - (4) To avoid doubt, it is not an offence for a person to do anything that is inconsistent with the prohibition or restriction included in the wāhi tapu conditions if—
    - (a) the person is carrying out an emergency activity (within the meaning of **section 8(2)**); or 35
    - (b) the person has an exemption notified under **section 77(4)**.

*Ngā taonga tūturu***81 Newly found taonga tūturu**

- (1) Any taonga tūturu found in a customary marine title area on or after the effective date is prima facie the property of the relevant customary marine title group. 5
- (2) Accordingly, section 11(1) of the Protected Objects Act 1975 does not apply to taonga tūturu to which **subsection (1)** applies.
- (3) Any person finding a taonga tūturu in a customary marine title area has a duty to notify the finding within 28 days, in accordance with section 11(3) of the Protected Objects Act 1975. 10
- (4) The obligations of the chief executive under section 11(4) of the Protected Objects Act 1975 apply, but with the following modifications:
- (a) the relevant customary marine title group is entitled to have interim custody of the taonga tūturu, at the discretion of the chief executive and subject to any conditions that the chief executive considers fit; and 15
- (b) the public notice given by the chief executive must provide for a period of 6 months from the date of the notice for any claims of ownership to the taonga tūturu to be lodged. 20
- (5) To avoid doubt, the power of the chief executive or other person under section 11(2) of the Protected Objects Act 1975 applies under this section. 25
- (6) If no competing claims have been lodged with the chief executive after 6 months from the date of the notice given under **subsection (4)(b)**, the relevant customary marine title group becomes the owner of the taonga tūturu.
- (7) If competing claims are lodged in respect of the taonga tūturu within the specified time,— 30
- (a) the relevant customary marine title group must be treated as having also lodged a claim for the ownership of the taonga tūturu; and
- (b) the ownership of the taonga tūturu must be determined in accordance with sections 11(6) and (7) and 12 of the Protected Objects Act 1975. 35

- (8) Section 11(8) and (9) of the Protected Objects Act 1975 apply to the finding of taonga tūturu to which this section applies.
- (9) In this section, **relevant customary marine title group** means the group that holds a customary marine title order or has entered into an agreement in relation to the part of the common marine and coastal area where the taonga tūturu is found. 5

*Status of minerals*

**82 Status of minerals in customary marine title area**

- (1) This section applies on and after the effective date. 10
- (2) A customary marine title group has, and may exercise, ownership of minerals (other than petroleum, gold, silver, and uranium existing in their natural condition) that are within the customary marine title area of that group.
- (3) The reservation of minerals in favour of the Crown continued by **section 17(2)** ceases. 15
- (4) This section does not limit or have any effect on section 11(1A) of the Crown Minerals Act 1991 (which excludes the reservation of minerals in favour of the Crown from applying to pounamu to which section 3 of the Ngai Tahu (Pounamu Vesting) Act 1997 applies). 20

**83 Status of existing privileges within the common marine and coastal area**

- (1) Despite **section 82(2) and (3)**, the following privileges, rights, obligations, functions, and powers continue, to the end of their term, as if **section 82** had not been enacted: 25
- (a) privileges in existence immediately before the effective date; and
- (b) rights that can be exercised under the Crown Minerals Act 1991 by the holders of those privileges; and
- (c) subsequent rights and privileges granted to those holders following the exercise of the rights referred to in **paragraph (b)**; and 30
- (d) the obligations on those holders imposed by or under the Crown Minerals Act 1991; and

- (e) the exercise by the Crown of its functions and powers under the Crown Minerals Act 1991 in relation to any of the matters referred to in **paragraphs (a) to (d)**.
- (2) A customary marine title group is entitled to receive from the Crown any royalties due to the Crown under the Crown Minerals Act 1991 in respect of minerals referred to in **section 82(2)** that are subject to the privileges referred to in **subsection (1)(a) to (d)** of this section. 5
- (3) **Subsection (2)** applies on and after the date on which the applicant group first lodges an application under **section 98** for recognition of a customary marine title order or notifies the responsible Minister of its intention to seek an agreement. 10

*Planning document*

**84 Planning document**

- (1) A customary marine title group has a right to have a planning document. 15
- (2) The purpose of the planning document is to set out the objectives and policies of the group in respect of its customary marine title area, including objectives and policies that, in accordance with tikanga, relate to— 20
- (a) the sustainable management of the natural and physical resources of the customary marine title area of the group; and
- (b) the protection of the cultural identity and historic heritage of the group. 25
- (3) A planning document may relate—
- (a) only to the customary marine title area of the group; or
- (b) if it relates to areas outside the customary marine title area, only to the part of the common marine and coastal area where the group exercises customary authority. 30
- (4) The planning document must not include matters that cannot be regulated by—
- (a) a local authority, under both the Local Government Act 2002 and the Resource Management Act 1991;
- (b) the Historic Places Trust, under the Historic Places Act 1993: 35

- (c) the Minister of Conservation or Director-General, as the case requires, under the Conservation Act 1987 and the Acts listed in Schedule 1 of that Act:
- (d) a statutory body established to exercise jurisdiction in relation to a matter regulated under an enactment referred to in this subsection. 5

**85 Lodging of planning document**

- (1) A planning document is of no effect until it is lodged with—
  - (a) any agency whose jurisdiction is relevant to the contents of the planning document; and 10
  - (b) the chief executive, who must record the document on the register.
- (2) A document is deemed to be registered on the day after it is first lodged with an agency.

**86 Effect of planning document** 15

The effect of a planning document, once lodged and registered, is, in relation to the district or region where a customary marine title area is located, to impose the obligations set out in **sections 87 to 91** on the agencies with which the planning document is lodged. 20

*Recognition of customary marine title planning documents*

**87 Recognition by local authorities**

- (1) This section applies if a planning document is lodged with a local authority that has statutory functions in the district or region where the customary marine title area is located. 25
- (2) On and after the date that the document is registered, the local authority must take the planning document into account when exercising its decision-making functions in accordance with any of the following provisions of the Local Government Act 2002: 30
  - (a) section 77(1) (which relates to the decision-making process of a local authority):
  - (b) section 78 (which requires community views to be taken into account in the decision-making process): 35

- (c) section 81 (which provides for Māori to contribute to the decision-making processes of the local authority):
- (d) section 82(2) (which requires the local authority to provide processes for consulting Māori).

**88 Recognition by New Zealand Historic Places Trust** 5

If a customary marine title group lodges a planning document with the New Zealand Historic Places Trust (the **Trust**), on and after the date that the planning document is registered,—

- (a) the Trust must have particular regard to matters set out in the document that relate to the functions of the Trust when considering an application under section 14 of the Historic Places Act 1993 to destroy, damage, or modify an archaeological site within the customary marine title area of the group; and 10
- (b) in the event of an appeal under section 20 of that Act against a decision of the Trust, the Environment Court must have particular regard to the planning document. 15

**89 Recognition by Director-General**

- (1) If a customary marine title group lodges a planning document with the Director-General, the Director-General must, on and after the date that a planning document is registered, take into account the relevant matters set out in the document when developing, reviewing, or amending a conservation management strategy that directly affects the customary marine title area of the group that lodged the planning document. 20 25
- (2) In this section, **conservation management strategy** has the meaning given in section 2(1) of the Conservation Act 1987.

**90 Recognition by Minister of Fisheries**

- (1) If a customary marine title group lodges a planning document with the Minister of Fisheries, the Minister must, on and after the date that the planning document is registered, have regard to the planning document to the extent that it is relevant to fisheries management when setting or varying sustainability measures under section 11(2) of the Fisheries Act 1996 within the customary marine title area of the group. 30 35



- (2) This section does not extend the scope of **section 84 or 85** or give a customary marine title group the right to include fisheries or other matters in a planning document, but enables a planning document to include matters that are provided for by the Resource Management Act 1991 and that may be relevant to fisheries management. 5

*Responsibilities of regional councils where  
planning documents lodged*

**91 Requirements relating to regional documents if planning document lodged** 10

*Interpretation*

- (1) In this section, **regional document** means—
- (a) a regional plan or regional policy statement within the meaning of section 43AA of the Resource Management Act 1991; and 15
  - (b) a proposed regional plan or proposed regional policy statement within the meaning of section 43AAC of that Act.

*Examination of regional documents*

- (2) A regional council that has statutory functions in a region where a planning document has been lodged must examine its regional documents, to the extent that they relate, directly or indirectly, to all or part of a customary marine title area where a planning document applies. 20
- (3) The purpose of the examination is to ensure that the regional documents recognise and provide for the matters set out in the planning document, to the extent that the planning document— 25
- (a) relates to resource management issues in the customary marine title area; and 30
  - (b) is consistent with the purpose of the Resource Management Act 1991.
- (4) The examination required by this section must be carried out as part of the regional council's next change, variation, or review of any provisions of its regional documents that apply to the relevant customary marine title area under the following provisions of the Resource Management Act 1991: 35

- (a) section 61 (which relates to regional policy statements):
- (b) section 66 (which relates to regional plans).
- Obligations of regional council until examination completed*
- (5) Until the examination required by this section is completed, the regional council must— 5
- (a) attach a copy of any planning document that has been lodged with the council under **section 85** to each of its regional documents; and
- (b) when considering applications for resource consents that relate wholly or in part to, or directly affect, a customary marine title area, recognise and provide for the matters included in the planning document, to the extent that— 10
- (i) they relate to resource management issues in the customary marine title area; and 15
- (ii) are consistent with the purpose of the Resource Management Act 1991.
- Obligations of regional council after examination completed*
- (6) If, after the completion of the examination, the regional council is of the view that its regional documents— 20
- (a) ought to be altered to reflect the need to recognise and provide for the matters included in the planning document relating to a customary marine title area, it must prepare new regional documents, or change its documents, in accordance with Schedule 1 of the Resource Management Act 1991; or 25
- (b) need not be altered because they do recognise and provide for the matters included in the planning document relating to a customary marine title area, it must give public notice, with reasons, of this decision. 30
- Obligations of regional council if planning document applies outside customary marine title area*
- (7) In relation to the obligations on a regional council under each of **subsections (2) and (5)(b)**, the council must take the planning document into account to the extent that it applies in a part of the common marine and coastal area that is outside a customary marine title area. 35

## Part 4

### Administrative and miscellaneous matters

#### Subpart 1—Procedure for recognition of customary interests

##### *Recognition of customary interests* 5

#### **92 Recognition of protected customary rights and customary marine title**

- (1) A protected customary right or customary marine title relating to a specified part of the common marine and coastal area may be recognised by— 10
- (a) an agreement made in accordance with **section 93** and brought into effect under **section 94**; or
  - (b) an order of the Court made on an application under **section 98**; or
  - (c) an Act. 15
- (2) A protected customary right or customary marine title may not be recognised in any other way.

##### *Recognition by agreement*

#### **93 Agreement**

- (1) An applicant group and the responsible Minister on behalf of the Crown may enter into an agreement recognising a protected customary right or customary marine title. 20
- (2) **Subsection (1)** does not apply unless the applicant group, not later than 6 years after this Part comes into force, has given notice in the prescribed form to the responsible Minister of its intention to seek an agreement recognising a protected customary right or customary marine title. 25
- (3) Nothing requires the Crown to enter into the agreement, or to enter into negotiations for the agreement: in both cases this is at the discretion of the Crown. 30
- (4) The Crown must not enter into an agreement unless the applicant group satisfies the Crown that,—
- (a) in the case of a protected customary right, the requirements in **section 53** are met; or
  - (b) in the case of customary marine title, the requirements in **section 60** are met. 35

**94 Agreement comes into effect by Order in Council**

- (1) An agreement made under **section 93** comes into effect on a date appointed by Order in Council and until that date has no effect.
- (2) The Order in Council must specify— 5
- (a) the applicant group in sufficient detail to identify it; and
  - (b) the area or areas to which the agreement relates.

**95 Registration and notification of agreement**

- (1) The responsible Minister— 10
- (a) must provide a copy of an agreement that comes into effect under **section 94** to the chief executive; and
  - (b) must do so in sufficient time to enable the chief executive to take the steps specified in **subsection (2)** before the agreement comes into effect.
- (2) The chief executive must, without delay after receiving a copy of the agreement from the responsible Minister and before the agreement comes into effect,— 15
- (a) enter the agreement in the register; and
  - (b) notify the agreement in the *Gazette*; and
  - (c) send a copy of the agreement to— 20
    - (i) the local authorities that are affected by the agreement; and
    - (ii) the Minister of Conservation; and
    - (iii) the Minister of Fisheries; and
    - (iv) the Minister of Māori Affairs; and 25
    - (v) any other person who the chief executive considers is directly affected by the agreement.

*Recognition by order of Court***96 Court may recognise protected customary right or customary marine title** 30

- (1) The Court may make an order recognising a protected customary right or customary marine title (a **recognition order**).
- (2) No other court has jurisdiction to make a recognition order.
- (3) Except in the exercise of its jurisdiction under this Act to make a recognition order, no court may hear and determine an abo- 35

original rights claim relating to the common marine and coastal area.

- (4) In **subsection (3)**, **aboriginal rights claim** means any claim in respect of the common marine and coastal area that is based on, or relies on, customary rights, customary title, aboriginal rights, aboriginal title, the fiduciary duty of the Crown, or any rights, titles, or duties of a similar nature, whether arising before, on, or after the commencement of this section and whether or not the claim is based on, or relies on, any 1 or more of the following:
- (a) a rule, principle, or practice of the common law or equity:
  - (b) the Treaty of Waitangi:
  - (c) the existence of a trust:
  - (d) an obligation of any kind.
- (5) Nothing in this section limits section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1993.
- (6) **Subsection (2)** does not limit **section 112**.

**97 Court may refer to Māori Appellate Court or pūkenga for opinion or advice on tikanga**

- (1) If an application for a recognition order raises a question of tikanga, the court may—
- (a) refer that question in accordance with section 61 of Te Ture Whenua Maori Act 1993 to the Māori Appellate Court for its opinion; or
  - (b) obtain the advice of a court expert (a **pūkenga**) appointed in accordance with the High Court Rules who has knowledge and experience of tikanga.
- (2) The opinion of the Māori Appellate Court is binding on the Court but the advice of a pūkenga is not.

*Application for recognition order*

**98 Who may apply**

- (1) An applicant group may apply to the Court for a recognition order.
- (2) However, the application must be filed not later than 6 years after this Part comes into force, and the Court must not accept

for filing or otherwise consider any application that purports to be filed after that date.

### 99 Contents of application

An application for a recognition order must—

- (a) state whether it is an application for recognition of a protected customary right, or of customary marine title, or both; and 5
- (b) if it is an application for recognition of a protected customary right, describe that customary right; and
- (c) describe the applicant group; and 10
- (d) identify the particular area of the common marine and coastal area to which the application relates; and
- (e) state the grounds on which the application is made; and
- (f) name a person to be the holder of the order as the representative of the applicant group; and 15
- (g) specify contact details for the group and for the person named to hold the order; and
- (h) be supported by an affidavit or affidavits that set out in full the basis on which the applicant group claims to be entitled to the recognition order; and 20
- (i) contain any other information required by regulations made under **section 118(1)(h)**.

### 100 Registry for filing application

An application for a recognition order must be filed in the registry of the Court nearest to the area of the common marine and coastal area to which the application relates. 25

### 101 Service of application

The applicant group applying for a recognition order must serve the application on—

- (a) the local authorities that have statutory functions in the area of the common marine and coastal area to which the application relates; and 30
- (b) any local authority that has statutory functions in the area adjacent to the area of the common marine and coastal area to which the application relates; and 35
- (c) the Solicitor-General; and

- (d) the chief executive of the Ministry of Economic Development; and
- (e) any other person who the Court considers is likely to be directly affected by the application.

- 102 Public notice of application** 5
- (1) The applicant group applying for a recognition order must give public notice of the application.
- (2) The public notice must include, as a minimum,—
- (a) the name of the applicant group and its description as a hapū or iwi, whichever applies; and 10
  - (b) a brief description of the application, including whether it is an application for recognition of a protected customary right or of customary marine title or both; and
  - (c) a description of the particular area of the common marine and coastal area to which the application relates; and 15
  - (d) the name of the person who is proposed as the holder of the order; and
  - (e) in the case of an application for recognition of a protected customary right, a description of the right; and
  - (f) a date that complies with **subsection (3)** for filing a notice of appearance in support of or in opposition to the application; and 20
  - (g) the registry of the Court for filing the notice of appearance.
- (3) The date for filing a notice of appearance must not be less than 20 working days after the first public notice of the application is published. 25
- 103 Who may appear on application for recognition order**
- Any interested person may appear and be heard on an application for a recognition order if that person has, by the due date, filed a notice of intention to appear. 30
- 104 Evidence**
- In hearing an application for a recognition order, the Court may receive as evidence any oral or written statement, document, matter, or information that the Court considers to be re- 35

liable, whether or not that evidence would otherwise be admissible.

#### **105 Burden of proof**

- (1) The applicant group must prove that it is entitled to the customary interest that is the subject of the application. 5
- (2) It is presumed, in the absence of proof to the contrary, that a customary interest has not been extinguished.
- (3) The Court must dismiss the application if the applicant group fails to prove its entitlement to the customary interest.

#### **106 Court's flexibility in dealing with application** 10

- (1) The Court may, if it considers that an application for recognition of a protected customary right is more appropriately decided as an application for recognition of customary marine title, treat it as the latter.
- (2) The Court may, if it considers that an application for recognition of customary marine title is more appropriately decided as an application for recognition of a protected customary right, treat it as the latter. 15
- (3) The Court may strike out all or part of an application for a recognition order if it— 20
  - (a) discloses no reasonably arguable case; or
  - (b) is likely to cause prejudice or delay; or
  - (c) is frivolous or vexatious; or
  - (d) is otherwise an abuse of the Court.
- (4) If the Court strikes out an application under **subsection (3)**, it may by the same or a subsequent order dismiss the application. 25
- (5) Instead of striking out all or part of an application under **subsection (3)**, the Court may stay all or part of the application on such conditions as are considered just.
- (6) This section does not affect the Court's inherent jurisdiction. 30

#### **107 Rules governing procedure**

Rules not inconsistent with this Act may be made under section 51C of the Judicature Act 1908 to regulate the practice and procedure of the Court or the Court of Appeal or the Supreme Court in relation to any application to the Court under this Act. 35



*Recognition orders*

**108 Form of recognition order**

- (1) An applicant group in whose favour the Court grants recognition of a protected customary right or customary marine title must submit a draft order for approval by the Registrar of the Court. 5
- (2) A recognition order must—
- (a) specify the particular area of the common marine and coastal area to which the order applies; and
  - (b) include a diagram or map that is sufficient to identify that particular area; and 10
  - (c) specify the group to which the order applies; and
  - (d) specify the name of the holder of the order; and
  - (e) specify contact details for the group and for the holder; and 15
  - (f) in the case of a recognition order recognising a protected customary right order, include a description of the right, including any limitations on the scale, extent, or frequency of the exercise of the customary right; and
  - (g) in the case of a recognition order recognising customary marine title, include a description of the title, including any prohibition or restriction that is to apply to a wāhi tapu or wāhi tapu area. 20

**109 Sealing of recognition order**

A recognition order must be sealed on the application of the applicant group. 25

**110 Notification of recognition orders and any appeals**

- (1) As soon as is reasonably practicable after a recognition order has been sealed, the chief executive must—
- (a) publish a minute of the order in the *Gazette*; and 30
  - (b) unless an appeal has already been filed, send a copy of the sealed order to—
    - (i) the local authorities that have statutory functions in the area of the common marine and coastal area to which the order applies; and 35

- (ii) any local authority with statutory functions in an area adjacent to the area of the common marine and coastal area to which the order applies; and
  - (iii) the Minister of Conservation, through the Director-General of Conservation; and 5
  - (iv) the Minister of Māori Affairs, through the chief executive of Te Puni Kōkiri; and
  - (v) each person who appeared on the application; and
  - (vi) any other person that the Court directs. 10
- (2) The copy of the sealed order must be accompanied by a notice that states the due date for lodging an appeal.
- (3) If the chief executive has not sent a copy of the sealed order as required by **subsection (1)(b)** because an appeal has been filed, and the appeal is discontinued, the chief executive must send a copy of the sealed order in accordance with **subsection (1)(b)** as soon as is reasonably practicable after the discontinuance. 15
- (4) The chief executive must, as soon as is reasonably practicable after a final judgment is given in any appeal against a recognition order,— 20
- (a) give notice of the outcome of the appeal by publication in the *Gazette* and by written notice to the persons specified in **subsection (1)(b)**; and
  - (b) if the appeal fails and copies of the sealed order have not been sent under **subsection (1)(b)**, send those copies. 25
- 111 Recognition order may be varied or cancelled**
- (1) The Court may—
- (a) vary a recognition order, including— 30
    - (i) varying any of the matters referred to in **section 108(2)(a) to (c), and (e) to (g)**; and
    - (ii) replacing the holder of the order with another person to hold the order as the representative of the group to which the order applies; or
  - (b) cancel a recognition order. 35
- (2) The Court may vary a matter referred to in **section 108(2)(a) to (c), (e), and (f)**; but only if the relevant criteria in **sections 53 and 60** are satisfied in relation to the variation.

- (3) In the case of a variation, the variation must not have the effect of depriving the group to which the order applied before variation of the benefits of the order.
- (4) An application for variation or cancellation of a recognition order may be made only by— 5
- (a) the holder of the order; or
  - (b) a representative of the group to which the order applies, if the holder—
    - (i) has ceased to exist; or
    - (ii) being a natural person, has died or no longer has 10 legal capacity.
- (5) The Court must not vary or cancel the order unless it is satisfied that—
- (a) the applicant is authorised to apply for the variation or cancellation by the group to which the order applies; 15 and
  - (b) the applicant has given sufficient notice of the application to that group; and
  - (c) there has been sufficient opportunity for that group to consider the application and make its views known to 20 the applicant; and
  - (d) that group has no meritorious objections to the application that would require the Court to decline the application.
- (6) **Sections 101 to 103** apply, with necessary modifications, to 25 an application under this section.

*Appeal rights*

**112 Right of appeal against decision of Court**

- (1) A party to a proceeding under this Part who is dissatisfied with a decision of the Court may appeal to the Court of Appeal on 30 a matter of fact or law.
- (2) In relation to a proceeding under this Part, the Crown—
- (a) may lodge an appeal on a matter of fact or law, whether or not it was a party to the proceeding in the Court; and
  - (b) must be treated as a party to the appeal. 35

- (3) An appeal made under this section must be commenced by notice of appeal, given in accordance with the Court of Appeal (Civil) Rules 2005.

*Registration of recognition order*

- 113 Recognition order must be entered in register** 5  
After the time allowed for an appeal has expired or an appeal has been disposed of, the chief executive must without delay enter the order in the register.

Subpart 2—Marine and coastal area register

- 114 Marine and coastal area register** 10  
The chief executive must keep a marine and coastal area register (the **register**) as a permanent record of—

- (a) the orders awarded or varied by the Court under **subpart 1**:  
(b) agreements (including variations of those agreements) made under **section 93**: 15  
(c) any public notices that are given in respect of orders, agreements, or variations of an order or agreement:  
(d) any other related information that in the opinion of the chief executive should be publicly available. 20

**115 Requirements for keeping register**

- (1) The register must be held in the safe custody of the chief executive.  
(2) The register may be kept—  
(a) in an electronic, electromagnetic, optical, digital, or photographic system or process; or 25  
(b) as a paper record; or  
(c) by other means for recording, reproducing, copying, or storing information; or  
(d) in any combinations of these processes, systems, or means. 30

**116 Inspection and copying**

- (1) All orders and other documents contained in the register must be available for public inspection and copying, and copies may

- be supplied to any person upon request on payment of the prescribed fee (if any).
- (2) The right to inspect and copy orders and other documents includes the right to receive,—
- (a) in the case of an order or other document that is a paper record, a paper copy of the order or other document; and 5
- (b) in the case of an instrument recorded by a process, system, or means other than as a paper record, a paper document that records the content of the instrument.
- 117 Application of Privacy Act 1993** 10
- The register is a public register within the meaning of section 58 of the Privacy Act 1993.
- Subpart 3—Regulations and miscellaneous matters
- Regulations and bylaws* 15
- 118 Regulations for administrative purposes**
- (1) The Governor-General may, by Order in Council, make regulations for any of the following purposes:
- (a) prescribing the duties of the chief executive in relation to the register: 20
- (b) providing for the appointment of wardens under **section 79**, the terms of those appointments (including the responsibility of the customary marine title group for their funding), and the termination of such appointments: 25
- (c) prescribing additional functions of wardens appointed under **section 79**, being functions that are reasonably incidental to the functions specified in that section:
- (d) prescribing any duties or powers to be exercised by wardens for the purpose of performing their functions: 30
- (e) prescribing the means (including, without limitation, identity cards or badges, or both) by which wardens are to be identified:
- (f) giving directions relating to the management of wardens by a customary marine title group whose custom- 35

- any marine title order includes prohibitions and restrictions in respect of a wāhi tapu or wāhi tapu area:
- (g) prescribing the fees payable for the consideration and processing of applications made under **section 37**, or the methods or rates by which those fees are to be assessed: 5
  - (h) prescribing the information that must be included in applications made under **subpart 1**:
  - (i) providing for any other matters contemplated by this Act or necessary for giving it full effect. 10
- (2) Regulations made under **subsection (1)** must be made on the advice of the Minister of Justice, after consultation with the responsible Minister who must consult with the customary marine title groups that appear to the Minister to be likely to be affected by the regulations. 15
- 119 Regulations for management of common marine and coastal area**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Conservation, make regulations for all or any of the following purposes: 20
    - (a) the safety and protection of members of the public who exercise rights of access in or over the common marine and coastal area or any specified part of that area:
    - (b) the preservation of the natural features of the common marine and coastal area or any specified part of that area: 25
    - (c) prohibiting or regulating the construction or use of structures in the common marine and coastal area or any specified part of that area, and providing for the removal or destruction of those structures:
    - (d) prohibiting or regulating the placing or deposit of objects in the common marine and coastal area or any specified part of that area, and providing for the removal or destruction of those objects: 30
    - (e) prescribing offences punishable on summary conviction by a fine not exceeding \$5,000 in any one case: 35
    - (f) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.

- (2) The Minister of Conservation must not make a recommendation under **subsection (1)** unless satisfied that—
- (a) the proposed regulations are necessary for the proper management of the common marine and coastal area or of the specified part to which the proposed regulations relate; and 5
  - (b) the objectives of the proposed regulations cannot be, or are not being, achieved under an existing enactment.

**120 Bylaws**

- (1) The Minister of Conservation may, by notice in the *Gazette*, make bylaws for any specified part of the common marine and coastal area for all or any of the following purposes: 10
- (a) prohibiting or regulating the use or parking of vehicles in a specified part of the common marine and coastal area: 15
  - (b) regulating the use or mooring of vessels in the specified part of a common marine and coastal area:
  - (c) prohibiting the hovering or landing of any aircraft over or in a specified part of the common marine and coastal area: 20
  - (d) prescribing fines, not exceeding \$500 in any one case, for the breach of any bylaws made under this section.
- (2) The Minister of Conservation must not make any bylaws under **subsection (1)** unless satisfied that—
- (a) the proposed bylaws are necessary for the proper management of the specified part of the common marine and coastal area to which the proposed bylaws relate; and 25
  - (b) the objectives of the proposed bylaws cannot be, or are not being, achieved under an existing enactment.

*References*

30

**121 References to public foreshore and seabed**

- (1) On and after the commencement of this section, a reference in any instrument to the public foreshore and seabed is taken to be a reference to the common marine and coastal area.

- (2) **Subsection (1)** does not apply to any document filed, served, or issued in any proceeding commenced under, or in reliance on, the Foreshore and Seabed Act 2004.

*Transitional arrangements*

- 122 Pending proceedings under Foreshore and Seabed Act 2004** 5
- (1) On the commencement of this section, all applications made under the Foreshore and Seabed Act 2004 to the Māori Land Court for customary rights orders and not finally determined under that Act before the commencement of this Act must, without further authority than this section, be transferred to the High Court. 10
- (2) The High Court must treat applications transferred under **subsection (1)** as if they were applications made under **subpart 1** for orders recognising protected customary rights. 15
- (3) The High Court—
- (a) must give priority to applications transferred under this section ahead of any applications made under **subpart 1**: 20
- (b) may deem any of the steps that are required for a proceeding under the High Court Rules to have been met by the applications transferred under this section: 25
- (c) may give directions to applicants to take such steps that, in the opinion of the High Court, are necessary to enable the proceedings to be completed. 25
- (4) An application made under section 33 of the Foreshore and Seabed Act 2004 for a finding that a group would have held territorial customary rights is to be treated by the High Court as an application under **subpart 1** for an order recognising customary marine title. 30

*Notices*

- 123 Giving of notices**
- (1) If a notice or other document is to be given or served on a person under this Act, it must be given in writing— 35
- (a) by personal service; or



- 
- (b) by registered post addressed to the person at the person's usual or last known place of business or residence; or
- (c) by service on the person's lawyer or another person authorised to act on behalf of that person; or 5
- (d) by registered post to that other person; or
- (e) by electronic transmission to the person or that person's lawyer or another person authorised to act on behalf of that person, including transmission by fax, electronic mail, or electronic data transfer. 10
- (2) A notice or document sent by post or registered post is deemed to have been given or received 7 days after the date on which it was posted, unless the person to whom it was sent proves that, other than through that person's fault, the notice or document was not received. 15

*Amendments to other enactments*

**124 Consequential amendments to other enactments**

The enactments specified in **Schedule 3** are amended in the manner specified in that schedule.

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**Schedule 1****s 9****Process by which certain new activities  
in customary marine title area become  
deemed accommodated activities****Part 1**

5

**New nationally or regionally significant  
structure or infrastructure**

- 1 Prior to the application under the Resource Management Act 1991 for any resource consents for new nationally or regionally significant structures or infrastructure in a customary marine title area, the proposed structure or infrastructure may become a deemed accommodated matter in accordance with this Part. 10
- 2 Any person listed in the definition of **nationally or regionally significant** in **section 8(2)** may apply to the Minister for Land Information to have a proposed structure or infrastructure classified as a deemed accommodated matter. In this Part, **Minister** means the Minister of Land Information. 15
- 3 In applying under this schedule, the applicant must provide to the Minister the following information: 20
- (a) a survey and a plan that—
    - (i) shows the customary marine title area where the proposed structure or infrastructure is to be constructed; and
    - (ii) must meet the requirements of the Cadastral Survey Act 2002 as if it were a cadastral survey within the meaning of that Act; and 25
  - (b) a detailed description of the proposed structure or infrastructure, including all of the relevant resource consents that will be applied for in support of the proposed structure or infrastructure; and 30
  - (c) a detailed description of the purpose for which the proposed structure or infrastructure is to be used; and

- 
- (d) justification why the proposed structure or infrastructure is considered by the applicant to be nationally or regionally significant; and
  - (e) justification why the proposed structure or infrastructure is considered by the applicant to be essential work; and 5
  - (f) an assessment of all practicable alternative sites, and why the proposed structure or infrastructure cannot practicably be constructed in any other location outside of the customary marine title area (within or outside the coastal marine area); and 10
  - (g) a description of the negotiations that have already taken place with the customary marine title group and, on the basis of those negotiations, reasons why the applicant considers it cannot reasonably obtain the permission of that group for the proposed structure or infrastructure. 15
- 4 Upon receipt of an application under **clause 3** (including after receipt of any additional information), the Minister must consider and decide to—
- (a) seek more information from the applicant; or 20
  - (b) decline the application on the basis that insufficient information has been provided, or the proposed structure or infrastructure does not meet all or any of the requirements and criteria set out in **clause 3**; or
  - (c) make an initial decision on whether there is sufficient information to demonstrate that all of those requirements and criteria have been adequately addressed. 25
- 5 For the avoidance of doubt, a decision under **clause 4(c)** is not a substantive decision of the Minister in favour of the classification of the proposed structure or infrastructure as a deemed accommodated matter. It is merely a decision that there is sufficient information for the Minister to consider the matter further with the relevant customary marine title group. 30
- 6 After making a decision under **clause 4(c)** that there is sufficient information, the Minister must, before determining the application,— 35

- 
- (a) serve notice of the Minister’s initial decision on the holder of the relevant customary marine title or agreement; and
- (b) provide to the holder of the relevant customary marine title or agreement a copy of the application and any further information received from the applicant; and 5
- (c) invite the customary marine title group to identify appropriate compensation for the removal of its RMA permission right or conservation permission right and any other affected right associated with the customary marine title for the proposed structure or infrastructure, in the event that it does not wish to agree to the construction of the proposed structure or infrastructure going ahead; and 10
- (d) negotiate in good faith with the customary marine title group in an attempt to the waiver of its permission right (and other affected rights) with respect to the application. 15
- 7 This clause applies if, after a period of 3 months,—
- (a) the customary marine title group fails to respond to any invitation issued under **clause 6**; or 20
- (b) the customary marine title group refuses to negotiate with the Minister; or
- (c) the Minister and the group do not agree to waive the permission right (and other affected rights). 25
- 8 If **clause 7** applies, the Minister must consider the application and any material provided by the customary marine title group and any other relevant information and make a decision on—
- (a) whether to waive the customary marine title group’s permission right; and 30
- (b) whether there are any other affected rights associated with the customary marine title; and
- (c) what compensation to provide; and
- (d) whether to classify the matter as a deemed accommodated matter under **section 9**. 35

- 9 In making his or her decision under **clause 8**, the Minister must consider whether the criteria set out in **clause 3** have been adequately addressed and, without limiting his or her consideration, the Minister may not agree to waive the permission right (and any other affected rights) unless he or she considers that the work is essential work and cannot be practicably undertaken in any other location outside of the customary marine title area. 5
- 10 If the customary marine title group agrees to waive the permission right (and any other affected rights), or a decision is made by the Minister under **clause 8** to waive the permission right (and any other affected rights), then the proposed structure or infrastructure will become a deemed accommodated matter, except that— 10
- (a) the waiver of the RMA permission right will operate only for the particular resource consents applied for with respect to the proposed structure or infrastructure (and only as far as the proposed structure or infrastructure is defined in the *Gazette* notice set out in **clause 11**); and 15 20
  - (b) the waiver of the permission right will not otherwise take away the legal effect of the customary marine title order or agreement, except as the customary marine title group expressly agrees otherwise or the Minister decides otherwise; and 25
  - (c) the waiver of the permission right (and any other affected rights) will only apply to the activity that is the subject of an application under **clause 3** and, unless expressly provided otherwise, it will not prevent the customary marine title group from exercising its permission right (and other rights) under a customary marine title order or agreement within the same area for any other resource consent application not included in the *Gazette* notice published under **clause 11**; and 30
  - (d) the customary marine title order or agreement will still be a relevant matter for the consent authority when considering the resource consents necessary for the deemed 35

accommodated matter under the Resource Management Act 1991.

- 11 If a proposed structure or infrastructure becomes a deemed accommodated activity under **clause 10**, the Minister must cause a notice to be published in the *Gazette* giving— 5
- (a) a description of the deemed accommodated matter, including a detailed description of the proposed structure or infrastructure and all resource consents that will be applied for as part of the proposed structure or infrastructure; and 10
  - (b) a description of the customary marine title area and rights that are affected; and
  - (c) a description of the purpose for which the structure or infrastructure is to be used; and
  - (d) the reasons why the construction of the structure or infrastructure is considered reasonably necessary. 15
- 12 The Minister must serve a copy of the *Gazette* notice on the holder of the relevant customary marine title order or agreement and the relevant regional council.

## Part 2

20

### New minerals—related activities

#### 1 Definitions

In this Part,—

**activity** means any activity—

- (a) that is necessary for, or reasonably related to, prospecting, exploration, mining operations, or mining under either or both of the following: 25
  - (i) a privilege in respect of petroleum:
  - (ii) a privilege to which **section 83(1)** applies; and
- (b) that is to commence in a customary marine title area after the effective date; and 30
- (c) for which a resource consent is to be sought

**activity agreement** means an agreement of the kind described in **clause 3** between the title holder and the permit holder

Part 2—*continued*

**permit holder** means the person seeking the resource consent for the activity.

**2 Permit holder may request title holder to negotiate activity agreement**

- (1) A permit holder may serve a notice on the relevant customary marine title group stating that the permit holder intends to negotiate an activity agreement with the group. 5
- (2) A notice served under **subclause (1)** must specify—
- (a) the area affected by the proposed activity; and
  - (b) the purpose for which resource consent is to be sought; and 10
  - (c) the proposed programme of work for the activity, including the type and duration of work to be carried out and the likely adverse effect on the customary marine title area and on the customary marine title group; and 15
  - (d) the compensation and safeguards against any likely adverse effects proposed; and
  - (e) the type of privilege held by the permit holder.

**3 Contents of activity agreement**

- (1) An activity agreement may make provision for the following matters: 20
- (a) the periods during which the permit holder is to undertake the activity in the customary marine title area:
  - (b) the parts of the customary marine title area on or in which the permit holder may undertake the activity: 25
  - (c) the kinds of activity that may be undertaken in the customary marine title area:
  - (d) the conditions to be observed by the permit holder in undertaking the activity in the customary marine title area: 30
  - (e) the action to be taken by the permit holder in order to protect the environment:
  - (f) the compensation to be paid to the customary marine title group as a consequence of the permit holder undertaking the activity in the customary marine title area: 35

Part 2—*continued*

- (g) the manner of resolving any dispute arising in connection with the activity agreement:
  - (h) any other matters that the parties to the arrangement may agree to include in the activity agreement.
- (2) In considering whether to agree to an activity agreement, the customary marine title group may have regard to any matters it considers relevant. 5
- 4 Requests for appointment of arbitrator**
- (1) The permit holder may serve a written notice on the customary marine title group requesting the group to agree to the appointment of an arbitrator if— 10
- (a) the permit holder and the group are unable to agree on an activity agreement; and
  - (b) a period of at least 60 days has expired since the day on which notice was served under **clause 2(1)**. 15
- (2) The customary marine title group and the permit holder may agree to the appointment of any person as arbitrator.
- 5 Appointment of arbitrator in default of agreement**
- (1) The permit holder or the customary marine title group may apply to the chief executive of the department responsible for the administration of the Crown Minerals Act 1991 for the appointment of an arbitrator if— 20
- (a) the customary marine title group and the permit holder are unable to agree on the appointment of an arbitrator; and 25
  - (b) a period of at least 30 days has expired since the day on which notice was served under **clause 4(1)**.
- (2) Every application must be accompanied by any prescribed fee.
- (3) On receipt of an application the chief executive must as soon as practicable appoint an arbitrator. 30
- 6 Arbitration**
- (1) If an arbitrator is appointed under clause 4(2) or 5(3), the arbitrator must conduct an arbitration in accordance with the Ar-



Part 2—*continued*

bitration Act 1996, and the provisions of that Act (other than those relating to the appointment of arbitrators) apply to the arbitration as if—

- (a) this clause were an arbitration agreement; and
  - (b) the matters specified in **paragraphs (a) to (g)** of **clause 3(1)** were matters in dispute that the customary marine title group and the permit holder had agreed to submit to arbitration. 5
- (2) The arbitrator's award must determine the basis on which the activity is to proceed, on reasonable conditions. 10
-

**Schedule 2****ss 57(6), 58(5)****Resource consents in protected customary  
rights area****Part 1****Matters relevant to applications**

5

**1 Determination of adverse effects**

In determining whether a proposed activity will, or is likely to, have an adverse effect on the exercise of a protected customary right, a consent authority must consider the following matters:

- (a) the effects of the proposed activity on a protected customary right; and 10
- (b) the area that the proposed activity would have in common with the relevant protected customary rights area; and
- (c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and 15
- (d) the degree to which the exercise of a protected customary right must be carried out to the exclusion of other activities; and
- (e) whether an alternative location or method would avoid, remedy, or mitigate any adverse effects of the proposed activity on the exercise of the protected customary right; and 20
- (f) whether any conditions could be included in a resource consent for the proposed activity that would avoid, remedy, or mitigate any adverse effects of the proposed activity on the exercise of the protected customary right. 25

**2 Written approval**

(1) This clause applies if—

- (a) a protected customary rights group gives written approval under **section 57(2)** for a resource consent for a proposed activity; and 30
- (b) the proposed activity, if carried out under the resource consent, would have the effect of preventing, in whole or in part, the exercise of a protected customary right. 35

Part 1—*continued*

- (2) The protected customary rights group must acknowledge in writing that the resource consent, if granted, would have the effect described in **subclause (1)(b)**.
- (3) Both the written approval given under **section 57(2)** and the written acknowledgement required by **subclause (2)**— 5
- (a) form part of the application for the resource consent for the proposed activity; and
- (b) if a resource consent is granted, form part of the resource consent for that activity.
- 3 Process if grant of resource consent has effect of cancelling protected customary right** 10
- (1) If the effect of carrying out an activity under a resource consent granted in the circumstances contemplated by **clause 2** would be permanently to cancel a protected customary rights order or agreement, in whole or in part,— 15
- (a) the protected customary rights group must apply, as the case requires,—
- (i) to the High Court under **section 111** to vary or cancel the order; or
- (ii) to the responsible Minister to vary or cancel an agreement; and 20
- (b) a decision by the consent authority to grant a resource consent for the proposed activity is of no effect until the application referred to in **paragraph (a)** has been—
- (i) determined by the High Court under **section 111** and all appeal rights have been pursued, and registered under **section 114**; or 25
- (ii) agreed to by the responsible Minister as if it were an application for an agreement to which **sections 93, 94, and 114** apply. 30
- (2) If the High Court or the responsible Minister, as the case requires, declines an application to cancel a protected customary rights order, the relevant resource consent must be treated as if it were declined by the consent authority.

Part 1—*continued***4 Adverse effects assessment**

- (1) For the purposes of imposing controls on the exercise of a protected customary right under **Part 2** of this schedule, a regional council must, if directed by the Minister of Conservation at any time, and may of its own initiative in the circumstances set out in **clause 8(2)**,— 5
- (a) carry out an adverse effects assessment of the effects on the environment of exercising a protected customary right in its region; and
  - (b) complete, and give to the Minister, an adverse effects report based on that assessment. 10
- (2) **Clauses 8 to 12** apply to the assessment carried out and to the report required by this clause.

## Part 2

## Controls on exercise of protected customary rights 15

## Power to impose controls

**5 Power to impose controls**

- (1) The Minister of Conservation may impose controls (including terms, standards, and restrictions) on the exercise of a protected customary right, but only if the Minister considers that— 20
- (a) the exercise of a protected customary right has, or may have, a significant adverse effect on the environment; and 25
  - (b) the controls—
    - (i) will not prevent the exercise of the right; and
    - (ii) are reasonable and, in the circumstances, not unduly restrictive; and
    - (iii) are necessary to avoid, remedy, or mitigate any significant adverse effects of the exercise of the right on the environment. 30
- (2) However, the Minister of Conservation must not impose controls on the exercise of a protected customary right under **sub-clause (1)** unless the Minister— 35

Part 2—*continued*

- (a) has received a copy of an adverse effects report under **clause 12** or carried out his or her own adverse effects assessment and completed a report on that assessment; and
- (b) has consulted with the relevant protected customary rights group and the Minister of Māori Affairs. 5
- (3) The Minister may seek any other relevant information and views before imposing controls.
- (4) The Minister of Conservation must not undertake an assessment under this clause if, before he or she has begun an assessment, the relevant regional council notifies the Minister of Conservation under **clause 9** that it is carrying out an adverse effects assessment of the protected customary right in accordance with **clause 8**. 10
- (5) The Minister of Conservation must give written notice of his or her decision to carry out an adverse effects assessment under this clause not later than 5 working days after making that decision to— 15
  - (a) the relevant regional council; and
  - (b) the relevant protected customary rights group. 20
- 6 Matters relevant to consideration**
- The Minister of Conservation, when considering whether to impose controls on the exercise of a protected customary right,—
- (a) must have regard to— 25
  - (i) the effects on the environment of exercising the right; and
  - (ii) any adverse effects report received by the Minister in relation to the exercise of the right; and
  - (iii) the views expressed by the persons with whom the Minister has consulted; and 30
  - (iv) any other relevant information and views that the Minister has received; and
- (b) may have regard to—
  - (i) any relevant national policy statement: 35
  - (ii) the New Zealand coastal policy statement:

Part 2—*continued*

- (iii) the relevant regional policy statement or proposed regional policy statement:
- (iv) any relevant plan or proposed plan.

**7 Timing and giving of notice**

- The Minister of Conservation must— 5
- (a) decide whether to impose controls on the exercise of a protected customary right no later than 60 working days after—
    - (i) receiving an adverse effects report on the matter from the regional council; or 10
    - (ii) giving notice under **clause 5(5)** that the Minister will be carrying out his or her own assessment; and
  - (b) give written notice of his or her decision, and the reasons for it, to— 15
    - (i) the relevant regional council; and
    - (ii) the relevant protected customary rights group; and
    - (iii) the Minister of Māori Affairs; and
    - (iv) the chief executive. 20

## Adverse effects assessment and reporting

**8 Adverse effects assessment**

- (1) A regional council must, not later than 5 working days after being so directed by the Minister of Conservation under **clause 4(1)**, begin an adverse effects assessment of the exercise of a protected customary right to be carried out in its region. 25
- (2) If a regional council has not been notified by the Minister of Conservation that the Minister intends to carry out his or her own adverse effects assessment, the regional council may, of its own initiative, carry out an adverse effects assessment of, and prepare an adverse effects report on, the exercise of the protected customary right. 30
- (3) However, the regional council may only carry out an assessment if—

Part 2—*continued*

- (a) it begins the assessment, for any reason, not later than 20 working days after a protected customary rights order or an agreement is registered under **section 113**; or
- (b) at any time after the expiry of the 20-working day period referred to in **paragraph (a)**, it considers that the effects of exercising the protected customary right on the environment are, or are likely to be, materially different from those effects considered when, whichever is the latest,—
  - (i) the protected customary rights order or agreement was registered; or
  - (ii) the controls were last imposed; or
  - (iii) the controls were last reviewed under this schedule.

**9 Notification**

- (1) A regional council must give written notice regarding an adverse effects assessment in relation to the exercise of a protected customary right if—
  - (a) it decides to carry out an adverse effects assessment under **clause 8(2)**; or
  - (b) in the period between the date that the relevant protected customary rights order or an agreement is registered and 20 working days after that date, it decides not to carry out an adverse effects assessment; or
  - (c) it is directed by the Minister of Conservation under **clause 8(1)** to begin an adverse effects assessment.
- (2) The written notice must be given to the Minister of Conservation and the relevant protected customary rights group.
- (3) Written notice given under **subclause (1)** must be given—
  - (a) for an assessment required by the Minister of Conservation under **clause 8(1)**, not later than 5 working days after receiving a direction from the Minister;
  - (b) for an assessment under **clause 8(3)(a) or (b)**, not later than 5 working days after deciding to carry out an adverse effects assessment:

Part 2—*continued*

- (c) for a decision referred to in **subclause (1)(b)**, not later than 25 working days after the protected customary rights order or agreement is registered.
- 10 Process and relevant considerations for adverse effects assessment** 5
- A regional council, in carrying out an adverse effects assessment under this Part,—
- (a) must seek the views of the relevant protected customary rights group; and
- (b) may seek any other relevant information; and 10
- (c) must have regard to—
- (i) the effects on the environment of the exercise of a protected customary right; and
- (ii) any relevant information and views it has received; and 15
- (d) may have regard to—
- (i) any relevant national policy statement;
- (ii) the New Zealand coastal policy statement;
- (iii) its regional policy statement or proposed regional policy statement: 20
- (iv) any relevant plan or proposed plan.
- 11 Adverse effects report**
- (1) A regional council must complete its adverse effects assessment and adverse effects report no later than 40 working days after giving notice of the assessment under **clause 9**. 25
- (2) The regional council must include in that report—
- (a) details of the protected customary right and the effects on the environment of its exercise; and
- (b) an outline of the information received and any views expressed by the relevant protected customary rights group; and 30
- (c) whether it considers that the exercise of the protected customary right has, or may have, a significant adverse effect on the environment; and



Part 2—*continued*

- (d) its recommendations (if any) to the Minister of Conservation on any controls it considers the Minister of Conservation should impose under **clause 5(1)**; and
- (e) the reasons for any recommendations.

**12 Report to Minister of Conservation and protected customary rights group** 5

No later than 5 working days after completing an adverse effects report, a regional council must give a copy to the Minister of Conservation and the relevant protected customary rights group. 10

Review of controls

**13 Review**

The Minister of Conservation may—

- (a) review, in accordance with **clauses 14 and 15**, controls imposed on the exercise of a protected customary right; and 15
- (b) after reviewing the controls,—
  - (i) confirm them; or
  - (ii) revoke them; or
  - (iii) revoke them and impose new controls (which may include some or all of the reviewed controls). 20

**14 Procedure for review**

- (1) If the Minister of Conservation reviews controls under **clause 13**, he or she must either— 25
  - (a) request the regional council—
    - (i) to carry out an adverse effects assessment; and
    - (ii) prepare an adverse effects report under **clauses 8 to 12**; or
  - (b) notify the regional council that the Minister will carry out an adverse effects assessment under **clause 5(5)**. 30
- (2) **Clauses 5 to 7—**

Part 2—*continued*

- (a) apply (with all necessary changes) to a review of controls imposed by the Minister of Conservation; and
- (b) are to be read, in relation to a review, as if all references in those clauses to controls imposed by the Minister of Conservation on the exercise of a protected customary right were references to controls on that right imposed or confirmed by the Minister after a review. 5

**15 Timing of review**

- (1) The Minister of Conservation—
  - (a) may review the controls imposed on the exercise of a protected customary right at any time; and 10
  - (b) must carry out a review of those controls if the protected customary rights group requests a review in writing.
- (2) A protected customary rights group may request a review only if— 15
  - (a) at least 2 years have passed since the controls were imposed or since they were last reviewed; or
  - (b) the protected customary rights group considers, on reasonable grounds, that the effects of the exercise of a protected customary right on the environment are, or are likely to be, materially different from those effects considered when, whichever is the later,— 20
    - (i) the controls were last imposed; or
    - (ii) the controls were last reviewed under this Part of this schedule. 25

**Schedule 3**

**s 124**

**Enactments consequentially amended**

Part 1

Acts amended

- Conservation Act 1987 (1987 No 65)** 5
- Section 2(1): insert in its appropriate alphabetical order:  
“**marine and coastal area** has the meaning given in the Marine and Coastal Area (Takutai Moana) Act **2010**”.
- Section 26ZS(1)(ab): repeal and substitute:  
“(ab) the Marine and Coastal Area (Takutai Moana) Act **2010**.” 10
- Section 39(7): omit “foreshore and seabed” and substitute “marine and coastal area”.
- Crown Minerals Act 1991 (1991 No 70)**
- Section 2(1): definition of **public foreshore and seabed**: repeal. 15
- Section 2(1): insert in their appropriate alphabetical order:  
“**coastal marine area** has the meaning given in section 2(1) of the Resource Management Act 1991  
“**common marine and coastal area** has the meaning given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010** 20  
“**customary marine title group** has the meaning given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**  
“**customary marine title order** has the meaning given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**.” 25
- Section 25(1A): repeal and substitute:  
“(1A) The Minister may not grant an exploration permit or a mining permit under this section in respect of minerals that are privately owned, except in the case of minerals owned by customary marine title groups,— 30  
“(a) as provided for by **section 82(2)** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and  
“(b) subject to **section 83** of that Act.” 35

Part 1—*continued***Crown Minerals Act 1991 (1991 No 70)**—*continued*

Heading to section 61: add “**and land in common marine and coastal area**”.

Section 61(1): add “or the common marine and coastal area”.

Section 61(3): insert “or to land in the common marine and coastal area” after “Act”.

5

**Fisheries Act 1996 (1996 No 88)**

Section 11(2)(c): repeal and substitute

“(c) sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (for the Hauraki Gulf as defined in that Act); and

“(d) a planning document lodged with the Minister of Fisheries by a customary marine title group under the Marine and Coastal Area (Takutai Moana) Act **2010**—”.

10

Section 89B(a): insert “protected” after “under a” and omit “Foreshore and Seabed Act 2004” and substitute “Marine and Coastal Area (Takutai Moana) Act **2010**”.

15

Section 186ZB: repeal and substitute:

“**186ZB Subpart does not apply to fish farming under protected customary rights order**

This subpart does not apply to fish farming undertaken in accordance with a protected customary rights order or an agreement made under **subpart 1 of Part 4** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

20

**Forest and Rural Fires Act 1977 (1977 No 52)**

Definition of **fire safety margin** in section 2(1): omit “(other than land administered by the Minister of Conservation pursuant to section 9A of the Foreshore and Seabed Endowment Revesting Act 1991)”.

25

Paragraph (a)(v) and (va) of the definition of **state area** in section 2(1): repeal and substitute:

“(v) the marine and coastal area (as defined in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

30

Part 1—*continued*

**Hauraki Gulf Marine Park Act 2000 (2000 No 1)**

Section 33(2)(c): omit “foreshore and seabed that is land owned by the Crown” and substitute “the common marine and coastal area”.

Heading to section 38: omit “**Crown-owned**”.

Heading to section 39: omit “**Crown-owned land**” and substitute “**land with protected status**”. 5

Schedule 1: omit “Foreshore and Seabed Act 2004”.

Schedule 1: insert in its appropriate alphabetical order: “Marine and Coastal Area (Takutai Moana) Act **2010**”.

**Local Government Act 1974 (1974 No 66)**

10

Section 345(1A): repeal and substitute:

“(1A) To avoid doubt, this section does not apply to the common marine and coastal area within the meaning of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

**Protected Objects Act 1975 (1975 No 41)**

15

New section 11A: insert after section 11:

**“11A Taonga tūturu found in customary marine title area**

If taonga tūturu are found in a part of the common marine and coastal area for which a customary marine title order has been awarded under the Marine and Coastal Area (Takutai Moana) Act **2010**, **section 81** of that Act applies to that finding instead of section 11 of this Act, except to the extent that section 11 is expressly applied by **section 81** of that Act.”

20

**Public Works Act 1981 (1981 No 35)**

Section 2: insert in its appropriate alphabetical order:

25

“**common marine and coastal area** has the meaning given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Definition of **Government work** in section 2: omit “public foreshore and seabed” and substitute “common marine and coastal area”.

30

Definition of **public foreshore and seabed** in section 2: repeal.

Part 1—*continued***Public Works Act 1981 (1981 No 35)**—*continued*

Section 52(1)(b): omit “public foreshore and seabed” and substitute “common marine and coastal area”.

Section 52(3)(b): omit “public foreshore and seabed” and substitute “common marine and coastal area”

**Resource Management Act 1991 (1991 No 69)**

5

Definitions of **access rights**, **board**, **customary rights order**, **foreshore and seabed reserve**, **holder**, **management plan**, **public foreshore and seabed**, and **recognised customary activity** in section 2(1): repeal.

Section 2(1): insert in their appropriate alphabetical order:

10

“**agreement** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**common marine and coastal area** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

15

“**customary marine title group** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**marine and coastal area** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

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“**protected customary right** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**protected customary rights area** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

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“**protected customary rights group** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

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“**protected customary rights order** has the meaning it is given in **section 7** of the Marine and Coastal Area (Takutai Moana) Act **2010**

Part 1—*continued*

**Resource Management Act 1991 (1991 No 69)**—*continued*

“**RMA permission right** means the right provided for a customary marine title group under **sections 65 and 67** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Definition of **affected order holder** in section 2AA: repeal.

Definition of **limited notification** in section 2AA: omit “or affected order holder”.

Section 6(g): repeal and substitute:

“(g) the protection of protected customary rights.”

Section 12(2): repeal and substitute:

“(2) Unless expressly allowed by a national environmental standard, a rule in a regional coastal plan or in any proposed regional coastal plan for the same region, or a resource consent, no person may—

“(a) occupy any part of the common marine and coastal area; or

“(b) remove sand, shingle, shell, or other natural material from that area.”

Section 12A(1)(b): repeal.

Heading above section 17A: repeal.

Section 17A: repeal.

Section 17B: repeal.

Section 28(e): omit “Schedule 12” and substitute “**Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

Section 28A(1)(c): omit “recognised customary activity” and substitute “protected customary right”.

Section 30(1)(d)(ii): repeal and substitute:

“(ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is not within the common marine and coastal area.”

Section 33(2): omit “board of a foreshore and seabed reserve,”.

Part 1—*continued***Resource Management Act 1991 (1991 No 69)**—*continued*

Section 35(2)(e): repeal and substitute:

- “(e) in the case of a regional council, the exercise of a protected customary right in its region, including any controls imposed on the exercise of that right under **Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**—”.

Section 35(5)(jb): repeal and substitute:

- “(jb) in the case of a regional council, records of every protected customary right order or agreement relating to a part of the common marine and coastal area within its region; and”.

Section 37B(d): repeal.

Section 38(3)(c): repeal.

Section 58(gb): omit “recognised customary activities” and substitute “protected customary rights”.

Section 61(2A): repeal and substitute:

“(2A) When a regional council is preparing or changing a regional policy statement, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region:

- “(a) the council must take into account any relevant planning document recognised by an iwi authority; and
- “(b) in relation to a planning document prepared by a customary marine title group under **section 84** of the Marine and Coastal Area (Takutai Moana) Act **2010**, the council must—
- “(i) recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
- “(ii) take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.”

Section 62(1)(b)(ii): repeal.



Part 1—*continued*

**Resource Management Act 1991 (1991 No 69)**—*continued*

Section 64A(1): omit “coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council)” and substitute “common marine and coastal area”.

Section 64A(4A): repeal and substitute: 5

“(4A) A coastal occupation charge must not be imposed on a protected customary rights group exercising a protected customary right under **Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

Section 66(2)(b): omit “in land of the Crown”. 10

Section 66(2A): repeal and substitute:

“(2A) When a regional council is preparing or changing a regional plan, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region: 15

“(a) the council must take into account any relevant planning document recognised by an iwi authority; and

“(b) in relation to a planning document prepared by a customary marine title group under **section 84** of the Marine and Coastal Area (Takutai Moana) Act **2010**, the council must— 20

“(i) recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and 25

“(ii) take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.”

Section 74(2A): repeal and substitute: 30

“(2A) A territorial authority must, when preparing or changing a district plan, must take into account the following documents, if lodged with the council, to the extent that their content has a bearing on resource management issues of the region:

Part 1—*continued***Resource Management Act 1991 (1991 No 69)**—*continued*

“(a) a relevant planning document recognised by an iwi authority:

“(b) a planning document prepared by a customary marine title group under **section 84** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

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Section 79A: repeal.

Section 79B: repeal.

Section 82A: repeal.

Heading above section 85A: omit “*recognised customary activities*” and substitute “*protected customary rights*”.

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Section 85A: omit “a recognised customary activity carried out under section 17A(2)” and substitute “the exercise of a protected customary right carried out under **Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

Section 85B(1): omit “If the holder of a customary rights order” and substitute “If a protected customary rights group”.

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Section 85B(2)(a): repeal and substitute:

“(a) the effects of the proposed activity on the exercise of a protected customary right; and”.

Section 85B(2)(b): omit “recognised customary activity” and substitute “protected customary right”.

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Section 85B(2)(d): omit “recognised customary activity” and substitute “exercise of a protected customary right”.

Section 85B(2)(e): omit “recognised customary activity” and substitute “protected customary right”.

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Section 95B(1): omit “or affected order holders” and substitute “or a relevant protected customary rights group”.

Section 95B(3): omit “any affected order holder” and substitute “a relevant protected customary rights group”.

Part 1—*continued*

**Resource Management Act 1991 (1991 No 69)**—*continued*

Section 95F: repeal and substitute:

**“95F Status of protected customary rights group as affected person**

A consent authority must decide that a protected customary rights group is an affected person, in relation to an activity in the protected customary rights area relevant to that group, if— 5

- “(a) the activity may have any adverse effects on a protected customary right carried out in accordance with the requirements of **Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and 10
- “(b) the person has not given written approval for the activity or has withdrawn approval for the activity in a written notice received by the consent authority before the authority has made a decision under this section.”

Section 104(3)(c)(iv): repeal and substitute: 15

- “(iv) **section 57(2)** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”.

Sections 107A to 107D: repeal.

Section 108(2)(h): omit “coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council)” and substitute “common marine and coastal area” 20

Section 122(5)(c): omit “which is land of the Crown or land vested in a regional council”.

Section 152(1): omit “in respect of any land of the Crown” 25

Section 152(4)(b): repeal.

Section 156: omit “in respect of any land of the Crown”.

Section 165H: omit “vested in the Crown or a regional council”.

Heading to section 237A: omit and substitute “**Vesting of land in common marine and coastal area or bed of lake or river**” 30

Section 237A(1)(b): repeal and substitute:

- “(b) show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area.”

Section 237A(2): omit “or subsection (1)(b)”.

Part 1—*continued***Resource Management Act 1991 (1991 No 69)**—*continued*

Section 239(1)(c): repeal and substitute:

- “(c) any land or any part of the bed of a river (not being part of the coastal marine area) or lake, shown on the survey plan as land to be vested in the territorial authority or the Crown, shall vest in the territorial authority or the Crown, as the case may be, free from all interests in land, including any encumbrances (without the necessity of an instrument of release or discharge or otherwise; and 5
- “(d) any land shown on the survey plan as land in the coastal marine area becomes part of the common marine and coastal area.” 10

Section 239(3): repeal and substitute:

- “(3) Any land vested in the Crown vests under the Land Act 1948 unless this Act provides otherwise.” 15

Section 309(4) and (5): omit “recognised customary activity” and substitute “protected customary right”.

Section 332(1)(c): omit “; or”.

Section 332(1)(d): repeal.

Section 333(1A): repeal. 20

Section 354(3): repeal and substitute:

- “(3) Any person may use or occupy any part of the common marine and coastal area without obtaining consent, unless consent must be obtained under—

- “(a) this Act; or 25
- “(b) any other enactment; or
- “(c) any instrument or order made under an enactment.”

Section 355(1): repeal.

Section 355(3): omit: “Without limiting section 355AA, the relevant Minister” and substitute “The Minister of Lands”. 30

Section 355(3): insert: “which forms part of a riverbed or lakebed and” after “reclaimed land”.

Part 1—*continued*

**Resource Management Act 1991 (1991 No 69)**—*continued*

Section 355(6): repeal and substitute:

“(6) For the purposes of this section, references to land which forms part of a riverbed or lakebed include land which was part of that bed before it was reclaimed.”

Section 355AA: repeal. 5

Section 355AB: repeal.

Section 360(1)(c): repeal and substitute:

“(c) prescribing the amount, methods for calculating the amount, and circumstances and manner in which holders of resource consents are liable to pay for— 10

“(i) the occupation of the coastal marine area, to the extent that it is within the common marine and coastal area; and

“(ii) the occupation of the bed of any river or lake that is land of the Crown; and 15

“(iii) the extraction of sand, shingle, shell, and other natural materials from that area; and

“(iv) the use of geothermal energy.”.

Schedule 1: clause 2(2)(b): omit “; and”.

Schedule 1: clause 2(2)(c): repeal. 20

Schedule 1: clause 3(1)(d): omit “; and”.

Schedule 1: clause 3(1)(e): repeal.

Schedule 1: clause 5(4)(f): omit “; and”.

Schedule 1: clause 5(4)(g): repeal.

Schedule 1: clause 20(4)(f): omit “; and” 25

Schedule 1: clause 20(4)(g): repeal.

Schedule 4: clause 1A: repeal and substitute:

“**1A Matters to be included in assessment of effects on environment**

An assessment of effects on the environment for the purposes of section 88 must include, in a case where an activity will, or is likely to, have adverse effects that are more than minor on the exercise of the right, a description of possible alternative locations or methods for the exercise of the proposed right 30

Part 1—*continued***Resource Management Act 1991 (1991 No 69)**—*continued*

(unless written approval for the exercise of that right is given  
by the protected customary rights group).”

Schedule 12: repeal.

**Te Ture Whenua Maori Act 1993 (1993 No 4)**

Section 4: paragraph (b) of the definition of **land**: omit “public fore-  
shore and seabed” and substitute “common marine and coastal area”. 5

Section 2(1): insert in its appropriate alphabetical order:

“**common marine and coastal area** has the meaning given in  
**section 7** of the Marine and Coastal Area (Takutai Moana)  
Act **2010**”. 10

Section 43(7): repeal.

Section 72(1): omit “(other than proceedings under the Foreshore  
and Seabed Act 2004)”.

Section 98(3)(c): repeal.

Section 98(3A): repeal. 15

## Part 2

## Regulations amended

**Commodity Levies (Mussel, Oyster, and Salmon) Order 2007  
(2007/212)**

Regulation 16(g)(ii): revoke. 20

**Resource Management (Forms, Fees, and Procedure)  
Regulations 2003 (2003/153)**

Regulation 10(2)(h): revoke.