Marine and Coastal Area (Takutai Moana) Bill

201—1

Report of the Māori Affairs Committee

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Marine and Coastal Area (Takutai Moana) Bill

Recommendation

The Māori Affairs Committee has examined the Marine and Coastal Area (Takutai Moana) Bill, and recommends by majority that it be passed without amendment.

Introduction

The aim of the bill is to reform the law relating to the ownership of the foreshore and seabed. The bill would repeal the Foreshore and Seabed Act 2004, replacing Crown ownership of the common marine and coastal area with a no ownership model. The bill would restore Māori customary interests that were extinguished by the 2004 Act, and recognise the traditional importance of the common marine and coastal area to Māori. Public access, fishing, and navigation rights for all New Zealanders throughout the common marine and coastal area would be protected by the bill.

Supplementary Order Paper

The Attorney-General released Supplementary Order Paper 167 to the bill and asked the committee to consider it alongside the main bill. We agreed to consider the amendment on the paper and heard submissions on it in conjunction with the bill.

The amendment on the supplementary order paper proposes to insert a subclause in clause 61 of the bill providing that evidence of fishing or navigation by third parties would not amount to substantial interruption for the purpose of determining whether customary marine title exists in a specified area of the common marine and coastal area.

Issues raised and possible amendments

We acknowledge that the impact of raupatu on the ability of claimants to meet the threshold test for customary marine title was a major concern raised by submitters. Based on the advice we received, National and Māori Party members are satisfied that this issue has been addressed in the bill.

The provision of legal aid for claimants was another serious concern for submitters. We were advised that this issue will be dealt with in processes outside those contained within the bill.

The question of whether the High Court or the Māori Land Court should hear from claimants was also raised by many submitters. The Māori Party member believes that the Māori Land Court should have jurisdiction to award customary marine title and protected customary rights.

In order to inform the House of these and other issues, as well as possible amendments to the bill, we have attached advice we received from officials as an appendix to this report.

Labour Party minority view

The Labour Party members recommend that the bill not proceed in its current from. It is widely criticised by submitters for many different reasons.

Labour remains willing to try to achieve an outcome that achieves settlement of this vexed issue. We have been willing to consider alternatives to the current Foreshore and Seabed Act 2004, including its repeal. We have not stoked race-based fears, and have criticised those who have.

We are dismayed that the Government has now adopted a process which has

1 blocked any legal advice being obtained by the committee on the effect of the changes to the threshold test for establishment of a customary marine title

2 forced through hasty consideration of the 500 page departmental report on submissions which is dated Friday 4 February 2011 and was received and physically delivered to committee members offices on Monday 7 February 2011 and received by the Labour members on Tuesday 8 February. It was then dealt with by the committee on 8 February 2011 inside two hours. This process gave Labour and other members no time to properly deal with the many issues raised, some of which are technically complex.

3 not included any revision track review of the bill in respect of any of the many amendments recommended by officials, which also made proper consideration and deliberation impossible. Government members blocked a resolution that a revision tracked version be prepared prior to deliberation.

4 ignored the submissions of hundreds of submitters, whose submissions have had no substantive analysis by the committee as evidenced by the fact that the select committee is reporting back without comment on most issues and without a single amendment, be it technical or substantive.

5 left many important technical issues unresolved.

Labour previously submitted to the review panel that the right to seek a remedy from the Court should be restored, and remain of that view.

For the reasons we set out below, the bill ought not to proceed.

We have tested with a range of submitters at select committee the idea that the threshold test for establishment of customary interests, and the interests that flow, should also be referred back to the Courts. There is considerable support for the view from both those who believe the tests codified by the bill are too tough and from those who believe them to be too loose.

This could be achieved by simple legislation enshrining rights of public access and inalienability of customary interests, with all matters being referred to the Courts. The current bill does not achieve this.

The main criticisms of the bill include:

The bill will not settle the legislative framework for the determination of unextinguished customary interests in the foreshore and seabed.

This is now clearly evident from Māori Party comments and from a great many submissions that this bill will not be accepted by most submitters as an enduring settlement.

That Māori do not have, or should not have recognised, unextinguished customary interests in the foreshore and seabed.

We disagree with these views. Unextinguished common-law Māori customary interests in the foreshore and seabed should be recognised.

There is now widespread agreement that rights of free public access to and across foreshore and seabed (other than for discrete areas like urupä, that is, burial grounds, ports, and existing Māori and non-Māori private titles) are not at legal risk, and should continue to be enshrined in statute. Similarly, provisions preventing the alienation of customary interest were recommended by the review panel and are widely supported.

The bill allows deals to be done by the Minister without Court or Parliamentary oversight.

This is a valid concern.

Court processes ensure that all proper interests are taken into account in accordance with the law. Foreshore and seabed deals via Ministers without Court oversight cannot occur at common law, nor can they under the current Foreshore and Seabed Act (where Court oversight is required). Settlements outside the Foreshore and Seabed Act require separate legislation, which gives Parliamentary oversight. Agreements without either Court or Parliamentary oversight are permitted under the bill.

There is considerable distrust of this change in the new bill.

Labour believes that there is a strong and valid public interest in the transparency achieved through independent Court processes. This achieves both verification that threshold tests for the establishment of customary title are properly met, and that the customary property rights of claimants are met fully (but no more than fully) in accordance with the law. Māori claimants have traditionally been happy with transparent processes.

The provisions in the existing Foreshore and Seabed Act requiring Court validation of proposed settlements were a condition of New Zealand First's support for the current Foreshore and Seabed Act. We agreed with that then and continue to believe in that principle.

The threshold test for establishment of customary title is too high, or the threshold test is too low.

While some divergence of view is to be expected, it is plain that this fundamental issue will not be settled by this legislation and that a sense of grievance will persist. It is also clear that some of this is founded upon unrealistic views (at both ends of the spectrum of

opinion) of the common law threshold test which would be applied by the Courts following the Ngāti Apa decision.

What is the practical effect of the change to the threshold test is unclear to us.

The select committee was not provided with legal advice as to the effect of the change to the threshold test for establishment of customary marine title as compared with the test for establishment of a territorial customary right under the current Act.

The select committee asked officials to provide copies of the legal advice the Government had received. The Government declined to provide that advice.

Labour members on a number of occasions said that the committee needed legal advice. This is important both to gauge how much of New Zealand's foreshore and seabed is likey to be subject to customary marine titles, and to compare the new test with the common law test applied in other jurisdictions.

The National Party and Māori Party members voted to block that motion and as a consequence we are unable to advise Parliament what the effect of this new test will be.

This is very undesirable given the importance of this issue.

The Prime Minister and the Attorney-General have both said the removal of the obligation for a claimant for a customary title to prove continuous ownership of contiguous land since 1840 will not have a substantial effect in how much foreshore and seabed is subject to customary title. The Attorney-General has said that the need to show continuous exclusive control of the foreshore and seabed will be difficult to prove if the claimant has not had continuous ownership of the contiguous land.

In response to Māori Party questions at select committee, we were told at committee that illegal confiscation of adjacent landwill not stop customary marine titles being awarded to claimants. This is at odds with the view stated by the Attorney-General in Parliament, and if correct risks confusing Treaty of Waitangi-based claims with unextinguished common law rights.

The absence of legal advice as to the effect of the changes to the legal threshold tests is wrong. The last foreshore and seabed had detailed advice from a Queens Counsel on the common law position and the effect of the statutory tests under the original bill. The absence of any thorough analysis of this most fundamental aspect of the changes made by this bill is very poor practice which has been brought about by the Minister and government members blocking any such advice being tendered.

The veto rights conferred upon iwi in respect of developments within customary title areas undermine the full and final nature of the commercial aquaculture settlement.

This is a valid concern.

Under that settlement Māori rightly receive 20 percent of marine areas allocated for aquaculture. They also have the right to apply for additional space. This was intended to settle Māori claims for commercial aquaculture space, which was what lay behind the original Ngāti Apa court case.

The bill allows customary title holders to use their right of veto of Resource Management Act 1991 consents to developments within customary title areas to negotiate additional interests in commercial aquaculture. This has the potential to undermine that settlement.

The primacy given to hapū and iwi planning documents.

The bill requires Regional Councils to "give effect to" these plans. While we agree that these plans should have status, they are prepared without many of the protections that apply to balance the range of interests on land (including public submissions and appeal rights). While those processes could be introduced for hapū and iwi planning documents, they would become unduly expensive and onerous for all involved, including the iwi or hapū preparing them.

While the Departmental advice acknowledges these concerns are valid, the proposed solutions are not made clear by any revised version of the bill. The solutions proposed in the Departmental Report will not clearly clarify the relationship between these planning documents and existing Resource Management Act district and regional plans, national policy statements and national environmental statements. This will add further complications and costs to Resource Management Act processes for all involved, as well as potentially undermine environmental outcomes.

This introduction of an alternative environmental planning regime has been rightly criticised by Local Government New Zealand, the Resource Management Law Association section of the Law Society, and others and is problematic.

Green Party minority view

The Green Party is opposed to this legislation in its entirety. We believe that this bill is simply a blend of the Foreshore and Seabed Act 2004 and the Labour Government's negotiated agreement with Ngāti Porou. As a result the inherent injustices of the 2004 Act are not remedied at all with this new legislation.

The Green Party considers

- that the common law tests for customary title should not be codified
- the 2004 Act should be repealed and full and access to the Court restored
- Te Ture Whenua Maori Act 1993 should be amended to prevent foreshore and seabed Māori customary land from being vested in any other form of title.

It is also our view that

1 there should be no saleable private and exclusive title granted over the foreshore and seabed to anyone, New Zealanders in general, tangata whenua, or overseas interests

2 Te Ture Whenua Maori Act be amended so that Māori customary foreshore and seabed land must remain in Māori ownership

3 collective customary title to the foreshore and seabed is not to be extinguished by legislation

4 public access should be protected, except for very special areas where environmental protection, historical, cultural, or spiritual significance makes this inappropriate.

This bill extinguishes customary rights by operation of law, without the consent of the customary owners. This constitutes a confiscation. This bill simply replaces one unjust law with an equally unjust law.

Act Party minority view

The ACT Party strongly objects to the process in which the Māori Affairs Committee has considered this bill. Parties were given notice of less than one day to submit a minority view on the bill, and more importantly were not being permitted to view the final copy of the bill before submitting a minority view.

In addition, the 500 page officials' report was made available to ACT just four days before it was due to be considered, and was deliberated on by the committee in only one afternoon. ACT considers this a massive abuse of the Parliamentary process. It is inconceivable that members of the committee could understand and comprehend the changes proposed in such a short time.

It was ACT that first raised the possibility that as originally drafted customary title holders may be able to charge for access to the beach. The Government subsequently agreed with ACT that the bill would be amended to make it explicit that the public cannot be charged for accessing the common marine and coastal area. While ACT is yet to see this clause in context we take some comfort that the Government appear to have followed through on this commitment.

In addition, ACT vigorously opposed the ability for the Minister in charge to negotiate behind closed doors customary title agreements which would then pass into law through Order in Council. ACT is pleased the Government now proposes that negotiated agreements can only come into effect through legislation and not Order in Council. Once again we are yet to see these provisions in context but are guardedly optimistic that our objection to this specific provision has been recognised.

Notwithstanding the above comments on access and negotiated agreements our overriding objections to the bill and to the process still remain.

The Marine and Coastal Area (Takutai Moana) Bill exacerbates the problems created by the 2004 Foreshore and Seabed Act.

ACT opposed Labour's 2004 Foreshore and Seabed Bill because we believe that iwi—like all New Zealanders—should be able to apply to the Courts to explore the nature and extent of, and to defend, their property rights.

The existence and scope of customary rights, or any contested right, should be a matter for the Courts to decide by applying existing common law. We still believe that is the proper and fair course to follow.

Since 1840 Māori have been entitled to call on the common law and the protection of the Courts to attempt to establish customary rights.

It is a long-established principle of the common law that certain customs can have the effect of law if they have been exercised by local inhabitants over long periods of time.

These may include such matters as rights-of way, the right to fish or collect shellfish, or the right to plant a particular crop.

For generations these customary laws have walked hand-in-hand with statute law. Judges have been able to look at the way that communities have operated over the years, and to recognise local custom and usage where it conflicts with the broader law.

This bill, like the Act it proposes to replace, ignores centuries of common law and attempts to establish its own regime. As a result, just like with the 2004 Act it has numerous flaws.

At the more general level:

- The bill draws on aspects of the co-governance model in some Treaty settlements, by granting Māori participation in statutory processes and by introducing veto rights that will add a further layer of complexity and cost to an already over-regulated society.
- It is riddled throughout with undefined Māori terms and ambiguous or undefined expressions. A bill that affects everyone should be in plain English, and not have crucial provisions or phrases expressed in ways which lack precise definition. These problematic expressions include "substantial interruption", "more than minor", "customary authority", "reasonable grounds", "mana tuku iho", and "tikanga".
- It allows deals to be done behind closed doors thereby making it inevitable that customary rights and customary title decisions will end up being corrupted by political deal-making. It is easy to see the possibility that, where two competing iwi make a claim, the likely winner will be the more politically influential iwi that can offer the most support to the Government.
- There are potentially vast wealth transfers involved: what would otherwise be held by the Crown for the interest of all could pass into the ownership of tiny minorities, all justified on the flimsiest of grounds and influenced by the needs of temporary political coalitions.

This bill risks taking legitimately-held rights away from some, while granting rights to others who are not entitled to them. It is likely to substantially expand potential iwi or hapu rights over the New Zealand coastline as it significantly lowers the common law tests for iwi to gain powerful coastal rights.

Protected customary right powers, for instance, outrank local authorities. Customary marine title gives titleholders powerful ownership rights including development and mining rights, full rights of veto over conservation applications and resource consents ("on any grounds" and with no right of appeal), and potentially the ability to impose coastal plans on local and central Gvernment.

The process envisaged in the bill lacks transparency; will not be open to those who contest the claimed special status; will have no right of appeal; and will be open to influence by considerations which are personal, subject to the political pressures of the day, and thus open to manipulation and corruption.

What should happen?

The proper process is to:

- Reinstate the rights of appeal for Ngāti Apa and the Crown which were denied by the 2004 Act
- Provide for any case to be taken to the general Courts, and on appeal to higher Courts
- Reconfirm ownership of the foreshore and seabed in the Crown, but without prejudice to claims for customary rights and interests
- Leave the Courts to resolve the issue under normal common law principles which consider issues of domination or control, persistence or continuity of use, access and exclusivity
- Apply the law even-handedly to all property interests and all New Zealanders.

Appendix A

Committee procedure

The Marine and Coastal Area (Takutai Moana) Bill was referred to the committee on 15 September 2010. The closing date for submissions was 19 November 2010. The committee received 4,455 written submissions and many supplementary submissions from organisations and individuals. The committee also received 1,520 form submissions. The committee heard 287 of the submissions orally. The committee heard evidence at Whangarei, Auckland, Hamilton, Tauranga, Wellington, and Christchurch. The committee met between 22 September 2010 and 9 February 2011 to consider the bill.

We received advice from the Ministry of Justice. The Regulations Review Committee reported on the regulation-making powers contained in clauses 2 and 119 of the bill.

Committee members

Hon Tau Henare (Chairperson)
Simon Bridges
Kelvin Davis
Hone Harawira
Hon Parekura Horomia
Paul Quinn
Hon Mita Ririnui

Hon John Boscawen and Metiria Turei were appointed as non-voting members for this item of business.

Te Ururoa Flavell, Hon David Parker, and Hilary Calvert were replacement members for this item of business.

Appendix B

Issues raised and proposed amendments

Extract from Marine and Coastal Area (Takutai Moana) departmental report from the Ministry of Justice.

The following key issues were raised by submitters and are addressed, along with other issues, in this report:

General Issues

- submitters wanted more time to consider the issues
- there was little consensus on whether Foreshore and Seabed Act (the 2004 Act) should be retained or repealed (and if repealed, what should replace the 2004 Act)
- how customary interests should be recognised, if at all

Part 1—Preliminary Provisions

Clauses 8 and 9 attracted the largest amount of submissions in Part 1 – these clauses set out those existing and new activities that are exempted from the exercise of the customary marine title permission rights. Many submitters, such as port companies, supported these clauses (and suggested other activities be added) but raised concerns that the clauses were confusing and difficult to follow.

- The report recommends the clauses be re-drafted for clarity.

Other submitters, such as iwi, considered the list of exempted activities was so extensive that it diluted the effectiveness of the rights awarded under customary marine title

- The report does not recommend the list be either reduced or increased as the current list achieves the appropriate balance of recognising existing use rights, encouraging new activities and protecting proven customary title interests.

The Regulations Review Committee was concerned with the proposal in clause 2 that Parts 3 and 4 of the Bill come into force at a later date than Parts 1 and 2.

- The report recommends all Parts come into force on the same date.

Part 2—Common marine and coastal area

A large number of submissions were received on clause 11 which divests the Crown and local authorities of their title and creates a common area which is incapable of being owned. Many submitters were uncomfortable with the removal of Crown ownership and did not support this proposal.

- The report does not recommend a change to this policy.

Many submitters were concerned that they may be charged for accessing the common marine and coastal area (clause 27).

- The report recommends it be made explicit the public cannot be charged for accessing the common marine and coastal area.

Part 3—Customary interests

In relation to the types of customary rights recognised under the Bill a significant number of submitters thought these did not adequately reflect the relationship of Māori with the area and that the Bill did not provide for all the rights extinguished by the 2004 Act.

- The report does not recommend a change to the types of customary rights recognised in the Bill as these are consistent with common law customary rights and recognise the relationship of all iwi and hapū with the common marine and coastal area.

There was significant opposition to the protected customary rights test set out in clause 53 on the basis that it created uncertainty about the type and extent of rights that may be recognised and it could result in harm to the environment.

- The report does not recommend a change to the Bill as it already provides for limits on the protected customary rights which will ensure the rights are consistent with sustainable management (clause 56).

Many iwi, hapū, whānau and several non-Māori organisations, for example the Human Rights Commission and Amnesty International, opposed the test for customary marine title for various reasons (but generally that the threshold was too high and those groups with a history of raupatu were prevented from meeting the test). Many other submitters opposed the test because they considered the threshold was too low.

- The report does not recommend a change to the test for customary marine title.

A number of submitters raised concerns about wāhi tapu and questioned whether the definition was too vague.

- The report does not recommend a change to the Bill as the proposed definition uses the definition from the Historic Places Act 1993.

A range of submitters suggested amendments to the provisions for the planning document (clauses 84–91) including reducing the effect of the planning document under the Resource Management Act 1991 from "recognise and provide for" to "take into account".

- The report recommends a number of changes to the planning document to take into account the concerns of submitters.

Part 4—Administrative and miscellaneous matters

Most submitters were opposed to the proposal that negotiated agreements come into effect by Order in Council (clause 94). They were concerned that this proposal compromised transparency in the process and would lead to "back room deals".

- The report recommends the Bill be changed to provide that negotiated agreements can only come into effect through legislation (not Order in Council).

Many submitters did not agree that the High Court should have jurisdiction for determining protected customary rights and customary marine title. Most of these submitters thought the Māori Land Court should have this jurisdiction.

- The report does not recommend a change to the Bill because the Bill proposes both the High Court and the Māori Land Court have a role in determining customary interests.

A large number of technical changes have been recommended in this report with the aim of assisting in the implementation of the legislation.

Table of recommendations

The tables below set out the recommendations for each clause in the Bill.

Subject to Parliamentary Counsel Office advice on drafting, we make the following recommendations:

Clause by clause recommendations

Clause	Change recommended
Clause 1	No change
Clause 2	Amend clause 2 to enable all Parts and provisions of the Bill to come into force on the day after the date in which it receives the Royal assent.
Clause 3	Amend clause 3(2)(a) to read "iwi, hapū and whānau" in order to make it consistent with other clauses in the Bill.
Clause 4	No change
Clause 5	No change
Clause 6	No change
Clause 7	*Definition of "common marine and coastal area"* Include areas created following the enactment of the Bill in line with clause 12 Delete (b) (iv)
Clause 7	*Definition of "marine and coastal area"* Replace the word "below" with "under" in sub clause (d)
Clause 7	*Definition of "concession"* Amend the definition of concession to mean a concession granted following the process under Part 3B of the Conservation Act. Delete (a) to (d) as they are covered by the reference to process under Part 3B of the Conservation Act.
Clause 7	*Definition of "conservation protected area"* Delete reference to fresh water Delete the word "common" Allow for the definition to capture conservation protected areas that lie outside of the marine and coastal area.

Clause	Change recommended
Clause 7	*Definition of "effective date"* Amend 'effective date' to reflect that a High Court order takes effect on sealing, not on the date of registration and an agreement takes effect on the day the related Act of Parliament receives royal assent. Consequentially amend clauses 91, 92 and 93.
Clause 7	*New definition requested -Definition of "council-controlled organisation"* Insert a new definition for "council-controlled organisation" which uses the definition in section 6(1) of the Local Government Act.
Clause 8	The general recommendations are to redraft the clause as follows: • refocus the descriptions in the clauses on the activity rather than the application, concession or activity • include text to emphasise/clarify the accommodated activities apply only to the RMA and Conservation permission rights which attach to the customary marine title award (not to other awards or customary interests) • move and place the relative parts of the clause into Part 3 of the Bill alongside the permission rights (to which the exemptions/ accommodation applies) • amend clause 21 to include reference to activities and use rights authorised under, or granted under an enactment that was replaced by, the Resource Management Act (to ensure activities covered in clauses 8(1)(a), (d) and (e) are covered by clause 21) • consider whether clause 64(4) repeats 65(4), 8(1)(c) and reduce duplication if so. • explicitly link definitions to specific clauses, examples include: the definition of "emergency activity" only applies to clause 8(1)(m); the definitions of "associated operations" and "nationally and regionally significant" only apply to clause 8(1)(f) and 9, or create separate clauses if that would ease clarity of reading
Clause 8(1)(a)	Delete clause 8(1)(a) as these activities would not trigger either permission rights and would be protected under clause 21. Ensure clause 21 is amended to clarify that all existing activities, use rights and resource consents authorised by the Resource Management Act prior to the commencement of the Bill are not affected.
Clause 8 (1) (b)	Amend clause 8(1)(b) to focus on the activity/activities rather than the application, concession or permit. Delete reference to "lodging" and replace with text referring to acceptance of application (consistent with the suggestion of Bay of Plenty Council).

Clause	Change recommended
Clause 8(1)(c)	Delete clause 8(1)(c) as it repeats clause 65(4) or alternatively delete clause 65(4) and retain clause 8(1)(c) (preference is to delete 8(1)(c)). Consider whether clause 64(4) repeats 65(4), 8(1)(c) and reduce duplication if so.
Clause(8)(1)(d)	Delete clause 8(1)(d) as these activities would not trigger either permission rights (although variations to such activities which require consents would), would be protected under clause 21 as amended and clause 64(4)(a). Amend clause 21 to ensure it covers other lawful approvals granted under an enactment that was replaced by the Resource Management Act.
Clause(8)(1)(e)	Delete clause 8(1)(e) as these activities would not trigger either permission rights, would be protected under clause 21 as amended and clause 64(4).
Clause 8(1)(f)	Amend clause 8(1)(f) to clarify it is the associated operations which are accommodated by the permission rights not the existing structures or infrastructure.
Clause 8(1)(g)	Amend clause 8(1)(g) to ensure only the activities necessary to manage existing marine reserves are accommodated.
Clause 8(1)(h)	Amend clause 8(1)(h) to ensure only the activities necessary to manage existing conservation protected areas are accommodated.
Clause 8(1)(i)	Amend clause 8(1)(i) to ensure only the activities necessary to manage existing marine mammal sanctuaries are accommodated.
Clause 8(1)(j)	Amend clause 8(1)(j) to focus on the activity/activities rather than the application, concession or permit.
Clause 8(1)(k)	Delete clause 8(1)(k) as it is not subject to either permission right
Clause 8 (1) (l)	Amend clause 8(1)(l) to focus on the activity/activities rather than the application or permit. Amend clause 8(1)(l) to ensure it captures a change in the species farmed or the method of marine farming.
Clause 8(1)(m)	No change.
Clause 8(1)(n)	Amend clause 8(1)(n) to focus on the activity/activities rather than the application or permit.
Clause 8(1)(o)	No change.

Clause	Change recommended
Clause 8 (2)	*Definition of "associated operations"* • redraft (a) to refer to the activity rather than the application or consent; • clarify (a) refers to consents for the same activity (including in extent, effects and duration) • delete the word "renewal" from (a) and provide for any consents that are sought to enable activities to continue in a specific location, provided there is no change in that location • remove references to 'structure' and 'infrastructure' from sub clauses (b), (c), (d) and (e) (these words are included in the chapeau) • remove the words 'minor upgrading' from (b) to clearly differentiate the matters addressed by this clause from those in (c) • delete "or relocation" from (d) to provide for replacement and relocation being different matters (relocation being dealt with in (e)) • delete "whether or not a resource consent is required" from (d) as they are unnecessary
Clause 8 (2)	*Definition of "emergency activity"* • ensure the definition of 'emergency activity' provides for organisations, other than local authorities, to undertake emergency activities in a customary marine title area (for example, by referring to "or an agent of the Crown" in (b)).
Clause 8 (2)	*Definition of "existing"* • consider deleting the definition of "existing" if covered by clauses 64(4) and 65(4).

Clause	Change recommended
Clause 8(2)	*Definition of "nationally or regionally significant"* • replace 'nationally or regionally significant structure or infrastructure' by a new term 'accommodated structure or infrastructure'; • insert a new definition of 'accommodated structure or infrastructure' which means: (i) not unlawful, and (ii) owned, operated, or carried out by 1 or more of the organisations listed in the Bill (with b(ii) amended as Watercare Services suggest), and (iii) nationally or regionally significant; • insert a new definition for nationally and regionally significant based on the definition used in the Resource Management Act; • include provisions for dispute resolution about whether an existing structure or infrastructure is nationally significant; and • amend clause 8(2) to read "(b)(ii) a local authority or council – controlled organisation".
Clause 9(1)	*General* • Move clause 9 to Part 3 subpart 3. • Redraft clause for simplicity. *Structures and Infrastructure* • No change to threshold for new structures and infrastructure • Clarify whether the definitions of 'associated operations' and 'nationally or regionally significant' apply to both clause 8 and 9 • Simplify the 'essential work' threshold in clause *Petroleum and minerals-related privileges* • Replace "required for" in clause 9(1)(c)(i) with "necessary for, or reasonably related to".
Clause 9(2)	Redraft clause 9(2) consistent with the comments made by the New Zealand Law Society
Clause 10	No change
Schedule 1	Delete Part 1 clause 10(d)
Clause 11	Add a sub-clause which states the cmca is not rateable
Clause 12	Amend to remove clause 12(1)(d)

Clause	Change recommended
Clause 13(1)	Ensure the current legal position, whether provided by statute or the common law, is preserved in relation to erosion Remove the words "immediately before the commencement of Part 2" from the definition of specified freehold interest
Clause 13(2)	Ensure the current legal position, whether provided by statute or the common law, is preserved in relation to accretion
Clause 14	No change
Clause 15	No change
Clause 16	Amend by: • clarifying existing formed roads in the marine and coastal area continue to be owned by the entity that owns them when the clause commences; • clarifying roads formed after the clause commences can be owned but leaving the identity of the owner to be dealt with through the legislation that establishes the road; • clarifying roads are formed when they are constructed which includes gravelling, metalling, sealing or permanently surfacing the road; • including a statement, for avoidance of doubt, the existing powers of road controlling authorities to manage and control roads in the cmca are not affected by the Bill; • deleting sub-clause (3); and • deleting the reference to "section 19" in sub-clause (4).

Clause	Change recommended
New issue (railways)	Amend the Bill to include provisions similar to roads for railways consistent with the following: • a railway is defined by section 4 of the Railways Act 2005; • existing railways in the marine and coastal area owned by the New Zealand Railways Corporation, the Crown or other person continue to be owned by New Zealand Railways Corporation, the Crown or other person; • new railways constructed in the marine and coastal area by the New Zealand Railways Corporation, the Crown or other person after the Bill commences are owned by New Zealand Railways Corporation, the Crown or other person; • railways within the marine and coastal area become part of the cmca upon the later of the following events: • the railway ceases to be used as a railway; • the railway infrastructure (definition as per the Railways Act 2005) has been removed from the railway; • the railway designation (definition as per the RMA) and/or resource consents for the railway have expired or otherwise cease to be kept current.
Clause 17	No change
Clause 18	Amend by deleting sub-clause (3). Replace it with a provision consistent with the following: • provide unformed roads continue to be owned by the current owner for 5 years, after which if no construction has commenced the road is deemed to be lawfully stopped and becomes part of the cmca; • provide other lawfully stopped roads become part of the cmca; • provide the stopping of a road (other than those deemed to be stopped) requires the formal stopping provisions of the Local Government Act 1974 or the Public Works Act 1981 be used; and • clarify roads owned by private title holders do not become part of the cmca, whether or not they are constructed.

Clause	Change recommended
Clause 19	Clarify the Crown's interest in structures in the cmca is non-rateable; Amend to make it clear ownership of structures in the cmca is tied to: • the holder of a resource consent for the structure; • the last known holder of a resource consent for a structure, where a consent has expired; • the owner of the materials in a structure, where no resource consent is required.
Clause 20	Add a sub-clause consistent with the following: • there is a prima facie case to consider a structure is abandoned if no resource consent exists; • if the owner could prove otherwise to a council they could seek a retrospective consent for the structure; • Amend clause 119 to enable regulations to be made to set out the process a regional council should follow for carrying out "due inquiry" into whether a structure is abandoned; Delete sub clause (3); Amend by adding a clause stating the Crown: • is not liable for breaches of the law or effects of an abandoned structure before it comes into Crown ownership; • is not required to gain an authorisation for an unauthorised abandoned structure, and • can only be required to take action in relation to an abandoned structure where it has a health or safety issue or a significant adverse effect on the environment.
Clause 21	Amend clause to clarify the following are not limited or affected by the Act: • resource consents granted before the commencement of Part 2 • activities that can be lawfully undertaken without a resource consent
Clause 22	Amend clause to be consistent with the following (amendments in underlined text): • certain proprietary interests to continue • in this section, proprietary interest- • means any interest under a lease, licence, permit, <u>easement or statutory authorisation</u> (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;

Clause	Change recommended
Clause 23	No change
Clause 24	No change
Clause 25	Delete "common" from the title of clause 25 and from clause 25(1);
Clause 26	Add sub-clauses to include: • provision to allow local authorities to apply for redress for loss of land as a result of clause 11(3); • a time limit of 12 months from the commencement of the section for the lodging of an application.
Clause 27	Amend sub clause (1) to be explicit that charging for public access in, on, over and across the cmca is not permitted;
Clause 28	Amend: • sub clause (1)(a) so it applies to all of the marine and coastal area; • sub clause (3) to clarify clause 28 is subject to wāhi tapu under clauses 77 to 80;
Clause 29	No change
Clause 30	Amend: • to clarify the powers of the Minister are residual powers conferred only where a power, duty or function is not expressly conferred on anyone else; • sub clause (2) to clarify the Minister administers regulations and bylaws under clauses 119 and 120 in carrying out the Minister's role under sub clause (1); • sub clause (3) to clarify delegates of the Minister exercise these powers for the purposes of carrying out the Minister's role under sub clause (1); • sub clauses (3) and (6) to clarify delegates of the Minister are not empowered to direct someone to stop carrying out an activity that is authorised under the Bill or any other enactment; • to clarify delegates of the Minister can enforce regulations and bylaws made under clauses 119 and 120; • to clarify delegates of the Minister can be enforcement officers warranted under the Conservation Act 1987 or authorised staff from DOC or from other government departments or local authorities; and • sub clause (3)(b) so it allows delegates of the Minister to direct a person to stop an activity that prejudices the preservation of the environment in the cmca.

Clause	Change recommended
Clause 31	Delete this clause
Clause 32	Ensure that the Bill provides for older reclamations appropriately. Amend the definition of "developer" so that it includes a person who retrospectively applies for a resource consent. For the sake of clarity, a definition of "eligible applicant" should be included that makes it clear this can be: • the developer (including a person who retrospectively applies for consent under s 355A of the RMA – this clause needs to ensure it is clear that a person in this situation is not subject to the 10 year restriction in clause 38(3) before they can apply); • a network utility operator; or • any person, where no interest has been granted in the land and the reclamation has been subject to this subpart for more than 10 years and there is no current application for an interest.
Clause 33	The following amendments should be made to clause 33 so the Bill is clearer in respect of conditional vestings and new reclamations: • clause 33 (1): delete the words "whether the reclamation was completed before or after the commencement of this Part"; and • clause 33 (3): delete the words "that has been completed or terminated after the commencement of this Part". • the references to "authorised" and "unauthorised" should be replaced with "lawful" and "unlawful" respectively.
Clause 34	Amend clause 34(2) so that it also refers to the Foreshore and Seabed Endowment Re-Vesting Act 1991.
Clause 35	Amend clause as follows: • clause 35(1): add the words "and not this Act" after "Land Act 1948"; and • clause 35(1) be reworded to "The Minister may, by notice in the Gazette, declare any land of the following kind to be Crown land subject to the Land Act 1948 and not this Act". This wording mirrors section 42(3) of the Public Works Act 1981 that also deals with changes of land status to that of Crown land. • clause 35 (1)(a): add the words "33 or" before "section 34".
Clause 36	No change.
Clause 37	No change.

Clause	Change recommended
Clause 38	Amend clause 38(1) to read "the developer on whose behalf reclaimed land subject to this subpart has been, is being, or is to be formed may apply to the Minister.." (or words to like effect). The intent is to make it clear that an application for an interest in reclaimed land can be made at any stage after obtaining a resource consent. Clause 38(2) needs to be amended to read as follows (or words to like effect): • "(2) A network utility operator may apply to the Minister for the grant to the network utility operator of a lesser interest in reclaimed land subject to this subpart that has been is being, or is to be 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." Delete clause 38(7) (b) ("reclaimed land subject to this subpart"). Include a definition of "eligible applicant" that makes it clear this can be: • the developer (including a person who retrospectively applies for consent under s 355A of the RMA – this clause needs to ensure it is clear that a person in this situation is not subject to the 10 year restriction in clause 38(3) before they can apply); • a network utility operator; or • any person, where no interest has been granted in the land and the reclamation has been subject to this subpart for more than 10 years and there is no current application for an interest. Amend the Bill to provide specifically that conditional applications can be made after a resource consent for the reclamation has been obtained. The intent is to make it clear that an application for an interest in reclaimed land can be made at any stage after a resource consent has been obtained.
Clause 39	Clause 39(1) should be amended so it reads as follows (or words to like effect): • "If the Minister is satisfied that an application for the grant of an interest has been made by an eligible applicant pursuant to section 38, the Minister must…." The words "(but not yet reported on)" should be deleted from clause 39(2)(e). This clause and clause 41 need to be reviewed to ensure that the formal vesting stage is separated from the substantive determination of the Minister under clause 42. References in this subpart to "grant" should be replaced with "vest" to make it clear that there is a distinction between the determination of the Minister to grant an interest (clause 41) and the actual granting of the interest (clause 42).

Clause	Change recommended
Clause 40	Amend so clause reads as follows (or words to like effect): • "If the Minister is satisfied that an application for the grant of an interest has been made by an eligible applicant pursuant to section 38, the Minister must…."
Clause 41	Amend clause 41(3) by deleting the following wording: "If a determination under section 39(1) is made before the reclamation concerned has been completed". The clause should be amended so that it reads as follows (or words to like effect): • "The Minister may, on the Minister's own initiative or on application by the applicant, vary the determination under section 39(1) before an interest…." Review this clause and clause 39 to ensure that the formal vesting stage is separated from the substantive determination of the Minister under clause 42.
Clause 42	Include new clause 42(1)(c) as follows (or words to like effect): • "the consent authority has issued a certificate under s 245(5)(b) of the Resource Management Act 1991 in respect of the reclaimed land." Amend to ensure it is clear that the reclamation must first be complete, and have a s 245 certificate (which makes the reclamation lawful) before an interest is granted. Consider amending clause 42(1) so "grant" is changed to "vest".
Clause 43	Consider replacing the word "granted" with the word "vested".

Clause	Change recommended
Clause 44	*Competing applications* Include a new clause providing that, where a competing application has been filed, the application by the developer cannot be withdrawn and then re-submitted in order to defeat the competing application. *Ports of Auckland Limited* Add new clause 44(1)(a)(ii) as follows (or words to like effect): "that has been substantively determined by the Minister of Conservation under s 355 of the Resource Management Act 1991, but a formal vesting by way of notice in the Gazette has not yet occurred"; Amend clause 44(2) as follows (or words to like effect): "An application to which subsection (1)(a)(i) applies…" Add new clause 44(2A) as follows (or words to like effect): "An application to which subsection (1)(a)(ii) apples must be formally vested by the Minister of Conservation by notice in the Gazette pursuant to section 355(3) after all relevant conditions have been satisfied including as to prices to be paid, 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"; Amend clause 44(3) as follows (or words to like effect): "However, an applicant who has made an application to which subsection (1)(a)(i) applies…" *Prime Port Timaru* Provide that the Prime Port Timaru arrangements in respect of reclamations are preserved in the Bill by providing that the Timaru Harbour Board Reclamation and Empowering Act 1980 prevails over the Bill where there is conflict. *Time period* Amend the Bill to provide that the time period in clause 44(5) is extended to 180 days.

Clause	Change recommended
Clause 45	Include a new clause 45(3)(c) requirement that "determine the application and provide notice of the determination (with any conditions) to the customary marine title group" to ensure some level of consistency with clause 41 for the process in areas outside customary marine title when not applied for by the title holder. Include a new clause 45(4) requiring that the Minister vest an interest in the title group "after ensuring that the consent authority has issued a certificate under s 245(5)(b) of the Resource Management Act 1991 in respect of the reclaimed land" (or words to like effect); Amend this clause to make it clear a customary marine title group can apply when the reclamation is to be formed, being formed or has been formed to make it consistent with reclamations outside customary marine title areas (ie clause 38). Consider replacing the word "grant" in clause 45 (4) with the word "vest" to make the language in this clause consistent with the language in the clauses dealing with reclamations outside customary marine title areas. Cross refer to clause 42 to ensure a requirement for a s 245 certificate before the interest is vested in the customary marine title holder is included. Amend clause 45 to provide LINZ can charge fees for determination (either under this clause or under clause 118(1)(g)).
Clause 46	The recommendations are: • "Freehold interest" should be defined to mean "an estate in fee simple, but does not include a stratum estate in freehold or in leasehold created under the Unit Titles Act 1972 or Unit Titles Act 2010" so that unit titles are not caught by the right of first refusal; • clause 46 should be amended to clarify that the change of control (ie: change in shareholders) in a company that owns a reclamation should trigger the right of first refusal; • the Bill should be clarified to provide the rights of first refusal apply only once (ie: a perpetual right of first refusal is not the intent); • include wording providing that where a company is selling all of its assets or shares, and a reclamation forms part of the assets of the company, the RFR does not apply; and • provide that the Minister of Land Information can charge fees for signing certificates that a right of first refusal has been complied with.
Clause 47	Insert new sub clause deeming notice to be given to iwi or hapū exercising customary authority over the area in which the reclaimed land is located if notice is publicly given to all iwi and hapū within the area.

Clause	Change recommended
New clause: Marginal strips	Include the following wording to provide for the exemption for marginal strips in Schedule 3 of the Bill under Conservation Act 1987:"Section 24: insert the following words at the end of subsection (7C): "or section 37 of the Marine and Coastal Area (Takutai Moana) Act."
New clauses: Local Acts	Insert a new clause that provides that the new legislation will prevail over any local Act, including any local Act that permits land reclaimed from the sea by accretion by the action of the sea to be vested in any person or body Insert a new clause similar to section 102 of the 2004 Act Bill that provides that, where there is conflict between the Empowering Act or the Timaru Harbour Board Reclamation and Empowering Act 1980 and the provisions of the new legislation, the provisions of the local Act prevail.
Clause 48	No change.
Clause 49	Change the words "that exercises customary authority" in clause 49(1) to "that exercises kaitiakitangā in a part of the common marine and coastal area where a conservation process is being considered" and the relevant change also be made to clause 84(3)(b). Define kaitiakitangā in clause 7 as having the meaning given to that term in section 2 of the RMA. Word the clauses dealing with participation in conservation processes to accommodate the possibility of more than one group exercising kaitiakitangā. Amend clause 49(4)(e) to insert the words "publicly notified" before the word "concessions".

Clause	Change recommended
Clause 50	Amend clause 50 to remove separate provision of notice to affected iwi and hapū and replace with the process recommended in relation to discussion of clause 49. Amend clauses 49 and 50 to capture: • "Affected iwi and hapū" would be defined as recommended above as "iwi or hapū that exercise kaitiakitangā in a part of the common marine and coastal area" and the current definitions of "hapū" and "iwi" would be removed; • the Director-General would publicly notify a conservation proposal (or, in the case of marine mammal watching permits, the applicant would publicly notify)' • the Director-General may make possibly affected iwi and hapū aware of the public notice using any means he or she thinks appropriate; • the public notice would advise that any iwi or hapū considering themselves to be "affected" (i.e. kaitiaki for the area) should declare this to the Director-General within the time limits provided for consultation. No supporting evidence would be required; • if a dispute were to arise in terms of which group is "affected", the Director-General would ask the challenger to provide evidence to support the challenge. It would be possible for DOC officers to challenge a claim of affected status; • evidence would be accepted only if it was from an authoritative source e.g. a previous Waitangi Tribunal ruling or a ruling of the Māori Land Court. Reference to mandated iwi authorities and coastline agreements under the Māori Fisheries Act could also assist; and • the Director-General would make the final decision as to which iwi and hapū were "affected" in cases of dispute.
Clause 51	Make minor wording changes to align with the new wording for clauses 49 and 50.
Clause 52	No change
Clause 53	Clarify in clause 53(2) that commercial aquaculture cannot be a protected customary right. Delete sub-clause 53(2)(b)(iii) Add a reference to 53(2)(c) consistent with ensuring any fishery that is subject to or administered under the Conservation Act 1987 is excluded from the scope of a protected customary right
Clause 54	Amend clause 54(2) to provide that customary marine title groups are not liable for the payment of royalties for sand and shingle under Resource Management Regulations.

Clause	Change recommended
Clause 55	No change
Clause 56	No change
Clause 57	Amend to provide that clause 57(2) has effect only in the case of resource consent applications lodged on or after the date that: • a protected customary rights agreement comes into effect; or • a customary protected rights order is sealed. Amend clause 57(3)(a) to be consistent with the amendments proposed in clause 8(1)(l) and to capture the following intent: • a resource consent, whenever it is lodged under the Resource Management Act 1991, to enable aquaculture activities to continue (including a change of species farmed and/or the method of marine farming), provided there is no change in the location of, or increase in size of the area to be occupied by, the activity for which resource consent is sought. Change the wording of clause 57(4) along the following lines: "Subsection (3)(c)(i) applies if 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; OR • if more than minor, are temporary in nature."
Clause 58	No change
Clause 59	No change
Clause 60	No change
Clause 61	No change
Supplementary Order Paper No 167 clause 61AA	No change
Clause 62	Amend clause 62(1) by making it clear it covers situations where the applicant group received the area in question by way of customary transfer after 1840 (referring to this as a substantial interruption is not entirely accurate) Amend clause 62(3)(d) to clarify that following the transfer the applicant group must meet the test in clause 60 from the time of the transfer to the present day.

Clause	Change recommended
Clause 63	Add a new provision that customary marine title groups are exempt from paying coastal occupation charges and royalties for sand and shingle in areas where they hold customary marine title.
Clause 63(2)(a) and (b)	In order to ensure customary transfers do not amount to an alienation of CMT, limit customary transfers to groups within the customary title holder's iwi which are specified in the CMT order or agreement. Include a process for transfers of CMT and delegations of CMT rights which include a specified time period or conditions of revocability for delegations of rights. Add the following provisions to clause 63 to clarify the process for making transfers and delegations: • a delegation of the rights conferred by an agreement or the transfer of an agreement does not take effect until the agreement has been varied. • a delegation of the rights conferred by a CMT order or the transfer of a CMT order does not take effect until the customary marine title order has been varied in accordance with clause 111. • there should only be one title holder (not two).
Clause 63(2)(c)	Add text following clause 63(2)(c) which clarifies that CMT groups are not exempt from obtaining consents, permits or other permissions under other statutes which are necessary to use or develop a right conferred by a customary marine title order or agreement.
Clause 64	Change clause 64(3) so a person applying for a resource consent, permit, or approval should not have to consult CMT applicant groups about their proposed application, they should only have to notify those groups and seek their views. Either delete clause 64(4) or retain the duplicate reference in clause 8. Consider duplication issues with 65(4).
Clause 65	Clarify an RMA permission right does not apply to an accommodated activity Empower the Minister for Land Information to determine whether an activity falls within the definition of accommodated activities under clause 8
Clause 66	Amend clause 66(2) to provide for a CMT group's permission to be in writing and include details of the length of time permission will last for.
Clause 67	No change

Clause	Change recommended
Clause 68	For the purposes of clause 68 and 69 change the meaning of court to the same meaning as under section 309 of the RMA (all proceedings relating to enforcement orders to be heard by an Environment Judge sitting alone or by the Environment Court; and all proceedings relating to offences to be heard in the District Court and, except where otherwise directed by the Chief District Court judge, by a District Court judge who is also an Environment Judge)
Clause 69	Clarify clause 69 only applies to a resource consent which is exercised without CMT group permission (and not to consents where permission is not required or has been received) Ensure clause 68 and clause 69 are aligned
Clause 70	No change
Clause 71	No change
Clause 72	No change
Clause 73	No change
Clause 74	No change
Clause 75	Amend to provide the obligation to recognise and provide for the views of a CMT group does not limit the Director-General's discretion to approve or decline a permit on grounds set out in the Marine Mammals Protection Regulations 1992 or to impose conditions on a permit.
Clause 76	No change
Clause 77	Include NZHPT in the groups to be notified of wāhi tapu conditions under the new notification clause recommended in Chapter 4 of this report

Clause	Change recommended
Clause 78	Amend clause 78(2) to be consistent with "wāhi tapu conditions may affect the exercise of fishing rights, but must not do so to the extent the conditions prevent fishers from being able to take their lawful entitlement in a quota management area or fisheries management area" Clarify in clause 78 wāhi tapu conditions are not intended to prevent a CMT group from carrying out kaitiakitangā responsibilities in relation to a wāhi tapu or wāhi tapu area Retain section 104(3)(c)(iv) of the RMA which provides a resource consent cannot be granted which is contrary to a Gazette notice for a wāhi tapu or wāhi tapu area (also provide for this in relation to an agreement which includes a wāhi tapu condition) Consider an avoidance of doubt provision clarifying wāhi tapu and associated conditions override accommodated activities (which only relate to the permission rights)
Clause 79	No change
Clause 80	Clarify in clause 80 CMT groups are exempt from offences when carrying out kaitiakitangā responsibilities in relation to a wāhi tapu or wāhi tapu area Amend clause 80(1) to remove the words "implement a prohibition or restriction included in the wāhi tapu conditions" and replace them with wording consistent with "encourage observance of the conditions imposed for the protection of wāhi tapu" Including a provision in the Bill which empowers fishery officers to act to enforce any fishing restrictions associated with a wāhi tapu or wāhi tapu area
Clause 81	No change
Clause 82	No change

Clause	Change recommended
Clause 83	Remove the words "to the end of their term" from 83(1) and make amendments consistent with the underlined words to clause 83(1): Despite section 82(2) and (3), the following privileges, rights, obligations, functions, and powers continue, <u>including those preserved in the transitional provisions in Part 2 of the Crown Minerals Act 1991</u>, as if section 82 had not been enacted: • privileges in existence immediately before the effective date; and • rights that can be exercised under the Crown Minerals Act 1991 by the holders of those privileges, <u>or any other person</u>; and • subsequent rights and privileges granted to those holders, <u>or any other person</u>, following the exercise of the rights referred to in paragraph (b) <u>including those under the section 32 of the Crown Minerals Act 1991</u>; and • the obligations on those holders, <u>or any other person</u>, imposed by or under the Crown Minerals Act 1991; and • 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). Include a provision that CMT groups receive royalties from sand and shingle collected under RMA regulations Consider whether clarification of clause 83(3) is required to ensure it is clear royalties will only be received once CMT is achieved
Clause 84	Delete the words "in accordance with tikanga" from clause 84(2). Change clause 84(2) to capture the following: The purpose of the planning document is to: a. Identify issues relating to the regulation and management of the customary marine title area, b. Set out the customary marine titleholder's regulatory and management objectives for the area; and c. Set out policies covering the courses of action to achieve the management objectives. A planning document may cover any matter than can be regulated under the Acts specified in 84(4) including matters relating to: • the promotion of sustainable management of the natural and physical resources of the CMT area of the group; and • the protection of the cultural identify and historic heritage of the group. Replace "customary authority" with "kaitiakitanga"
Clause 85	Refer to the recommendations in clauses 90 and 91

Clause	Change recommended
Clause 86	Amend clause 86 to reflect the concerns expressed by SeaFIC that: • the spatial scale at which sustainability measures are set under the Fisheries Act is not accurately reflected in the drafting of the Bill; • a more accurate reflection of the intent of clause 90 is that it enables RMA matters in the planning document that may be relevant to fisheries management to be considered when setting sustainability measures under the Fisheries Act.
Clause 87	That clause 87(2) be changed along the lines of: "On and after the date that the document is registered, the local authority must take the planning document into account when making any decision under the Local Government Act in relation to the customary marine title area."
Clause 88	No change
Clause 89	No change
Clause 90	Amend clause 90 to be consistent with the following: • 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(1) of the Fisheries Act 1996 where the measures apply to areas that include in whole or in part the customary marine title area of the group. • 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 relates to matters included in a planning document that are provided for by the Resource Management Act 1991 that may be relevant to fisheries management.
Clause 91	Refer to the table below that outlines further proposed changes to clause 91. Provide new transitional provisions so that: • obligations on local authorities under clause 87, on the New Zealand Historic Places Trust under clause 88 and on Regional Councils under clause 91 do not apply in relation to applications for resource consents or other approvals lodged prior to the registration of a planning document; and • a planning document is deemed to be registered (have effect) 28 days after it is first lodged with an agency.

Clause	Change recommended
Schedule 2	Delete clause 8(3)(b)(i) of schedule 2 Give consideration to whether a definition of "effect" should be included in the Bill with the same meaning as in the RMA.
Clause 92:	Delete 92(1)(c).
Clause 93	No change
Clause 94	Amend so negotiated agreements which recognise customary marine title made under clause 93 come into effect by an Act of Parliament.
Clause 95	Delete clause 95.
Clause 96	Amend to make it clear the High Court must be satisfied that applicant groups meet the requirements of clause 53 and 60 before it makes recognition orders.
Clause 97	No change.
Clause 98	No change.
Clause 99	No change.
Clause 100	No change.
Clause 101	Amend clause 101 (d) to include the Secretary for Justice.
Clause 102	Amend: • clause 102(1) to add "within 20 working days of filing"; and • clause 102(2) (f) to read "a date that complies with subsection (3) for filing a notice of appearance".
Clause 103	Amend to: • make it clear that a person who appears under clause 103 is not a party to the proceedings; • delete 'notice of intention to appear' and replace with 'notice of appearance'.
Clause 104	No change
Clause 105	Amend to provide further clarity that: • applicant groups must prove the positive aspects of their claim (held in accordance with tikangā and continuous use and occupation); and • the Crown is responsible for proving extinguishment of the customary interest by fact or law.

Clause	Change recommended
Clause 106	Add the words "including an application to appear made under section 103" at the end of clause 106(3).
Clause 107	No change.
Clause 108	Amend clause 108(2)(b) to provide that the diagram of may identifying a particular area must be to a standard of survey determined by Surveyor General.
Clause 109	No change.

Clause 110	Amend clause 110 to reflect that:
	• the Registrar of the Court must, within 5 working days, provide a copy of a sealed recognition order made by the Court under section 96 or a sealed recognition order varied under section 111 to the chief executive and the responsible Minister;
	• the responsible Minister must publish a minute of the recognition order or variation of a recognition order, including any wāhi tapu conditions, in the Gazette, and must send a copy of the recognition order or variation of a recognition order to the organisations listed below:
	  • relevant local authorities;
	  • the Minister of Conservation;
	  • the Minister of Māori Affairs;
	  • each person who appeared on the application; and
	  • any other person that the Court directs;
	• in the case of a recognition order or variation of a recognition order which recognises customary marine title and includes recognition of a wāhi tapu or wāhi tapu area, the responsible Minister must give public notice of the conditions and notify the conditions in writing to the customary marine title group, the New Zealand Historic Places Trust and relevant local authorities;
	• the Registrar of the relevant court must, within 5 working days, notify the chief executive and the responsible Minister of the result of any appeal;
	the responsible Minister must notify the result of any appeal in accordance with the same process for a recognition order and variation of a recognition order.

Clause	Change recommended
Clause 111	Delete clause 111(1) and (2) and replace with clauses that clearly indicate that: • the Court may vary a recognition order in terms of the matters referred to in clause 108(2); • the court may vary or cancel rights that have been transferred or delegated under clauses 55 and 63; and • a recognition order may only be varied if the relevant criteria in clauses 53 and 60 are satisfied in relation to the variation.
Clause 112	Amend clause 112(2) to reflect that the Crown may apply under High Court rules to be an intervener in proceedings.
Clause 113	Delete clause 113.
Clause 114	Amend the definition of chief executive in clause 7 to 'Chief Executive of Land Information New Zealand'. Amend to provide that the chief executive of Land Information New Zealand must keep a marine and coastal register as a permanent record of: • orders awarded, varied or cancelled ; • agreements made, varied or cancelled; and • planning documents Amend to provide that the chief executive of Land Information New Zealand must, without delay after receiving a document listed above, or in the case of negotiated agreements, following the agreement legislation being posted on the New Zealand Legislation website, enter it in the register provided the document contains all requirements for registration. Amend to clarify the Crown will not under any circumstances be liable for compensation for any loss or damage caused by any act or omission in the performance or exercise a duty vested in the chief executive of Land Information New Zealand under the legislation.
Clause 115	No change.
Clause 116	No change.
Clause 117	No change.

Clause	Change recommended
Clause 118	Amend so clause 118 provides for the prescription of the fees payable for the public inspection and copying and copies supplied of documents under section 116. Amend clause 118(1)(g) to allow for the charging of fees for the consideration and processing of applications and other actions under clauses 37 to 47, and decisions under Schedule 1. Amend to allow for regulations to be made that prescribe the information that the Chief Executive of Land Information New Zealand may require in order to facilitate compliance with section 114.
Clause 119	Technical amendments are recommended as outlined in the technical amendments table.
Clause 120	No change.
Clause 121	Amend to reflect the common marine and coastal area does not necessarily include all conservation areas.
Clause 122	No change.
Clause 123	No change.
Clause 124	No change.

Clause 91 amendments

Issue	Proposed changes
The sequence of steps that councils must follow is unclear	Structure clause so the following sequence is clear: • when a planning document is lodged, a Council must attach it to its regional documents. • until the Council completes the alteration of its regional documents or decides they do not need to be altered, it must have regard to planning document RMA related matters when considering resource consent applications. • at the next change, variation or review of a provision in a regional document that applies to the CMT area, a Council must examine the document to identify whether it recognises and provides for the matters set out in a planning document (to the extent the planning document relates to resource management issues that are the function of the regional council and will achieve the purpose of the RMA). • depending on the outcome of the examination, along with consultation under clause 2 and 3 of Schedule 1, Council decides whether or not to notify proposed changes to its regional document to recognise and provide for the matters in the planning document.
Providing in clause 91(3) that the purpose of the examination is to "ensure" that regional documents recognise and provide for relevant matters in a planning document does not accurately describe this step and implies that the need for changes has been predetermined.	Provide that the purpose of the examination is to '**identify**' or '**assess whether'** (rather than "ensure that") regional documents provide for the matters set out in the planning document …
Clauses 2 and 3 of the RMA First Schedule require consultation with the board of any foreshore and seabed reserve in the area. These have been repealed rather than replaced with a requirement to consult any CMT group.	Include consequential amendments to clauses 2(2)(c) and 3(1)(e) of Schedule 1 to provide that during the preparation of a proposed policy statement or plan, the local authority shall consult with any CMT group.

Issue	Proposed changes
Clause 91(3) anticipates councils will have discretion as to what to include in their proposed regional documents yet other wording does not appear to support this (e.g. the reference to "ensure" in clause 91(3) covered above, and the wording of clause 91(6) where the choice appears to recognise and provide for the whole planning document or not).	Clarify that recognising and providing for planning documents in regional documents does not require that the contents of the planning document has to be accepted without change or be given effect to (i.e. there are a number of elements that go into making decisions, including the matters in Part 2 of the RMA, the functions of the local authority, consideration of the benefits and costs, public submissions, the need to give effect to the New Zealand Coastal Policy Statement and the impact of an Environment Court appeal).
The interim requirement to recognise and provide for a planning document at the consent stage (clause 91(5)(b) gives it a disproportionate weighting compared to the later stage when the planning document has been 'filtered' through a Schedule 1 plan process.	Amend clause 91(5) to replace "recognise and provide for" with "have regard to".
Clause 91(6)(b) does not provide for the possibility that a council may decide that a regional document does not need to be altered despite it not recognising and providing for the matters in a planning document. This might be, for example, because after discussion with the CMT group and others, it decides that the issues raised in a planning document might be better addressed in other ways.	Word clause 96(6) to capture the intent that: If after the completion of the examination, and consultation required under clauses 2 and 3 of Schedule 1 of the Resource Management Act 1991, the regional council is of the view that a regional document: a. needs to be altered, it must notify proposed changes in accordance with clause 5 of Schedule 1; or b. needs not be altered, it must give public notice with reasons.
Wording in clause 91(3)(b) is not consistent with that used in RMA (e.g. in section 32)	Change to read: "(b) Will achieve the purpose of the Resource Management Act 1991"
The reference to "matters set out in a planning document" in 91(3) and similar wording in 91(5)(b) and (6)(a) is intended to convey that a council does not have to import objectives and policies word for word, and has flexibility in the way (and the timeframe over which) it addresses issues of importance to CMT holders. This may not be sufficiently clear.	Give consideration to whether the clause could convey more explicitly that councils may use different words to those included in the planning document or take an alternative approach to, or timeframe for, addressing CMT group issues (e.g. may decide on a different objective to address an issue or a different course of action (policy) for achieving an objective).

Issue	Proposed changes
Clause 91(5) does not explicitly acknowledge that councils may not be able to recognise and provide for all matters in a planning document when considering resource consent applications for restricted discretionary and controlled activities.	Qualify that when considering a resource consent application, councils must have regard to the matters included in a planning document to the extent they relate to matters over which they can exercise discretion.

Technical amendments

Clause	Change recommended	Explanation
18(1)	Replace reference in line 22 to "coastal marine area" with "marine and coastal area"	Corrects term used in error Proposed by New Zealand Law Society (2782)
23	Replace reference in clause heading to "certificates of title" with "computer freehold register"	Corrects term used in error. "Computer freehold register" is the term now used in the Land Transfer Act 1952 Proposed by New Zealand Law Society (2782)
24(2)(d)	Delete "certificate of title or"	Corrects term used in error. "Computer freehold register" is the term now used in the Land Transfer Act 1952 Proposed by New Zealand Law Society (2782)
27(1)	Clarify the rights in paragraphs (a), (b) and (c) are separate rights.	The inclusion of "and" at the end of paragraphs (a), (b) and (c) can be read as giving one right of access requiring all of paragraphs (a), (b) and (c) to be met. The intention is for the rights in (a), (b) and (c) to be separate rights.
27(3)	Parliamentary Counsel to review whether this sub clause is needed in clause 27 or whether it is better to include an equivalent provision in clause 78.	NZLS proposes deleting clause 27(3) – as their view is this sub clause is redundant for this clause – and inserting an equivalent of clause 27(3) into clause 78.
28(4)	Parliamentary Counsel to review whether to retain clause 27(4).	NZLS proposes deleting clause 28(4) as it is redundant.
29(2)	Cross-reference should be to clause 78, not clause 80.	Corrects cross-reference. Proposed by SeaFIC.
38(6)	Refers to the fees in subsection (5) rather than subsection (6).	Typographical error
49(4)c)	Give consideration to whether it is necessary to amend this	For example, regulation 12 can authorise commercial operators

Clause	Change recommended	Explanation
	clause to clarify that it relates only to marine mammal watching, not other permits under regulation 12.	to carry out commercial operations to view or come into contact with marine mammals. The latter is not covered by clause 49.
49(4)(e)	Remove the words "under the enactments relevant to the granting of concessions".	These words are not now appropriate given the change to the definition of concession.
54(1)	Replace "9-17" with "12-17"	Clauses 9-11 RMA do not apply to coastal marine area.
54(4)	Clarify that a PCR order or agreement can be either delegated OR transferred not both.	It is not possible for two holders to existing simultaneously.
54(4)(c)	Make it clear that a PCR group cannot derive a commercial benefit from the exercise of a right that applies to customary non-commercial aquaculture.	The Māori Aquaculture Claims Settlement Act 2004 (s6(2)) has settled all current and future claims in respect of commercial aquaculture whether the claims are founded in common law, the Treaty or statute, and including any commercial aspects of traditional aquaculture activity.
55	Add "of protected customary rights" to the heading for this clause	Clarifies clause is only relevant to protected customary rights delegations and transfers.
55(2) and (3)	Delete and amend to wording consistent with "a delegation or transfer of PCR does not take effect until, in the case of an agreement, the agreement is varied, or, in the case of a recognition order, the order is varied in accordance with clause 111."	Discussed under Chapter 4 Notification and registration is being rationalised. Varying an agreement will be covered by a negotiations policy. This allows for variation of both orders and agreements in relation to the delegation and transfer of PCR.
55(3)	Change clause 55(3)(b) to read: "the variation comes into effect"	This is because the registration step does not make the variation effective.
57(3)(c)(ii)	Change reference to section 9(1)(b) to section 9(1)(b)(i)	Clarifies existing policy that the arbitration process which is referred to in 9(1)(b)(ii) and set out in Part 2 of Schedule 1 does

Clause	Change recommended	Explanation
		not apply to clause 57(3)(c)(ii).
58(3)	Amend to require notice to also be served on the applicant.	This is appropriate given the Minister's notice was a response to an application for the imposition of controls.
59(2)(b)	Delete "relevant protected customary rights area" and replace with "extent of the area that is subject to the controls"	Information is required is relevant to the area where controls are to be put in place (which is not necessarily the entire protected customary rights area)
59(3)(c)	Change "local authority" to "local authorities"	Reflects potential for more than one local authority to be involved
59(4)	Delete	Clause 114 sets out what the chief executive must register
60, 61, 62	Achieve consistency in wording in references to "particular part", specified part" and specified area"	Ensure internal consistency
61(3)(iii)	Clarify this only relates to land in the nature of a strip (rather than a large reserve some distance from the coast)	Provide further clarity around relevant factors
64(3)	Remove the words "to apply for a resource consent" from the end of this clause and change the word "proposal" to "application"	Ensure sub-clause is comprehensive and internally consistent
64(3)	Clarify that "resource consent, permit or approval" is in relation to the matters covered under sub-clause 64(1)	To ensure there is no wider reading of resource consent, permit or approval
65(3)	Delete sub-clause	The matters provided are more comprehensively covered under sub-clause 67(1) already. Reduces potential for confusion by making similar provision twice
65(4)	Amend wording to be consistent with "an RMA permission right does not apply to activities for which a	Existing words could imply that the permission right only applies once there is a resource consent application (however it can

Clause	Change recommended	Explanation
	resource consent application is lodged before the effective date"	apply before)
68(1)	Add 66(4) as a further section under which an offence can occur (the two situations under which permission is given)	Avoidance of doubt
70	Check that the wording in this clause allows for the permission right to apply to: new conservation areas within the CMT area; cases where a conservation area may lie outside the cmca but an extension takes it into the cmca.	For clarity
70(1)	Include "proposal" after the term "application"	The matters under the conservation permission right will apply to proposals as well (not just applications)
70(3)	Clarify in the chapeau that the conservation permission right occurs within or partly within the customary marine title area	Avoidance of doubt
70(3)	Include the words "within the relevant customary marine title area" after the word "activities" and delete those same words in 70(3)(c)	To clarify that conservation permission right applies only to activities within cmca and address grammatical problems.
70(3)(c)	Delete the words "under the enactments etc"	To allow for the new definition of "concession"
73(2)	"Insert the words "of national importance and is" after the word "is" in line 22 of clause 73(2)	To ensure consistency with the wording in clause 74(c)
75(1)	Delete "grants a permit" in the first line and replace with "determines an application"	Ensures provision aligns with existing practice
77(4)	Delete and replace with wording consistent with "if a wāhi tapu condition in an order or agreement is varied or	Discussed under Chapter 4 (notification and registration is being rationalised. Varying an agreement will be covered by a

Clause	Change recommended	Explanation
	revoked under section 78(3), the responsible Minister must provide a copy of the variation of revocation to the chief executive within 5 working days of the variation or revocation taking effect"	negotiations policy)
77(5)	Delete	Clause 114 sets out what the chief executive must register
78(3)(a)	Delete and replace with "varying the recognition order under section 111"	Discussed under Chapter 4 (rationalising clauses related to variation)
78(3)(b)	Delete and replace with "varying the agreement"	Discussed under Chapter 4 (varying an agreement will be covered by a negotiations policy)
78(4)	Delete	Clause 114 sets out what the chief executive must register
80(4)(b)	Remove "77(4)" and replace with "78(1)(c)"	Correct cross reference
81(5)	Include words consistent with "to apply to the Māori Land Court to exercise any part of its jurisdiction under section 12 of that Act" in between "1975" and "applies"	Assist reader to understand what "power" means
85	Add new sub-clause consistent with "the customary marine title group must provide a copy of their planning document to the chief executive"	Dealt with under clause 114. Ensures chief executive receives all documents required on the register)
85(1)(a)	Clarify that agencies relate to those listed in clauses 87-91	Ensure planning document stays within intended scope
88(b)	Clarify that Environment Court obligations apply only when appeal relates to a decision within the CMT area	Provides clarity
90(1)	Should refer to section 11(1) of Fisheries Act 1996 (not section 11(2)	Typographical error

Clause	Change recommended	Explanation
Schedule 2	Amend heading of Schedule 2 to also refer to matters in Part 2 of Schedule 2	Heading only covers matters in Part 1 of Schedule 2
Schedule 2	Delete clause 3(1)(b)(ii) and replace with "agreed to by the responsible Minister"	Discussed under Chapter 4 (varying an agreement will be subject to a negotiations policy)
Schedule 2	Move clause 4 into subpart 2	Content aligns with subpart 2, not subpart 1
Schedule 2	Provide for section 333(1A) of the Resource Management Act in Schedule 2 (any enforcement officer authorised in writing may carry out surveys, investigations, tests, measurements or take samples of water, air, soil or vegetation, enter or re-enter land except a dwelling house, at any reasonable time and with whatever equipment is necessary for any purpose connected with the preparation, change, or review of a policy statement or plan. This provision is to apply for the purposes of assessing the effects on the environment of a protected customary right)	Ensure existing ability of councils to monitor controls on protected customary rights continues
78(4)	Delete	Clause 114 sets out what the chief executive must register
80(4)(b)	Remove "77(4)" and replace with "78(1)(c)"	Correct cross reference
81(5)	Include words consistent with "to apply to the Māori Land Court to exercise any part of its jurisdiction under section 12 of that Act" in between "1975" and "applies"	Assist reader to understand what "power" means
85	Add new sub-clause consistent with "the customary marine title group must provide a copy of their planning document to the chief executive"	Dealt with under clause 114. Ensures chief executive receives all documents required on the register)

Clause	Change recommended	Explanation
85(1)(a)	Clarify that agencies relate to those listed in clauses 87-91	Ensure planning document stays within intended scope
88(b)	Clarify that Environment Court obligations apply only when appeal relates to a decision within the CMT area	Provides clarity
90(1)	Should refer to section 11(1) of Fisheries Act 1996 (not section 11(2)	Typographical error
Schedule 2	Amend heading of Schedule 2 to also refer to matters in Part 2 of Schedule 2	Heading only covers matters in Part 1 of Schedule 2
Schedule 2	Delete clause 3(1)(b)(ii) and replace with "agreed to by the responsible Minister"	Discussed under Chapter 4 (varying an agreement will be subject to a negotiations policy)
Schedule 2	Move clause 4 into subpart 2	Content aligns with subpart 2, not subpart 1
Clause 99 (b)	Indent clause 99 (b) so that it becomes clause 99 (a) (i), then (c) becomes (b) etc.	For clarity purposes.
Clause 119 (1) (a)	Amend this sub clause to include reference to "navigation" after "access".	Clause 28(3) envisages navigation restrictions being imposed by regulation.
Clause 119(1) (b)	Amend this sub clause to include "or protection" after "preservation" and replace "features" with "environment".	These amendments would allow the Department of Conservation to consider a wider range of matters, such as recreational values or to exclude the public for the purposes of carrying out pest operations or to protect bird nesting.

Consequential amendments (substantive)

Clause	Change recommended
Clause 124	No change
Schedule 3 of the Marine and Coastal Area (Takutai Moana) Bill	Insert into the Bill the additional proposed amendments to the following Acts: **Conservation Act 1987** • **Section 7(1):** remove references to "the foreshore" and add a new provision clarifying the Minister of Conservation can declare the cmca is held for conservation purposes under clause 12 of the Bill **Forest and Rural Fires Act 1977** • **Section 2(1):** change existing consequential amendment to paragraph (a)(v) of the definition of state area by deleting "marine and coastal area" and replacing with "common marine and coastal area" • Add post 1991 reclamations defined under clause 32(1) of the Bill as reclaimed land vested in the Crown under sections 33 or 34 to the definition of state area • Replace repealed wording in the definition of fire safety margin with words consistent with "reclaimed land subject to Subpart 2 of the Marine and Coastal Area (Takutai Moana) Act (as defined in section 32(1) of that Act)" **Historic Places Act 1993** • **Section 2:** add a definition of planning document and registered planning document • **Section 14:** add the requirements of clause 88 of the Bill • **Section 20:** add the requirements of clause 88 of the Bill **Resource Management Act 1991** • **Section 12(2):** Parliamentary Counsel Office to consider changed order of this section in proposed consequential amendments • **Section 30(1)(d)(ii):** remove the word "not" in the proposed consequential amendment • **Section 74(2A):** delete proposed consequential amendment • **Section 87A(2)(a):** amend to change the words in the brackets to words consistent with "except if section 106 or section 57(2) of the Marine and Coastal Area Act applies". • **Section 237G:** provide in the case of land becoming part of the cmca compensation is available to the registered proprietor from the Crown (subject to the existing 4 hectares or more requirement) • **Schedule 4 clause 1A:** In the proposed consequential amendment change "right" to "protected customary right"

Clause	Change recommended
	and "proposed right" to "proposed activity" • **In the appropriate place:** add the requirement of clause 67(1) that a resource consent cannot be exercised in a CMT area without the title holders permission (unless it is for an accommodated activity) **Commodity Levies (Mussel, Oyster, and Salmon) Order 2007** • **Regulation 16(g)(ii):** Replace proposed consequential amendment with provision for levies to be spent on protected customary rights and CMT claims under the Bill **Marine Mammal Protection Regulations 1992** • **In the appropriate place:** add the requirements of clause 75 of the Bill **Resource Management (Forms, Fees, and Procedure) Regulations 2003** • **Regulation 10(2)(h):** Replace proposed consequential amendment to refer to protected customary rights groups (instead of revoking) • Add CMT groups for the purposes of accommodated activities

Consequential amendments (technical)

Act or regulation	Change recommended	Explanation
All consequential amendments	Where there is reference to the "Marine and Coastal Area (Takutai Moana) Act 2010" replace "2010" with "2011"	Bill was not enacted in 2010
Conservation Act 1987	Add a new requirement under section 17D that the Director General of Conservation must take into account a planning document according to the requirements in clause 89 of the Bill	To ensure both pieces of legislation include the same requirements and ensure the obligation is not missed by readers of the Conservation Act
Conservation Act 1987	Add the following words to the end of section 24(7C) "or section 39 of the Marine and Coastal Area (Takutai Moana) Act"	Discussed above in Chapter 2 (retains exemption for creating a marginal strip around reclamations)
Crown Minerals Act	In section 2(1) add to the definition of access arrangement and arrangement words to be consistent with "or in the case of the common marine and coastal area where no customary marine title exists, the appropriate Minister" after "owner and occupier of the land"	Continues Minister's role to enter into access arrangements in the cmca covered by Schedule 4

Act or regulation	Change recommended	Explanation
Crown Minerals Act	In section 2(2) add "or land in the common marine and coastal area" after "in relation to Crown land" In section 2(2)(b) delete reference to Crown land in the public foreshore and seabed and replace with words consistent with "if the land is part of the common marine and coastal area"	Under section 61(1) the appropriate Minister can enter into an access agreement with regard to Crown land and land in the cmca. Under section 2(2)(a) the appropriate Minister is only defined in regards to Crown land. The current reference in section 2(2)(b) is to the Minister of Conservation's role in relation to the public foreshore and seabed. Continuation of this role is needed in relation to access arrangements in areas of the cmca covered by Schedule 4 of the Crown Minerals Act (which prevents mining in high value conservation areas such as Marine Reserves and National Parks)
Crown Minerals Act	In section 25(1A) add a cross reference to state section 32(7) does not apply or words to that effect. Alternatively insert in section 32(7) it applies except in accordance with section 25(1A)	Section 32(7) (regarding rights to subsequent permits) states permits cannot be granted under this section over privately owned minerals. This is inconsistent with changes being made to section 25(1A) (allowing granting of permits over minerals privately owned by a CMT group subject to clause 83)
Crown Minerals Act 1991	In section 49(3) add "or customary marine title group" after "owner and occupier" and "every owner and every occupier"	Ensure CMT groups are informed of minimum impact activities in the same way as a private title holder would
Crown Minerals Act 1991	In section 49(4) add "or the customary marine group" after "any owner or occupier"	Ensure CMT groups can require a person entering the CMT area to produce a copy of the authorisation or permit which allows this

Act or regulation	Change recommended	Explanation
Crown Minerals Act	Add a new sub-section to section 50 which provides the requirements in section 50 to have the consent of the owner of land should not apply for land in the cmca	Clarifies an access arrangement is not generally required for the cmca – this recognises the non-ownership status of the cmca
Crown Minerals Act	Add a new sub-section to section 53 which provides the requirements of sub-section (2) to have an access arrangement with the owner of land should not apply for land in the cmca	Clarifies an access arrangement is not generally required for the cmca in relation to petroleum – this recognises the non-ownership status of the cmca, with the resource consent process determining which activities can take place
Crown Minerals Act	Add a new sub-section to section 53 consistent with "the holder of a permit in respect of petroleum shall not prospect, explore, or mine on or in land to which his or her permit relates in the common marine and coastal area described in Schedule 4 where no customary marine title exists, otherwise than in accordance with an access arrangement agreed in writing between the permit holder and the appropriate Minister"	Clarifies an access arrangement is required for minimum impact activities for petroleum in areas of the cmca that fall within Schedule 4
Crown Minerals Act	Add a new sub-section to section 54 which provides the requirements of sub-section (2) to have an access arrangement with the owner of land should not apply for land in the cmca	Clarifies an access arrangement is not generally required for the cmca in relation to activities for minerals other than petroleum

Act or regulation	Change recommended	Explanation
Crown Minerals Act	Add a new sub-section to section 54 consistent with "the holder of a permit in respect of a mineral (other than petroleum) shall not prospect, explore, or mine on or in land to which his or her permit relates in the common marine and coastal area described in Schedule 4 where no customary marine title exists, otherwise than in accordance with an access arrangement agreed in writing between the permit holder and the appropriate Minister"	Clarifies an access arrangement is required for activities for minerals (other than petroleum) in areas of the cmca that fall within Schedule 4
Crown Minerals Act	Add "as required by sections 53 and 54" to the end of the proposed consequential amendment to section 61(1)	Clarifies the circumstances under which the Minister may grant access arrangements in the cmca
Crown Minerals Act 1991	In section 61(1A) add "or land of the common marine and coastal area as required by sections 53 and 54" after the brackets	To ensure access arrangements are required for parts of the cmca covered by Schedule 4
Crown Minerals Act 1991	Delete proposed consequential amendment to section 61(3)	Is not required as the proposed changes to sections 53 and 54 already clarify an access arrangement is not required in the cmca
Fisheries Act 1996	Add cross reference in consequential amendment to section 11(2)(d) to clause 90 in the Bill by adding words consistent with "in accordance with section 90 of the Marine and Coastal Area (Takutai Moana) Act"	To ensure both pieces of legislation include the same requirements
Fisheries Act 1996	Further consequential amendments to the title of section 89B and 89B(a) and (b) are needed to change terminology to protected customary rights orders and to encompass agreements	Provision needs to be made for protected customary rights orders and agreements under the Bill

Act or regulation	Change recommended	Explanation
Fisheries Act 1996	Further consequential amendment to title of section 186ZB to encompass agreement	Provision needs to be made for protected customary rights orders and agreements under the Bill
Local Government (Rating) Act 2002	Add cmca to the list of non-rateable land in Schedule 1	Government has decided the cmca will not be rateable (discussed above under Chapter 2 (clause 11))
Local Government (Rating) Act 2002	Add the Crown's interest in structures in the cmca to the list of non-rateable land in Schedule 1	Government has decided the Crown's interest in structures in the cmca will not be rateable (discussed above under Chapter 2 (clause 11))
Resource Management Act 1991	Repeal section 29(1)(p)	Missed consequential amendment as Schedule 12 of the RMA will be repealed by the Bill
Resource Management Act 1991	Amend section 58(d) to change to wording consistent with "the Crown's interests in the coastal marine area"	Continues the Crown's ability to provide direction on allocation matters in the cmca and conservation areas
Resource Management Act 1991	Amend proposed consequential amendment to sections 61(2A)(b) and 66(2A)(b) to add after "must" wording consistent with "in accordance with section 91 of that Act"	To clarify the obligations are the same as set out in the Bill
Resource Management Act 1991	Further amendment to section 85A to replace "a significant adverse effect" with "an adverse effect that is more than minor"	Uses new language now used in the Bill
Resource Management Act 1991	Amend the wording of the proposed substitution for section 95B(1) and (3) from "relevant protected customary rights group" to "affected protected customary rights group"	Clarifies that this provision applies when protected customary rights groups are affected (continues existing provision)

Act or regulation	Change recommended	Explanation
Resource Management Act 1991	Add customary marine title groups to section 95B(1) and (3) in relation to accommodated activities	Clarifies CMT groups will also be given limited notification for accommodated activities by consent authorities alongside protected customary rights groups
Resource Management Act 1991	Replace "affected person" with "affected protected customary rights group" in proposed consequential amendment to section 95F	Matches language in section 95B(1) and (3)
Resource Management Act 1991	Add a new clause guiding councils in decision on whether a CMT group is affected for the purposes of section 95B(1) and (3). This new section 95G would be similar to new proposed section 95F	Provide for CMT groups to qualify for limited notification of resource consent applications for accommodated activities when affected by an environmental affect
Resource Management Act 1991	Add amendment to section 104 by including a new subsection with requirements of clause 91(5)(b) of the Bill that consent authorities must have regard to \ the matters in a customary marine title holders planning document when making decisions on resource consents prior to them undertaking a review of their regional documents. Also include a provision reflecting requirements of clause 91(7)	Ensure councils do not miss this obligation
Resource Management Act 1991	Add reference to a Gazette notice or agreement which contains a wāhi tapū condition to section 104(3)(c) (resource consent not granted if contrary to a Gazette notice)	Continues existing provision in relation to Gazette notices in the 2004 Act
Resource Management Act 1991	Further amend section 152(1) to replace the words removed by the existing consequential change with wording consistent with "the Crown's interests in the coastal marine area"	Retain existing jurisdiction (which does not extend into privately owned areas)

Act or regulation	Change recommended	Explanation
Resource Management Act 1991	Further amend section 156 to replace the words removed by the existing consequential change with wording consistent with "in respect of the common marine and coastal area"	Retain existing jurisdiction (which does not extend into privately owned areas)
Resource Management Act 1991	Further amend section 165H to replace the words removed by the existing consequential change with "in the common marine and coastal area"	Retain existing jurisdiction (which does not extend into privately owned areas)
Resource Management Act 1991	End bracket required after "otherwise" at the end of the proposed consequential amendment to section 239(1)(c)	Typographical error
Resource Management Act 1991	Delete proposed 239(1)(d)	Consequential amendment not required. The Bill already provides land in Crown ownership in the coastal marine area becomes the cmca
Resource Management Act 1991	Change heading of section 293A to refer to protected customary rights orders and agreements under the Marine and Coastal Area (Takutai Moana) Act	Missed consequential amendment
Resource Management Act 1991	Extend proposed amendment to section 309(4) to also delete the words "carried out in accordance with section 17A(2)"	Missed consequential amendment (section 17A is to be repealed)

Act or regulation	Change recommended	Explanation
Resource Management Act 1991	Extend proposed amendment to section 309(5) to note the following sections apply to protected customary rights "sections 310 to 313 and sections 330 to 331"	Section 332 does not need to apply to protected customary rights as no power of entry for inspection is required. This report recommends section 333 in respect of protected customary rights (power of entry for survey) be incorporated into the Bill. Sections 334-337 (warrants for entry for search; return of seized property) cannot apply to protected customary rights as there is no place of entry
Resource Management Act 1991	Add the words "above the coastal marine area" after the words "which forms part of a riverbed" in the proposed consequential amendment to section 355(3)	Clarifies riverbeds within the coastal marine area are not part of this provision
Resource Management Act 1991	Further amend proposed amendment to section 360(1)(c) to link (iii) with both (i) and (ii)	Clarify that "area" in (iii) refers to the area described in the subsections above
Resource Management Act 1991	Amend clause 2(2)(c) of Schedule 1 to provide during the preparation of a proposed policy statement or plan, the local authority shall consult with any CMT group	Discussed above in Chapter 3 (ensure CMT groups are involved in Schedule 1 consultation on a planning document)
Resource Management Act 1991	Amend clause 3(1)(e) of Schedule 1 to provide during the preparation of a proposed policy statement or plan the local authority shall consult with any CMT group	Discussed above in Chapter 3 (ensure CMT groups are involved in Schedule 1 consultation on a planning document)
Te Ture Whenua Maori Act 1993	Consequential amendment to section 2(1) should instead refer to section 4	Typographical error