

# **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill sets up an environmental management regime for New Zealand's Exclusive Economic Zone (**EEZ**) and continental shelf.

The EEZ Bill fills gaps in the environmental management regime in the EEZ; existing laws such as the Fisheries Act 1996 and Maritime Transport Act 1994 will continue to operate largely as at present. Activities covered by the Bill include seabed mining, some aspects of petroleum activities, energy generation, carbon capture and storage, and marine farming.

The Bill gives effect to New Zealand's obligations under the United Nations Convention on the Law of the Sea to manage and protect the natural resources of the EEZ. The EEZ is the area of sea, seabed, and subsoil from 12 to 200 nautical miles offshore over which New Zealand has jurisdiction. The continental shelf is the seabed and subsoil of New Zealand's submerged landmass from the territorial limits of New Zealand and in some places extending beyond the EEZ. New Zealand has exclusive sovereign rights for the purpose of exploring the continental shelf and managing, conserving, and exploiting its

natural resources. These resources are limited to those found on or under the seabed.

The Bill aims to achieve a balance between the protection of the environment and economic development. It also includes a general duty for adverse effects to be avoided, remedied, or mitigated. The Bill recognises that some adverse effects are avoided, remedied, or mitigated under other legislation.

The Bill sets up the general framework for the regulatory system, but the specific controls and standards will be set out in subsequent regulations. When regulations are developed, or consent decisions are made, decision-makers will be required to consider a number of matters relating to the purpose and principles of the legislation.

The Bill sets up a consent regime to regulate activities. Activities will be classified as permitted, discretionary, or prohibited by regulations. For discretionary activities, persons will need to apply for a marine consent. An impact assessment will form the basis of an application and will allow the Environmental Protection Authority (**EPA**) to assess the effects on the environment and existing interests. The EPA will be the decision-maker for all marine consents.

### **Regulatory impact statement**

The Ministry for the Environment produced a regulatory impact statement on 20 April 2011 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.mfe.govt.nz/cabinet-papers/ris-eez-environmental-effects.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mfe-eez-jun11.pdf>

### **Clause by clause analysis**

*Clause 1* states the Title.

*Clause 2* is the commencement clause. The Act comes into force on 1 or more dates appointed by Order in Council. However, any provisions not brought into force by 1 July 2013 come into force on that date. The Ministry for the Environment advises that commencement by Order in Council is desirable because regulations will need to be developed before the Act will be effective. The Ministry plans to

produce a discussion paper as the basis for consultation on the proposals and anticipates regulations could be made and the Act brought into force by the end of 2012.

## **Part 1**

### **Preliminary provisions**

#### **Subpart 1—Outline, definitions, and application**

*Clause 3* is an outline provision and indicates the scope and purpose of the Bill.

*Clauses 4 to 7* define terms used in the Bill. *Clause 4* is the general interpretation clause. *Clause 5* provides that a reference to a person includes a reference to the person's successor. *Clause 6* defines effect and *clause 7* defines marine management regime.

*Clause 8* provides that the Act binds the Crown, except as provided in that clause and *clause 9*, which provides for the application of the Act to the ships and aircraft of the New Zealand Defence Force and foreign States.

#### **Subpart 2—Purpose and principles**

*Clause 10* states the purpose of the Bill.

*Clause 11* requires the Act to be interpreted, and all persons who perform functions and duties under it to act, in a manner that is consistent with New Zealand's international obligations under the United Nations Convention on the Law of the Sea.

*Clause 12* sets out matters that decision-makers must take into account to achieve the purpose.

*Clause 13* requires decision-makers to take a cautious approach to the lack, or inadequacy, of information and to consider whether an adaptive management approach would allow an activity to be undertaken.

*Clause 14* indicates how the Bill provides for the Crown's responsibility to take appropriate account of the Treaty of Waitangi.

### Subpart 3—Duties and restrictions

*Clause 15* restricts certain activities in relation to the EEZ and continental shelf. The restricted activities may be authorised by regulations or a marine consent.

*Clause 16* allows existing mining activities to continue if they are authorised by a permit under the Crown Minerals Act 1991 or a licence under the Continental Shelf Act 1964 granted before 1 July 2011, or if they were authorised by a mining privilege to which section 107 of the Crown Minerals Act 1991 applies.

*Clause 17* allows certain activities to continue for 6 months after the regulations affecting them change to require the activities to be authorised by a marine consent. During the 6 months, the persons undertaking the activities may apply for new consents. If a person applies for a new consent during the 6 months, the person may continue with the activities for as long as needed to get a final decision on the application.

*Clause 18* allows certain activities to continue for a limited period after regulations are made that prohibit the activities. If the activity was authorised by a consent, it may continue for the duration of the consent. If the activity did not require a consent, it may continue for a period specified in the regulations.

*Clause 19* imposes duties on persons operating in the EEZ or on the continental shelf—

- to avoid, remedy, or mitigate the adverse effects of their activities on the environment; and
- to train and supervise their employees and provide them with sufficient resources to ensure compliance with the Bill.

*Clause 20* clarifies that compliance with the Bill does not relieve persons from their obligations under other legislation or rules of law and vice versa.

### Subpart 4—Functions, duties, and powers

#### *Functions, duties, and powers*

*Clause 21* sets out the functions of the Environmental Protection Authority under the Bill. The EPA will decide applications for marine consents, and have monitoring, enforcement, and other functions.

*Clause 22* provides that the Minister must not direct the EPA to give effect to a Government policy when the EPA is making decisions on applications for consents or making decisions in relation to objections, appeals, or enforcement.

*Clause 23* provides that the EPA has all the powers that are reasonably necessary to carry out its functions.

*Clause 24* restricts the EPA's power to delegate. It must not delegate the power to decide an application for consent under *clause 61* except to a committee appointed under the Crown Entities Act 2004 or a board of inquiry appointed under the Resource Management Act 1991 to decide an application for resource consent where part of the activity is in the coastal marine area and part of it is in the EEZ or on the continental shelf.

*Clause 25* requires the EPA to keep records and make information available to the public.

#### *Māori Advisory Committee*

*Clause 26* provides for the functions under this Act of the Māori Advisory Committee appointed under the Environmental Protection Authority Act 2011.

## **Part 2 Requirements and consents**

### Subpart 1—Regulations

#### *Regulation of activities and environment of exclusive economic zone and continental shelf*

*Clause 27* empowers the making of regulations prescribing standards, methods, or requirements in relation to the EEZ or continental shelf for activities restricted by *clause 15*, the effects of those activities, or for the environment.

*Clause 28* provides that regulations made under *clause 27* may identify and provide for areas of the EEZ or continental shelf that have features that require a location-specific approach. This may include closing an area of the EEZ or continental shelf.

*Clause 29* provides that regulations made under *clause 27* may classify activities as permitted, discretionary (allowed with a marine consent), or prohibited. Regulations may not classify an activity as per-

mitted if the Minister considers that the activity has or is likely to have significant adverse effects on the environment or existing activities and it is more appropriate to address the effects in relation to an application for a marine consent.

### *Regulations generally*

*Clause 30* empowers the making of regulations relating to the following:

- the provision of information and keeping of records:
- forms relating to enforcement orders and the appointment of enforcement officers:
- charges to recover costs:
- other matters.

### *Provisions applying to all regulations*

*Clause 31* provides that regulations may apply to all or any part of the EEZ and continental shelf, and any or all activities restricted by *clause 15* and resources in the EEZ or on the continental shelf.

*Clause 32* sets out a consultation process for the making of regulations under *clause 27 or 30*. However, the process is not mandatory for minor amendments and corrections.

*Clause 33* sets out the matters the Minister must consider in developing regulations. The Minister must—

- give the matters in *subpart 2 of Part 1* the consideration required by the different provisions of that subpart:
- have regard to matters that include—
  - the potential adverse effects of activities on the environment and existing interests:
  - existing interests in and around the area being regulated:
  - the cumulative adverse effects on the environment of all activities undertaken in an area of the EEZ or continental shelf, including activities not regulated under the Bill.

*Clause 34* provides that a regulation must not classify an activity as permitted or discretionary in relation to a particular area if the Minister considers that such status would be contrary to the purpose

of a prohibition or restriction on the use of the area under another marine management regime.

*Clause 35* provides that a marine consent may be more stringent than a regulation, but not more lenient. An existing consent will prevail over a regulation made later until the consent is reviewed. However, if the regulation prohibits the activity authorised by the consent, *clause 18* applies and the activity may continue for the duration of the consent.

#### *Types of activity*

*Clause 36* provides that a permitted activity is one described as such in regulations and a person may undertake a permitted activity without a consent provided that the activity complies with any terms and conditions specified in the regulations. A person intending to undertake a permitted activity must first notify the EPA if regulations require.

*Clause 37* provides that a discretionary activity is one described as such by regulations or allowed with a marine consent. If an activity is not classified by regulations, it is a discretionary activity.

*Clause 38* provides that a prohibited activity is one described as such by regulations. No application for a marine consent can be made or granted for a prohibited activity.

### Subpart 2—Marine consents

This subpart establishes a regime for activities to be undertaken in the EEZ and on the continental shelf. There are only 3 categories of activity: permitted, discretionary, and prohibited. Marine consents are required for discretionary activities and all applications for consents must be publicly notified. Any person may make a submission. There may be a hearing if requested by the applicant for consent or a submitter. The EPA may grant or refuse a consent, and if a consent is granted, the EPA may impose conditions, including a requirement for a bond or the appointment of an observer.

Consent conditions may be reviewed and amended or cancelled and consents may be cancelled in some circumstances. The duration of a consent may also be reviewed and extended provided, it does not exceed 35 years in total.

*Clause 39* allows a person to apply for a marine consent for a discretionary activity. The application must be in the prescribed form (which may be prescribed by regulations or approved by the EPA), fully describe the proposal, and include an impact assessment and any other information required by regulations.

*Clause 40* sets out the requirements for the impact assessment. The impact assessment must—

- describe the activity:
- described the current state of the area where the activity may be undertaken and the local environment of the area:
- identify the effects of the activity on the environment and existing interests wherever those effects occur:
- identify the persons whose existing interests are likely to be adversely affected:
- describe any consultation undertaken with those persons:
- include copies of any written approvals to the activity from persons whose interests are affected:
- specify any alternative locations for, or methods for undertaking, the activity that could avoid, remedy, or mitigate the adverse effects of the activity:
- specify the measures that the applicant intends to take to avoid, remedy, or mitigate the adverse effects of the activity.

The level of detail of the information to be included in the impact assessment must reflect the scale and significance of the effects that the activity may have on the environment and existing interests and be sufficient to enable the EPA and persons whose existing interests may be affected to understand the nature of the activity and its effects.

The applicant need only make reasonable efforts in the circumstances to identify effects the activity may have and persons whose existing interests are likely to be affected.

*Clause 41* imposes an obligation on the EPA to deal with applications promptly.

*Clause 42* allows the EPA to return an application within 10 days of receiving it if the EPA considers that it is incomplete in that it does not include an adequate impact assessment or any information required by the Bill. If the applicant sends the application to the EPA again, it is treated as a new application.



*Clause 43* allows the EPA to request further information concerning an application from the applicant. The EPA must provide a copy of any information provided to every submitter.

*Clause 44* provides that an applicant who receives a request for further information may provide the information, agree to provide the information at a later date, or refuse to provide the information. If the applicant agrees to provide the information, the EPA must set a time within which the information must be provided. If the applicant does not provide the information or does not respond to the request, the EPA must still consider the application under *clause 59*.

*Clause 45* allows the EPA to commission a report relating to the application or the activity or an independent review of the impact assessment. The EPA may also seek advice from the Māori Advisory Committee or any person in relation to the application or the activity. The report and advice must be made available to the applicant and submitters.

*Clause 46* requires the EPA to give public notice of an application for consent and serve a copy of the notice on—

- Ministers with relevant responsibilities:
- Maritime New Zealand:
- iwi authorities, customary marine title groups, and protected customary rights groups that may be affected by the application:
- persons with existing interests that may be affected:
- regional councils whose regions may be affected.

### *Submissions*

*Clause 47* allows any person to make a submission.

*Clause 48* requires submissions to be made no later than 20 working days after public notification of the application.

*Clause 49* requires the EPA to give the applicant a list of submissions it has received.

*Clause 50* allows the EPA to invite the applicant and submitters to discuss matters in dispute or to enter into mediation.

### *Hearings*

*Clause 51* provides that the EPA may conduct a hearing if it wishes, but must conduct a hearing if requested to do so by the applicant or a submitter.

*Clause 52* provides for the hearing date, notice of the hearing, and the location.

*Clause 53* requires a hearing to be held in public unless there are grounds for excluding the public under *clause 146(3)(a)*. The EPA must establish a fair and appropriate procedure for a hearing that is not unnecessarily formal.

*Clause 54* allows the applicant and any submitter who indicated they wished to be heard to speak and call evidence. However, the EPA may limit parties with the same interest to avoid excessive repetition.

*Clause 55* specifies provisions of the Commissions of Inquiry Act 1908 that apply to hearings.

*Clauses 56, 57, and 58* allow the EPA to make directions relating to the provision of briefs of evidence, the order of business at the hearing, the recording and presentation of evidence, and the striking out of submissions.

### *Decisions*

*Clause 59* sets out the matters that the EPA must consider in deciding an application for a marine consent. The EPA must—

- give the matters in *subpart 2 of Part 1* the consideration required by the different provisions of that subpart:
- have regard to matters that include—
  - submissions, evidence, advice, reports, and information it has received in relation to the application:
  - the adverse effects of an activity on the environment and existing interests:
  - best practice in relation to the industry or activity involved:
  - in relation to an application for a replacement consent, the value of the applicant's investment in the activity.

The EPA must not consider trade competition or the effects of trade competition, the effects on climate change of discharging greenhouse

gases into the air, or any effects on an existing interest if the person whose interest it is has given written approval to the activity.

*Clause 60* specifies matters that must be considered in determining the extent of adverse effects an activity may have on an existing interest.

*Clause 61* provides that the EPA may grant or refuse an application for a marine consent. The EPA may also refuse an application if the EPA does not have adequate information to determine the application.

*Clause 62* provides for the EPA to impose conditions on the grant of a consent to deal with the adverse effects on the environment or existing interests of the activity.

*Clause 63* expands on the scope of a condition requiring a bond to secure the performance of another condition. A bond may continue after the expiry of the consent to secure the performance of conditions that relate to the long-term effects of the activity, such as the removal of structures, restoration of the site, or ongoing monitoring.

*Clause 64* expands on the power to impose a condition requiring the applicant to monitor and report on the exercise of the consent and the effects of the activity it authorises.

*Clause 65* expands on the power to impose a condition requiring the applicant to appoint an observer to monitor an activity and its effects. The person appointed must first be approved by the EPA and the EPA must approve a person who has the appropriate training, skill, and experience for the role.

*Clause 66* requires the EPA to make a decision on an application no later than 20 working days after the hearing or, if there is no hearing, after the closing date for submissions.

*Clause 67* requires the decision on an application to be in writing.

*Clause 68* requires the decision to be publicly notified, and for copies to be given to the applicant, submitters, the Māori Advisory Committee, and any other person the EPA considers appropriate.

*Clause 69* provides that a marine consent commences once all appeals have been determined or withdrawn or when the time for lodging an appeal has expired and no appeals were lodged. However, the consent may specify a later date for the consent to commence.

### *Nature of consent*

*Clause 70* provides that a consent is neither real nor personal property and provides for its vesting following the death or bankruptcy of the consent holder (if the holder is a natural person). A consent must be treated as property for the purposes of the Protection of Personal and Property Rights Act 1988 and as personal property for the purposes of the Personal Property Securities Act 1999.

### *Duration of consent*

*Clause 71* provides that a consent may have a term of 35 years or less. In deciding what the appropriate term should be, the EPA must consider the matters in *subpart 2 of Part 1* and take into account the duration of any other legislative authorisations granted or required for the activity.

*Clause 72* allows the holder of a consent that expires to continue the activity authorised by the activity if the holder had applied for a new consent for the activity at least 6 months before the expiry of the original consent. If the application for a new consent is made between 6 and 3 months before the expiry of the original consent, the EPA may allow the consent holder to continue the activity. If the holder of the consent is allowed to continue the activity after the expiry of the original consent, the holder may do so until the application for the new consent is finally decided.

### *Transfer of marine consent*

*Clause 73* allows the holder of a consent to transfer it to another person but not to another location. Written notice of the transfer must be given to the EPA before the transfer takes effect.

### *Review of duration and conditions of consent*

*Clause 74* provides that the EPA may review the duration or conditions of a consent—

- if the consent provides for review to deal with adverse effects on the environment that may arise from the exercise of the consent that are better dealt with later, or for any other purpose:
- to ensure that conditions are consistent with standards that are prescribed:

- to deal with unanticipated adverse effects on the environment or existing interests:
- if the applicant provided materially inaccurate information to the EPA as part of the application and the effects of the exercise of the consent are such that more appropriate conditions are required:
- if new information becomes available to the EPA that shows more appropriate conditions are required.

The EPA must review a consent if required by an enforcement order made by the Environment Court.

*Clause 75* specifies the information that must be in a notice of review.

*Clause 76* requires public notice of a review and individual notice to be served on specified people.

*Clause 77* applies *clauses 43 to 58* to a review of a consent. The clauses provide for the EPA to request further information, obtain advice and commission reports, to call for and receive submissions, and to conduct hearings. *Clause 45(1)(a)* does not apply because it relates to the commissioning of a review of the impact assessment included with an application for consent and there is no equivalent document in this context.

*Clause 78* specifies the matters to be considered in reviewing the conditions of a consent. These are the same matters that must be considered in relation to an application for a consent but, in addition, the EPA must consider whether the activity authorised by the consent will continue to be viable after the conditions are changed and any reasons a court provided for making an order requiring a review. The EPA may consider the manner in which the activity authorised by the consent has been undertaken.

*Clause 79* provides that following a review, the EPA may change or cancel a condition of a consent only if 1 or more of the circumstances in *clause 74* apply. The provisions of the Bill that relate to the imposition of conditions on a consent, decisions, notification, commencement of the consent, and appeals apply to the review as if it were an application for a consent and the consent holder were the applicant for the consent. The EPA may cancel a consent if—

- the review was initiated because the information provided by the applicant for the consent contained material inaccuracies influencing the decision to grant the consent and there are sig-

nificant adverse effects resulting from the exercise of the consent:

- the review was required by an enforcement order made by the Environment Court following the conviction of a person for an offence relating to breach of a consent and there are significant adverse effects resulting from the exercise of the consent.

*Clause 80* provides that following a review of a consent, the EPA may shorten the duration of a consent only if the effects of the activity authorised by it were not anticipated when the consent was granted and shortening the consent is the only way to avoid, remedy, or mitigate the effects appropriately. The EPA may extend the duration of a consent only if monitoring of the activity shows that the effects are minor or may be adequately addressed imposing by conditions. However, the duration may not be extended so that the term is longer than 35 years.

*Clause 81* provides for minor changes to consent conditions to be made without notifying the review, although the EPA must allow the consent holder to make a submission.

*Clause 82* allows the EPA to amend a consent within 15 working days after it is granted to correct minor mistakes or defects.

### *Cancellation of marine consents*

*Clause 83* provides that a consent lapses on a date specified in the consent or, if no date is specified, 5 years after it commences if the consent is not given effect to during that period and the applicant does not apply to the EPA to extend the period before it expires.

*Clause 84* allows the EPA, by notice to the consent holder, to cancel a consent if the consent has been exercised in the past but has not been exercised during the preceding 5 years. The consent holder may ask the EPA to revoke the notice within 3 months after it is served.

*Clause 85* allows a consent holder to request the EPA to change or cancel consent conditions. The request is dealt with as if it were an application for a consent, although the EPA has discretion to dispense with notification, notify only persons the EPA considers may be affected, or deal with the request under *clause 81* (minor changes).

### Subpart 3—Marine consents for cross-boundary activities

*Clause 86* defines terms used in this subpart, including cross-boundary activity, which is an activity carried out in both the coastal marine area and the EEZ or continental shelf, and joint application for consent, which is an application that comprises both an application for a resource consent under the Resource Management Act 1991 (the **RMA**) and an application for a marine consent.

*Clause 87* provides that *subpart 3* applies to a proposal to undertake a cross-boundary activity that requires both a resource consent and a marine consent. *Subpart 3* does not apply if the part of the activity that is to be undertaken in the coastal marine area is a restricted coastal activity under the RMA.

#### *EPA may decide whether joint or separate applications for consent required*

*Clause 88* allows a person intending to undertake a cross-boundary activity to make a joint application for consent or separate applications for a resource consent and a marine consent.

*Clause 89* requires a joint application for consent to be sent to both the relevant consent authority under the RMA and the EPA. The assessment of effects included in the application must comply with both the RMA and *clause 40*. The applicant may specify that the part of the joint application that is the application for a resource consent is lodged with the EPA under section 145 of the RMA. That means that the applicant wishes the application for resource consent to be dealt with as a matter of national significance. If the resource consent is called in by the Minister or the Minister of Conservation and referred to a board of inquiry under the RMA, *clauses 97 and 98* apply to the joint application.

*Clause 90* provides that if a person applies separately for a resource consent and a marine consent, or just applies for a marine consent for part of a cross-boundary activity, the application for a marine consent is dealt with as if the activity were not a cross-boundary activity.

*Clause 91* allows the EPA to require a joint application to be made even if the applicant wishes to make separate applications. The EPA may either defer dealing with the application for a marine consent

for a cross-boundary activity or return the application as incomplete if no application for a resource consent has been made.

*Clause 92* allows the EPA to decide that a joint application for consent ought to be processed as separate applications for a resource consent and a marine consent. This may happen at any time during the processing of the joint application.

#### *Processing of joint application*

*Clause 94* provides that the EPA is responsible for the administration of the processing of a joint application for consent and requires the EPA to liaise with the relevant consent authority under the RMA in relation to the processing. *Clause 94* also recognises that the RMA time periods for processing applications for consent may not be the same as the time periods under this Bill and allows the EPA to extend time periods so that the applications can be jointly notified, submissions on the applications close on the same date, and the applications are heard at the same time and place.

*Clause 95* requires the relevant consent authority and the EPA to share information relating to a joint application.

*Clause 96* requires the EPA and the relevant consent authority to make separate decisions on the application for a marine consent and the application for a resource consent and the decision-making criteria under the Bill and the RMA apply to the decisions on the respective applications.

#### *Nationally significant cross-boundary activities*

*Clause 97* provides that the EPA may delegate its decision-making functions in relation to an application for a marine consent that is part of a joint application to the board of inquiry appointed under the RMA to hear and decide the application for a resource consent. If the EPA delegates these functions, the EPA will administer the process under the provisions of the RMA that apply when a board of inquiry is to decide an application

*Clause 98* requires the EPA to provide a board of inquiry that will hear and decide an application for a marine consent with the application, submissions received, and all other information the EPA has received that relates to the application or the activity. The EPA must also prepare or commission a report on the key issues relating to the



application and the activity and provide it to the board, the relevant consent authority, the applicant, and the submitters.

### **Part 3**

## **Objections, appeals, and enforcement**

### Subpart 1—Objections and appeals

#### *Objections*

*Clause 99* provides for a right of objection in relation to certain decisions of the EPA. The applicant for a marine consent may object if the EPA returns an application as incomplete, decides to commission a review of the impact assessment or a report, or decides to seek advice. A submitter may object if the EPA strikes out its submission or a part of its submission. A consent holder may object to a decision made by the EPA following a review of the consent, or its conditions or duration.

*Clause 100* sets out the procedure for making an objection.

*Clause 101* provides for the EPA to uphold or dismiss an objection and to send a copy of the decision to the person who made the objection and any other person it considers appropriate no later than 5 working days after making the decision.

*Clause 102* allows the person who made an objection and who is dissatisfied with the EPA's decision on the objection to appeal to the High Court on a question of law.

#### *Appeal to High Court on question of law*

*Clause 103* provides for appeals against decisions of the EPA on applications for consent and reviews of consents to be made to the High Court on questions of law only.

*Clause 104* sets out the requirements for a notice of appeal.

*Clause 105* requires the applicant or consent holder and any submitters who wish to appear to give notice of intention to appear to the appellant, the Registrar of the High Court, and the EPA within 10 working days of the person being served with the notice of appeal.

*Clauses 106 and 107* deal with the parties to an appeal. *Clause 106* provides that the parties are the appellant, the EPA, a person who gives notice of intention to appear under *clause 105*, and a person who becomes a party under *clause 107*. *Clause 107* allows the fol-

lowing persons to be a party to proceedings by giving notice to the High Court and other parties:

- the Attorney-General, representing a relevant aspect of the public interest;
- the relevant consent authority in relation to proceedings affecting a cross-boundary activity.

*Clause 108* allows the High Court to dismiss an appeal if the appellant does not proceed with the appeal with due diligence and another party applies to have the appeal dismissed or the appellant does not appear at the hearing.

*Clause 109* requires the Registrar of the High Court to arrange a hearing date as soon as practicable after being notified that the notice of appeal has been served on all parties.

*Clause 110* applies the High Court Rules to an appeal if a procedural matter is not provided for by *clauses 103 to 109*.

### *Appeal to Court of Appeal*

*Clause 111* provides for a further appeal to the Court of Appeal.

## Subpart 2—Enforcement

*Clause 112* provides that all proceedings in relation to enforcement orders are to be heard by an Environment Judge sitting alone or by the Environment Court. An Environment Judge or a District Court Judge who is also an Environment Judge may hear proceedings relating to an interim enforcement order. Prosecutions must be heard in the District Court by a Judge who is an Environment Judge. However, the Chief District Court Judge may direct that any of these proceedings may be heard by a District Court Judge who is not an Environment Court Judge.

### *Enforcement order*

*Clause 113* sets out the scope of an enforcement order. An order may only be made in relation to a contravention of the Bill, regulations, or a marine consent. It may—

- require a person to stop doing something or not to start doing something;

- require a person to do something to ensure compliance with the Bill, regulations, or a consent or to avoid, remedy, or mitigate adverse effects that result from a breach of the Bill, regulations, or a consent:
- require a person to pay money to or reimburse another person for the actual and reasonable costs and expenses of taking reasonable measures to avoid, remedy, or mitigate the adverse effects resulting from the first person's failure to comply with another enforcement order, the Bill, regulations, or a marine consent:
- change or cancel a consent if the information the applicant for consent provided to the EPA contained inaccuracies relevant to the order that materially influenced the decision to grant the consent and the effects of the activity warrant different conditions or cancellation of the consent.

*Clauses 114 to 116* deal with the making of an application for an enforcement order, service of notice of the application, and the right to be heard of the applicant for the order and the person against whom the order is sought. Only the EPA or an enforcement officer may apply for an order.

*Clause 117* provides for the decision on an application for an enforcement order.

*Clause 118* provides for the making of interim enforcement orders if the Judge considering an application for such an order considers there is an imminent risk of serious adverse effects resulting from a breach of the Bill, regulations, or a marine consent. The Judge may make an order without requiring service of the notice of application for the order and without holding a hearing.

*Clause 119* provides for the person against whom an interim enforcement order is made to challenge the order.

*Clause 120* requires the person against whom an enforcement order is made to comply with the order and to pay all costs of complying with the order. If the person does not comply and another person complies with the order, the second person may recover the costs from the first person.

*Clause 121* allows the EPA, an enforcement officer, or the person against whom an enforcement order is made to apply to change or cancel an enforcement order.

*Clause 122* provides that neither the EPA nor an enforcement officer may apply for an enforcement order in relation to actions of certain people under the Maritime Transport Act 1994 taken to deal with a hazardous ship, hazardous structure, or hazardous marine operation, or taken in response to an oil spill.

*Clause 123* provides that sections 299 to 308 of the RMA apply to proceedings under the Bill in the Environment Court. These sections deal with appeals from decisions of the Environment Court to the High Court on questions of law, orders of the High Court, and further appeals to the Court of Appeal.

#### *Offences and penalties*

*Clauses 124 and 125* specify offences and penalties for the offences. No offences attract a penalty of imprisonment. The maximum penalty for a breach of *clause 15* or an enforcement order is \$300,000 for a natural person and \$600,000 for any other person. Continuing offences attract an additional maximum penalty of \$10,000 per day or part of a day. Less serious offences attract a maximum penalty of \$10,000 and \$1,000 per day, and offences of obstruction or breach of a summons or order to give evidence are punishable by a maximum fine of \$1,500. In addition to a monetary penalty, the court may make an enforcement order or an order requiring the EPA to review the relevant consent.

*Clause 126* makes an offence in relation to *clause 15* an offence of strict liability meaning that it is not necessary to prove that the defendant intended to commit the offence, and the defendant must prove the elements of the defence.

*Clause 127* makes a person liable for an offence committed by another on the first person's behalf.

*Clause 128* requires an information in relation to an offence to be laid by an enforcement officer within 6 months after the breach becomes known, or should have become known, to the officer. The period does not run if the defendant (being a natural person) is beyond the outer limits of the territorial sea.

#### *Appointment and powers of enforcement officers*

*Clause 129* authorises the EPA to appoint enforcement officers.

*Clause 130* requires enforcement officers to exercise their powers in accordance with their warrants of appointment and to keep the warrants and proof of identity with them and produce them if required.

*Clause 131* empowers an enforcement officer to require a person to give the officer information identifying the person if the officer believes the person is committing or has committed an offence.

*Clause 132 and the Schedule* empower an enforcement officer to enter and inspect a place (other than a dwellinghouse or marae), vehicle, vessel, or structure for the purpose of checking compliance with the Bill, regulations, a consent, or an enforcement order. The inspection may be conducted in New Zealand territory, in the EEZ, or, in relation to a structure on the continental shelf, outside the EEZ. An enforcement officer may board and inspect a vessel in the waters beyond the EEZ but above the continental shelf but, if the vessel is a foreign vessel, the enforcement officer must first advise the Secretary of Foreign Affairs so that the Secretary may advise the flag State of the vessel.

## **Part 4**

### **Miscellaneous, transitional provisions, and amendments to other Acts**

#### Subpart 1—Miscellaneous

##### *Protection of the Crown and others*

*Clause 133* provides that the Crown, the chief executive of the EPA, the EPA, and enforcement officers are not liable for any loss or damage caused or expense incurred as a result of a person lawfully carrying out functions and duties under the Bill.

##### *Cost recovery*

*Clauses 134 to 138* require the EPA to recover its costs in performing its functions. Charges recovering the costs or a method for determining the charges may be prescribed by regulations. In determining the method and level of cost recovery, the Minister (who will recommend the making of the regulations) must have regard to the principles of equity, efficiency, justification, and transparency as those principles are expanded upon in *clause 135*.

### *Service of documents*

*Clauses 139 and 140* provide for the service of notices and other documents on persons. Service on a master of a ship who is a defendant in a prosecution may be achieved by personal delivery or registered letter to the ship's agent or served in accordance with section 24 of the Summary Proceedings Act 1957.

### *Incorporation by reference*

*Clauses 141 to 145* allow specified written material to be incorporated by reference into regulations. The material that may be specified is—

- standards, requirements, or recommended practices of international or national organisations;
- standards, requirements, or recommended practices of any country or jurisdiction;
- other material that the Minister considers is impractical or too large to include in or print as part of the regulations.

### *Protection of sensitive information*

*Clause 146* provides for the protection of information if necessary to avoid causing serious offence to tikanga Māori, disclosing the location of wāhi tapu, disclosing a trade secret, or causing unreasonable prejudice to the commercial position of the person who supplied the information.

### *Waivers and extension of time limits*

*Clause 147* allows the EPA to extend time periods or waive a failure to comply with a time period, or waive compliance with a requirement to provide information or a procedural requirement. *Clause 149* provides that any extension of a time period may not exceed twice the maximum period specified unless the applicant requests or agrees to the extension. Before extending, or waiving compliance with, a time period, the EPA must take into account the interests of any person directly affected and of the community.

### Subpart 2—Transitional provisions

*Clauses 149 to 151* apply to activities being carried out when the Bill comes into force. An activity that becomes a discretionary activity may continue without a consent for 6 months longer and, if the person undertaking the activity applies for a marine consent during the 6 months, until the application is finally decided. An activity that becomes a prohibited activity may continue for a period prescribed in regulations.

### Subpart 3—Amendments to other Acts

*Clause 152* amends the Continental Shelf Act 1964 by repealing unused provisions that authorise the making of regulations—

- regulating the construction or use of structures on the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources:
- prohibiting the construction, placement, or use of structures on the continental shelf that could interfere with navigation:
- prescribing measures to be taken in safety zones around structures to protect the natural resources of the continental shelf and its waters from harmful agents:
- prescribing the notice to be given in relation to the construction and placement of structures:
- providing for the removal of structures that have been abandoned:
- prohibiting or restricting exploration and exploitation of natural resources if the exploration or exploitation could unjustifiably interfere with navigation, fishing, or conservation of living resources, or could interfere with national defence, research, or with submarine cables and pipelines.

*Clauses 153 to 157* make consequential amendments to the Crown Organisations (Criminal Liability) Act 2002, the Environment Act 1986, the Environmental Protection Authority Act 2011, the Fisheries Act 1996, and the Resource Management Act 1991.

---





*Hon Dr Nick Smith*

# **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill**

Government Bill

## **Contents**

		Page
1	Title	8
2	Commencement	8
<b>Part 1</b>		
<b>Preliminary provisions</b>		
Subpart 1—Outline, definitions, and application		
3	Outline of Act	8
4	Interpretation	11
5	Successors	15
6	Meaning of effect	15
7	Meaning of marine management regime	16
8	Act binds the Crown	16
9	Application to ships and aircraft of New Zealand Defence Force and foreign States	17
Subpart 2—Purpose and principles		
10	Purpose	18
11	International obligations	19
12	Matters to be taken into account to achieve purpose	19
13	Information principles	19
14	Treaty of Waitangi	20

**Exclusive Economic Zone and Continental  
Shelf (Environmental Effects) Bill**

---

	Subpart 3—Duties and restrictions	
15	Restrictions on activities in exclusive economic zone and on continental shelf	20
16	Certain existing mining activities to continue	22
17	Certain existing activities to continue	22
18	Certain prohibited activities to continue	23
19	Duty of persons operating in exclusive economic zone or on continental shelf	24
20	Relationship with other legal requirements	24
	Subpart 4—Functions, duties, and powers	
	<i>Functions, duties, and powers</i>	
21	Functions of Environmental Protection Authority	24
22	Restriction on ministerial direction to Environmental Protection Authority	25
23	Powers of Environmental Protection Authority	25
24	Restriction on Environmental Protection Authority's power to delegate	25
25	Environmental Protection Authority to keep records	25
	<i>Māori Advisory Committee</i>	
26	Function of Māori Advisory Committee	26
	<b>Part 2</b>	
	<b>Requirements and consents</b>	
	Subpart 1—Regulations	
	<i>Regulation of activities and environment of exclusive economic zone and continental shelf</i>	
27	Regulations prescribing standards, methods, or requirements	27
28	Regulations classifying areas of exclusive economic zone or continental shelf	27
29	Regulations classifying activities	28
	<i>Regulations generally</i>	
30	Regulations	29
	<i>Provisions applying to all regulations</i>	
31	Application of regulations	29
32	Process for developing or amending regulations	29
33	Matters to be considered for regulations	30
34	Relationship between regulations and prohibitions and restrictions under other marine management regimes	31
35	Relationship between regulations and consents	31

**Exclusive Economic Zone and Continental  
Shelf (Environmental Effects) Bill**

---

	<i>Types of activity</i>	
36	Permitted activities	31
37	Discretionary activities	31
38	Prohibited activities	32
	Subpart 2—Marine consents	
	<i>Application for marine consent</i>	
39	Application for marine consent	32
40	Impact assessment	32
41	Obligation to deal with application promptly	33
42	Environmental Protection Authority may return incomplete application	34
43	Request for further information	34
44	Response to request	34
45	Environmental Protection Authority may obtain independent advice	35
46	Public notice of consent applications	36
	<i>Submissions</i>	
47	Making of submissions	36
48	Time limit for submissions	37
49	Advice of submissions to applicant	37
50	Meetings and mediation to resolve matters before decision	37
	<i>Hearings</i>	
51	Obligation to hold hearing	37
52	Hearing date and notice	38
53	Hearings to be public and without unnecessary formality	38
54	Persons who may be heard at hearings	39
55	Provisions relating to hearings	39
56	Control of hearings	39
57	Directions to provide evidence within time limits	40
58	Directions before or at hearings	40
	<i>Decisions</i>	
59	Environmental Protection Authority's consideration of application	41
60	Matters to be considered in deciding extent of adverse effects on existing interests	42
61	Decisions on applications for marine consents	43
62	Conditions of marine consents	43
63	Bonds	44
64	Monitoring conditions	45
65	Observers	45

**Exclusive Economic Zone and Continental  
Shelf (Environmental Effects) Bill**

---

66	Time limits for Environmental Protection Authority’s decision	46
67	Decision of Environmental Protection Authority to be in writing	46
68	Notification of Environmental Protection Authority’s decision	46
69	When marine consent commences	47
	<i>Nature of consent</i>	
70	Consents neither real nor personal property	47
	<i>Duration of marine consent</i>	
71	Duration of marine consent	48
72	Exercise of marine consent while applying for new consent	48
	<i>Transfer of marine consents</i>	
73	Transfer of consents	49
	<i>Review of duration and conditions of marine consent</i>	
74	Environmental Protection Authority may review duration and conditions	49
75	Contents of notice of review	50
76	Notice of review to consent holder and public notice	50
77	Further information, independent advice, submissions, and hearing	51
78	Matters to be considered in review	51
79	Decisions on review of consent conditions	52
80	Decision on review of duration of consent	53
81	Process for minor changes to consent conditions	53
82	Minor corrections of marine consents	54
	<i>Cancellation of marine consents</i>	
83	Lapsing of consent if not exercised	54
84	Cancellation of consent if not exercised	54
85	Change or cancellation of consent conditions on application by consent holder	55
	Subpart 3—Marine consents for cross-boundary activities	
86	Interpretation	56
87	Application of this subpart	56
	<i>EPA may decide whether joint or separate applications for consent required</i>	
88	Application for consent for cross-boundary activity	57

**Exclusive Economic Zone and Continental  
Shelf (Environmental Effects) Bill**

---

89	Joint application for consent for cross-boundary activity	57
90	Separate applications for consents for cross-boundary activity	58
91	Environmental Protection Authority may require joint application	58
92	Decision to separate joint application for consent	59
	<i>Processing of joint application</i>	
93	Application of sections 94 and 95	60
94	Environmental Protection Authority to administer process	60
95	Relevant consent authority and EPA to share information	61
96	Separate decisions on marine consent and resource consent applications	61
	<i>Nationally significant cross-boundary activities</i>	
97	Application for consent for nationally significant cross-boundary activity referred to board of inquiry	61
98	EPA must provide board of inquiry with necessary information	63
	<b>Part 3</b>	
	<b>Objections, appeals, and enforcement</b>	
	Subpart 1—Objections and appeals	
	<i>Objections</i>	
99	Right of objection to Environmental Protection Authority against certain decisions	64
100	Procedure for making or hearing objection	64
101	Decision on objection	65
102	Appeals against decisions on objections	65
	<i>Appeal to High Court on question of law</i>	
103	Appeals on question of law	65
104	Notice of appeal	66
105	Right to appear and be heard on appeal	66
106	Parties to appeal	67
107	Representation at proceedings	67
108	Dismissal of appeal	68
109	Date of hearing	68
110	Application of High Court Rules	68
	<i>Appeal to Court of Appeal</i>	
111	Appeal to Court of Appeal	68

**Exclusive Economic Zone and Continental  
Shelf (Environmental Effects) Bill**

---

Subpart 2—Enforcement		
112	Proceedings to be heard by Environment Judge	68
<i>Enforcement order</i>		
113	Enforcement order	69
114	Application for enforcement order	70
115	Notice of application for enforcement order	71
116	Right to be heard	71
117	Decision on application for enforcement order	71
118	Interim enforcement order	71
119	Application to change or cancel interim enforcement order	72
120	Compliance with enforcement order	72
121	Change or cancellation of enforcement order	73
122	Restriction on certain applications for enforcement orders	73
123	Proceedings in Environment Court	74
<i>Offences and penalties</i>		
124	Offences	74
125	Penalties	75
126	Strict liability and defences	76
127	Liability of principal for acts of agents	77
128	Limitation of proceedings	78
<i>Appointment and powers of enforcement officers</i>		
129	Enforcement officers	78
130	Exercise of powers	79
131	Power to require certain information	79
132	Power of entry for inspection	79
<b>Part 4</b>		
<b>Miscellaneous, transitional provisions, and consequential amendments</b>		
Subpart 1—Miscellaneous		
<i>Protection of the Crown and others</i>		
133	Protection of the Crown and others	80
<i>Cost recovery</i>		
134	Principles of cost recovery	80
135	Methods of cost recovery	82
136	Cost recovery to relate generally to financial year	83
137	Charges to be prescribed by regulations	83
138	Charges constitute debt due to Environmental Protection Authority	84

**Exclusive Economic Zone and Continental  
Shelf (Environmental Effects) Bill**

---

	<i>Service of documents</i>	
139	Service of documents	84
140	Service on master or owner of ship	85
	<i>Incorporation by reference</i>	
141	Incorporation by reference of written material in regulations	86
142	Effect of amendments to, or replacement of, material incorporated by reference in regulations	87
143	Proof of material incorporated by reference	87
144	Effect of expiry of material incorporated by reference	87
145	Access to material incorporated by reference	88
	<i>Protection of sensitive information</i>	
146	Protection of sensitive information	89
	<i>Waivers and extension of time limits</i>	
147	Power of waiver and extension of time limits	90
148	Requirements for waivers and extensions	91
	Subpart 2—Transitional provisions	
149	Activities in exclusive economic zone or on continental shelf when Act commences	91
150	Existing activities that become discretionary	92
151	Existing activities that become prohibited	92
	Subpart 3—Amendments to other Acts	
	<i>Amendment to Continental Shelf Act 1964</i>	
152	Amendment to Continental Shelf Act 1964	93
	<i>Amendment to Crown Organisations (Criminal Liability) Act 2002</i>	
153	Amendment to Crown Organisations (Criminal Liability) Act 2002	93
	<i>Amendment to Environment Act 1986</i>	
154	Amendment to Environment Act 1986	93
	<i>Amendment to Environmental Protection Authority Act 2011</i>	
155	Amendment to Environmental Protection Authority Act 2011	93
	<i>Amendment to Fisheries Act 1996</i>	
156	Amendment to Fisheries Act 1996	94

cl 1	<b>Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill</b>	
<i>Amendments to Resource Management Act 1991</i>		
157	Amendments to Resource Management Act 1991	94
	<b>Schedule</b>	95
	<b>General provisions relating to search powers</b>	

---

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

- 1 Title**  
This Act is the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act **2011**.
- 2 Commencement**
- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates. 5
- (2) Any provision that has not earlier been brought into force comes into force on 1 July 2013. 10

**Part 1  
Preliminary provisions**

Subpart 1—Outline, definitions, and application

- 3 Outline of Act** 15
- (1) This section is a guide to the overall scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act.
- Part 1**
- (2) **Subpart 1—** 20
- (a) defines terms used in the Act; and
- (b) provides that the Act binds the Crown; and
- (c) provides for the application of the Act to the ships and aircraft of the New Zealand Defence Force and foreign States. 25
- (3) **Subpart 2—**



- (a) sets out the purpose of the Act; and
  - (b) requires the Act to be interpreted, and persons acting under it to act, consistently with New Zealand’s international obligations; and
  - (c) sets out matters that decision-makers must take into account to achieve the purpose; and 5
  - (d) requires a cautious approach to be taken in making decisions on uncertain or inadequate information; and
  - (e) specifies how the Crown’s responsibility to take appropriate account of the Treaty of Waitangi is recognised by provisions of the Act. 10
- (4) **Subpart 3** sets out the duties and restrictions imposed by this Act, including,—
- (a) in **section 15**, restrictions on activities; and
  - (b) in **section 16**, provision for certain mining activities authorised before 1 July 2011 to continue; and 15
  - (c) in **sections 17 and 18**, provision for activities that are being carried out when regulations change the rules relating to them to continue in specified circumstances; and 20
  - (d) in **section 19**, a duty on every person to avoid, remedy, or mitigate the adverse effects of their activities on the environment and a duty to provide sufficient training, supervision, and resources to their employees to ensure compliance with the Act; and 25
  - (e) clarification in **section 20** that compliance with the Act does not mean a person need not comply with other legal requirements and vice versa.
- (5) **Subpart 4** sets out the functions, duties, and powers of the Environmental Protection Authority and the Māori Advisory Committee, and regulates— 30
- (a) the Minister’s power to direct the EPA in relation to a power, duty, or function exercised or performed by the EPA under **Parts 2 and 3**; and
  - (b) the EPA’s power to delegate its decision-making function in relation to applications for marine consents to a committee or a board of inquiry hearing a resource consent application in relation to the same cross-boundary activity. 35

**Part 2**

- (6) **Subpart 1** provides for the making of regulations—
  - (a) prescribing standards for activities, the effects of activities, and the environment; and
  - (b) classifying areas of the exclusive economic zone and continental shelf; and 5
  - (c) classifying activities as permitted, discretionary, or prohibited; and
  - (d) prescribing administrative requirements.
- (7) **Subpart 1** also provides for— 10
  - (a) a process for developing regulations; and
  - (b) matters that the Minister must take into account in developing regulations.
- (8) **Subpart 2** sets out the standard process for applying for a marine consent and matters that the EPA must consider in deciding whether to grant or refuse to grant a consent, and provides for the review of the conditions and duration of consents. 15
- (9) **Subpart 3** sets out the process for applying for consent for a cross-boundary activity, including a cross-boundary activity that includes a matter of national significance. 20

**Part 3**

- (10) **Subpart 1** provides for objections to the EPA and appeals to the High Court on a question of law.
- (11) **Subpart 2** provides for enforcement of the Act by providing for— 25
  - (a) the Environment Court to issue enforcement orders under **section 113**; and
  - (b) offences and penalties under **sections 124 and 125**; and
  - (c) the appointment of enforcement officers under **section 129**. 30

**Part 4**

- (12) **Subpart 1** deals with various miscellaneous matters, including— 35
  - (a) protection of the Crown and others from liability; and
  - (b) cost recovery; and
  - (c) service of documents; and

- (d) provision for the incorporation by reference into regulations of written material; and
  - (e) protection of sensitive information; and
  - (f) waivers and extension of time limits.
- (13) **Subpart 2** sets out transitional arrangements. 5
- (14) **Subpart 3** makes a number of amendments to other Acts.

**4 Interpretation**

- (1) In this Act, unless the context otherwise requires,—
- activity** means an activity restricted by **section 15**
- adaptive management approach** includes— 10
- (a) allowing an activity to commence on a small scale or for a short period so that its effects can be monitored:
  - (b) allowing an activity to be undertaken on the basis that consent can be revoked if the effects are more than minor: 15
  - (c) any other approach that allows an activity to be undertaken so that its effects can be assessed and the activity discontinued on the basis of those effects
- applicant** means a person who makes an application for a marine consent under **section 39** 20
- chief executive** means the chief executive of the department
- consent holder** or **holder**, in relation to a consent, means the person who has been granted a consent under **section 61** or to whom a consent has been transferred under **section 73**
- continental shelf** has the same meaning as in section 2(1) of the Continental Shelf Act 1964 25
- Convention** means the United Nations Convention on the Law of the Sea 1982
- Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002 30
- department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- discretionary activity** means an activity that is a discretionary activity under **section 37(1)** 35
- disturb** includes excavate, drill, tunnel, or dredge

**enforcement officer** means an enforcement officer appointed under **section 129**

**enforcement order** means an order made under **section 113**

**environment** means the natural environment, including ecosystems and their constituent parts and all natural resources, of— 5

- (a) New Zealand:
- (b) the exclusive economic zone:
- (c) the continental shelf:
- (d) the waters beyond the exclusive economic zone and above and beyond the continental shelf 10

**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

**exclusive economic zone** means the exclusive economic zone of New Zealand as defined in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 15

**existing interest** means, in relation to New Zealand territory, the exclusive economic zone, or the continental shelf (as applicable), the interest a person has in— 20

- (a) any lawfully established existing activity, whether or not authorised by or under any Act or regulations, including rights of access, navigation, and fishing:
- (b) any activity that may be undertaken under the authority of an existing marine consent: 25
- (c) any activity that may be undertaken under the authority of an existing resource consent:
- (d) the settlement of a historical claim under the Treaty of Waitangi Act 1975:
- (e) the settlement of a contemporary claim under the Treaty of Waitangi as provided for in an Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992: 30
- (f) a protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 35

**impact assessment** means the impact assessment described in **section 40**

**information** includes analysis

**information principles** means the information principles set out in **section 13**

**Māori Advisory Committee** means the committee established under section 18 of the Environmental Protection Authority Act 2011 5

**marine consent** or **consent** means a consent granted under **section 61**

**Minister** means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 10

**natural resources,—**

(a) in relation to the exclusive economic zone, includes seabed, subsoil, water, air, minerals, and energy, and all forms of organisms (whether native to New Zealand or introduced); and 15

(b) in relation to the continental shelf, means the mineral and other non-living resources of the seabed and subsoil and sedentary species

**New Zealand territory** means the land, seabed, and waters within the territorial limits of New Zealand 20

**notice of review** means a notice served under **section 76**

**permitted activity** means an activity that is permitted under **section 36(1)**

**person**, subject to **section 5**, includes the Crown, a corporation sole, and also a body of persons, whether incorporated or unincorporated 25

**prescribed** means prescribed by regulations, and, in relation to forms, means prescribed by regulations or approved by the chief executive of the EPA 30

**prohibited activity** means an activity that is prohibited under **section 38(1)**

**public notice** means a notice—

(a) published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin; and 35

(b) which may also be published on the EPA's Internet site

**regional council**—

- (a) has the same meaning as in section 5 of the Local Government Act 2002; and
- (b) includes a unitary authority within the meaning of that Act

5

**regulations** means regulations made under this Act

**review** means a review of the conditions or duration of a consent under **section 74**

**sedentary species** means living organisms that, at their harvestable stage,—

10

- (a) are immobile on or under the seabed; or
- (b) are unable to move except in constant physical contact with the seabed or subsoil

**serve** means serve in accordance with **section 139 or 140**, and **service** has a corresponding meaning

15

**standard** means a standard prescribed by regulations made under **section 27**

**structure**—

- (a) means any building, equipment, or device; and
- (b) includes—
  - (i) an offshore installation, artificial island, or floating platform; and
  - (ii) a ship used in connection with any installation, artificial island, or floating platform; but
- (c) does not include a submarine pipeline

20

25

**submarine cable** has the same meaning as in section 2 of the Submarine Cables and Pipelines Protection Act 1996

**submarine pipeline** has the same meaning as in section 2 of the Submarine Cables and Pipelines Protection Act 1996

**submission** means a written or an electronic submission

30

**submitter** means a person who makes a submission under **section 47**

**threatened species** includes any species that falls within the definition of threatened species in any 1 or more of—

- (a) section 2(1) of the Biosecurity Act 1993;
- (b) section 2(1) of the Marine Mammals Protection Act 1978;
- (c) section 2(1) of the Wildlife Act 1953

35

**wāhi tapu** has the same meaning as in section 2 of the Historic Places Act 1993

**warship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994

**waste or other matter** has the same meaning as in section 257 of the Maritime Transport Act 1994. 5

(2) The following terms have the same meanings as in section 2(1) of the Resource Management Act 1991:

- (a) **biological diversity:**
- (b) **iwi authority:** 10
- (c) **region:**
- (d) **tikanga Māori.**

## 5 Successors

(1) In this Act, unless the context otherwise requires, any reference to a **person**, however described or referred to (including applicant and consent holder), includes the successor of that person. 15

(2) For the purposes of this Act, where the person is a body of persons that is unincorporated, the successor includes a body of persons that is corporate and composed of substantially the same members. 20

## 6 Meaning of effect

(1) In this Act, unless the context otherwise requires, **effect** includes—

- (a) any positive or adverse effect; and 25
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effect; and
- (d) any cumulative effect that arises over time or in combination with other effects; and
- (e) any potential effect of high probability; and 30
- (f) any potential effect of low probability that has a high potential impact.

(2) **Subsection (1)(a) to (d)** apply regardless of the scale, intensity, duration, or frequency of the effect.

**7 Meaning of marine management regime**

- (1) In this Act, unless the context otherwise requires, **marine management regime** includes the regulations, rules, and policies made and the functions, duties, and powers conferred under an Act that applies to any 1 or more of the following: 5
- (a) territorial sea:
  - (b) exclusive economic zone:
  - (c) continental shelf.
- (2) The marine management regimes referred to in this section include those established under the following Acts: 10
- (a) Biosecurity Act 1993:
  - (b) Continental Shelf Act 1964:
  - (c) Crown Minerals Act 1991:
  - (d) Defence Act 1990:
  - (e) Fiordland (Te Moana o Atawhenua) Marine Management Act 2005: 15
  - (f) Fisheries Act 1996:
  - (g) Hauraki Gulf Marine Park Act 2000:
  - (h) Marine and Coastal Area (Takutai Moana) Act 2011:
  - (i) Marine Mammals Protection Act 1978: 20
  - (j) Marine Reserves Act 1971:
  - (k) Maritime Transport Act 1994:
  - (l) Resource Management Act 1991:
  - (m) Submarine Cables and Pipelines Protection Act 1996:
  - (n) Wildlife Act 1953. 25

**8 Act binds the Crown**

- (1) This Act binds the Crown, except as provided in this section and **section 9**.
- (2) This Act does not apply to any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security. 30
- (3) An enforcement order may be made against an instrument of the Crown, in accordance with this Act, only if—
- (a) the instrument of the Crown is a Crown organisation; and 35
  - (b) the order is made against the Crown organisation in its own name.



- (4) **Subsection (3)** applies despite section 17(1)(a) of the Crown Proceedings Act 1950.
- (5) An instrument of the Crown may be prosecuted for an offence against this Act only if—
- (a) the instrument of the Crown is a Crown organisation; 5  
and
  - (b) the offence is alleged to have been committed by the Crown organisation; and
  - (c) the proceedings are commenced—
    - (i) by the EPA or an enforcement officer; and 10
    - (ii) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and
    - (iii) in accordance with the Crown Organisations (Criminal Liability) Act 2002. 15
- (6) However, **subsection (5)** is subject to section 8(4) of the Crown Organisations (Criminal Liability) Act 2002 (which provides that a court may not sentence a Crown organisation to pay a fine in respect of an offence against this Act).
- (7) If a Crown organisation is not a body corporate, it is to be 20  
treated as if it were a separate legal personality for the purposes of—
- (a) making an enforcement order against it; and
  - (b) enforcing an enforcement order in relation to it.
- (8) Except to the extent and in the manner provided for in **sub-** 25  
**sections (5) to (7)**, the Crown may not—
- (a) have an enforcement order made against it; or
  - (b) be prosecuted for an offence against this Act.
- 9 Application to ships and aircraft of New Zealand Defence 30**  
**Force and foreign States**
- (1) This Act does not apply to any of the following:
- (a) warships of the New Zealand Defence Force:
  - (b) warships of any other State:
  - (c) aircraft of the New Zealand Defence Force:
  - (d) aircraft of the defence forces of any other State: 35
  - (e) any ship owned or operated by any State other than New Zealand, if the ship is being used by the State for wholly governmental purposes:

- (f) the master and crew of any warship, aircraft, or ship referred to in **paragraphs (a) to (e)**;
  - (g) defence areas as defined in section 2 of the Defence Act 1990.
- (2) In this section, a ship that is being used for commercial purposes, or both commercial and governmental purposes, is not being used for wholly governmental purposes. 5

### Subpart 2—Purpose and principles

#### **10 Purpose**

- (1) This Act seeks to achieve a balance between the protection of the environment and economic development in relation to activities in the exclusive economic zone and on the continental shelf by—
- (a) requiring decision-makers to take the matters in **section 12** into account in making decisions under **sections 27, 30, and 61**; and 15
  - (b) requiring them to take a cautious approach in decision-making if information available is uncertain or inadequate; and
  - (c) requiring the adverse effects of activities on the environment to be avoided, remedied, or mitigated. 20
- (2) In addition to the matters in **subsection (1)**, this Act—
- (a) recognises that—
    - (i) some activities that are undertaken in the exclusive economic zone or on the continental shelf may have effects on the environment and on existing interests that are not addressed under other legislation; and 25
    - (ii) some activities are regulated under legislation in a way that incidentally avoids, remedies, or mitigates the adverse effects of those activities on the environment; and 30
  - (b) regulates the activities described in **paragraph (a)(i)** and their effects on the environment and existing interests. 35

- 11 International obligations**  
 This Act must be interpreted, and all persons performing functions and duties or exercising powers under it must act, consistently with New Zealand’s international obligations under the Convention. 5
- 12 Matters to be taken into account to achieve purpose**  
 In making decisions for the purposes of this Act, all persons performing functions and duties or exercising powers under it that may affect the environment or existing interests must take into account the following matters: 10
- (a) the adverse effects on the environment of all activities undertaken in an area of the exclusive economic zone or the continental shelf, including the effects of activities not regulated under this Act:
  - (b) the economic well-being of New Zealand: 15
  - (c) the efficient use and development of natural resources:
  - (d) the effects of activities on existing interests:
  - (e) the effects on human health that may arise from adverse effects on the environment:
  - (f) the nature and effect of other marine management regimes: 20
  - (g) the protection of the biological diversity and integrity of marine species, ecosystems, and processes:
  - (h) the protection of rare and vulnerable ecosystems and the habitats of threatened species. 25
- 13 Information principles**
- (1) In achieving the purpose of this Act, a person performing functions and duties or exercising powers under it that affect the environment must—
    - (a) make full use of the information and other resources available to it and of its powers to obtain information and expert advice and commission research; and 30
    - (b) base decisions on the best available information; and
    - (c) take into account any uncertainty or inadequacy in the information available. 35
  - (2) If, in relation to the making of a decision under this Act that affects the environment, the information available is uncertain

or inadequate, the person must favour caution and environmental protection.

- (3) If favouring caution and environmental protection means that an activity is likely to be a prohibited activity or a marine consent is likely to be refused, the person must first consider whether taking an adaptive management approach would allow the activity to be undertaken. 5
- (4) In this section, **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time. 10

#### 14 **Treaty of Waitangi**

In order to recognise the Crown's responsibility to take appropriate account of the Treaty of Waitangi,—

- (a) **section 26** (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise the Environmental Protection Authority so that decisions made under this Act may be informed by a Māori perspective; and 15
- (b) **section 32** requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed standards and regulations; and 20
- (c) **sections 33 and 59** require all persons performing functions and duties or exercising powers under this Act to have regard to existing interests to the extent that they are relevant; and 25
- (d) **section 46** requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them. 30

#### Subpart 3—Duties and restrictions

#### 15 **Restrictions on activities in exclusive economic zone and on continental shelf**

- (1) No person may undertake an activity described in **subsection (2)** in the exclusive economic zone or on the continental shelf 35

unless the activity is a permitted activity or authorised by a marine consent.

- (2) The activities are—
- (a) the construction, placement, alteration, extension, removal, or demolition of a structure on or under the seabed; or 5
  - (b) the construction, placement, alteration, extension, or removal of a submarine pipeline on or under the seabed; or
  - (c) the placement, alteration, or removal of a submarine cable on or from the seabed; or 10
  - (d) the removal of non-living natural material from the seabed or subsoil; or
  - (e) the disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on the seabed or subsoil; or 15
  - (f) the deposit of any thing or organism in, on, or under the seabed; or
  - (g) the destruction, damage, or disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on marine life or its habitat. 20
- (3) No person may undertake an activity described in **subsection (4)** in the waters of the exclusive economic zone unless the activity is a permitted activity or authorised by a marine consent.
- (4) The activities referred to in **subsection (3)** are— 25
- (a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure or part of a structure; or
  - (b) the causing of vibrations in a manner that is likely to have an adverse effect on marine life; or 30
  - (c) the causing of an explosion.
- (5) Despite **subsection (2)(e) and (g)**, this section does not apply to lawful fishing for wild fish under the Fisheries Act 1996.
- (6) Despite **subsection (2)(f)**, this section does not affect the following activities regulated or prohibited by the Maritime Transport Act 1994: 35
- (a) the dumping or storing of radioactive waste or other radioactive matter; or

- (b) the storing of toxic or hazardous waste; or
  - (c) the dumping of waste or other matter.
  - (7) This section is subject to **sections 16 to 18**.
- 16 Certain existing mining activities to continue**
- (1) This section applies to an activity that— 5
    - (a) involves a structure or a submarine pipeline and that is associated with mining for petroleum authorised by a petroleum mining permit granted under section 25 of the Crown Minerals Act 1991 before 1 July 2011 or authorised by an existing privilege preserved under section 107 of that Act; or 10
    - (b) is associated with prospecting or mining for minerals authorised by a licence granted under section 5 of the Continental Shelf Act 1964 before 1 July 2011.
  - (2) However, despite **subsection (1)**, this section does not apply to— 15
    - (a) any change in the activity if the change was authorised by a change to the permit, licence, or privilege made on or after 1 July 2011; or
    - (b) the alteration, extension, removal, or demolition of a structure or pipeline associated with the activity. 20
  - (3) The activity may continue even if it contravenes this Act and regulations for the term of the permit, licence, or privilege specified in the permit, licence, or privilege, but not for any period by which the permit, licence, or privilege is extended. 25
- 17 Certain existing activities to continue**
- (1) This section applies to an existing activity that requires a marine consent as a result of regulations coming into force after this section commences if— 30
    - (a) the activity was a permitted activity or otherwise could have been lawfully carried on without a marine consent before the regulations came into force; and
    - (b) the activity was lawfully established before the regulations came into force; and
    - (c) the effects of the activity on the environment and existing interests are of the same or similar character, inten- 35

sity, and scale as the effects that existed before the regulations came into force.

- (2) The activity may continue without a marine consent for 6 months after the regulations come into force.
- (3) If the person carrying on the activity applies for a marine consent within 6 months after the regulations come into force, the activity may continue after the 6 months has expired until the application is decided or any appeals are determined. 5

**18 Certain prohibited activities to continue**

- (1) This section applies to an activity if the activity— 10
  - (a) becomes a prohibited activity as a result of regulations coming into force after this section commences; and
  - (b) was a permitted activity, or was authorised by a marine consent, or otherwise could have been lawfully carried on without a marine consent before the regulations came into force; and 15
  - (c) was lawfully established before the regulations came into force.
- (2) The activity may continue— 20
  - (a) for the duration of the consent, if the activity is authorised by a marine consent; or
  - (b) for a period specified in the regulations, if the activity is not authorised by a consent.
- (3) When the consent or the period specified in the regulations expires, the person undertaking the activity must— 25
  - (a) stop the activity; and
  - (b) in stopping the activity, comply with any regulations or consent conditions that apply to the stopping of the activity; and
  - (c) comply with any instructions of the Environmental Protection Authority in relation to any structures associated with the activity. 30

- 19 Duty of persons operating in exclusive economic zone or on continental shelf**
- (1) Every person carrying out or proposing to carry out an activity in the exclusive economic zone or on the continental shelf has— 5
- (a) a general duty to avoid, remedy, or mitigate the adverse effects of the activity on the environment; and
  - (b) a duty to provide—
    - (i) training and supervision to all the person’s employees who are engaged in an activity in the exclusive economic zone or on the continental shelf in order to ensure compliance with this Act, regulations, and consent conditions; and 10
    - (ii) sufficient resources to the employees to ensure compliance with this Act, regulations, and consent conditions, including establishing appropriate management systems. 15
- (2) The duties referred to in **subsection (1)** are not enforceable against any person, and no person is liable to any other person for a breach of a duty. 20
- (3) However, despite **subsection (2)**, an enforcement order may be made under **section 113(1)(b)(ii)** to require a person to comply with **subsection (1)(a)** if the adverse effects result from a breach of this Act, regulations, or a marine consent.
- 20 Relationship with other legal requirements** 25
- To avoid doubt,—
- (a) compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, and rules of law; and
  - (b) compliance with any Act, regulations, or rule of law does not remove the need to comply with this Act. 30

Subpart 4—Functions, duties, and powers

*Functions, duties, and powers*

- 21 Functions of Environmental Protection Authority**
- The Environmental Protection Authority has the following functions: 35



- (a) to decide applications for marine consents:
  - (b) to monitor compliance with this Act:
  - (c) to enforce the requirements of this Act, and of regulations made and consents granted under it:
  - (d) to approve forms for the purposes of **subparts 2 and 3 of Part 2:** 5
  - (e) to promote public awareness of the requirements of this Act:
  - (f) to perform any other function specified in this Act.
- 22 Restriction on ministerial direction to Environmental Protection Authority** 10
- The Minister may not give a direction under section 103 of the Crown Entities Act 2004 that relates to the exercise of any power, duty, or function of the Environmental Protection Authority under **section 21(a) and (c), and Parts 2 and 3.** 15
- 23 Powers of Environmental Protection Authority**
- The Environmental Protection Authority has all the powers that are reasonably necessary to enable it to carry out its functions under this Act.
- 24 Restriction on Environmental Protection Authority’s power to delegate** 20
- Despite section 17 of the Environmental Protection Authority Act 2011, the Environmental Protection Authority must not delegate its power to decide an application for a marine consent or make a decision on a review of a consent under **section 61 or 79** (as appropriate), except to— 25
- (a) a committee appointed under clause 14 of Schedule 5 of the Crown Entities Act 2004; or
  - (b) a board of inquiry as provided for in **section 97(2).**
- 25 Environmental Protection Authority to keep records** 30
- (1) The Environmental Protection Authority must keep records and make available information—
- (a) that is relevant to the performance of its functions under this Act; and

- (b) in particular, to enable the public and persons undertaking or proposing to undertake activities in the exclusive economic zone or on the continental shelf to be better informed of their duties and of the functions, powers, and duties of the EPA and to participate effectively under this Act. 5
- (2) In particular, the EPA must keep and make available—
  - (a) copies of all material incorporated by reference into regulations; and
  - (b) records of every application for a marine consent or for a change to or cancellation of the conditions of a consent; and 10
  - (c) records of every notice of review; and
  - (d) records of all decisions made by the EPA; and
  - (e) records of the transfer of a marine consent; and 15
  - (f) a summary of all written complaints received in the preceding 5 years (or if the Act has been in force for less than 5 years then for the period that the Act has been in force) concerning alleged breaches of the Act, regulations, or the conditions of a marine consent, and information explaining how the EPA dealt with each complaint. 20
- (3) In this section, **make available** means the information must be kept at the offices of the EPA and made available to members of the public on request and may be kept on an Internet site maintained by, or on behalf of, the EPA. 25
- (4) **Section 147** overrides this section.

*Māori Advisory Committee*

- 26 Function of Māori Advisory Committee** 30  
The Māori Advisory Committee may provide advice to the Environmental Protection Authority in accordance with sections 19 and 20 of the Environmental Protection Authority Act 2011.

**Part 2**  
**Requirements and consents**

Subpart 1—Regulations

	<i>Regulation of activities and environment of exclusive economic zone and continental shelf</i>	5
<b>27</b>	<b>Regulations prescribing standards, methods, or requirements</b>	
(1)	The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe technical standards, methods, or requirements for—	10
(a)	activities that are carried out in the exclusive economic zone or on the continental shelf:	
(b)	the effects of activities carried out in the exclusive economic zone or on the continental shelf, including effects that occur in the territorial sea or in the waters above and beyond the continental shelf:	15
(c)	assessing the state of the environment of the exclusive economic zone and the continental shelf.	
(2)	The regulations may include—	
(a)	qualitative or quantitative standards:	20
(b)	methods for classifying a natural resource:	
(c)	requirements in relation to methods, processes, or technology to implement standards:	
(d)	transitional provisions for the matters described in this section.	25
<b>28</b>	<b>Regulations classifying areas of exclusive economic zone or continental shelf</b>	
(1)	Regulations made under <b>section 27</b> may identify and provide for areas of the exclusive economic zone or the continental shelf that—	30
(a)	are important or especially vulnerable because of their biophysical characteristics; or	
(b)	are important for specific uses; or	
(c)	must be managed in co-ordination with other marine management regimes; or	35
(d)	are, or are likely to be, the subject of competition or conflict; or	

- (e) are experiencing, or likely to experience, cumulative adverse environmental effects.
  - (2) The regulations may close an area of the exclusive economic zone or the continental shelf to all or any activities.
- 29 Regulations classifying activities** 5
- (1) Regulations made under **section 27** may—
    - (a) prohibit an activity; or
    - (b) allow an activity without a marine consent or describe the activity as permitted; or
    - (c) allow an activity with a marine consent or describe the activity as discretionary; or 10
    - (d) require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by a regulation; or
    - (e) require a person undertaking a specified permitted activity to give specified information about the activity to the Environmental Protection Authority. 15
  - (2) If regulations provide for an activity to be a permitted activity, the regulations may specify terms and conditions that apply to the activity. 20
  - (3) If regulations provide for an activity to be a discretionary activity, the regulations may specify—
    - (a) terms and conditions that apply to the activity (including conditions described in **section 62**):
    - (b) the matters that must be addressed by terms and conditions imposed on the marine consent by the Environmental Protection Authority. 25
  - (4) The regulations must not provide for an activity to be a permitted activity if, in the Minister’s opinion,—
    - (a) the activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and 30
    - (b) it is more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent. 35

*Regulations generally*

**30 Regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes: 5
- (a) requiring the holder of a marine consent to gather information and keep records relating to the exercise of the consent and to supply information to the Environmental Protection Authority;
  - (b) prescribing forms for the purposes of **subpart 2 of Part 3:** 10
  - (c) prescribing the amounts of charges payable or the method by which they are to be assessed or calculated, and the persons liable to pay the charges;
  - (d) providing for any other matters contemplated by this Act and necessary for its administration or necessary for giving it full effect. 15
- (2) Despite **section 137**, the Minister may not recommend the making of regulations prescribing charges under **subsection (1)(c)** unless satisfied that, to the extent appropriate in the circumstances, the requirements of **section 134** have been met. 20

*Provisions applying to all regulations*

**31 Application of regulations**

- (1) A regulation may apply to all or any part of the exclusive economic zone and the continental shelf and to any or all activities carried out in the exclusive economic zone or on the continental shelf. 25
- (2) A regulation may apply to the effects of an activity even if the effects occur in the territorial sea or the waters beyond the exclusive economic zone. 30
- (3) Different requirements or standards may apply in relation to different activities and different classes of the same activity.

**32 Process for developing or amending regulations**

- (1) Before making a recommendation to the Governor-General under **section 27 or 30**, the Minister must comply with **subsection (2)**. 35

- (2) The Minister must—
- (a) notify the public, iwi authorities, and persons whose existing interests are likely to be affected of—
    - (i) the proposed subject matter of the regulations; and 5
    - (ii) in the case of regulations to which **section 27** applies, the Minister’s reasons for considering that the regulations are consistent with the purpose of the Act; and
  - (b) establish a process that the Minister considers gives the public, iwi authorities, and persons whose existing interests are likely to be affected adequate time and opportunity to comment on the subject matter of the proposed regulations. 10
- (3) However, the Minister need not comply with **subsection (2)** 15 if the Minister is recommending the making of an amendment to regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

**33 Matters to be considered for regulations**

- (1) This section applies when the Minister is developing regulations for the purposes of **section 27 or 30**. 20
- (2) The Minister must consider the matters set out in **subpart 2 of Part 1** as provided in that subpart.
- (3) The Minister must have regard to the following matters to the extent that they are relevant in the circumstances: 25
- (a) comments provided under **section 32(2)**;
  - (b) the adverse effects on the environment or existing interests of activities;
  - (c) the cumulative adverse effects on the environment of all activities undertaken in an area of the exclusive economic zone or the continental shelf, including the effects of activities not regulated under this Act: 30
  - (d) best practice in relation to an industry or activity;
  - (e) any other relevant matter.

**34 Relationship between regulations and prohibitions and restrictions under other marine management regimes**

A regulation must not classify an activity as permitted or discretionary in relation to an area of the exclusive economic zone or the continental shelf if the Minister is of the opinion that to do so would be contrary to the purpose of a prohibition or restriction on the use of that area under another marine management regime. 5

**35 Relationship between regulations and consents**

- (1) A marine consent containing conditions that are more stringent than a regulation prevails over the regulation. 10
- (2) A consent must not be more lenient than a regulation.
- (3) Despite **subsection (2)**, a consent that exists when a regulation is made prevails over the regulation until a review of the consent's conditions under **section 74(1)(b)**. 15
- (4) However, if the regulation provides for the activity authorised by the consent to be a prohibited activity, **section 18** overrides **subsection (3)**.
- (5) Regulations that exist before the hearing of an application for a consent apply to the application. 20

*Types of activity*

**36 Permitted activities**

- (1) An activity is a permitted activity if it is described in regulations as a permitted activity.
- (2) A person may undertake a permitted activity without a marine consent provided that the activity complies with any terms and conditions specified for the activity in regulations. 25
- (3) A person intending to undertake a permitted activity must notify the Environmental Protection Authority before undertaking the activity if required to do so by regulations made under this Act. 30

**37 Discretionary activities**

- (1) An activity is a discretionary activity if regulations—
  - (a) describe the activity as discretionary; or
  - (b) allow the activity with a marine consent; or 35

- (c) do not classify the activity as permitted, discretionary, or prohibited.
- (2) A person must have a marine consent before undertaking a discretionary activity.
- (3) **Subsection (2)** is subject to **section 17**. 5

**38 Prohibited activities**

- (1) An activity is a prohibited activity if it is described in regulations as a prohibited activity.
- (2) No person may apply for a marine consent for a prohibited activity and a consent for a prohibited activity must not be granted. 10
- (3) No person may undertake a prohibited activity.
- (4) **Subsection (3)** is subject to **sections 16 and 18**.

Subpart 2—Marine consents

*Application for marine consent* 15

**39 Application for marine consent**

- (1) Any person may apply to the Environmental Protection Authority for a marine consent to undertake a discretionary activity.
- (2) An application must— 20
  - (a) be made in the prescribed form; and
  - (b) fully describe the proposal; and
  - (c) include an impact assessment prepared in accordance with **section 40**.

**40 Impact assessment** 25

- (1) An impact assessment must—
  - (a) describe the activity for which consent is sought; and
  - (b) describe the current state of the area where it is proposed that the activity will be undertaken and the environment surrounding the area; and 30
  - (c) identify the actual and potential effects of the activity on the environment and existing interests (including cumulative effects and effects that may occur in New Zealand territory or the high seas); and



- (d) identify persons whose existing interests are likely to be adversely affected by the activity; and
  - (e) describe any consultation undertaken with persons described in **paragraph (d)** and specify those who have given written approval to the activity; and 5
  - (f) include copies of any written approvals to the activity; and
  - (g) specify any possible alternative locations for, or methods for undertaking, the activity that may avoid, remedy, or mitigate any adverse effects; and 10
  - (h) specify the measures that the applicant intends to take to avoid, remedy, or mitigate the adverse effects identified.
  - (2) An impact assessment must contain the information required by **subsection (1)** in—
    - (a) such detail as corresponds to the scale and significance of the effects that the activity may have on the environment and existing interests; and 15
    - (b) sufficient detail to enable the Environmental Protection Authority and persons whose existing interests are or may be affected to understand the nature of the activity and its effects on the environment and existing interests. 20
  - (3) The impact assessment complies with **subsection (1)(c) and (d)** if the Environmental Protection Authority is satisfied that the applicant has made a reasonable effort to identify the matters described in those paragraphs. 25
  - (4) The measures that must be specified under **subsection (1)(h)** include any measures required by another marine management regime and any measures required by the Health and Safety in Employment Act 1992 that may have the effect of avoiding, remedying, or mitigating the adverse effects of the activity on the environment. 30
- 41 Obligation to deal with application promptly**  
 After receiving an application for a marine consent, the Environmental Protection Authority must deal with the application as promptly as is reasonable in the circumstances. 35

**42 Environmental Protection Authority may return incomplete application**

- (1) If the Environmental Protection Authority decides that an application does not include an impact assessment that complies with **section 40** or any information required by this Act, it may return the application to the applicant as incomplete. 5
- (2) The EPA may seek advice under **section 45** to assist it in determining whether an impact assessment complies with **section 40**.
- (3) The EPA must return an incomplete application and give the applicant a written explanation for its finding that the application is incomplete within 10 working days after the application is received by the EPA. 10
- (4) If, after the EPA returns an application as incomplete, the application is sent to the EPA again, the application is to be treated as a new application. 15
- (5) The applicant may object under **section 99** to a decision under **subsection (1)**.

**43 Request for further information**

- (1) The Environmental Protection Authority may request an applicant to provide further information relating to an application. 20
- (2) A request may be made at any reasonable time before a hearing under **section 51** or, if no hearing is to be held, before the EPA makes a decision on the application.
- (3) A request must be in writing and set out the EPA's reasons for requesting further information. 25
- (4) The EPA must provide a copy of the information provided by the applicant to every submitter as soon as practicable after the later of—
  - (a) the day on which the EPA receives the information: 30
  - (b) the date on which the submitter makes a submission.

**44 Response to request**

- (1) An applicant who receives a request under **section 43(1)** must, within 5 working days after the date of the request,—
  - (a) provide the information; or 35

- (b) write to the Environmental Protection Authority telling it that the applicant agrees to provide the information; or
  - (c) write to the EPA telling it that the applicant refuses to provide the information. 5
- (2) After the EPA receives the applicant’s letter under **subsection (1)(b)**, the EPA must—
  - (a) set a reasonable time within which the applicant must provide the information; and
  - (b) write to the applicant telling it the date by which the applicant must provide the information. 10
- (3) The EPA must consider the application under **section 59** even if the applicant—
  - (a) does not respond to the request; or
  - (b) agrees to provide the information under **subsection (1)(b)** but does not do so; or
  - (c) refuses to provide the information under **subsection (1)(c)**. 15
  
- 45 Environmental Protection Authority may obtain independent advice** 20
- (1) The Environmental Protection Authority may—
  - (a) commission an independent review of the impact assessment;
  - (b) commission any person to provide a report on a matter described in **paragraph (d)**: 25
  - (c) seek advice from the Māori Advisory Committee on any matter related to the application:
  - (d) seek advice from any person on any aspect of—
    - (i) an application for a marine consent; or
    - (ii) the activity to which an application relates. 30
- (2) The EPA must tell an applicant in writing that it intends to commission a review or report or seek advice and include reasons for wanting to commission a review or report or seek advice.
- (3) **Subsection (1)** applies at any reasonable time before a hearing or, if no hearing is to be held, before a decision on the application is made. 35

- (4) The applicant for a consent may object under **section 99** to a decision to commission a review or a report, or to seek advice.
- (5) The EPA must, as soon as is reasonably practicable after receiving the advice or report (including a report on the results of a review), notify the applicant and every submitter that the advice or report is available at the EPA's office. 5

**46 Public notice of consent applications**

- (1) If the Environmental Protection Authority is satisfied that an application for a marine consent is complete, it must give public notice of the application and also must serve a copy of the notice on— 10
  - (a) Ministers with responsibilities that may be affected by the activity for which consent is sought:
  - (b) Maritime New Zealand:
  - (c) any of the following that the EPA considers may be affected by the application: 15
    - (i) iwi authorities:
    - (ii) customary marine title groups:
    - (iii) protected customary rights groups:
  - (d) persons that the EPA considers have existing interests that may be affected by the application: 20
  - (e) regional councils whose regions may be affected by the application.
- (2) The application must be notified within 10 working days after the date on which the EPA is satisfied that the application is complete. 25
- (3) The notice must—
  - (a) be in the prescribed form; and
  - (b) give a summary of the application for consent; and
  - (c) specify where the application is available for inspection. 30

*Submissions*

**47 Making of submissions**

- (1) Any person may make a submission to the Environmental Protection Authority about an application for a marine consent.
- (2) A submission must be in the prescribed form. 35

- (3) A submitter must provide a copy of the submission to the applicant as soon as is reasonably practicable after serving it on the EPA.

**48 Time limit for submissions**

Submissions must be made not later than 20 working days after public notification of the application under **section 46**. 5

**49 Advice of submissions to applicant**

As soon as is reasonably practicable after the closing date for submissions, the Environmental Protection Authority must give the applicant a list of all the submissions that it has received. 10

**50 Meetings and mediation to resolve matters before decision**

- (1) The Environmental Protection Authority may request the applicant for a marine consent and 1 or more submitters to meet to discuss any matters in dispute in relation to the application for consent, or to enter mediation to resolve a dispute. 15

- (2) The person who conducts the meeting or mediation must report to the EPA and the persons who were at the meeting or mediation on the outcome of the meeting or mediation—  
 (a) before the hearing; or 20  
 (b) if there is no hearing, before the EPA decides the application.

- (3) The report must set out—  
 (a) the matters that were agreed at the meeting or mediation; and 25  
 (b) the matters that were not resolved.

- (4) The report must not include anything communicated or made available at the meeting or during the mediation on a without prejudice basis.

*Hearings* 30

**51 Obligation to hold hearing**

The Environmental Protection Authority—  
 (a) may conduct a hearing on an application for a consent if the EPA considers it necessary or desirable; but

- (b) must conduct a hearing if the applicant or a submitter requests a hearing.

**52 Hearing date and notice**

- (1) If a hearing of an application for a marine consent is to be held, the Environmental Protection Authority must fix a commencement date and time and the place of the hearing. 5
- (2) The date for the commencement of any hearing must not be later than 40 working days after the closing date for submissions on the application.
- (3) The EPA must give at least 20 working days' notice of the commencement date and time and the place of a hearing to— 10
  - (a) the applicant; and
  - (b) every submitter on the application who stated that he or she wished to be heard and who has not subsequently advised that he or she does not wish to be heard. 15
- (4) The EPA may give directions as to evidence and the general conduct of the hearing.

**53 Hearings to be public and without unnecessary formality**

- (1) A hearing must be held in public unless the Environmental Protection Authority directs, under **section 146(3)(a)**, that the whole or part of a hearing is to be held with the public excluded. 20
- (2) The Environmental Protection Authority must establish a procedure for a hearing that is appropriate and fair in the circumstances. 25
- (3) In determining an appropriate and fair procedure for a hearing, the EPA must—
  - (a) avoid unnecessary formality; and
  - (b) recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori, and the Maori Language Act 1987 applies accordingly; and 30
  - (c) not permit any person other than a representative of the EPA to question a party or witness.

**54 Persons who may be heard at hearings**

- (1) At a hearing, the applicant and every submitter who stated that he or she wished to be heard at the hearing may speak (either personally or through a representative) and call evidence.
- (2) However, the Environmental Protection Authority may, if it considers that there is likely to be excessive repetition, limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support. 5
- (3) The Environmental Protection Authority may proceed with a hearing even if the applicant or a submitter who stated that he or she wished to be heard fails to appear at the hearing if the EPA considers it fair and reasonable to do so. 10

**55 Provisions relating to hearings**

- (1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing: 15
  - (a) section 4 (which gives powers to maintain order):
  - (b) section 4B (which relates to evidence):
  - (c) section 4D (which gives power to summon witnesses):
  - (d) section 5 (which relates to the service of a summons):
  - (e) section 6 (which relates to the protection of witnesses): 20
  - (f) section 7 (which relates to allowances for witnesses).
- (2) Every summons to a witness to appear at a hearing must be in the prescribed form and be signed on behalf of the Environmental Protection Authority or by the chairperson of the committee that is to conduct the hearing. 25
- (3) All allowances for a witness must be paid by the party on whose behalf the witness is called.
- (4) At a hearing, the following persons must give to the EPA any information and advice that is relevant and reasonably necessary to decide the application if the EPA asks for it: 30
  - (a) a person who reviewed the impact assessment or provided advice under **section 45**:
  - (b) a person who is heard or represented at the hearing.

**56 Control of hearings**

The Environmental Protection Authority may exercise a power under **section 57 or 58** after considering whether the 35

scale and significance of the hearing makes the exercise of the power appropriate.

**57 Directions to provide evidence within time limits**

- (1) The Environmental Protection Authority may direct the applicant to provide briefs of evidence to the EPA before the hearing. 5
- (2) The applicant must provide its briefs of evidence at least 15 working days before the hearing.
- (3) The EPA may direct a submitter who is intending to call expert evidence to provide briefs of the evidence to the EPA before the hearing. 10
- (4) The submitter must provide the briefs of evidence at least 10 working days before the hearing.
- (5) The EPA must, as soon as practicable after the EPA receives the briefs of evidence, give— 15
- (a) a copy of the applicant’s brief of evidence to every submitter; and
  - (b) a copy of a submitter’s briefs of evidence to the applicant.

**58 Directions before or at hearings** 20

- (1) Before or at the hearing, the Environmental Protection Authority may do 1 or more of the following:
- (a) specify the order of business at the hearing, including the order in which evidence and submissions are presented: 25
  - (b) direct that evidence and submissions be—
    - (i) recorded; or
    - (ii) taken as read; or
    - (iii) limited to matters in dispute:
  - (c) direct the applicant, when presenting evidence or a submission, to present it within a time limit: 30
  - (d) direct a submitter, when presenting evidence or a submission, to present it within a time limit.
- (2) At the hearing, the EPA may seek advice on an application or the activity to which the application relates under **section 45(1)**, if the applicant agrees. 35



- (3) The EPA must provide copies of the advice to the applicant and submitters.
- (4) At the hearing, the EPA may direct a person presenting a submission not to present—
  - (a) the whole submission, if all of it is irrelevant or not in dispute; or
  - (b) any part of the submission that is irrelevant or not in dispute.
- (5) Before or at the hearing, the EPA may direct that a submission or a part of a submission be struck out if the EPA considers—
  - (a) that the submission, or the part, is frivolous or vexatious; or
  - (b) that the submission, or the part, discloses no reasonable or relevant case; or
  - (c) that it would be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.
- (6) If the EPA gives a direction under **subsection (5)**, it must record the reasons for the direction and give a copy of the reasons to the submitter whose submission is affected by the direction.

*Decisions*

**59 Environmental Protection Authority’s consideration of application**

- (1) This section and **section 60** apply when the Environmental Protection Authority is considering an application for a marine consent and submissions on the application.
- (2) The EPA must consider the matters in **subpart 2 of Part 1** as provided in that subpart.
- (3) The EPA must apply—
  - (a) the relevant regulations; and
  - (b) any other applicable law.
- (4) The EPA must have regard to—
  - (a) any further submissions and evidence made in relation to the application; and
  - (b) any advice, reports, or information it has received in relation to the application; and

- (c) any effects on the environment or existing interests of allowing the activity (including cumulative effects and effects that may occur in New Zealand territory or the waters beyond the exclusive economic zone); and
  - (d) best practice in relation to an industry or activity; and 5
  - (e) any other matter the EPA considers relevant and reasonably necessary to determine the application.
- (5) When considering an application affected by **section 72**, the EPA must also have regard to the value of the investment in the activity of the existing consent holder. 10
- (6) Despite **subsection (4)**, the EPA must not have regard to—
  - (a) trade competition or the effects of trade competition; or
  - (b) the effects on climate change of discharging greenhouse gases into the air; or
  - (c) any effects on a person’s existing interest if the person has given written approval to the proposed activity. 15
- (7) **Subsection (6)(c)** does not apply if the person has given written approval but the person withdraws the approval by giving written notice to the EPA—
  - (a) before the date of the hearing, if there is one; or 20
  - (b) if there is no hearing, before the EPA decides the application.
- 60 Matters to be considered in deciding extent of adverse effects on existing interests**  
In considering the effects of an activity on existing interests under **section 59(4)(c)**, the Environmental Protection Authority must have regard to—
  - (a) the area that the activity would have in common with the existing interest; and
  - (b) the degree to which both the activity and the existing interest must be carried out to the exclusion of other activities; and 30
  - (c) whether the existing interest can be exercised only in the area to which the application relates; and
  - (d) any other relevant matter. 35

**61 Decisions on applications for marine consents**

- (1) Before the Environmental Protection Authority decides whether to grant or refuse an application for marine consent under **subsection (2)**, the EPA must consider the extent to which imposing conditions under **section 62** might avoid, remedy, or mitigate the adverse effects of the activity for which consent is sought. 5
- (2) After complying with **subsection (1)** and **sections 59 and 60**, the EPA may—
  - (a) grant an application for marine consent, in whole or in part, and issue a consent if the activity’s contribution to New Zealand’s economic development outweighs the activity’s adverse effects on the environment; or 10
  - (b) refuse the application if the adverse effects of the activity on the environment outweigh the activity’s contribution to New Zealand’s economic development. 15
- (3) The EPA may also refuse an application for a consent if it considers that it does not have adequate information to determine the application.
- (4) Before refusing an application under **subsection (3)**, the EPA must— 20
  - (a) have regard to whether the applicant gave the EPA any further information or reports in response to a request by the EPA; and
  - (b) consider whether taking an adaptive management approach would allow the activity to be undertaken. 25
- (5) If the EPA grants the application, it may issue the consent subject to conditions under **section 62**.

**62 Conditions of marine consents**

- (1) The Environmental Protection Authority may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests. 30
- (2) The conditions that the EPA may impose include, but are not limited to, conditions requiring the consent holder to— 35
  - (a) provide a bond for the performance of any 1 or more conditions of the consent:

- (b) obtain and maintain public liability insurance of a specified value:
  - (c) monitor, and report on, the exercise of the marine consent and the effects of the activity it authorises:
  - (d) appoint an observer to monitor the activity authorised by the consent and its effects on the environment: 5
  - (e) make records related to the activity authorised by the consent available for audit.
- (3) To avoid doubt, the EPA may not impose a condition to deal with an effect if the condition would have the same or similar effect as, or conflict with, a measure required in relation to the activity by another marine management regime or the Health and Safety in Employment Act 1992. 10
- (4) **Subsection (1)** is subject to any provision in this Act or any regulations that expressly limit the conditions that may be attached to a consent. 15

### 63 Bonds

- (1) A bond required under **section 62(2)(a)** may be given for the performance of any 1 or more conditions of a marine consent that the Environmental Protection Authority considers appropriate and may continue after the expiry of the consent to secure the ongoing performance of conditions relating to long-term effects, including— 20
- (a) a condition relating to the alteration or removal of structures: 25
  - (b) a condition relating to remedial, restoration, or maintenance work:
  - (c) a condition providing for ongoing monitoring of long-term effects.
- (2) A condition of a consent that describes the terms of the bond may— 30
- (a) require that the bond be given before the consent is exercised or at any other time:
  - (b) provide that the liability of the holder of the consent be not limited to the amount of the bond: 35
  - (c) require the bond to be given to secure performance of conditions of the consent, including conditions relating

- to any adverse effects on the environment that become apparent during or after the expiry of the consent:
- (d) require the holder of the consent to provide such security as the EPA thinks fit for the performance of any condition of the bond: 5
  - (e) require the holder of the consent to provide a guarantor (acceptable to the EPA) to bind itself to pay for the carrying out of a condition in the event of a default by the holder or the occurrence of an adverse environmental effect requiring remedy: 10
  - (f) provide that the bond may be varied, cancelled, or renewed at any time by agreement between the holder and the EPA.
- (3) If a consent authority considers that an adverse effect may continue or arise at any time after the expiration of a marine consent granted by it, the consent authority may require that a bond continue for a specified period that the EPA thinks fit. 15

**64 Monitoring conditions**

- (1) A condition imposed under **section 62(2)(c)** may require the consent holder to do 1 or more of the following: 20
- (a) make and record measurements:
  - (b) take and supply samples:
  - (c) carry out analyses, surveys, investigations, inspections, or other specified tests:
  - (d) carry out the procedures in **paragraphs (a) to (c)** in a specified manner: 25
  - (e) provide information to the EPA or a person specified by the EPA at a specified time or times:
  - (f) provide information to the EPA or a person specified by the EPA in a specified manner: 30
  - (g) comply with the condition at the consent holder's expense.
- (2) This section does not limit **section 62(2)(c)**.

**65 Observers**

- (1) A condition imposed under **section 62(2)(d)** that requires the holder of a consent to appoint an observer must specify in detail the observer's duties in relation to the activity. 35

- (2) The consent holder may appoint a person to be an observer only if the person is approved by the EPA for that purpose.
- (3) The EPA must approve a person to be an observer in relation to a consent if the person has the appropriate training, skill, and experience to perform the duties. 5
  
- 66 Time limits for Environmental Protection Authority’s decision**  
 The Environmental Protection Authority must make its decision on an application for a marine consent as soon as is reasonably practicable and,— 10
  - (a) if a hearing is held, no later than 20 working days after the conclusion of the hearing; or
  - (b) if a hearing is not held, no later than 20 working days after the closing date for making submissions under **section 48**. 15
  
- 67 Decision of Environmental Protection Authority to be in writing**  
 Every decision of the EPA on an application for a marine consent must be in writing and include reasons for the decision.
  
- 68 Notification of Environmental Protection Authority’s decision** 20
  - (1) The Environmental Protection Authority must—
    - (a) give a copy of its decision on an application for a marine consent to—
      - (i) the applicant; and 25
      - (ii) all submitters; and
      - (iii) the Māori Advisory Committee; and
      - (iv) any other person or organisation that the EPA considers appropriate; and
    - (b) give public notice of the decision. 30
  - (2) The notice must—
    - (a) be in the prescribed form; and
    - (b) give a summary of the decision; and
    - (c) specify where the full decision is available for inspection. 35

- (3) The EPA must comply with this section as soon as practicable after it has made its decision.

**69 When marine consent commences**

- (1) A marine consent that has been granted commences—
- (a) when the time for lodging an appeal against the grant of the consent expires and no appeal has been lodged; or 5
  - (b) when the High Court determines the appeal or all persons who lodged appeals withdraw their appeals.
- (2) **Subsection (1)** does not apply if the marine consent specifies that the consent commences on a later date. 10

*Nature of consent*

**70 Consents neither real nor personal property**

- (1) A marine consent is neither real nor personal property.
- (2) A marine consent—
- (a) vests in the personal representative of the holder of the consent on the death of the holder, as if the consent were personal property, and the personal representative may deal with the consent to the same extent as the holder would have been able to do; and 15
  - (b) vests in the Official Assignee on the bankruptcy of an individual who is the holder of a consent, as if it were personal property, and the Official Assignee may deal with the consent to the same extent as the holder would have been able to do; and 20
  - (c) must be treated as property for the purposes of the Protection of Personal and Property Rights Act 1988. 25
- (3) If the conditions of the consent are inconsistent with **subsection (2)**, the conditions override that subsection.
- (4) The holder of a marine consent may grant a charge over the consent as if it were personal property, but the consent may be transferred only to the chargee, or by or on behalf of the chargee, to the same extent as it could be transferred by the holder. 30
- (5) The Personal Property Securities Act 1999 applies in relation to a marine consent as if the consent were personal property within the meaning of that Act. 35

- (6) **Subsection (4)** overrides **subsection (5)**.

*Duration of marine consent*

**71 Duration of marine consent**

- (1) The duration of a marine consent is—
- (a) 35 years after the date of the granting of the consent; or 5
  - (b) a period less than 35 years that is specified in the consent.
- (2) When determining the duration of the consent, the Environmental Protection Authority must—
- (a) consider the matters in **subpart 2 of Part 1** as provided in that subpart; and 10
  - (b) take into account the duration sought by the applicant; and
  - (c) take into account the duration of any other legislative authorisations granted or required for the activity that is the subject of the application for consent. 15

**72 Exercise of marine consent while applying for new consent**

- (1) **Subsection (3)** applies when—
- (a) a marine consent is due to expire; and
  - (b) the holder of the consent applies to the Environmental Protection Authority for a new consent for the same activity; and 20
  - (c) the application is made at least 6 months before the expiry of the existing consent.
- (2) **Subsection (3)** also applies when— 25
- (a) a marine consent is due to expire; and
  - (b) the holder of the consent applies to the Environmental Protection Authority for a new consent for the same activity; and
  - (c) the application is made in the period that— 30
    - (i) begins 6 months before the expiry of the existing consent; and
    - (ii) ends 3 months before the expiry of the existing consent; and
  - (d) the EPA, in its discretion, allows the holder to continue to undertake the activity under the existing consent. 35



- (3) The holder may continue to undertake the activity under the existing consent until—
  - (a) a new consent is granted and all appeals are determined; or
  - (b) a new consent is declined and all appeals are determined. 5

*Transfer of marine consents*

**73 Transfer of consents**

- (1) The holder of a marine consent—
  - (a) may transfer the whole or any part of the consent to another person; but 10
  - (b) may not transfer the whole or any part of the consent to another location.
- (2) The transfer of a marine consent has no effect until written notice of the transfer is given to the Environmental Protection Authority. 15

*Review of duration and conditions of marine consent*

**74 Environmental Protection Authority may review duration and conditions** 20

- (1) The Environmental Protection Authority may serve notice on a consent holder of its intention to review the duration of a marine consent or the conditions of the consent—
  - (a) at any time or times specified for that purpose in the consent for any of the following purposes: 25
    - (i) to deal with any adverse effect on the environment that may arise from the exercise of the consent and with which it is appropriate to deal after the consent has been granted:
    - (ii) any other purpose specified in the consent: 30
  - (b) if regulations take effect that prescribe standards, to ensure that the conditions are consistent with the standards:
  - (c) to deal with any adverse effects on the environment or existing interests that arise and that were not anticipated when the consent was granted: 35

- (d) if the information made available to the EPA by the applicant for the consent for the purposes of the application contained inaccuracies that materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions: 5
- (e) if information becomes available to the EPA that was not available to the EPA when the consent was granted and the information shows that more appropriate conditions are necessary to deal with the effects of the exercise of the consent. 10
- (2) The EPA must, in accordance with **section 76**, serve notice on a consent holder of its intention to review the conditions of a marine consent if required by an order made under **section 125(5)(b)**. 15

#### **75 Contents of notice of review**

- (1) A notice of review must—
- (a) specify that the duration of the consent is to be reviewed, if that is the case; and
- (b) identify the conditions to be reviewed; and 20
- (c) give reasons for the review; and
- (d) specify the information that the Environmental Protection Authority took into account in deciding to review the conditions, if the review is under **section 74(1)(d)**; and 25
- (e) tell the consent holder whether a charge is payable and, if so, the estimated amount of the charge.
- (2) A notice of review may—
- (a) propose new consent conditions; or
- (b) invite the consent holder to propose new consent conditions within 20 working days after service of the notice. 30

#### **76 Notice of review to consent holder and public notice**

- (1) If the Environmental Protection Authority serves a notice of review on a consent holder, the EPA must also give public notice of its intention to review the conditions of a marine consent. 35

- (2) The EPA must serve a copy of the public notice on the persons specified in **section 46(1)** and that provision applies as if reference to an application for a marine consent were reference to a notice of review.
- (3) The public notice must— 5
  - (a) be in the prescribed form; and
  - (b) give a summary of the notice of review; and
  - (c) specify where the notice of review is available for inspection.
- (4) The EPA must comply with **subsections (1) and (2)** within— 10
  - (a) 30 working days after the date on which the EPA serves the notice of review on the consent holder, if the consent holder is invited to propose new conditions; or
  - (b) 10 working days after the date on which the EPA serves 15 the notice of review on the consent holder, if **paragraph (a)** does not apply.
  
- 77 Further information, independent advice, submissions, and hearing**
- (1) **Sections 43 to 58** apply, with all necessary modifications, to a review of a marine consent as if— 20
  - (a) the notice of review were an application for a marine consent; and
  - (b) the consent holder were the applicant for the marine consent. 25
- (2) However, **section 45(1)(a)** does not apply to a review.
  
- 78 Matters to be considered in review**
- When reviewing the conditions of a marine consent, the Environmental Protection Authority— 30
  - (a) must— 30
    - (i) consider the matters in **sections 59 and 60** as provided for in those sections; and
    - (ii) have regard to whether the activity allowed by the consent will continue to be viable after the proposed change of conditions; and 35

- (b) in the case of a review under **section 74(2)**, must have regard to any reasons that the court provided for making the order requiring the review; and
- (c) may have regard to the manner in which activity authorised by the consent has been undertaken. 5

**79 Decisions on review of consent conditions**

- (1) The Environmental Protection Authority may change or cancel a condition of a marine consent on a review under **section 74** only if 1 or more of the circumstances specified in that section apply. 10
- (2) **Sections 62 to 69** (which relate to conditions, decisions, notification, and commencement) and **sections 103 and 111** (which relate to appeals) apply, with all necessary modifications, to a review as if—
  - (a) the review were an application for a marine consent; and 15
  - (b) the consent holder were an applicant for a marine consent.
- (3) The EPA may cancel a marine consent if—
  - (a) it reviews the consent under **section 74(1)(d)**; and
  - (b) the application for the consent contained inaccuracies that the consent authority considers materially influenced the decision made on the application; and 20
  - (c) there are significant adverse effects on the environment resulting from the exercise of the consent.
- (4) The EPA may also cancel a consent if— 25
  - (a) it reviews the consent under **section 74(2)**; and
  - (b) there are significant adverse effects on the environment resulting from the exercise of the consent.
- (5) If the EPA cancels a consent, the EPA may— 30
  - (a) set a timetable for the consent holder to cease the activity; and
  - (b) direct the consent holder to take any other action in relation to any structures used for the activity.
- (6) The consent holder must comply with the timetable set by the EPA and with any other directions of the EPA. 35

- (7) The consent holder may object, under **section 99**, to a decision to change or cancel a condition of a consent or to cancel a consent.

**80 Decision on review of duration of consent**

- (1) The Environmental Protection Authority may shorten the duration of a marine consent on a review under **section 74** only if the effects of the activity authorised by the consent were not anticipated when the consent was granted and shortening the duration is the only way to avoid, remedy, or mitigate the effects appropriately. 5  
10
- (2) The EPA may extend the duration of a consent on a review under **section 74** only if the monitoring of the effects shows that the effects are minor or may be avoided, remedied, or mitigated by imposing conditions.
- (3) A change in the duration of a consent after a review must not result in the duration of the consent exceeding 35 years. 15
- (4) The consent holder may object, under **section 99**, to a decision to shorten or not to extend the duration of a consent.

**81 Process for minor changes to consent conditions**

- (1) If the Environmental Protection Authority considers that a review is likely to be limited to minor changes to the conditions of a consent, it may deal with the review without notifying the review under **section 76**. 20
- (2) If the EPA deals with a review under **subsection (1), section 77** does not apply to the review. 25
- (3) However, despite **subsection (2)**, the EPA must allow the consent holder to make a submission and request a hearing.
- (4) As a result of a review under this section, the EPA may not—  
(a) cancel a consent; or  
(b) make changes to the conditions of a consent that are more than minor. 30
- (5) The consent holder may object, under **section 99**, to a decision by the EPA to change consent conditions.

<b>82</b>	<b>Minor corrections of marine consents</b>	
	The EPA may issue an amended consent to correct minor mistakes or defects in a consent within 15 working days after the granting of the consent.	
	<i>Cancellation of marine consents</i>	5
<b>83</b>	<b>Lapsing of consent if not exercised</b>	
(1)	A marine consent lapses on the date specified in the consent or, if no date is specified, 5 years after the date of commencement of the consent unless, before the consent lapses,—	
(a)	the consent is given effect to; or	10
(b)	an application is made to the Environmental Protection Authority to extend the period after which the consent lapses, and the EPA decides to grant an extension after taking into account—	
(i)	whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and	15
(ii)	whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and	20
(iii)	relevant enactments.	
(2)	The consent holder may object, under <b>section 99</b> , to a decision of the EPA under <b>subsection (1)(b)</b> not to extend the period after which the consent lapses.	
<b>84</b>	<b>Cancellation of consent if not exercised</b>	25
(1)	The Environmental Protection Authority may cancel a marine consent by written notice served on the consent holder if the consent has been exercised in the past but has not been exercised during the preceding 5 years.	
(2)	However, despite <b>subsection (1)</b> , the consent holder may ask the EPA to revoke the notice no later than 3 months after service of the notice.	30
(3)	In deciding whether to revoke the notice, the EPA must take into account—	

- (a) whether the applicant has obtained approval from persons whose existing interests may be adversely affected by the revocation of the notice; and
  - (b) how any regulations classify and provide for the activity authorised by the consent in relation to the area to which the consent relates. 5
- (4) **Subsection (1)** does not apply if the consent expressly provides otherwise.
- (5) The consent holder may object, under **section 99**, if the EPA refuses to revoke a notice. 10

**85 Change or cancellation of consent conditions on application by consent holder**

- (1) The holder of a marine consent may request the Environmental Protection Authority to change or cancel a condition of the consent. 15
- (2) **Sections 39 to 69** apply, with all necessary modifications, as if—
- (a) the request were an application for a marine consent; and
  - (b) the references to a marine consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively. 20
- (3) However, if the EPA considers that the requested change or cancellation is likely— 25
- (a) to affect the existing interests of only some of the persons described in **subsection (4)**, it may notify those persons and may, but need not, give public notice of the request under **section 46**; or
  - (b) to be limited to minor matters, it may deal with the request under **section 81**. 30
- (4) For the purposes of determining who is adversely affected by the change or cancellation, the EPA must consider, in particular, every person who— 35
- (a) made a submission on the original application; and
  - (b) has a existing interest that may be affected by the change or cancellation.

- (5) If the EPA decides, under **subsection (3)(a)**, not to give public notice of the request, the EPA may, but need not, give public notice of its decision under **section 79**.

Subpart 3—Marine consents for cross-boundary activities 5

**86 Interpretation**

In this subpart, unless the context otherwise requires,—

**assessment of environmental effects** means the assessment of effects on the environment required by section 88(2)(b) of the Resource Management Act 1991 10

**coastal marine area** has the meaning given to it by section 2(1) of the Resource Management Act 1991

**consent authority** has the meaning given to it by section 2(1) of the Resource Management Act 1991

**cross-boundary activity** means an activity that is carried out partly in the exclusive economic zone or on the continental shelf and partly in New Zealand territory 15

**joint application for consent** or **joint application** means an application that comprises both an application for a resource consent under the Resource Management Act 1991 and an application for a marine consent under this Act 20

**relevant consent authority** means—

(a) the consent authority responsible for a district or region in which part of a cross-boundary activity is or is intended to be undertaken; or 25

(b) the Minister of Conservation, in relation to the coastal marine areas of the Kermadec Islands, the Snares Islands, the Bounty Islands, the Antipodes Islands, the Auckland Islands, Campbell Island, and the islands adjacent to Campbell Island 30

**resource consent** has the meaning given to it by section 2(1) of the Resource Management Act 1991.

**87 Application of this subpart**

- (1) This subpart applies to a proposal to undertake a cross-boundary activity that cannot be carried out without— 35



- (a) a resource consent for the part of the activity that is carried out in the coastal marine area; and
- (b) a marine consent for the part of the activity that is carried out in the exclusive economic zone or on the continental shelf. 5
- (2) However, this subpart does not apply if a part of the activity to be carried out in the coastal marine area is a restricted coastal activity under section 117 of the Resource Management Act 1991.
- EPA may decide whether joint or separate applications for consent required* 10
- 88 Application for consent for cross-boundary activity**
- A person who intends to undertake a cross-boundary activity may—
- (a) prepare a joint application for consent that complies with the requirements of— 15
- (i) this Act and any regulations in relation to the part of the activity that relates to the exclusive economic zone or the continental shelf; and
- (ii) the Resource Management Act 1991, and any regulations, national environmental standards, or regional or district plans made under that Act, in relation to the part of the activity that relates to New Zealand territory; or 20
- (b) apply for a marine consent and a resource consent for a cross-boundary activity separately, whether concurrently or at different times. 25
- 89 Joint application for consent for cross-boundary activity**
- (1) This section applies if a person makes a joint application for consent. 30
- (2) The joint application must be sent to both the relevant consent authority and the Environmental Protection Authority.
- (3) The joint application must include an assessment of effects that complies with section 88(2)(b) of the Resource Management Act 1991 and **section 40 of this Act**. 35

- (4) The joint application may specify that the application for resource consent is lodged with the EPA under section 145 of the Resource Management Act 1991.

**90 Separate applications for consents for cross-boundary activity** 5

**Subpart 2 of this Part** applies to an application for a marine consent if a person—

- (a) applies separately for consents for a cross-boundary activity, as described in **section 88(b)**; or
- (b) applies for a marine consent in relation to a cross-boundary activity and does not apply for a resource consent for the activity. 10

**91 Environmental Protection Authority may require joint application**

- (1) At any time before or during the processing of an application for a marine consent for a cross-boundary activity, the Environmental Protection Authority may decide (whether on a request by the applicant or on its own initiative) that the application ought to be processed and heard (if a hearing is held) with an application for resource consent for the activity. 15 20
- (2) **Subsection (1)** applies despite a decision by an applicant to apply separately for resource and marine consents under **section 88(a)** and despite **section 90**.
- (3) In the case described in **subsection (1)**, the EPA may decide— 25
  - (a) not to proceed with the notification or hearing of the application for a marine consent until the application for resource consent is lodged with it and the relevant consent authority; or
  - (b) return the application for a marine consent to the applicant as incomplete under **section 42**. 30
- (4) The EPA must inform the applicant of its decision under **subsection (1)** as soon as practicable after making the decision.
- (5) If the EPA makes the decision in **subsection (3)(a)** and the applicant then lodges an application for a resource consent for the cross-boundary activity, the application for resource con- 35

sent and the application for a marine consent are a new joint application for consent made on the date on which the application for a resource consent was lodged.

**92 Decision to separate joint application for consent**

- (1) At any time during the processing of a joint application for consent, the Environmental Protection Authority may decide that the application for a resource consent and the application for a marine consent that comprise the joint application must cease to be processed as a joint application and continue to be processed separately. 5  
10
- (2) **Subsection (1)** applies only if—
  - (a) the EPA and the relevant consent authority agree that the applications are sufficiently unrelated that a joint process is not necessary; or
  - (b) the application for resource consent does not require public notification under the Resource Management Act 1991; or 15
  - (c) a hearing is required for one application but not the other; or
  - (d) the joint processing of the applications for resource consent and marine consent that comprise the joint application for consent is not administratively efficient. 20
- (3) In any case described in **subsection (1)**,—
  - (a) the relevant consent authority must resume processing the application for resource consent under the Resource Management Act 1991; and 25
  - (b) the EPA must resume processing the application for a marine consent under **subpart 2 of this Part**.
- (4) The EPA must cease processing a joint application for consent if— 30
  - (a) the Minister for the Environment or the Minister of Conservation (in relation to a proposal of national significance) directs that the application for a resource consent be referred to the Environment Court for decision under section 142(2)(b) or 147(1)(b) of the Resource Management Act 1991; or 35
  - (b) the relevant consent authority agrees to the applicant's request made under section 87D of the Resource Man-

- agement Act 1991 to allow the application to be determined by the Environment Court.
- (5) In the case described in **subsection (4)(a)**, section 149T of the Resource Management Act 1991 applies to the application for resource consent. 5
- (6) In the case described in **subsection (4)(b)**, sections 87F(2) to (5) and 87G to 87I of the Resource Management Act 1991 apply to the application for resource consent.
- (7) In both cases described in **subsection (4)**, the EPA must resume processing the application for a marine consent under **subpart 2 of this Part**. 10

*Processing of joint application*

- 93 Application of sections 94 and 95**  
**Sections 94 and 95** apply to the processing of a joint application for consent while the application is a joint application. 15
- 94 Environmental Protection Authority to administer process**
- (1) The Environmental Protection Authority is responsible for ensuring the efficient and co-ordinated processing of a joint application for consent for a cross-boundary activity. 20
- (2) The EPA must, in relation to the joint application, liaise with the relevant consent authority to—
- (a) prepare a request for further information under **section 43** so that, where practicable, the request covers all the information needed in relation to the whole cross-boundary activity; and 25
- (b) ensure that the application is notified jointly by the EPA and the relevant consent authority; and
- (c) set a closing date for the making of submissions; and
- (d) receive submissions and provide copies of them to the consent authority; and 30
- (e) set the hearing time, date, and venue, and notify submitters of those matters; and
- (f) set the procedure for the hearing; and
- (g) provide general administrative services. 35

- (3) The EPA may extend a time period that applies to the processing of the application for a marine consent in order to ensure that—
- (a) the application for a marine consent is notified jointly with the application for resource consent: 5
  - (b) submissions on the applications close on the same date:
  - (c) the applications are heard (if there is a hearing) at the same time and place.
- (4) **Section 148(1) and (2)** do not apply to the exercise by the EPA of the power to extend a time period under **subsection (3)**. 10

**95 Relevant consent authority and EPA to share information**

- (1) The Environmental Protection Authority and the relevant consent authority must provide each other with copies of all information and reports relating to the application received by them after the joint application has been made. 15
- (2) The EPA and the relevant consent authority must provide the information as soon as practicable after they receive the information or report.

**96 Separate decisions on marine consent and resource consent applications** 20

- (1) The Environmental Protection Authority must decide the application for a marine consent that is part of a joint application for consent.
- (2) **Sections 59 to 69** apply to the application for a marine consent. 25
- (3) The relevant consent authority must decide the application for a resource consent that is part of a joint application.
- (4) Sections 104 to 116 of the Resource Management Act 1991 apply to the application for resource consent. 30

*Nationally significant cross-boundary activities*

**97 Application for consent for nationally significant cross-boundary activity referred to board of inquiry**

- (1) This section applies if the part of the cross-boundary activity that is to be carried out in the coastal marine area is or is part 35

- of a proposal of national significance called in by the Minister or the Minister of Conservation and referred to a board of inquiry under section 142(2)(a) or 147(1)(a) of the Resource Management Act 1991.
- (2) The Environmental Protection Authority may delegate to the board of inquiry the EPA's functions in relation to an application for a marine consent that relates to the part of the activity that is to be carried out in the exclusive economic zone or on the continental shelf. 5
- (3) If the EPA delegates its functions under **subsection (2), sections 51 to 58 of this Act** do not apply to the application for a marine consent and, instead,— 10
- (a) the EPA must process and the board of inquiry must decide the application for a marine consent together with the associated application for a resource consent; and 15
- (b) the provisions of the Resource Management Act 1991 specified in **subsection (5)** apply to the processing of the application for marine consent as if the application for a marine consent were a matter lodged with the EPA under section 145(1)(a) of the Resource Management Act 1991. 20
- (4) If **subsection (3)** applies, the EPA must—
- (a) notify the application for a marine consent under **section 46 of this Act**, if it hasn't already been notified; and 25
- (b) receive submissions made under **section 47**.
- (5) The provisions referred to in **subsection (3)(b)** are—
- (a) section 149L (which deals with the conduct of the inquiry):
- (b) section 149Q (which requires the board to produce a draft report) except subsections (2)(e) and (f) and (3)(b) and (c): 30
- (c) section 149R (which requires the board to produce a final report)—
- (i) as if subsection (2)(a) of that section referred to the day on which the EPA gave public notice under **section 46 of this Act**; but 35
- (ii) not including subsections (3)(e) and (f) and (4)(b) and (c):

- (d) section 149S (which allows the Minister to extend the time by which the board must report)—
  - (i) as if subsection (2)(b)(i) of that section referred to the day on which the EPA gave public notice under **section 46 of this Act**; but 5
  - (ii) not including subsection (4)(b):
- (e) section 149V (which provides for appeals against decisions to be on questions of law only) as if the reference to section 149R(4)(a) to (f) were a reference to section 149R(4)(a), (d), (e), and (f). 10

**98 EPA must provide board of inquiry with necessary information**

- (1) This section applies if an application for a marine consent is to be decided by a board of inquiry.
- (2) The EPA must provide the board of inquiry with each of the following things as soon as is reasonably practicable after receiving it: 15
  - (a) the application for the marine consent:
  - (b) all the information received by the EPA that relates to the application of the activity: 20
  - (c) the submissions received by the EPA on the application.
- (3) The EPA must also prepare or commission a report on the key issues relating to the application and the activity, including—
  - (a) any relevant provisions of standards or other regulations made under this Act; and 25
  - (b) a statement on whether the application covers all aspects of the activity for which a marine consent is required.
- (4) The EPA must provide a copy of the report to—
  - (a) the board of inquiry; and 30
  - (b) the relevant consent authority; and
  - (c) the applicant; and
  - (d) every submitter.

## Part 3 Objections, appeals, and enforcement

### Subpart 1—Objections and appeals

#### *Objections*

- 99 Right of objection to Environmental Protection Authority against certain decisions** 5
- (1) An applicant for a marine consent may object to a decision of the Environmental Protection Authority to—
- (a) return an incomplete application under **section 42**;
  - (b) commission a review or report, or seek advice under **section 45**. 10
- (2) A submitter whose submission or part of whose submission is struck out under **section 58(5)** may object to the decision of the EPA to strike out the submission or part of the submission.
- (3) A consent holder may object to a decision of the EPA to— 15
- (a) change or cancel a condition of a consent or cancel a consent under **section 79**;
  - (b) shorten or refuse to extend the duration of a consent under **section 80**;
  - (c) make a minor change to a condition under **section 81**; 20
  - (d) refuse to extend the period after which a consent lapses under **section 83**;
  - (e) cancel a consent under **section 84**.
- 100 Procedure for making or hearing objection**
- (1) An objection made under **section 99** must be made in writing to the Environmental Protection Authority not later than 15 working days after the decision is notified to the person affected by the decision. 25
- (2) The notice of objection must set out the reasons for the objection. 30
- (3) The EPA must—
- (a) give the person who made the objection an opportunity to be heard; and
  - (b) consider and decide the objection within 20 working days after receipt of the notice of objection. 35



**101 Decision on objection**

- (1) The Environmental Protection Authority may—
  - (a) dismiss the objection; or
  - (b) uphold the objection in whole or in part.
- (2) Not later than 5 working days after the EPA makes a decision on an objection, it must send a copy of the decision to—
  - (a) the person who made the objection; and
  - (b) any other person the EPA considers appropriate.
- (3) A decision must include the reasons for the decision.

**102 Appeals against decisions on objections**

10

- (1) Any person who has made an objection under **section 99** may appeal to the High Court against the decision on the objection only on a question of law.
- (2) This section does not apply to a person who has exercised a right of appeal under **section 103** relating to the same matter.

15

*Appeal to High Court on question of law*

**103 Appeals on question of law**

- (1) The applicant for a consent or any submitter on an application for a consent may appeal to the High Court against the whole or a part of a decision of the Environmental Protection Authority to—
  - (a) grant an application for a consent; or
  - (b) decline an application; or
  - (c) impose any conditions on a consent.
- (2) The holder of a consent or any submitter on the review of a consent may appeal to the High Court against the whole or a part of a decision of the Environmental Protection Authority to—
  - (a) change or cancel a condition of a consent under **section 79(1)**; or
  - (b) shorten, extend, or refuse to extend the duration of a consent under **section 80**; or
  - (c) cancel a consent under **section 79(3) or (4)**.
- (3) An appeal lodged under this section may be only on a question of law.

20

25

30

35

- (4) This section is in addition to the rights provided for in **section 99**.

**104 Notice of appeal**

- (1) An appellant must file a notice of appeal with the Registrar of the High Court within 15 working days after the date on which the appellant is notified of the decision of the Environmental Protection Authority. 5
- (2) The appellant must also serve a copy of the notice of the appeal on the EPA within the time limit specified in **subsection (1)**.
- (3) The notice of appeal must specify— 10
- (a) the decision or part of the decision appealed against; and
  - (b) the error of law alleged by the appellant; and
  - (c) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and
  - (d) the relief sought. 15
- (4) The appellant must serve a copy of the notice of appeal on—
- (a) the applicant or consent holder, if the appellant is not the applicant or consent holder; and
  - (b) any submitter on the application for consent, or a change or cancellation of the consent conditions, or a review of consent conditions. 20
- (5) The appellant must comply with **subsection (4)** no later than 5 working days after the appeal is filed.
- (6) The EPA must send a copy of the whole of the decision appealed against to the Registrar of the High Court as soon as is reasonably practicable after receiving the notice of appeal. 25

**105 Right to appear and be heard on appeal**

- (1) The applicant for, or holder of, the consent to which the appeal relates and any submitters who wish to appear on an appeal to the High Court must give notice of intention to appear to— 30
- (a) the appellant; and
  - (b) the Registrar of the High Court; and
  - (c) the Environmental Protection Authority.
- (2) The notice to appear must be served within 10 working days after the person was served with the notice of appeal. 35

**106 Parties to appeal**

The parties to an appeal before the High Court are—

- (a) the appellant; and
- (b) the Environmental Protection Authority; and
- (c) a person who gives notice of intention to appear under **section 105**; and 5
- (d) a person who becomes a party to an appeal under **section 107**.

**107 Representation at proceedings**

- (1) The following persons may be a party to any proceedings before the High Court under this Act: 10
  - (a) the Attorney-General, representing a relevant aspect of the public interest;
  - (b) the relevant consent authority in relation to proceedings affecting a cross-boundary activity to which **subpart 3 of Part 2** applies. 15
- (2) A person described in **subsection (1)** may become a party to the proceedings by giving notice to the High Court and to all other parties within 15 working days after—
  - (a) the period for lodging a notice of appeal ends, if the proceedings are an appeal: 20
  - (c) the proceedings are commenced, in any other case.
- (3) The notice given under **subsection (2)** must state—
  - (a) the proceedings in which the person has an interest; and
  - (b) whether the person supports or opposes the proceedings and the reasons for that support or opposition; and 25
  - (c) if applicable, the grounds for seeking representation under **subsection (1)(a)**; and
  - (d) an address for service.
- (4) A person who becomes a party to the proceedings under this section may appear and call evidence in accordance with **subsection (5)**. 30
- (5) Evidence must not be called under **subsection (4)** unless it is on matters within the scope of the appeal or other proceeding.
- (6) A person who becomes a party to the proceedings under this section may not oppose the withdrawal or abandonment of the proceedings unless the proceedings were brought by a person 35

who made a submission in the previous proceedings on the same matter.

**108 Dismissal of appeal**

The High Court may dismiss an appeal if—

- (a) the appellant does not appear at the hearing of the appeal; or 5
- (b) the appellant does not proceed with the appeal with due diligence and another party applies to the court to dismiss the appeal.

**109 Date of hearing** 10

- (1) An appeal is ready for hearing when the appellant notifies the Registrar of the High Court that the notice of appeal has been served on all parties to the proceedings.
- (2) The Registrar must arrange a hearing date as soon as practicable after being notified that the notice of appeal has been served on all parties to the proceedings. 15

**110 Application of High Court Rules**

The High Court Rules apply if a procedural matter is not provided for by **sections 103 to 109**.

*Appeal to Court of Appeal* 20

**111 Appeal to Court of Appeal**

Section 144 of the Summary Proceedings Act 1957 applies to a decision of the High Court on an appeal filed under **section 103 of this Act** as if the decision had been made under section 107 of the Summary Proceedings Act 1957. 25

Subpart 2—Enforcement

**112 Proceedings to be heard by Environment Judge**

- (1) All proceedings in relation to enforcement orders must be heard by an Environment Judge sitting alone or by the Environment Court. 30
- (2) Proceedings relating to an interim enforcement order must be heard by—

- (a) an Environment Judge sitting alone; or
- (b) in the District Court by a District Court Judge who is an Environment Judge.
- (3) Proceedings under **section 124** must be heard in the District Court by a District Court Judge who is an Environment Judge. 5
- (4) Despite **subsections (2) and (3)**, the proceedings described in those subsections need not be heard by a District Court Judge who is an Environment Judge if the Chief District Court Judge directs otherwise.

*Enforcement order* 10

**113 Enforcement order**

- (1) In this Part, **enforcement order** means an order made by the Environment Court or an Environment Judge (or by another Judge in accordance with **section 112**) that does 1 or more of the following: 15
  - (a) requires a person to stop doing something, or prohibits the person from starting to do something that, in the opinion of the court, breaches or is likely to breach this Act, any regulations, or a marine consent:
  - (b) requires a person to do something that, in the opinion of the court, is necessary to— 20
    - (i) ensure that the person complies with this Act, any regulations, or a marine consent; or
    - (ii) avoid, remedy, or mitigate any actual or likely adverse effects on the environment or existing interests that result from any breach of this Act, regulations, or a marine consent by the person: 25
  - (c) requires a person to pay money to or reimburse any other person for any actual and reasonable costs and expenses which that other person has incurred or is likely to incur in taking reasonable measures to avoid, remedy, or mitigate any adverse effect on the environment, where the person against whom the order is sought fails to comply with— 30
    - (i) an order under any other paragraph of this subsection; or 35
    - (ii) regulations or a marine consent; or

- (iii) any of that person's other obligations under this Act:
- (d) changes or cancels a consent if—
  - (i) the court is of the opinion that the information provided to the Environmental Protection Authority by the applicant contained inaccuracies relevant to the enforcement order sought that materially influenced the decision to grant the consent; and 5
  - (ii) the effects of the exercise of the consent are such that more appropriate conditions are needed or the consent should be cancelled. 10
- (2) For the purposes of **subsection (1)(c)**, **actual and reasonable costs** includes the costs of investigation, supervision, and monitoring of the adverse effect on the environment, and the costs of any actions required to avoid, remedy, or mitigate the adverse effect. 15
- (3) In **subsection (1)**, an act done or to be done, or any adverse effects caused, by a person includes an act done or to be done, or adverse effects caused, on the person's behalf. 20
- (4) An enforcement order may be made on such terms and conditions as the Environment Court thinks fit (including the payment of any charge provided for by regulations, the provision of security, or the entry into a bond for performance).
- (5) An enforcement order will, if the court so states, apply to the personal representatives, successors, and assigns of a person to the same extent as it applies to that person. 25

#### **114 Application for enforcement order**

- (1) The Environmental Protection Authority or an enforcement officer may apply to the Environment Court for an enforcement order. 30
- (2) The application for an enforcement order must be in the prescribed form and specify the relief sought.
- (3) Part 11 of the Resource Management Act 1991 applies as if the application were made under Part 12 of that Act. 35

**115 Notice of application for enforcement order**

- (1) The applicant for an enforcement order must serve notice of the application for the order on every person directly affected by the application.
- (2) The notice must be— 5
  - (a) in the prescribed form; and
  - (b) served within 5 working days after the application is made to the Environment Court.

**116 Right to be heard**

- Before deciding an application for an enforcement order, the Environment Court must— 10
- (a) hear the applicant for the enforcement order; and
  - (b) hear the person against whom the order is sought, if the person wishes to be heard.

**117 Decision on application for enforcement order** 15

- After considering an application for an enforcement order, the Environment Court may—
- (a) make an order under **section 113**; or
  - (b) refuse the application.

**118 Interim enforcement order** 20

- (1) **Sections 113 to 117** apply to an application for, and the determination of the application for, an interim enforcement order, except as provided in this section.
- (2) If an Environment Judge or a District Court Judge considers there is an imminent risk of serious adverse effects resulting from a breach of the Act, regulations, or a marine consent, the Judge may make an interim enforcement order— 25
  - (a) without requiring service of notice in accordance with **section 115**; and
  - (b) without holding a hearing. 30
- (3) Before making an interim enforcement order, the Environment Judge or the District Court Judge must consider—
  - (a) what the effect of not making the order would be on the environment and existing interests; and

- (b) whether the applicant has given an appropriate undertaking as to damages; and
  - (c) whether the Judge should hear the applicant or any person against whom the interim order is sought; and
  - (d) such other matters as the Judge thinks fit. 5
- (4) The Judge must direct the applicant for the interim enforcement order or another person to serve a copy of the interim enforcement order on the person against whom the order is made.
- (5) The interim enforcement order takes effect on and from the date on which it is served or such later date as the order specifies. 10

**119 Application to change or cancel interim enforcement order**

- (1) This section applies to a person— 15
- (a) against whom an interim enforcement order has been made; and
  - (b) who was not heard by the Judge who made the order before the order was made.
- (2) The person may apply, as soon as practicable after service of the order, to an Environment Judge or a District Court Judge to change or cancel the order. 20
- (3) The Environment Judge or the District Court Judge may confirm, change, or cancel the interim enforcement order after hearing from the person, the applicant, and any other person the Judge thinks fit. 25
- (4) An interim enforcement order stays in force until an application for an enforcement order under **section 113** is determined, or until cancelled by an Environment Judge or a District Court Judge under **subsection (3)**, or cancelled by the Environment Court under **section 121**. 30

**120 Compliance with enforcement order**

- (1) Where an enforcement order is made against a person and that enforcement order is served on that person, that person must—
- (a) comply with the order; and 35



- (b) unless the order directs otherwise, pay all the costs of complying with the order.
- (2) If a person against whom an enforcement order is made fails to comply with the order, any person may, with the consent of the Environment Court,— 5
  - (a) comply with the order on behalf of the person who fails to comply with the order, and for this purpose, enter upon any land or enter any structure (with a constable if the structure is a dwellinghouse or a marae); and
  - (b) recover the costs of doing so as a debt due from that person. 10

**121 Change or cancellation of enforcement order**

- (1) The Environmental Protection Authority, an enforcement officer, or the person against whom an enforcement order is made may apply to the Environment Court in the prescribed form to change or cancel the order. 15
- (2) **Subsection (1)** does not limit **section 120(2)**.
- (3) **Sections 115 to 117** (which relate to notification, hearing, and decision) apply to every application under **subsection (1)** as if it were an application for an enforcement order. 20

**122 Restriction on certain applications for enforcement orders**

- (1) Neither the Environmental Protection Authority nor an enforcement officer may apply to the Environment Court for an enforcement order of a kind specified in any of **section 113(1)(a) to (c)** in respect of anything done or to be done— 25
  - (a) by or on behalf of the Director of Maritime New Zealand under section 248 or 249 of the Maritime Transport Act 1994; or
  - (b) by or on behalf of any person in accordance with any instructions issued under either of those sections of that Act; or 30
  - (c) by or on behalf of any on-scene commander under section 305 or 311 of that Act or in accordance with a direction given under section 310 of that Act; or
  - (d) by or on behalf of the master or owner of any ship, or the owner or operator of any oil transfer site or offshore 35

- installation, or any other person, in accordance with a direction given under section 305 of that Act.
- (2) Neither the Environmental Protection Authority nor an enforcement officer may apply for an enforcement order of a kind specified in **section 113(1)(c)** in respect of any actual or reasonable costs where— 5
- (a) the costs that a person has incurred or is likely to incur constitute pollution damage (as defined in section 342 of the Maritime Transport Act 1994); and
  - (b) in respect of those costs, the person is liable in damages under Part 25 of that Act. 10
- (3) Neither the Environment Court nor any other court may make an order relating to such damage in any proceedings (including prosecutions for offences) under this Act.

**123 Proceedings in Environment Court** 15  
Sections 299 to 308 of the Resource Management Act 1991 apply to proceedings in the Environment Court under this Act.

*Offences and penalties*

- 124 Offences**
- (1) A person commits an offence against this Act who breaches, or permits a breach of, any of the following: 20
- (a) **section 15** (which imposes restrictions on activities):
  - (b) an enforcement order.
- (2) A person commits an offence against this Act who breaches, or permits a breach of, any of the following: 25
- (a) a requirement under **section 36(3)** to notify the Environmental Protection Authority of permitted activities to be undertaken:
  - (b) a requirement to provide certain information to an enforcement officer under **section 132**: 30
  - (c) a direction given by the EPA under **section 146** in relation to the protection of sensitive information:
  - (d) an order (other than an enforcement order) made by the Environment Court or the High Court.
- (3) Every person commits an offence against this Act who— 35

- (a) wilfully obstructs, hinders, resists or deceives any person in the execution of any powers conferred on that person by or under this Act; or
- (b) contravenes or permits a contravention of any summons or order to give evidence issued or made under **section 55**. 5

**125 Penalties**

- (1) A person who commits an offence against **section 124(1)** is liable on conviction,—
  - (a) in the case of a natural person, to a fine not exceeding \$300,000; 10
  - (b) in the case of a person other than a natural person, to a fine not exceeding \$600,000.
- (2) Every person who commits an offence against **section 124(1)** is also liable on conviction, if the offence is a continuing one, to a fine not exceeding \$10,000 for every day or part of a day during which the offence continues. 15
- (3) A person who commits an offence against **section 124(2)** is liable on summary conviction to a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues. 20
- (4) A person who commits an offence against **section 124(3)** is liable on summary conviction to a fine not exceeding \$1,500.
- (5) If a person is convicted of an offence against **section 124**, the court may, instead of or in addition to imposing a fine, make 1 or more of the following orders: 25
  - (a) an order specified in **section 113**;
  - (b) an order requiring the Environmental Protection Authority to serve notice, under **section 75(2)**, of the review of a marine consent held by the person, but only if the offence involves an act or omission that breaches the consent. 30
- (6) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act is a continuing offence. 35

**126 Strict liability and defences**

- (1) In a prosecution for an offence of breaching, or permitting a breach of, **section 15**, it is not necessary to prove that the defendant intended to commit the offence.
- (2) It is a defence to a prosecution of the kind referred to in **sub-** 5  
**section (1)** if the defendant proves—
- (a) that—
- (i) the action or event to which the prosecution re- 10  
lates was necessary for the purposes of saving  
or protecting life or health, or preventing ser-  
ious damage to property, or avoiding an actual  
or likely adverse effect on the environment; and
- (ii) the conduct of the defendant was reasonable in  
the circumstances; and
- (iii) the effects of the action or event were adequately 15  
mitigated or remedied by the defendant after it  
occurred; or
- (b) that the action or event to which the prosecution relates  
resulted from an event beyond the control of the defen- 20  
dant, including natural disaster, mechanical failure, or  
sabotage, and in each case—
- (i) the action or event could not reasonably have  
been foreseen or been provided against by the de-  
fendant; and
- (ii) the effects of the action or event were adequately 25  
mitigated or remedied by the defendant after it  
occurred.
- (3) **Subsection (2)** applies only if the defendant delivers to the  
prosecutor within 7 days after the service of the summons, or  
such further time as the court may allow, a written notice— 30
- (a) stating that the defendant intends to rely on **subsection**  
**(2)**; and
- (b) specifying the facts that support his or her reliance on  
**subsection (2)**.
- (4) However, the court may grant leave to the defendant to rely on 35  
**subsection (2)** even if the defendant does not comply with  
**subsection (3)**.

**127 Liability of principal for acts of agents**

- (1) The consequence specified in **subsection (2)** applies if a person (the **agent**) commits an offence against this Act while—
- (a) acting as an agent (including a contractor) or employee of another person (the **principal**); or 5
  - (b) in charge of a ship owned by another person (the **principal**).
- (2) The principal is liable in the same manner and to the same extent as if the principal had personally committed the offence.
- (3) The liability of the principal is without prejudice to the liability of the agent. 10
- (4) Despite **subsection (2)**, if proceedings are brought in reliance on that subsection, it is a defence if the defendant proves,—
- (a) in the case of a natural person (including a partner in a firm), that— 15
    - (i) he or she did not know, nor could reasonably be expected to have known, that the offence was to be or was being committed; or
    - (ii) he or she took all reasonable steps to prevent the commission of the offence; or 20
  - (b) in the case of a person other than a natural person, that—
    - (i) neither the directors (if any) nor any person involved in the management of the defendant knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or 25
    - (ii) the defendant took all reasonable steps to prevent the commission of the offence; and
  - (c) the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence. 30
- (5) If a person other than a natural person is convicted of an offence against this Act, a director (if any), or a person involved in the management of, the defendant is guilty of the same offence if it is proved that—
- (a) the act or omission that constituted the offence took place with his or her authority, permission, or consent; and 35
  - (b) he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed.

ted and failed to take all reasonable steps to prevent or stop it.

**128 Limitation of proceedings**

- (1) An information in respect of an offence against this Act may be laid by an enforcement officer no later than 6 months after the time when the breach giving rise to the offence first became known, or should have become known, to the enforcement officer. 5
- (2) The period of 6 months does not run while the person charged (being a natural person) is beyond the outer limits of the territorial sea. 10
- (3) This section overrides section 14 of the Summary Proceedings Act 1957.

*Appointment and powers of enforcement officers*

**129 Enforcement officers**

- (1) The Environmental Protection Authority may appoint a person described in **subsection (2)** to be an enforcement officer for either or both of the following purposes: 15
  - (a) to ensure compliance with this Act, regulations, and marine consents; or 20
  - (b) to exercise the power of inspection under **section 132**.
- (2) A person is eligible for appointment as an enforcement officer if the person—
  - (a) has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to the person; or 25
  - (b) is an employee of the EPA who is suitably qualified and trained.
- (3) The EPA must supply each enforcement officer with a warrant that— 30
  - (a) states the full name of the person; and
  - (b) includes a summary of the powers conferred on the person under this Act.
- (4) An enforcement officer who holds a warrant issued under this section must, on the termination of his or her appointment, surrender the warrant to the EPA. 35

**130 Exercise of powers**

- (1) An enforcement officer may exercise the powers under this Act, in accordance with his or her warrant, only for the purposes for which he or she was appointed.
- (2) An enforcement officer exercising a power under this Act must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity. 5

**131 Power to require certain information**

- (1) This section applies if an enforcement officer believes on reasonable grounds that a person is committing or has committed an offence against this Act. 10
- (2) The enforcement officer may require the person to give the officer the following information:
  - (a) if the person is a natural person, his or her full name, address, and date of birth: 15
  - (b) if the person is not a natural person, the person's full name and address.

**132 Power of entry for inspection**

- (1) An enforcement officer may at all reasonable times, for the purpose specified in **subsection (2)**, enter and inspect— 20
  - (a) a place, vehicle, vessel, or structure in New Zealand territory or the exclusive economic zone, except a dwellinghouse or marae; and
  - (b) a structure located on the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources; and 25
  - (c) a vessel in the waters above the continental shelf that is beyond the exclusive economic zone.
- (2) The purpose for which the power to enter and inspect may be exercised is to determine whether the following are being complied with: 30
  - (a) this Act, any regulations, or a marine consent:
  - (b) an enforcement order.
- (3) The power to enter and inspect may only be exercised in relation to a place, vehicle, vessel, or structure described in **subsection (1)** if the enforcement officer is expressly authorised 35

- in writing by the Environmental Protection Authority to enter that place, vehicle, vessel, or structure.
- (4) Before an enforcement officer exercises a power to board and inspect a foreign vessel under **subsection (1)(c)**, the officer must send a copy of the authority described in **subsection (3)** to the Secretary of Foreign Affairs. 5
- (5) The provisions of the **Schedule** apply to the carrying out of powers of inspection and search.
- (6) In this section and the **Schedule**—  
**enter**, in relation to a vessel, means board 10  
**foreign vessel** means a vessel that is not a New Zealand ship within the meaning of that term in the Ship Registration Act 1992.

**Part 4**  
**Miscellaneous, transitional provisions,** 15  
**and consequential amendments**

Subpart 1—Miscellaneous

*Protection of the Crown and others*

- 133 Protection of the Crown and others** 20  
The following persons are not liable for any loss or damage caused or any expense incurred as a result of a person lawfully carrying out functions or duties under this Act:
- (a) the Crown:
  - (b) the chief executive of the Environmental Protection Authority: 25
  - (c) the Environmental Protection Authority:
  - (d) an enforcement officer.

*Cost recovery*

- 134 Principles of cost recovery** 30  
(1) The Environmental Protection Authority must take all reasonable steps to recover so much of the direct and indirect costs incurred in performing its functions and providing services under this Act as are not provided for by money appropriated by Parliament for the purpose.



- (2) The functions and services include those performed in relation to—
  - (a) assisting a person in the preparation of an application for a marine consent, whether or not the application is made: 5
  - (b) receiving, processing, and deciding applications for marine consents:
  - (c) the administration, monitoring, and supervising of marine consents:
  - (d) the monitoring of a permitted activity if the monitoring is required by regulations: 10
  - (e) the review of the conditions of a marine consent.
  
- (3) In determining the most appropriate method of cost recovery under **section 135**, and its level, in any particular case, the Minister must have regard, as far as is reasonably practicable, to the following criteria: 15
  - (a) equity, in that funding for a particular function or service or a particular class of function or service should generally, and to the extent practicable, be recovered from— 20
    - (i) the person, or class of persons, who benefits from the performance of the function or service and at a level proportional to the person’s or class of persons’ benefit from the function or service; or
    - (ii) the person, or class of persons, whose action or inaction gives rise to the exercise of the function at a level proportional to the person’s or class of persons’ contribution to the cost of performing the function: 25
  - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost: 30
  - (c) justification, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the performance of the relevant function or service: 35
  - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to a function

- or service for the recovery period in which the function or service is performed.
- (4) Costs should not be recovered under this Act unless there has been appropriate consultation with persons or organisations that appear to the EPA to be representative of the interests of persons likely to be substantially affected by the recovery of costs, and the persons or organisations have been given sufficient time and information to give an informed response. 5
  - (5) Nothing in **subsection (4)** requires consultation in relation to specific charges, or the specific levels of charges, so long as the charges set are reasonably within the scope of any general consultation, and a failure to comply with **subsection (4)** does not affect the validity of any regulations made for the purposes of this Act. 10
  - (6) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based on usage, and, without limiting the way in which charges may be set, a charge may be set at a level or in a way that— 15
    - (a) is determined by calculations that involve an averaging of costs or potential costs: 20
    - (b) takes into account costs or potential costs of functions or services that do not directly benefit the person who pays the charge, but which are an indirect or potential cost arising from the performance of the function or service in question to a class of persons. 25

**135 Methods of cost recovery**

Costs may be recovered for the purpose of **section 134(1)** by 1 or more of the following methods:

- (a) fixed charges:
- (b) charges based on a scale or formula or at a rate determined on an hourly or other unit basis: 30
- (c) charges for actual and reasonable costs spent in or associated with the performance of a function or service:
- (d) estimated charges, or charges based on estimated costs, paid before the performance of the function or service, followed by reconciliation and an appropriate further payment or refund after performance of the function or service: 35

- (e) refundable or non-refundable deposits paid before performance of the function or service.

**136 Cost recovery to relate generally to financial year**

- (1) Any regulations that prescribe a charge that applies in any financial year— 5
  - (a) must have been made before the start of the financial year; but
  - (b) except as the regulations may otherwise provide, apply in that year and all subsequent years until revoked or replaced. 10
- (2) **Subsection (1)** does not prevent the alteration or setting during any financial year of a charge payable in that year, if either—
  - (a) the charge is reduced, removed, or restated without substantive alteration; or 15
  - (b) in the case of an increase or a new charge,—
    - (i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the increase or the new charge; and 20
    - (ii) the Minister is satisfied that those persons, or their representatives, agree or do not substantially disagree with the increase or the new charge.
- (3) **Subsection (1)** does not prevent the amendment of any regulation prescribing a charge if any substantive alteration effected by the amendment is for the purpose of correcting an error. 25
- (4) In any financial year, recovery may be made of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year). 30

**137 Charges to be prescribed by regulations**

- (1) Regulations may be made under **section 30** prescribing charges for the purposes of this Act. 35

- (2) The charges may be prescribed using any 1 or more of the methods specified in **section 135**.
- (3) The charges prescribed may—
  - (a) differ depending on whether a special or urgent function or service is performed: 5
  - (b) include more than 1 level of charge for the same function or service provided in different ways, or provided in or in respect of different places:
  - (c) differ for otherwise similar functions or services provided in different ways: 10
  - (d) differ depending on the time taken to perform the function or service required or the components of the function or service required for the particular person or class of persons.

**138 Charges constitute debt due to Environmental Protection Authority** 15

- (1) A charge or part of a charge that is not paid by the due date is a debt due to the EPA.
- (2) The EPA may recover the debt in any court of competent jurisdiction. 20
- (3) If a charge is payable to the EPA, the EPA need not perform any action to which the charge relates until the charge has been paid in full.

*Service of documents*

**139 Service of documents** 25

- (1) If a notice or other document is to be served on a person under this Act or regulations, it may be served by—
  - (a) delivering it personally to the person (other than a Minister of the Crown); or
  - (b) delivering it at the usual or last known place of residence or business of the person; or 30
  - (c) sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person; or
  - (d) posting it to the post office box address that the person has specified as an address for service; or 35

- (e) leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service; or
- (f) sending it to the fax number that the person has specified as an address for service; or 5
- (g) sending it to the email address that the person has specified as an address for service; or
- (h) serving it as the Environment Court or the High Court directs in the particular case.
- (2) However, a provision in another Act or regulations that is inconsistent with **subsection (1)** overrides that subsection. 10
- (3) A Minister of the Crown may be served by service on the chief executive of the appropriate department of State.
- (4) A body corporate or an unincorporated body may be served by service on an officer, or at the registered office, of the body. 15
- (5) A partnership may be served by service on any of the partners or at the registered office of the partnership.
- (6) **Subsection (1)** applies to service under **subsections (3) to (5)**.
- (7) Despite **subsection (1)**, if a notice or other document is to be served on a Crown organisation for the purpose of this Act, it may be served— 20
- (a) by delivering it at the organisation’s head office or principal place of business; or
- (b) by sending it to the fax number or email address that the organisation has specified for its head office or principal place of business; or 25
- (c) by a method agreed between the organisation and the person serving the notice or document.
- (8) If a notice or document is sent by post under **subsection (1)(c) or (d)**, it is presumed to be received by the person at the time at which the notice or document would have been delivered in the ordinary course of the post. 30
- 140 Service on master or owner of ship**
- (1) If the master or owner of a ship is a defendant in a prosecution for an offence against **section 124(1)(a)**, service on the defendant of a summons or other document is achieved for the 35

purposes of the Summary Proceedings Act 1957 if the summons or other document is—

- (a) delivered personally to the agent of the ship on behalf of the defendant or is brought to the notice of the agent if the agent refuses to accept it on behalf of the defendant; 5  
or
  - (b) sent to the agent of the ship by registered letter addressed to that agent on behalf of the defendant at the agent's last known or usual place of residence or business; or 10
  - (c) served in accordance with section 24 of the Summary Proceedings Act 1957 if a District Court Judge, Justice, Community Magistrate, or Registrar directs that the document or summons must be served in accordance with that section. 15
- (2) **Subsection (1)** applies despite any other enactment.
- (3) If a summons or document is sent by post under **subsection (1)(b)**, it is presumed to be received by the agent at the time at which the notice or document would have been delivered in the ordinary course of the post. 20

*Incorporation by reference*

**141 Incorporation by reference of written material in regulations**

- (1) The following written material may be incorporated by reference in regulations made under **section 27 or 30**: 25
- (a) standards, requirements, or recommended practices of international or national organisations:
  - (b) standards, requirements, or recommended practices of any country or jurisdiction:
  - (c) any other written material that, in the opinion of the Minister, is impractical or too large to include in, or print as part of, the regulations. 30
- (2) Material may be incorporated by reference in regulations—
- (a) in whole or in part; and
  - (b) with modifications, additions, or variations specified in the regulations. 35

- (3) Material incorporated by reference in regulations has legal effect as part of the regulations.

**142 Effect of amendments to, or replacement of, material incorporated by reference in regulations**

- (1) An amendment to, or replacement of, material incorporated by reference in regulations has legal effect as part of the regulations only if the Minister publishes a notice under **subsection (2)**. 5
- (2) The Minister may publish a notice in the *Gazette* that—
- (a) states that **subsection (1)** applies to the regulations; and 10
- (b) specifies the date on which **subsection (1)** applies to the regulations.
- (3) **Subsection (1)** does not apply if the regulations expressly state that it does not apply. 15

**143 Proof of material incorporated by reference**

- (1) A copy of material incorporated by reference in regulations, including any amendment to, or replacement of, the material, must be—
- (a) certified as a correct copy of the material by the chief executive; and 20
- (b) retained by the chief executive.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the regulations. 25

**144 Effect of expiry of material incorporated by reference**

- (1) Material incorporated by reference in regulations that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the regulations only if the Minister publishes a notice under **subsection (2)**. 30
- (2) The Minister may publish a notice in the *Gazette* that—
- (a) states that **subsection (1)** applies to the regulations; and
- (b) specifies the date on which **subsection (1)** applies to the regulations. 35

- (3) **Subsection (1)** does not apply if the regulations expressly say that it does not apply.

**145 Access to material incorporated by reference**

- (1) This section applies to—
- (a) material incorporated by reference in regulations: 5
  - (b) any amendment to, or replacement of, the material that is incorporated in the regulations or the material referred to in **paragraph (a)** with the amendments or replacement material incorporated:
  - (c) if the material referred to in **paragraph (a) or (b)** is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material. 10
- (2) The chief executive must—
- (a) make the material available for inspection during working hours free of charge at the offices of the department and at any other place that the chief executive considers appropriate; and 15
  - (b) make copies of the material available for purchase at a reasonable price at the offices of the department; and 20
  - (c) make copies of the material available free of charge on an Internet site maintained by or on behalf of the department, unless doing so would infringe copyright; and
  - (d) give notice in the *Gazette* stating that—
    - (i) the material is incorporated in the regulations and the date on which the regulations commence; and 25
    - (ii) the material is available for inspection during working hours free of charge at the offices of the department and identifying any other places at which it may be inspected; and 30
    - (iii) copies of the material can be purchased at the offices of the department and identify any other places at which they may be purchased; and
    - (iv) if copies of the material are made available under **paragraph (c)**, that the material is available on the Internet, free of charge, and stating the Internet site address. 35
- (3) The chief executive—



- (a) may make copies of the material available in any other way that he or she considers appropriate in the circumstances; and
  - (b) must, if **paragraph (a)** applies, give notice in the *Gazette* stating that the material is available in other ways and giving details of where or how it can be accessed or obtained. 5
- (4) The chief executive may comply with **subsection (2)(c)** (if applicable) by providing a hypertext link from an Internet site maintained by or on behalf of the department to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else. 10
- (5) A failure to comply with this section does not invalidate regulations that incorporate material by reference.
- (6) For the purposes of **subsection (2)(c)**, the chief executive may not rely on section 66 of the Copyright Act 1994 as authority to make the incorporated material available on an internet site. 15

*Protection of sensitive information*

- 146 Protection of sensitive information** 20
- (1) The Environmental Protection Authority may, on its own initiative or on the application of any party to any proceedings or class of proceedings, give a direction described in **subsection (3)** where it is satisfied that the order is necessary—
- (a) to avoid causing serious offence to tikanga Māori or to avoid disclosing the location of wāhi tapu; or
  - (b) to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information. 25
- (2) Despite **subsection (1)**, the EPA may not give a direction described in **subsection (3)** if, in the circumstances of the particular case, the public interest in making the information available outweighs the importance of avoiding such offence, disclosure, or prejudice. 30
- (3) The EPA may give a direction for the purpose of **subsection (1)**— 35

- (a) requiring the whole or part of any hearing or class of hearing at which the information is likely to be referred to be held with the public excluded:
- (b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to an application. 5
- (4) A direction given under **subsection (3)(b)** in relation to—
- (a) any matter described in **subsection (1)(a)** may be expressed to have effect from the commencement of any proceedings to which it relates and for an indefinite period or until such date as the EPA considers appropriate in the circumstances: 10
- (b) any matter described in **subsection (1)(b)** may be expressed to have effect from the commencement of any proceedings to which it relates but will cease to have any effect at the conclusion of those proceedings. 15
- (5) On the date that a direction prohibiting or restricting the publication or communication of information is given under **subsection (3)(b)**, the provisions of the Official Information Act 1982 cease to apply to the information while the direction remains in effect. 20
- (6) Any party to any proceedings or class of proceedings before the EPA may apply to the Environment Court for an order under section 279(3)(a) of the Resource Management Act 1991 cancelling or varying any direction given by the EPA. 25
- (7) Where, on the application of any party to any proceedings or class of proceedings, the EPA has refused to give a direction described in **subsection (3)**, that party may apply to the Environment Court for an order under section 279(3)(b) of the Resource Management Act 1991. 30
- (8) In this section, **information** includes any document or evidence.

*Waivers and extension of time limits*

- 147 Power of waiver and extension of time limits** 35
- (1) The Environmental Protection Authority may, in any particular case,—

- (a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; or
  - (b) waive a failure to comply with a requirement under this Act or regulations for the time or method of service of documents. 5
- (2) If a person is required to provide information under this Act or regulations and the information is inaccurate or omitted, or a procedural requirement is not complied with, the EPA may—
- (a) waive compliance with the requirement; or
  - (b) direct that the omission or inaccuracy be rectified on such terms as the EPA thinks fit. 10

**148 Requirements for waivers and extensions**

- (1) The Environmental Protection Authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with **section 147** unless it has taken into account—
- (a) the interests of any person who, in the EPA’s opinion, may be directly affected by the extension or waiver; and
  - (b) the interests of the community in being able to achieve an adequate assessment of the potential effects of a proposal. 15
- (2) A time period may be extended under **section 147** for—
- (a) a time not exceeding twice the maximum time period specified in this Act; or
  - (b) a time exceeding twice the maximum time period specified in this Act if the applicant requests or agrees. 20
- (3) The EPA must ensure that every person who, in his or her opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver. 25

Subpart 2—Transitional provisions

**149 Activities in exclusive economic zone or on continental shelf when Act commences**

This section and **sections 150 and 151** apply to an activity that is being undertaken in the exclusive economic zone or on 35

the continental shelf when **subpart 2 of Part 3** comes into force.

**150 Existing activities that become discretionary**

- (1) This section applies to an activity that requires a marine consent as a result of this Act coming into force if— 5
  - (a) the activity was lawfully established before the Act came into force; and
  - (b) the effects of the activity are of the same or similar character, intensity, and scale as the effects that existed before the Act came into force. 10
- (2) The activity may continue without a marine consent after the Act comes into force—
  - (a) for 6 months after the Act comes into force; and
  - (b) if the person carrying on the activity applied for a marine consent within 6 months after the Act comes into force, until the application is decided or any appeals are determined. 15
- (3) **Subsection (4)** applies once the period described in **subsection (2)** expires, if the EPA refuses the application for consent described in **subsection (2)(b)**. 20
- (4) The person undertaking the activity must—
  - (a) stop the activity; and
  - (b) comply with any instructions of the Environmental Protection Authority in relation to any structures associated with the activity. 25

**151 Existing activities that become prohibited**

- (1) This section applies to an activity that—
  - (a) becomes a prohibited activity as a result of this Act coming into force; and
  - (b) was lawfully established before the Act comes into force. 30
- (2) The activity may continue for a prescribed period.
- (3) When the prescribed period expires, the person undertaking the activity must—
  - (a) stop the activity; and 35

- (b) comply with any instructions of the Environmental Protection Authority in relation to any structures associated with the activity.

Subpart 3—Amendments to other Acts

*Amendment to Continental Shelf Act 1964* 5

**152 Amendment to Continental Shelf Act 1964**

- (1) This section amends the Continental Shelf Act 1964.  
 (2) Section 8 is amended by repealing subsection (1)(a), (b), (f), (g), (i), and (j).

*Amendment to Crown Organisations (Criminal Liability) Act 2002* 10

**153 Amendment to Crown Organisations (Criminal Liability) Act 2002**

- (1) This section amends the Crown Organisations (Criminal Liability) Act 2002. 15  
 (2) Section 6(1) is amended by adding the following paragraph:  
 “(d) an offence against the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2011**”.

*Amendment to Environment Act 1986* 20

**154 Amendment to Environment Act 1986**

- (1) This section amends the Environment Act 1986.  
 (2) The Schedule is amended by inserting the following item in its appropriate alphabetical order:  
 “**Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2011**”.

*Amendment to Environmental Protection Authority Act 2011*

**155 Amendment to Environmental Protection Authority Act 2011** 30

- (1) This section amends the Environmental Protection Authority Act 2011.

- (2) The definition of **environmental Act** in section 5 is amended by inserting the following paragraph after paragraph (a):  
“(ab) the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2011**.”.

*Amendment to Fisheries Act 1996* 5

**156 Amendment to Fisheries Act 1996**

- (1) This section amends the Fisheries Act 1996.
- (2) Section 11(2) is amended by inserting the following paragraph after paragraph (c):  
“(ca) regulations made under the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2011**; and”.

*Amendments to Resource Management Act 1991*

**157 Amendments to Resource Management Act 1991**

- (1) This section amends the Resource Management Act 1991. 15
- (2) Section 61(2) is amended by adding “; and” and also by adding the following paragraph after paragraph (b):  
“(c) the extent to which the regional policy statement needs to be consistent with regulations made under the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2011**; and” 20
- (3) Section 66(2) is amended by adding “; and” and also by adding the following paragraph after paragraph (d):  
“(e) to the extent to which the regional policy statement needs to be consistent with regulations made under the **Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2011**; and” 25
-

**Schedule**

**s 132**

**General provisions relating to search  
powers**

Exercising inspection and search powers

- 1 Application** 5  
For the purposes of this schedule, **inspection power** means every power conferred under **section 132** or any other provision of this Act to enter and inspect (without warrant) any place.
- 2 Inspection powers** 10  
Every inspection power authorises the person exercising it—  
(a) to enter and inspect the place that the person is authorised to enter and inspect, and any item or items found in that place, at any time that is reasonable in the circumstances:  
(b) to request any person to assist with the entry and inspection (including, without limitation, a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi): 15  
(c) to take a sample of any substance:  
(d) to conduct examinations, tests, inquiries, demonstrations, and inspections: 20  
(e) to require the production of, inspect, and copy any document, or part of a document:  
(f) to take photographs, sound and video recordings, and drawings of the place searched, and of any thing found in that place, if the person exercising the power has reasonable grounds to believe that the photographs, sound and video recordings, or drawings may be relevant in any proceedings related to the entry and search. 25
- 3 Identification and notice requirements for person exercising inspection power** 30  
(1) A person exercising an inspection power must,—  
(a) before initial entry into or onto the place to be inspected,—

Schedule	<b>Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill</b>	
	(i) announce his or her intention to enter and inspect the place under a statutory power:	
	(ii) identify himself or herself; and	
	(b) before or on initial entry into or onto the place to be inspected,—	5
	(i) give the occupier (if present) of the place a copy of the advice about the enactment (the <b>authority</b> ) that authorises him or her to conduct the entry and inspection; and	
	(ii) produce to the occupier of the place evidence of his or her identity (which may include details of a unique identifier instead of a name).	10
(2)	The person conducting the search is not required to comply with <b>subclause (1)(a)</b> if he or she has reasonable grounds to believe that—	15
	(a) no person is lawfully present in or on the place to be searched; or	
	(b) compliance with <b>subclause (1)(a)</b> would—	
	(i) endanger the safety of any person; or	
	(ii) prejudice the successful exercise of the entry and inspection power; or	20
	(iii) prejudice ongoing investigations.	
(3)	If the occupier of a place is not present at any time during the search, the person carrying out the search must,—	
	(a) on completion of the search, leave a copy of the authority referred to in <b>subclause (1)(b)(i)</b> and the notice referred to in <b>subclause (4)</b> in a prominent position at the place; or	25
	(b) if this is not reasonably practicable, provide the copy of the authority referred to in <b>subclause (1)(b)(i)</b> and the notice referred to in <b>subclause (4)</b> to the occupier of the place no later than 7 days after the exercise of the power.	30
(4)	The notice required by <b>subclause (3)</b> is a written notice containing the following particulars:	35
	(a) the date and time of the commencement and completion of the inspection:	
	(b) the name or unique identifier of the person who had overall responsibility for that inspection:	



- (c) the address of the office to which inquiries should be made.
- (5) For the purposes of this clause, the following persons may not be treated as the occupier of the place:
  - (a) any person who is under 14 years of age: 5
  - (b) any person who the person undertaking the inspection has reasonable grounds to believe is not the occupier of the place.