

House of Representatives

Supplementary Order Paper

Tuesday, 8 March 2011

Marine and Coastal Area (Takutai Moana) Bill

Proposed amendments

Hon Christopher Finlayson, in Committee, to move the following amendments:

Preamble, paragraph (4)

To omit “whānau, hapū, and iwi” (lines 1 and 2 on page 8) and substitute “iwi, hapū, and whānau”.

To insert after “seabed” (line 3 on page 8) “and on the principle of manaakitanga”.

Clause 2

To omit this clause (lines 14 to 22 on page 8) and substitute the following clause:

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Clause 3

Subclause (2)(a): to omit “whānau, hapū, and iwi” (lines 1 and 2 on page 9) and substitute “iwi, hapū, and whānau”.

Subclause (2): to insert the following paragraph after *paragraph (a)* (after line 2 on page 9):

(ab) repeals the Foreshore and Seabed Act 2004 and restores any customary interest extinguished by that Act; and

Subclause (3)(a)(ii): to omit this subparagraph (lines 16 to 18 on page 9).

Subclause (4): to omit “provides the full extent of” (line 30 on page 9) and substitute “sets out”.

Subclause (5)(a): to omit this paragraph (lines 5 to 13 on page 10) and substitute the following paragraphs:

(a) in **subpart 1**,—

- (i) for the responsible Minister, on behalf of the Crown, to enter into agreements with applicant groups for recognition of—
 - (A) protected customary rights, which must be brought into effect by Order in Council; and
 - (B) customary marine title, which must be brought into effect by an Act of Parliament; and
- (ab) in **subpart 1A**, for the jurisdiction of the High Court to hear and determine applications for recognition orders; and

Subclause (5)(b): to omit “**subpart 1**” (line 16 on page 10) and substitute “**subparts 1 and 1A**”.

Subclause (6)(a)(i) and (ii): to omit these subparagraphs (lines 22 to 25 on page 10) and substitute the following subparagraphs:

- (i) decision making concerning resource consent applications that may adversely affect the exercise of protected customary rights; and
- (ii) the process relating to how new activities become deemed accommodated activities; and

Clause 4(1)(b)

To omit “and hapū” (line 34 on page 10) and substitute “, hapū, and whānau”.

New clauses 4A and 4B

To insert the following clauses after *clause 4* (after line 16 on page 11):

4A Repeal of Foreshore and Seabed Act 2004

The Foreshore and Seabed Act 2004 (2004 No 93) is repealed.

4B Customary interests restored

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

Clause 5(a)

To omit “and hapū” (line 23 on page 11) and substitute “, hapū, and whānau”.

Clause 6

To omit this clause (lines 29 to 36 on page 11) and substitute the following clause:

6 Rights and obligations under international law not affected

To avoid doubt, this Act does not affect—

- (a) the sovereignty of New Zealand under international law over the marine and coastal area, including the airspace above it; or
- (b) the rights and obligations of New Zealand under international law pursuant to that sovereignty; or
- (c) the provisions in any other enactment relating to any such rights and obligations under international law.

Clause 7

Definition of **accommodated activity**: to omit “**section 8**” (line 3 on page 12) and substitute “**section 64B**”.

Definition of **affected iwi or hapū**: to omit “**or hapū**” (line 4 on page 12) and substitute “**, hapū, or whānau**”.

Paragraph (a) of the definition of **applicant group**: to omit “and whānau” (line 13 on page 12) and substitute “or whānau”.

Paragraph (b) of the definition of **applicant group**: to omit “and whānau” (line 20 on page 12) and substitute “or whānau”.

Definition of **chief executive**: to omit “Secretary for Justice” (line 25 on page 12) and substitute “chief executive of Land Information New Zealand”.

Paragraph (b) of the definition of **common marine and coastal area** (line 31 on page 12 to line 5 on page 13): to omit this paragraph and substitute the following paragraph:

- (b) any area that is owned by the Crown and has the status of any of the following kinds:
 - (i) a conservation area within the meaning of section 2(1) of the Conservation Act 1987;
 - (ii) a national park within the meaning of section 2 of the National Parks Act 1980;
 - (iii) a reserve within the meaning of section 2(1) of the Reserves Act 1977; and

Definition of **concession**: to omit this definition (lines 7 to 12 on page 13) and substitute the following definition:

concession means a concession granted following the process required by Part 3B of the Conservation Act 1987

To insert the following definition after the definition of **consent authority** (after line 14 on page 13):

conservation area has the meaning given in section 2(1) of the Conservation Act 1987

Definition of **conservation protected area**: to omit this definition (lines 21 to 29 on page 13) and substitute the following definition:

conservation protected area—

- (a) means a part of the marine and coastal area that is protected, primarily for the purposes of conserving natural resources or the historical and cultural heritage of the area, under 1 or more of the following Acts:
 - (i) the Conservation Act 1987;
 - (ii) the National Parks Act 1980;
 - (iii) the Reserves Act 1977;
 - (iv) the Wildlife Act 1953; and
- (b) includes any adjoining land that may become part of that conservation protected area, whether or not it is within the marine and coastal area

To insert the following definition after the definition of **contact details** (after line 1 on page 14):

council-controlled organisation has the meaning given in section 6(1) of the Local Government Act 2002

Definition of **customary marine title area**: to add “and brought into effect” (line 15 on page 14).

Paragraph (a) of the definition of **customary marine title group**: to insert after “made” (line 17 on page 14) “and brought into effect”.

Definition of **customary marine title order**: to omit this definition (lines 22 to 25 on page 14) and substitute the following definition:

customary marine title order means an order of the Court—

- (a) granted in recognition of a customary marine title of a customary marine title group in respect of a customary marine title area; and
- (b) sealed under **section 112A**

To insert the following definition after the definition of **customary marine title order** (after line 25 on page 14):

deemed accommodated activity has the meaning given in **section 64C**

Definition of **effective date**: to omit this definition (lines 28 to 32 on page 14) and substitute the following definition:

effective date means,—

- (a) in the case of a recognition order made under **section 96**, the date on which the order is sealed under **section 112A**; and
- (b) in the case of an agreement entered into under **section 93**, the date on which the agreement is brought into effect under **section 94(1)**

To insert after the definition of **infrastructure** (after line 38 on page 14) the following definition:

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

Paragraph (d) of the definition of **marine and coastal area**: to omit “below” (line 21 on page 15) and substitute “under”.

Definition of **protected customary rights order**: to add (line 20 on page 16) “and sealed under **section 112A**”.

Definition of **responsible Minister**: to insert after “administration of” (line 3 on page 17) “any provision in”.

Definition of **RMA permission right**: to omit “and” (line 6 on page 17) and substitute “to”.

To insert the following definition after the definition of **road** (after line 14 on page 17):

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

Definition of **specified freehold title**: to omit “, immediately before the commencement of **Part 2**,” (lines 17 and 18 on page 17).

New subclause (2): to add the following subclause as *subclause (2)* (after line 10 on page 18):

- (2) In **Schedule 2** and elsewhere as the context requires, **effect** has the meaning given in section 3 of the Resource Management Act 1991.

Clauses 8 and 9

To omit these clauses (line 11 on page 18 to line 35 on page 22).

Clause 11

Subclause (2): to omit “Part” (line 10 on page 23) and substitute “Act”.

Subclause (3): to omit “Part” (line 11 on page 23) and substitute “Act”.

Subclause (4): to omit “Part” (line 15 on page 23) and substitute “Act”.

Subclause (5): to omit this subclause (lines 20 to 37 on page 23) and substitute the following subclause:

- (5) The special status accorded by this section to the common marine and coastal area does not affect—
 - (a) the recognition of customary interests in accordance with this Act; or
 - (b) any lawful use of any part of the common marine and coastal area or the undertaking of any lawful activity in any part of the common marine and coastal area; or
 - (c) any power to impose, by or under an enactment, a prohibition, limitation, or restriction in respect of a part of the common marine and coastal area; or
 - (d) any power or duty, by or under an enactment, to grant resource consents or permits (including the power to

- impose charges) within any part of the common marine and coastal area; or
- (e) any power, by or under an enactment, to accord a status of any kind to a part of the common marine and coastal area, or to set aside a part of the common marine and coastal area for a specific purpose; or
 - (f) any status that is, by or under an enactment, accorded to a part of the common marine and coastal area or a specific purpose for which a part of the common marine and coastal area is, by or under an enactment, set aside, or any rights or powers that may, by or under an enactment, be exercised in relation to that status or purpose.

Clause 12

Subclause (1): to omit “, other than a customary marine title area,” (lines 6 and 7 on page 24).

Subclause (1)(d): to omit this paragraph (lines 14 to 16 on page 24).

Subclause (2): to omit “any defined area to which this section applies” (lines 18 and 19 on page 24).

Subclause (2): to add “any defined area to which this section applies other than an area that is within a customary marine title area” (line 19 on page 24).

Clause 13

To omit this clause (line 26 on page 24 to line 6 on page 25) and substitute the following clause:

13 Boundary changes of marine and coastal area

- (1) This Act (other than **section 11(4)**) does not affect any enactment or the common law that governs accretions or erosions.
- (2) However, if, because of a change caused by a natural occurrence or process, any land, other than a road, that is owned by the Crown or a local authority becomes part of the marine and coastal area, then that land becomes part of the common marine and coastal area (even if that land consists of or is included in a piece of land defined by fixed boundaries).
- (3) If land has, because of a change caused by a natural occurrence or process, ceased to be part of the common marine and coastal area, and the title to that land is not determined by an enactment or the common law, then the land vests in the Crown as Crown land and is subject to the Land Act 1948.

Clauses 14 and 15

To omit these clauses (lines 7 to 16 on page 25).

Clause 16

To omit this clause (lines 17 to 33 on page 25) and substitute the following clauses:

16 Roads located in marine and coastal area

- (1) Any road, whether formed or unformed, that is in the marine and coastal area on the commencement of this Act is not part of the common marine and coastal area.
- (2) A certificate signed and dated by the responsible Minister may state, in respect of an unformed road to which **subsection (1)** applies,—
 - (a) that the formation of the road has commenced; or
 - (b) that the Minister believes that the formation of the road is intended to be commenced, having regard to any evidence that the Minister considers relevant, including, without limitation, any resource consent or other authorisation for that formation or any application or proposed application for such consent or authorisation.
- (3) If, on the day before any quinquennial anniversary, an unformed road to which **subsection (1)** applies continues in existence as an unformed road, then that road is deemed to be stopped, and becomes part of the common marine and coastal area on that anniversary, unless a current certificate has been signed and dated in respect of that road.
- (4) If a road to which **subsection (1)** applies continues to be unformed for at least 15 years after the commencement of this Act, the road is deemed to be stopped, and becomes part of the common marine and coastal area, on the date that the responsible Minister, in his or her discretion, signs and dates a certificate stating that—
 - (a) the formation of the road has not commenced; and
 - (b) the Minister believes that there is no longer an intention to commence the formation of the road.
- (5) An unformed road that, after the commencement of this Act, comes into existence in the marine and coastal area is part of the common marine and coastal area.
- (6) However, if a road to which **subsection (5)** applies is formed, the road ceases to be part of the common marine and coastal area on the day on which its formation is completed.
- (7) In any case where a road in the marine and coastal area is not part of the common marine and coastal area, the ownership, management, and control of the road is determined and governed by the enactments that apply to the road.
- (8) Nothing in this section (except **subsection (7)**) and in **section 16A** applies to a private road.
- (9) In this section,—

current certificate means a certificate under **subsection (2)** that is dated not earlier than 6 months before the relevant quinquennial anniversary

formation and **form** have the same meaning as in section 2(1) of the Local Government Act 1974

private road has the same meaning as in section 315(1) of the Local Government Act 1974

quinquennial anniversary means any date that is the fifth, tenth, or 15th anniversary of the commencement of this Act.

16A No ownership in road that becomes part of common marine and coastal area

- (1) When a road or a former road becomes part of the common marine and coastal area, the title of the Crown or other entity as owner of the road is divested.
- (2) If a road in the marine and coastal area is stopped under the Local Government Act 1974 or the Public Works Act 1981, the former road becomes or, as the case requires, continues to be part of the common marine and coastal area.
- (3) A certificate signed by the responsible Minister that identifies a road or an area and states that a provision of **section 16** or this section has, since a specified date, applied to the road or area is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate.
- (4) This section and **section 16** override **section 19**.

Clause 18

Subclause (1): to omit “Part” (line 18 on page 26) and substitute “Act”.

Subclause (1): to omit “coastal marine” (line 22 on page 26) and substitute “marine and coastal”.

Subclause (3): to omit this subclause (lines 28 to 30 on page 26).

Clause 19

Subclause (1): to omit “Part” (line 33 on page 26) and substitute “Act”.

Subclause (3): to omit “Part” (line 6 on page 27) and substitute “Act”.

To insert the following subclause after *subclause (3)* (after line 9 on page 27):

- (3A) A person is presumed, unless the contrary is shown, to own a structure to which this section applies if the person holds a resource consent for the occupation of the part of the common marine and coastal area in which the structure is located.

Subclause (4): to omit “Part” (line 11 on page 27) and substitute “Act”.

Clause 20(3)

To omit this subclause (line 26 on page 27) and substitute the following subclauses:

- (3) Where the ownership of a structure in the common marine and coastal area is uncertain, the regional council must undertake an inquiry under **subsection (2)** if there is no current resource consent in respect of the structure.
- (4) Every inquiry under **subsection (2)** must be undertaken in accordance with regulations made under **section 118**.
- (5) Nothing in this section makes the Crown liable—
 - (a) for any breaches committed, in respect of a structure, before the Crown became the deemed owner of the structure; or
 - (b) for any effects attributable to anything done or omitted, in respect of a structure, before the Crown became the deemed owner of the structure; or
 - (c) to comply with any requirement in respect of the structure that does not relate to a matter of health or safety or to a significant adverse effect on the environment.

Clause 21

To omit this clause (lines 27 to 29 on page 27) and substitute the following clause:

21 Act does not affect existing resource consents or lawful activities

Nothing in this Act limits or affects—

- (a) any resource consent granted before the commencement of this Act; or
- (b) any activities that can be lawfully undertaken without a resource consent or other authorisation.

Clause 22

Subclause (1)(a): to omit “or permit” (line 32 on page 27) and substitute “permit, easement, or statutory authorisation”.

Subclause (1)(a): to omit “Part” (line 34 on page 27) and substitute “Act”.

Subclause (2): to omit “Part” (line 5 on page 28) and substitute “Act”.

Heading to clause 23

To omit “**certificates of title**” (line 22 on page 28) and substitute “**computer freehold registers**”.

Clause 24(2)(d)

To omit “certificate of title or” (line 1 on page 30).

Clause 25

Heading to clause 25: to omit “**common**” (line 8 on page 30).

Subclause (1): to omit “common” (line 11 on page 30).

Clause 26

Subclause (1): to insert after “**section**” (line 17 on page 30) “**11(3) or (4) or**”.

Subclause (2)(b)(i): to insert after “**section**” (line 32 on page 30) “**11(3) or (4) or**”.

Subclause (3): to omit this subclause (lines 1 to 3 on page 31) and substitute the following subclause:

- (3) An application under **subsection (1)** must be made,—
 - (a) if the loss results from the operation of **section 11(3)**, not later than 12 months after the commencement of this Act:
 - (b) if the loss results from the operation of **section 11(4) or 18**, not later than 12 months after the occurrence of the loss to which the application relates.

Subclause (4): to insert after “**section**” (line 6 on page 31) “**11(3) or (4) or**”.

Subclause (5): to omit “Part” (line 8 on page 31) and substitute “Act”.

Clause 27(1)

To omit this subclause (lines 16 to 22 on page 31) and substitute the following subclause:

- (1) Every individual has, without charge, the following rights:
 - (a) to enter, stay in or on, and leave the common marine and coastal area:
 - (b) to pass and repass in, on, over, and across the common marine and coastal area:
 - (c) to engage in recreational activities in or on the common marine and coastal area.

Clause 28

Subclause (1)(a): to omit “territorial sea” (line 4 on page 32) and substitute “marine and coastal area”.

Subclause (3): to add (line 19 on page 32) “, including restrictions and prohibitions imposed under **sections 77 and 78**”.

Heading above clause 30 and clauses 30 and 31

To omit this heading and these clauses (line 1 on page 33 to line 2 on page 35).

Clause 32(1)

Definition of **developer**: to add (line 9 on page 35) “, whether or not that resource consent was obtained after the commencement or completion of the reclamation”.

To insert the following definition after the definition of **dispose of** (after line 10 on page 35) the following definition:

eligible applicant, in relation to an application under **section 38**, means a person who, under a provision of that section, is entitled to make that application

Definition of **freehold interest**: to omit this definition (line 11 on page 35) and substitute the following definition:

freehold interest means an estate in fee simple but does not include a stratum estate in freehold or in leasehold created under the Unit Titles Act 1972 or the Unit Titles Act 2010

Clause 33

Subclause (1): to omit “an authorised reclamation, whether the reclamation was completed before or after the commencement of this Part” (lines 3 to 5 on page 36) and substitute “a lawful reclamation”.

Subclause (2): to omit “Part” (line 8 on page 36) and substitute “Act”.

Subclause (3): to omit “unauthorised reclamation that has been completed or terminated after the commencement of this Part” (lines 12 to 14 on page 36) and substitute “unlawful reclamation”.

Clause 34

Subclause (1)(a): to omit “Part” (line 29 on page 36) and substitute “Act”.

Subclause (1)(a): to insert the following subparagraph after *subparagraph (ii)* (after line 33 on page 36):

(iia) subject to the Foreshore and Seabed Endowment Revesting Act 1991; or

Subclause (2): to omit “Part” (line 36 on page 36) and substitute “Act”.

Subclause (2): to insert after “the Foreshore and Seabed Act 2004” (line 2 on page 37) “, the Foreshore and Seabed Endowment Revesting Act 1991,”.

Subclause (3)(a): to omit “Part” (line 6 on page 37) and substitute “Act”.

Clause 35(1)

To omit this subclause (lines 12 to 17 on page 37) and substitute the following subclause:

- (1) The Minister may, by notice in the *Gazette*, declare any land of the following kind to be Crown land subject to the Land Act 1948 and not to this Act:
 - (a) reclaimed land vested in the Crown by **section 33 or 34**;
 - (b) reclaimed land in which the Crown has, at any time after the commencement of this Act, acquired the freehold interest.

Clause 38

Subclauses (1) and (2): to omit these subclauses (lines 10 to 19 on page 38) and substitute the following subclauses:

- (1) A developer of reclaimed land subject to this subpart that has been, or is being, or is to be formed may apply to the Minister for the grant to the developer of an interest in that reclaimed land.

- (2) A network utility operator may apply to the Minister for the grant to the network utility operator of a lesser interest in reclaimed land subject to this subpart that has been, or is being, or is to be formed on the ground that the lesser interest is required for the purposes of the network utility operation undertaken by the network utility operator.

Subclause (6): to omit “**subsection (6)**” (line 31 on page 38) and substitute “**subsection (5)**”.

Subclause (7): to omit this subclause (lines 33 to 36 on page 38 and lines 1 to 3 on page 39) and substitute the following subclause:

- (7) In this section, **network utility operator** and **network utility operation** have the same meanings as in section 166 of the Resource Management Act 1991.

Clause 39

Subclause (1): to omit “If the Minister is satisfied that an application for the grant of an interest in reclaimed land subject to this subpart has been made” (lines 5 and 6 on page 39) and substitute “When an application under **section 38** is made”.

Subclause (2)(e): to omit “(but not yet reported on)” (lines 37 and 38 on page 39).

Clause 40(1)

To omit “If a person of a kind specified in **subsection (2)** is eligible to apply for the grant of an interest in reclaimed land subject to this subpart and makes such an application under **section 38**” (lines 17 to 19 on page 40) and substitute “In the case of an application made under **section 38** by an eligible applicant who is a person of a kind specified in **subsection (2)**”.

Clause 41(3)

To omit this subclause (lines 14 to 20 on page 41) and substitute the following subclause:

- (3) The Minister may, on the Minister’s own initiative or on application by an applicant, vary a determination made under **section 39(1)** before an interest in the reclaimed land to which the determination relates is vested under **section 42** if that variation is, in the Minister’s opinion, necessary or desirable—
- (a) to take account of any of the matters specified in **section 39(2)**; or
 - (b) for any other reason.

Clause 42

To omit this clause (lines 21 to 37 on page 41 and lines 1 to 24 on page 42) and substitute the following clause:

- 42 Vesting of interest in reclaimed land subject to this subpart**
- (1) The Minister may, by notice in the *Gazette*, vest in an applicant an interest in reclaimed land subject to this subpart if the Minister is satisfied that—
 - (a) the vesting is in accordance with a determination made under **section 39(1)**, as varied by any variations under **section 41(3)**; and
 - (b) any conditions imposed under **section 39(1)(c)** have been complied with or that adequate provision has been made to ensure that those conditions will be complied with; and
 - (c) a certificate under section 245(5)(b) of the Resource Management Act 1991 has been issued in respect of the reclaimed land.
 - (2) Every *Gazette* notice published under **subsection (1)** must—
 - (a) state the name of the applicant in whom the interest is vested and describe the position and extent of the reclaimed land; and
 - (b) describe the interest vested; and
 - (c) describe any encumbrances or restrictions imposed on the interest, including any restrictions that apply under **section 46**; and
 - (d) where the interest vested is a freehold interest and in any other case where the Minister considers it appropriate, be sent by the Minister to the Registrar, with a request that a computer register be issued accordingly; and
 - (e) where the Registrar receives a request under **paragraph (d)**, be registered by the Registrar after receipt from the Minister.
 - (3) The Registrar must, in accordance with a request made under **subsection (2)(d)**,—
 - (a) issue a computer register under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 in respect of the interest in the land vested by the *Gazette* notice; and
 - (b) record on that computer register—
 - (i) that the land is reclaimed land subject to **subpart 3 of Part 2** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and
 - (ii) where the interest vested is a freehold interest, that the disposition of the freehold interest in that land is restricted by that subpart.

Clause 43

Subclause (1): to omit “granted” (line 26 on page 42) and substitute “vested”.

Subclause (3): to omit “grant” (line 34 on page 42) and substitute “vesting”.

Subclause (5): to omit “Part” (line 3 on page 43) and substitute “Act”.

Clause 44

Subclause (1)(a): to omit “Part” (line 10 on page 43) and substitute “Act”.

Subclause (1)(b): to insert before “determined” (line 11 on page 43) “substantively”.

To insert the following subclause after *subclause (1)* (after line 12 on page 43):

- (1A) No applicant may apply under **section 38** if—
- (a) the applicant has previously made an application (**application A**) to which this section applies; and
 - (b) application A was withdrawn or discontinued; and
 - (c) at the time of that withdrawal or discontinuance, application A was in competition with another application to which this section applies.

Subclause (4)(a): to omit “Part” (line 25 on page 43) and substitute “Act”.

Subclause (5): to omit “90” (line 32 on page 43) and substitute “180”.

Subclause (5): to omit “Part” (line 33 on page 43) and substitute “Act”.

New clause 44A

To insert the following clause after *clause 44* (after line 2 on page 44):

44A Savings

- (1) Where, as at the commencement of this Act, any right, title, or interest in reclaimed land is to be vested in a person under a determination of an application under section 355 of the Resource Management Act 1991 (as in force immediately before the commencement of this Act) but the right, title, or interest has not yet been formally vested, the Minister of Conservation must, if satisfied that all relevant conditions have been fulfilled and the price (if any) has been paid, give effect to the determination as if—
 - (a) this subpart (other than this section) had not been enacted; and
 - (b) the Resource Management Act 1991 had not been amended by this Act.
- (2) In **subsection (1), determination** includes an agreement referred to in section 355AA(2)(b) of the Resource Management Act 1991 (as in force immediately before the commencement of this Act).

Clause 45

Subclause (1): to insert after “has been formed” (line 6 on page 44) “or is being formed or is to be formed”.

Subclause (3): to add “; and” (line 26 on page 44) and also to add the following paragraphs (after line 26 on page 44):

- (c) determine the application, including whether any conditions must be fulfilled before any interest in the reclaimed land is vested and the nature of any such conditions; and
- (d) notify the customary marine title group of the determination.

Subclause (4): to omit this subclause (lines 27 and 28 on page 44) and substitute the following subclauses:

- (3A) Before the Minister makes a determination under **subsection (3)(c)**, the Minister must give the customary marine title group a reasonable opportunity to comment on the proposed determination.
- (4) If satisfied that a certificate under section 245(5)(b) of the Resource Management Act 1991 has been issued in respect of the reclaimed land and that any conditions determined under **subsection (3)(c)** have been fulfilled, the Minister may, by notice in the *Gazette*, vest in the customary marine title group an interest in the reclaimed land.

Subclause (5)(b) : to omit “granted” (line 33 on page 44) and substitute “vested”.

Subclause (5)(d): to omit “granted” (line 36 on page 44) and substitute “vested”.

Subclause (6): to omit “granted” (line 11 on page 45) and substitute “vested”.

Clause 46

Subclauses (1) and (2): to omit these subclauses (lines 14 to 24 on page 45) and substitute the following subclauses:

- (1) For as long as a computer register issued for reclaimed land subject to this subpart contains a record made under **section 42(3)(b)**, the freehold interest in the land may not be disposed of otherwise than in accordance with **section 47**, but if that record is removed (in accordance with **subsection (6)** of this section) following a disposition in accordance with **section 47**, the freehold interest may be disposed of in any lawful way.
- (2) However, the restriction in **subsection (1)** does not apply to a disposition that—
 - (a) is made by a company to another company if both companies are—
 - (i) members of the same group (within the meaning of section 2(1) of the Financial Reporting Act 1993); or
 - (ii) related companies (within the meaning of section 2(3) of the Companies Act 1993); or
 - (b) affects not solely the freehold interest in the reclaimed land, but also 1 or more other assets.

Subclause (3): to insert after “The Minister may” (line 25 on page 45) “, at the request of the proprietor of the freehold interest and on payment of any fees payable under regulations made under this Act,”.

Clause 47

Subclause (3): to omit “a notice” (line 25 on page 46) and substitute “public notice”.

Subclauses (4) to (7): to omit these subclauses (lines 27 to 37 on page 46 and lines 1 to 20 on page 47) and substitute the following subclauses:

- (4) A public notice under this subsection must be addressed to all iwi and hapū within the area in which the reclaimed land is located and must invite tenders from representatives of those iwi and hapū for the acquisition of the freehold interest and must state:
 - (a) the minimum consideration for the freehold interest, which may not be less than the consideration stated in the most recent notice given or sent under **subsection (2)**;
 - (b) any other terms and conditions, which may not be more favourable than the terms and conditions stated in the most recent notice given under **subsection (2)**.
- (5) If, within the period that the notice under **subsection (4)** is in effect, no hapū or iwi enters into a contract to acquire the freehold interest, the proprietor may, before the second anniversary of the day on which the notice was given to the Minister under **subsection (2)**, give public notice under **subsection (6)**.
- (6) A public notice under this subsection must invite tenders from any person for the acquisition of the freehold interest and state—
 - (a) the minimum consideration for the freehold interest, which may not be less than the consideration stated in the most recent public notice given under **subsection (4)**;
 - (b) any other terms and conditions, which may not be more favourable than the terms and conditions stated in the most recent notice given under **subsection (4)**.
- (7) A notice given or published under **subsection (2), (4), or (6)** is in effect for the period that commences on the date on which the Minister receives the notice or, in the case of a public notice, the notice is first published and ends with the close of the 90th day after that date.

Clause 48

Heading to *clause 48*: to omit “**Purpose**” (line 24 on page 47) and substitute “**Overview**”.

To omit “The purpose of this Part is to set out the full extent of” (line 25 on page 47) and substitute “This Part sets out”.

Clauses 49 to 51

To omit these clauses (line 31 on page 47 to line 34 on page 49) and substitute the following clauses:

49 Participation in conservation processes

- (1) In this section and **sections 50 to 52**, **affected iwi, hapū, or whānau** means iwi, hapū, or whānau that exercise kaitiakitanga in a part of the common marine and coastal area where a conservation process is being considered.
- (2) Affected iwi, hapū, or whānau have the right to participate in conservation processes in the common marine and coastal area.
- (3) For the purposes of **subsection (1)**, the conservation processes are—
 - (a) applications made under section 5 of the Marine Reserves Act 1971 for the purpose of declaring or extending a marine reserve;
 - (b) proposals under section 22 of the Marine Mammals Protection Act 1978 to define and declare or extend a marine mammal sanctuary;
 - (c) proposals under the enactments relevant to conservation protected areas to declare or extend conservation protected areas;
 - (d) publicly notified applications for concessions;
 - (e) applications made under regulation 12 of the Marine Mammals Protection Regulations 1992 for permits authorising marine mammal watching.

50 Notification of conservation process

- (1) If an application or a proposal is made for a conservation process, notice must be given as provided for in **subsection (2)**, by—
 - (a) the Director-General, in the case of those referred to in **section 49(3)(a) to (d)**; and
 - (b) the applicant, in the case of an application referred to in **section 49(3)(e)**.
- (2) Notice must be given as soon as is reasonably practicable after the application or proposal is received by the Director-General and may be given—
 - (a) as part of any public notice given to members of the public generally of the matter to which it relates; or
 - (b) in a case where the Director-General is not otherwise required to give public notice, to the affected iwi, hapū,

or whānau in particular in any publication circulating in the locality to which the proposal relates.

- (3) A notice given under this section must—
- (a) include advice that any iwi, hapū, or whānau that consider they are affected iwi, hapū, or whānau may provide that advice to the Director-General; and
 - (b) state the day by which any iwi, hapū, or whānau who may be affected must provide their views; and
 - (c) provide sufficient information about the subject matter and scope of the application or proposal—
 - (i) to inform iwi, hapū, or whānau who may be affected of the obligations on the Director-General under this subpart; and
 - (ii) to assist affected iwi, hapū, or whānau to decide whether they wish to make a submission on the application or proposal; and
 - (iii) to advise where further information on an application or proposal may be viewed.
- (4) In the event of a dispute as to whether, or which, iwi, hapū, or whānau are affected by an application or proposal, the Director-General must—
- (a) seek, and may rely on, any evidence that in his or her opinion is of sufficient authority to resolve the dispute; and
 - (b) advise iwi, hapū, or whānau without delay of the decision made under this subsection, with reasons.
- (5) A decision of the Director-General as to whether iwi, hapū, or whānau are affected is final.

51 Obligation on decision maker

If the Director-General is advised by iwi, hapū, or whānau and accepts, or determines under **section 50(4)**, that they are affected iwi, hapū, or whānau, the decision maker must have particular regard to the views of those affected iwi, hapū, or whānau in considering the application or proposal.

Clause 53(2)

To insert the following paragraph after *paragraph (a)* (after line 24 on page 50):

- (ab) that is a commercial aquaculture activity (within the meaning of section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004); or

Paragraph (b)(iii): to omit this paragraph (lines 34 and 35 on page 50).

Clause 54

Subclause (1): to omit “9” (line 18 on page 51) and substitute “12”.

Subclause (2): to omit this subclause (lines 20 to 23 on page 51) and substitute the following clause:

- (2) In exercising a protected customary right, a protected customary rights group is not liable for—
 - (a) the payment of coastal occupation charges imposed under section 64A of the Resource Management Act 1991; or
 - (b) the payment of royalties for sand and shingle imposed by regulations made under the Resource Management Act 1991.

Subclause (4)(a): to insert after “delegate” (line 34 on page 51) “or transfer”.

Subclause (4)(b): to omit this paragraph (lines 36 and 37 on page 51).

Subclause (4)(c): to omit this paragraph (lines 1 and 2 on page 52) and substitute the following paragraph:

- (c) derive a commercial benefit from exercising its protected customary rights, except in relation to the exercise of—
 - (i) a non-commercial aquaculture activity; or
 - (ii) a non-commercial fishery activity that is not a right or interest subject to the declarations in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1991:

Clause 55

Heading to clause 55: to add after “**transfers**” (line 8 on page 52) “**of protected customary rights**”.

Subclause (3): to omit this subclause and substitute the following subclause:

- (3) A delegation or transfer does not take effect until,—
 - (a) in the case of a protected customary rights order, the order is varied in accordance with **section 111**; and
 - (b) in the case of an agreement, the agreement is varied.

Clause 57

Subclause (1): to omit this subclause (lines 3 to 5 on page 53) and substitute the following subclause:

- (1) This section applies if an application for a resource consent for an activity to be undertaken wholly or in part within a protected customary rights area is lodged on or after the date that—
 - (a) a protected customary rights agreement comes into effect under **section 94(1)(a)**; or
 - (b) a protected customary rights order is sealed in accordance with **section 112A**.

Subclause (3)(a): to omit this paragraph (lines 16 to 20 on page 53) and substitute the following paragraph:

- (a) a coastal permit under the Resource Management Act 1991 to permit existing aquaculture activities to continue to be carried out in a specified part of the common marine and coastal area,—
 - (i) regardless of when the application is lodged or whether there is any change in the species farmed or in the method of marine farming; and
 - (ii) provided that there is no increase in the area, or change to the location, of the coastal space occupied by the aquaculture activity for which the existing coastal permit was granted; or

Subclause (3)(b): to omit “**section 8(2)**” (line 23 on page 53) and substitute “**section 64A**”.

Subclause (3)(b): to omit “.” (line 26 on page 53) and substitute “; or”.

Subclause (3)(c): to omit this paragraph (lines 27 to 32 on page 53) and substitute the following paragraphs:

- (c) a resource consent for an existing accommodated infrastructure (within the meaning of **section 64A**) if any adverse effects of the proposed activity on the exercise of a protected customary right will be or are likely to be—
 - (i) the same or similar in character, intensity, and scale as those that existed before the application for the resource consent was lodged; or
 - (ii) if more than minor or temporary in nature; or
- (d) a resource consent for a deemed accommodated activity (within the meaning of **section 64C(1)(b)(i)**).

Subclause (4): to omit this subclause (line 33 on page 53 to line 4 on page 54).

Subclause (5): to omit “of an activity to which **subsection (3)(c)(ii)**” (line 5 on page 54) and substitute “where a deemed accommodated activity within the meaning of **section 64C(1)(b)(i)**”.

Clause 58(3)

Subclause (3): to add “; and” (line 30 on page 54) and also to add the following paragraph (after line 30 on page 54):

- (c) the person applying for controls to be imposed.

Clause 59

Subclause (2)(b): to omit “relevant protected customary rights area” (lines 9 and 10 on page 55) and substitute “extent of the protected customary rights area that is subject to the controls”.

Subclause (3)(c): to omit “authority that has” (line 24 on page 55) and substitute “authorities that have”.

Subclause (4): to omit this subclause (line 27 on page 55).

Clause 60

To omit this clause (lines 32 to 35 on page 55 and lines 1 to 12 on page 56) and substitute the following clause:

60 Customary marine title

- (1) Customary marine title exists in a specified area of the common marine and coastal area if the applicant group—
 - (a) holds the specified area in accordance with tikanga; and
 - (b) has, in relation to the specified area,—
 - (i) exclusively used and occupied it from 1840 to the present day without substantial interruption; or
 - (ii) received it, at any time after 1840, through a customary transfer in accordance with **subsection (3)**.
- (2) For the purpose of **subsection (1)(b)**, there is no substantial interruption to the exclusive use and occupation of a specified area of the common marine and coastal area if, in relation to that area, a resource consent for an activity to be carried out wholly or partly in that area is granted at any time between—
 - (a) the commencement of this Act; and
 - (b) the effective date.
- (3) For the purposes of **subsection (1)(b)(ii)**,—
 - (a) a transfer is a customary transfer if a customary interest in a specified area of the common marine and coastal area was transferred—
 - (i) between or among members of the applicant group; or
 - (ii) to the applicant group or some of its members from a group or some members of a group who were not part of the applicant group ; and
 - (b) the transfer was in accordance with tikanga; and
 - (c) the group or members of the group making the transfer—
 - (i) held the specified area in accordance with tikanga; and
 - (ii) had exclusively used and occupied the specified area from 1840 to the time of the transfer without substantial interruption; and
 - (d) the group or some members of the group to whom the transfer was made have—
 - (i) held the specified area in accordance with tikanga; and
 - (ii) exclusively used and occupied the specified area from the time of the transfer to the present day without substantial interruption.

- (4) Without limiting **subsection (2)**, customary marine title does not exist if that title is extinguished as a matter of law.

Clause 61

Heading to *clause 61*: to omit “**Factors**” (line 13 on page 56) and substitute “**Matters**”.

Subclause (1): to omit “Factors” (line 14 on page 56) and substitute “Matters”.

Subclause (1): to omit “part” (line 15 on page 56) and substitute “area”.

New subclause (2A): to insert after *subclause (2)* (after line 29 on page 56) the following subclause:

- (2A) The use at any time, by persons who are not members of an applicant group, of a specified area of the common marine and coastal area for fishing or navigation does not, of itself, preclude the applicant group from establishing the existence of customary marine title.

Subclause (3)(b)(iii): to omit “that” (line 5 on page 57) and substitute “, but only to the extent that it”.

Clause 62

To omit this clause (lines 13 to 35 on page 57).

Clause 63

New subclause (1A): to insert the following subclause after *subclause (1)* (after line 9 on page 58):

- (1A) A customary marine title group—
- (a) may use, benefit from, or develop a customary marine title area (including derive commercial benefit) by exercising the rights conferred by a customary marine title order or agreement, but is not exempt from obtaining any relevant resource consent, permit, or approval that may be required under another enactment for the use and development of that customary marine title area; and
 - (b) is not liable for payment, in relation to the customary marine title area, of—
 - (i) coastal occupation charges imposed under section 64A of the Resource Management Act 1991; or
 - (ii) royalties for sand and shingle imposed by regulations made under the Resource Management Act 1991.

Subclause (2)(b): to omit “; or” (line 14 on page 58) and substitute “.”.

Subclause (2)(c): to omit this paragraph (lines 15 to 17 on page 58).

New clause 63A

To insert the following clause after *clause 63* (after line 17 on page 58):

63A Delegation and transfer

- (1) A delegation or transfer permitted by **section 63(2)** may only be to persons who—
 - (a) belong to the same iwi or hapū as the customary marine title group making the delegation or transfer; and
 - (b) are specified in the relevant customary marine title order or agreement.
- (2) A delegation or transfer of customary marine title recognised by an order or in an agreement takes effect only when, as the case requires,—
 - (a) the order has been varied in accordance with **section 111**; or
 - (b) the agreement has been varied.
- (3) If customary marine title is delegated, the applicant group remains the holder of the customary marine title.
- (4) If customary marine title is transferred, the persons to whom the title is transferred become the customary marine title group.

Clause 64

Heading to *clause 64*: to omit this heading (line 18 on page 58) and substitute the following heading: “**Rights conferred by customary marine title**”.

Subclause (1)(f): to omit “despite **section 63(1)(b)**,” (line 36 on page 58).

Subclauses (3) and (4): to omit these subclauses (lines 20 to 35 on page 59) and substitute the following subclause:

- (3) Before a person may lodge an application that relates to a right conferred by a customary marine title order or agreement, that person must—
 - (a) notify the applicant group about the application; and
 - (b) seek the views of the group on the application.

New heading and clauses 64A to 64C

To insert the following heading and clauses after *clause 64* (after line 35 on page 59):

Accommodated activities

64A Interpretation

In this section and in **sections 64B and 64C**,—

accommodated activities are activities that are—

- (a) expressly excluded under **section 64B(1)** from the exercise of an RMA permission right or a conservation permission right by a customary marine title group; and
- (b) within the scope of the activities provided for by **section 64B(1)**

accommodated infrastructure means infrastructure (including structures and associated operations) that is—

- (a) lawfully established; and
- (b) owned, operated, or carried out by 1 or more of the following:
 - (i) the Crown, including a Crown entity;
 - (ii) a local authority or a council-controlled organisation;
 - (iii) a network utility operator (within the meaning of section 166 of the Resource Management Act 1991);
 - (iv) an electricity generator (as defined in section 2(1) of the Electricity Act 1992);
 - (v) a port company (as defined in section 2(1) of the Port Companies Act 1988);
 - (vi) a port operator (as defined in section 650J(6) of the Local Government Act 1974); and
- (c) reasonably necessary to—
 - (i) the national social or economic well-being; or
 - (ii) the social or economic well-being of the region in which the infrastructure is located.

associated operations means activities that are necessary for the functioning of an accommodated infrastructure, including—

- (a) an activity carried out under a resource consent granted under the Resource Management Act 1991 to permit existing accommodated infrastructure to continue in the same location; and
- (b) maintenance, remedial, and restoration work; and
- (c) the upgrading of existing infrastructure, but only if the effects on the environment of the upgraded infrastructure, assessed at the date when an application is made to upgrade the existing infrastructure, are to be the same or similar in character, intensity, and scale as the effects of the infrastructure that is being upgraded; and
- (d) the replacement of a part of existing infrastructure by a new part of the same or similar nature; and
- (e) the relocation of existing infrastructure, if—
 - (i) that is necessary for the continuing operation of the infrastructure; and
 - (ii) the effects on the environment of the new location, assessed at the date when an application is made to relocate the existing infrastructure, are the same or similar in character, intensity, and scale as the effects of the infrastructure in its previous location; and

(f) dredging as part of the ongoing operation of a port
Crown agent has the meaning given in section 10(1) of the Crown Entities Act 2004

deemed accommodated activities are the activities described in **section 64C**

emergency activity—

- (a) means an activity undertaken in a customary marine title area to prevent, remove, or reduce—
- (i) an actual or imminent danger to human health or safety; or
 - (ii) a danger to the environment or property so significant that immediate action is required; and
- (b) includes all necessary coastal protection work undertaken in a customary marine title area by a local authority or Crown agency; and
- (c) includes any activity authorised by an enactment for the purpose of preventing any of the matters referred to in **paragraph (a)**, including an activity in relation to—
- (i) a state of emergency declared under the Civil Defence Emergency Management Act 2002; or
 - (ii) a biosecurity emergency declared under section 144 of the Biosecurity Act 1993; or
 - (iii) an emergency or a special emergency declared under section 49B or 136 of the Hazardous Substances and New Organisms Act 1996; or
 - (iv) a marine oil spill response under the Maritime Transport Act 1994; or
 - (v) an emergency within the meaning of section 2(1) of the Fire Service Act 1975; or
 - (vi) emergency works described in section 330 of the Resource Management Act 1991

existing, in relation to an activity, means an activity for which, before the effective date, any necessary resource consents have been granted, whether or not any or all of them have been given effect to before the effective date.

64B Accommodated activities

- (1) An accommodated activity—
- (a) may be carried out in a part of the common marine and coastal area despite customary marine title being recognised in respect of that part under **subpart 1 or 1A of Part 4**; and
 - (b) is not limited or otherwise affected by the exercise of an RMA permission right or a conservation permission right; but

- (c) does not limit or otherwise affect the exercise of any other right referred to in **section 64(1)**.
- (2) For the purposes of this subpart, **accommodated activity** means any of the following activities, to the extent that they are within a customary marine title area:
 - (a) an activity authorised under a resource consent, whenever granted, if the application for the consent is first accepted by the consent authority before the effective date:
 - (b) an activity that may be carried out under a resource consent, whenever granted, for a minimum impact activity (as defined in section 2(1) of the Crown Minerals Act 1991) relating to petroleum (as defined in section 2(1) of that Act):
 - (c) accommodated infrastructure:
 - (d) the management activities for which a resource consent is required in relation to—
 - (i) an existing marine reserve:
 - (ii) an existing wildlife sanctuary:
 - (iii) an existing marine mammal sanctuary:
 - (iv) an existing concession:
 - (e) an activity carried out under a coastal permit granted under the Resource Management Act 1991 to permit existing aquaculture activities to continue to be carried out in a specified part of the common marine and coastal area,—
 - (i) regardless of when the application is lodged or whether there is any change in the species farmed or in the method of marine farming; but
 - (ii) provided that there is no increase in the area, or change of location, of the coastal space occupied by the aquaculture activities for which the existing coastal permit was granted:
 - (f) an emergency activity:
 - (g) scientific research or monitoring that is undertaken or funded by—
 - (i) the Crown:
 - (ii) any Crown agent:
 - (iii) the regional council with statutory functions in the region where the research or monitoring is to take place:
 - (h) a deemed accommodated activity.
- (3) **Subsection (4)** applies if, in relation to whether an activity is an accommodated activity, there is a dispute between—
 - (a) a customary marine title group; and

- (b) the person who owns, operates, or carries out the activity that is the subject of the dispute.
- (4) Either party to the dispute may refer the dispute to the Minister for Land Information for resolution.
- (5) The decision of the Minister is final.

64C Deemed accommodated activities

- (1) For the purpose of **section 64B(2)(h) and Schedule 2A**, the following activities are deemed to be accommodated activities:
 - (a) the construction or operation of any proposed infrastructure that—
 - (i) is within the meaning of **paragraph (b)** of the definition of **accommodated infrastructure**; and
 - (ii) cannot practicably be constructed or operated in any location other than within a customary marine title area; and
 - (iii) is essential for—
 - (A) the national social or economic wellbeing; or
 - (B) the social or economic wellbeing of the region in which the infrastructure is located; and
 - (iv) in any case where the construction of infrastructure is to take place at any time after the commencement of this Act, that construction is either—
 - (A) agreed in principle in accordance with **Part 1 of Schedule 2A** (subject to all necessary consents being obtained) by the group that holds a customary marine title order in the area relevant to the proposed infrastructure; or
 - (B) classified by the Minister for Land Information as a deemed accommodated activity (subject to all necessary resource consents being obtained) in accordance with **Part 1 of Schedule 2A**:
 - (b) any activity—
 - (i) that, at any time after the commencement of this Act, is necessary for, or reasonably related to, prospecting, exploration, mining operations, or mining (as those terms are defined in section 2(1) of the Crown Minerals Act 1991) for petroleum under a privilege; and

- (ii) for which an agreement or an arbitral award has been made under **Part 2** of **Schedule 2A**:
- (c) any activity—
 - (i) that, at any time after the commencement of this Act, is necessary for, or reasonably related to, the exercise of a privilege in existence immediately before the effective date and of the rights associated with that privilege, as provided for in **section 83(1)**; and
 - (ii) for which an agreement or arbitral award has been made under **Part 2** of **Schedule 2A**.
- (2) Nothing in **subsection (1)(a) or (b)** limits the discretion of a consent authority—
 - (a) to decline an application for a resource consent; or
 - (b) to impose conditions on the resource consent.

*Clause 65**Subclause (3)*: to omit this subclause (lines 11 to 13 on page 60).*Subclause (4)*: to omit this subclause (lines 14 to 16 on page 60).*Clause 66**Subclause (2)*: to omit this subclause (lines 1 to 5 on page 61) and substitute the following subclause:

- (2) The customary marine title group must—
 - (a) notify in writing its decision on a request for permission to—
 - (i) the applicant who gave notice under **subsection (1)**; and
 - (ii) the relevant consent authority; and
 - (b) if permission is given, specify—
 - (i) the activity for which permission is given; and
 - (ii) the applicant who is to have the benefit of the permission; and
 - (iii) the duration of the permission.

Subclause (4): to insert after “permission” (line 13 on page 61) “for the resource consent, for its duration,”.*Clause 68**Subclause (1)*: to add after “**section 65(2)**” (line 5 on page 62) “or is to be treated as having given permission under **section 66(4)**”.*Subclause (4)*: to omit “Court” (line 22 on page 62) and substitute “Environment Court”.*Subclause (4)(b)(ii)*: to omit “Court” (line 33 on page 62) and substitute “Environment Court”.

New subclause (5): to add the following subclause after *subclause (4)* (after line 33 on page 62):

- (5) Proceedings under this section and **section 69** must be heard either—
 - (a) by an Environment Judge sitting alone; or
 - (b) in the District Court and, unless the Chief District Court Judge directs otherwise, by a District Court Judge who is an Environment Judge.

Clause 69

To omit this clause (lines 34 to 37 on page 62 and lines 1 to 4 on page 63) and substitute the following clause:

- 69 Court may make enforcement orders**
- (1) **Subsection (3)** applies only if, in relation to the exercise of a resource consent,—
 - (a) the RMA permission right is applicable; and
 - (b) a resource consent is exercised without the permission of the customary marine title group being obtained.
 - (2) If proceedings for an offence are commenced in the Environment Court, the Summary Proceedings Act 1957 applies as if a reference to the District Court were a reference to the Environment Court, with any other necessary modifications.
 - (3) The Environment Court may make enforcement orders to—
 - (a) prohibit a person from continuing the activity;
 - (b) require a person to remove any structure or other work or materials from the customary marine title area;
 - (c) require a person to rectify any adverse effects of the activity on the customary marine title area.

Clause 70

Subclause (1): to omit this subclause (lines 7 to 11 on page 63) and substitute the following subclause:

- (1) A conservation permission right enables a customary marine title group to give or decline permission, on any grounds, for the Minister of Conservation or the Director-General, as the case requires, to proceed to consider an application or proposal for a conservation activity specified in **subsection (3)**.

Subclause (3): to insert after “are activities” (line 15 on page 63) “wholly or partly within the relevant customary marine title area and”.

Subclause (3)(c): to omit “under the enactments relevant to the granting of a concession for activities within the relevant customary marine title area” (lines 21 to 23 on page 63).

Clause 73(2)

To omit “essential for protection purposes” (line 22 on page 65) and substitute “for a protection purpose that is of national importance”.

Heading to clause 74

To omit “**essential**” (line 23 on page 65).

Clause 75

Subclause (1): to omit “grants a permit” (line 17 on page 66) and substitute “determines an application”.

New subclause (1A): to insert the following subclause after *subclause (1)* (after line 29 on page 66):

- (1A) The obligation under **subsection (1)(b)** does not limit the discretion of the Director-General to—
- (a) approve or decline an application on the grounds set out in the Marine Mammals Protection Regulations 1992; or
 - (b) impose any conditions on a permit that the Director-General thinks fit.

Clause 77

Subclause (3): to insert after “**subpart 1**” (line 17 on page 67) “**or 1A**”.

Subclauses (4) and (5): to omit these subclauses (lines 21 to 29 on page 67).

Clause 78

Subclause (2): to omit this subclause (lines 6 to 9 on page 68) and substitute the following subclause:

- (2) Wāhi tapu conditions—
- (a) may affect the exercise of fishing rights, but must not do so to the extent that the conditions prevent fishers from taking their lawful entitlement in a quota management area or fisheries management area; and
 - (b) do not affect the exercise of kaitiakitanga by a customary marine title group in relation to a wāhi tapu or wāhi tapu area in the customary marine title area of that group.

Subclause (3): to omit this subclause (lines 10 to 15 on page 68) and substitute the following subclause:

- (3) A customary marine title group may seek to vary or revoke a wāhi tapu condition by applying to—
- (a) vary a recognition order under **section 111**; or
 - (b) vary an agreement.

Subclause (4): to omit this subclause (lines 16 to 21 on page 68)

Clause 79

Heading to *clause 79*: to omit “**Appointment of wardens**” (line 26 on page 68) and substitute “**Wardens and fishery officers**”.

To add the following subclauses after *subclause (2)* (after line 14 on page 69):

- (3) Fishery officers and honorary fishery officers may enforce wāhi tapu conditions imposed under **section 78** if, and to

- the extent that, any fishing in a wāhi tapu or wāhi tapu area breaches those conditions.
- (4) For the purpose of **subsection (3)**, fishery officers and honorary fishery officers may enter a wāhi tapu or wāhi tapu area—
- (a) to assist in implementing a prohibition or restriction:
 - (b) to advise fishers of any applicable prohibition or restriction:
 - (c) to warn fishers to leave the wāhi tapu or wāhi tapu area:
 - (d) to record any failure of a fisher, and the details of that fisher, to comply with a prohibition or restriction, if the officer has reason to believe the failure is intentional:
 - (e) to report any such failure to a constable.
- (5) In this section, **fishery officer**, **honorary fishery officer**, and **fishing** have the meanings given in section 2(1) of the Fisheries Act 1996.

Clause 80

Heading to *clause 80*: to omit “**Implementation and enforcement of wāhi tapu conditions**” (line 15 on page 69) and substitute “**Compliance**”.

Subclause (1): to omit “implement a prohibition or restriction included in the” (lines 20 and 21 on page 69) and substitute “encourage public compliance with any”.

Subclause (4)(a): to omit “**section 8(2)**” (line 36 on page 69) and substitute “**section 64A**”.

Subclause (4)(b): to omit “**section 77(4)**” (lines 37 and 38 on page 69) and substitute “**section 78(1)(c)**”.

Clause 81(5)

To omit this subclause (lines 23 to 25 on page 70) and substitute the following subclause:

- (5) To avoid doubt, the discretion conferred on the chief executive or other person by section 11(2) of the Protected Objects Act 1975 to apply to the Māori Land Court also applies under this section.

Clause 83

To omit this clause (lines 21 to 34 on page 71 and lines 1 to 12 on page 72) and substitute the following clause:

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

- (1) Despite **section 82(2) and (3)**, the following privileges, rights, obligations, functions, and powers (including those preserved by the transitional provisions in Part 2 of the Crown Minerals Act 1991) continue as if **section 82** had not been enacted:

- (a) privileges in existence immediately before the effective date; and
 - (b) rights that can be exercised under the Crown Minerals Act 1991 by the holders of those privileges or any other person; and
 - (c) subsequent rights and privileges granted to those holders, or any other person, following the exercise of the rights referred to in **paragraph (b)** (including those provided for by section 32 of the Crown Minerals Act 1991); and
 - (d) the obligations on those holders or any other person imposed by or under the Crown Minerals Act 1991; and
 - (e) the exercise by the Crown of its functions and powers under the Crown Minerals Act 1991 in relation to any of the matters referred to in **paragraphs (a) to (d)**.
- (2) A customary marine title group is entitled to receive the following royalties:
- (a) from the Crown, any royalties due to the Crown under the Crown Minerals Act 1991 in respect of minerals (other than petroleum, gold, silver, and uranium existing in their natural condition) that are subject to any privilege referred to in **subsection (1)(a) to (d)** that applies to its customary marine title area; and
 - (b) from the regional council, any royalties for sand and shingle taken from the customary marine title area imposed by regulations made under the Resource Management Act 1991.
- (3) Royalties due under **subsection (2)**—
- (a) are payable on and after the date on which—
 - (i) a customary marine title order is sealed under **section 112A**; or
 - (ii) an agreement is brought into effect under **section 94(1)(b)**; but
 - (b) must be calculated from the date on which an application is made for—
 - (i) a recognition agreement under **section 93**; or
 - (ii) a recognition order under **section 98**.

Clause 84

To omit this clause (lines 14 to 36 on page 72 and lines 1 to 6 on page 73) and substitute the following clause:

84 Planning document

- (1) A customary marine title group has a right to prepare a planning document.
- (2) The purposes of the planning document are—

- (a) to identify issues relevant to the regulation and management of the customary marine title area of the group; and
 - (b) to set out the regulatory and management objectives of the group for its customary marine title area; and
 - (c) to set out policies for achieving those objectives.
- (3) A planning document may include any matter that can be regulated under the enactments specified in **subsection (5)**, including matters that are relevant to—
- (a) promoting the sustainable management of the natural and physical resources of the customary marine title area; and
 - (b) the protection of the cultural identity and historic heritage of the group.
- (4) A planning document may relate—
- (a) only to the customary marine title area of the group; or
 - (b) if it relates to areas outside the customary marine title area, only to the part of the common marine and coastal area where the group exercises kaitiakitanga.
- (5) The planning document may include only matters that may be regulated under—
- (a) the Conservation Act 1987 or the Acts listed in Schedule 1 of that Act;
 - (b) the Historic Places Act 1993;
 - (c) the Local Government Act 2002;
 - (d) the Resource Management Act 1991.

Clause 85

Heading to *clause 85*: to insert after “**Lodging**” (line 7 on page 73) “**and registration**”.

New subclause (1)(aa): to insert before *paragraph (a)* (before line 9 on page 73) the following paragraph:

- (aa) the regional council with jurisdiction in the region to which the planning instrument relates; and

Subclause (1)(a): to omit “any agency” (line 9 on page 73) and substitute “any of the agencies referred to in **sections 87 to 90**”.

Subclause (1)(b): to omit “, who must record the document on the register” (lines 11 and 12 on page 73).

Subclause (2): to insert after “day” (line 13 on page 73) “that is 20 working days”.

Clause 86

To omit this clause (lines 15 to 20 on page 73) and substitute:

86 Transitional provision

The obligations arising under **sections 88 and 90** do not apply to applications for resource consents or other approvals that are accepted before a planning document is lodged under **section 85(1)**

Heading above clause 87

To omit “*Recognition*” (line 21 on page 73) and substitute “*Obligations arising in respect*”.

Clause 87

Heading to *clause 87*: to omit “**Recognition by**” (line 23 on page 73) and substitute “**Obligation on**”.

Subclause (2): to omit this subclause (lines 27 to 35 on page 73 and lines 1 to 4 on page 74) and substitute the following subclause:

- (2) On and after the date that a planning document is registered, the local authority must take the planning document into account when making any decision under the Local Government Act 2002 in relation to the customary marine title area.

Clause 88

Heading to *clause 88*: to omit “**Recognition by**” (line 5 on page 74) and substitute “**Obligation on**”.

Paragraph (b): to insert “made under **paragraph (a)**” after “Trust” (line 16 on page 74).

Clause 89

Heading to *clause 89*: to omit “**Recognition by**” (line 18 on page 74) and substitute “**Obligation on**”.

Subclause (1): to omit “developing, reviewing,” (lines 22 and 23 on page 74) and substitute “reviewing”.

Clause 90

Heading to *clause 90*: to omit “**Recognition by**” (line 28 on page 74) and substitute “**Obligation on**”.

Subclause (1): to omit “11(2)” (line 34 on page 74) and substitute “11(1)”.

Subclause (1): to omit “within” (line 34 on page 74) and substitute “if these measures apply to an area that includes, wholly or in part,”.

Subclause (2): to omit this subclause (lines 1 to 6 on page 75) and substitute the following subclause:

- (2) This section—
(a) does not extend the scope of the rights conferred by **section 84 or 85** or give a customary marine title

- group the right to include fisheries or other matters in a planning document; and
- (b) relates only to matters—
 - (i) included in a planning document that are provided for by the Resource Management Act 1991; and
 - (ii) that are relevant to fisheries management.

Heading above clause 91

To omit this heading (lines 7 and 8 on page 75).

Clause 91

To omit this clause (lines 9 to 37 on page 75 and lines 1 to 37 on page 76) and substitute the following clauses:

91AA Interpretation

In this section and **section 91**, unless the context otherwise requires,—

regional document means any of the following:

- (a) a regional plan or regional policy statement (within the meanings given in section 43AA of the Resource Management Act 1991):
- (b) a proposed regional plan or proposed policy statement (within the meanings of sections 43AA and 43AAC of that Act)

relevant regional document means a regional document that relates, directly or indirectly, to all or part of the area to which a planning document applies.

91 Obligations on regional councils in relation to planning documents

Preliminary obligations

- (1) A regional council with functions in a region where 1 or more planning documents are registered in accordance with **section 85** must, until the requirements of **subsection (5)** have been completed, attach the planning documents to copies of its relevant regional documents that it makes publicly available.

Identification and application of resource management matters included in planning document

- (2) Between the time that a planning document is lodged under **section 85(1)** and the time it is deemed to be registered under **section 85(2)**, a regional council must identify the matters in the planning document that relate to resource management issues within its functions under the Resource Management Act 1991, to the extent that those matters are relevant within—

- (a) the customary marine title area to which the planning document relates; and
 - (b) any parts of the common marine and coastal area to which the planning document relates other than the customary marine title area.
- (3) When considering, under section 104 of the Resource Management Act 1991, a resource consent application for an activity that would, if the consent were granted, directly affect, wholly or in part, the area to which the planning document applies, a consent authority of a regional council must have regard to any matters identified under **subsection (2)**
- (4) The obligation under **subsection (3)** applies only to the matters in respect of which a regional council is able to exercise discretion.
- (5) The obligation under **subsection (3)** continues until—
- (a) a regional document, altered in accordance with this section, becomes operative in accordance with Schedule 1 of the Resource Management Act 1991; or
 - (b) 30 working days after the date that the customary marine title group is informed of the decision under **subsection (11)** that no alterations are to be made to the relevant regional documents.

Obligations with respect to relevant regional documents

- (6) A regional council must initiate a process to determine whether to alter its relevant regional documents, if and to the extent that any alteration would achieve the purpose of the Resource Management Act 1991, in order to—
- (a) to recognise and provide for any matters identified under **subsection (2)(a)**; and
 - (b) take into account any matters identified under **subsection (2)(b)**.
- (7) The process required by **subsection (6)** may be commenced—
- (a) at any time after a planning document is registered; but
 - (b) not later than the first proposed change to, or variation or review of, any provision in a relevant regional document that applies to a customary marine title area.
- (8) In making a determination under **subsection (6)**, a regional council must consider the extent to which alterations must be made to is relevant regional documents to—
- (a) recognise and provide for the matters in a planning document that relate to the customary marine title area; and

- (b) take into account the matters in a planning document that relate to the parts of the common marine and coastal area other than the customary marine title area.
- (9) The obligations on a regional council under **subsection (8)** must be carried out in accordance with the requirements and procedures that relate to regional documents in—
 - (a) Part 5 of the Resource Management Act 1991; and
 - (b) Schedule 1 of that Act.
- (10) A regional council may decide, in conducting the process required by **subsection (6)**, not to alter its relevant regional documents, but only on the grounds that the matters in the planning document—
 - (a) are already provided for in a relevant regional document; or
 - (b) would not achieve the purpose of the Resource Management Act 1991; or
 - (c) would be more effectively and efficiently addressed in another way.
- (11) If a regional council determines that no alterations should be notified in a proposed policy statement or plan that is notified under clause 5 of Schedule 1 of the Resource Management Act 1991, it must inform the customary marine title group in writing and provide reasons for its decision within 5 working days of that decision.
- (12) If an application is made to a regional council under Part 2 of Schedule 1 of the Resource Management Act 1991 for a private plan change that includes a customary marine title area in respect of which a planning document has been lodged,—
 - (a) the provisions of Part 2 of that schedule apply to the application, subject to the regional council having regard to any matters in the planning document when making a decision under clause 25 of that schedule; and
 - (b) if the private plan change is not rejected or treated as a resource consent application, the regional council must adopt the request and initiate the process required by **subsection (6)**.

Heading above clause 92

To omit the *Subpart 1* heading above *clause 92* (lines 3 and 4 on page 77).

Clause 92(1)

Paragraph (b): to omit “; or” (line 14 on page 77) and substitute “.”.

Paragraph (c): to omit this paragraph (line 15 on page 77).

Heading above clause 93

To omit the heading above *clause 93* (line 18 on page 77) and substitute the following heading:

Subpart 1—Recognition agreements

Clause 93

Heading to *clause 93*: to omit “**Agreement**” (line 19 on page 77) and substitute “**Recognition agreements**”.

Subclause (1): to omit this subclause (lines 20 to 22 on page 77) and substitute the following subclause:

- (1) An applicant group and the responsible Minister on behalf of the Crown may enter into an agreement recognising—
 - (a) a protected customary right;
 - (b) customary marine title.

Subclause (2): to omit “this Part comes into force” (line 24 on page 77) and substitute “the commencement of this Act”.

Subclause (2): to omit “in the prescribed form” (line 25 on page 77).

Clause 94

To omit this clause (lines 1 to 7 on page 78) and substitute the following clause:

94 How recognition agreements to be brought into effect

- (1) An agreement is of no effect unless and until it is brought into effect—
 - (a) in the case of an agreement to recognise a protected customary right, on the date prescribed by an Order in Council, which must also specify—
 - (i) the applicant group in sufficient detail to identify it; and
 - (ii) the area to which the agreement relates, with a map or diagram that is sufficient to identify the area; and
 - (b) in the case of an agreement to recognise customary marine title, by an Act of Parliament on the date specified in the enactment.
- (2) The responsible Minister must introduce legislation into Parliament that contains the full text of the agreement for the purpose of **subsection (1)(b)**.

Clause 95

To omit this clause (lines 8 to 27 on page 78) and substitute the following clause:

95 Notification of agreement recognising protected customary rights

The responsible Minister must, without delay, provide a copy of any agreement recognising a protected customary right and brought into effect under **section 94(1)(a)** to—

- (a) the chief executive; and

- (b) the local authorities that are affected by the agreement; and
- (c) the Minister of Conservation; and
- (d) the Minister of Fisheries; and
- (e) the Minister of Māori Affairs; and
- (f) any other person who the responsible Minister considers is directly affected by the agreement.

Heading above clause 96

To omit this heading (line 28 on page 78) and substitute the following heading:

Subpart 1A—Recognition by order of Court

Clause 96

To insert the following subclause after *subclause (1)* (after line 32 on page 78):

- (1A) The Court may only make an order if it is satisfied that the applicant,—
 - (a) in the case of an application for recognition of a protected customary right, meets the requirements of **section 53(1)**; or
 - (b) in the case of an application for recognition of customary marine title, meets the requirements of **section 60**.

Subclause (3): to omit this subclause (lines 34 and 35 on page 78 and lines 1 and 2 on page 79) and substitute the following subclause:

- (3) On and after the commencement of this Act, the jurisdiction of the Court to hear and determine any aboriginal rights claim is replaced fully by the jurisdiction of the Court under this Act.

Subclause (4): to omit “section” (line 8 on page 79) and substitute “Act”.

Clause 98

Subclause (1): to omit this subclause (lines 33 and 34 on page 79) and substitute the following subclause:

- (1) An applicant may apply to the Court—
 - (a) for a recognition order; or
 - (b) to vary or cancel a recognition order.

Subclause (2): to omit “this Part comes into force” (line 36 on page 79) and substitute “the commencement of this Act”.

Clause 100

To omit this clause (lines 23 to 26 on page 80).

Clause 101

Paragraph (c): to insert after “Solicitor-General” (line 36 on page 80) “on behalf of the Attorney-General”.

Paragraph (d): to omit this paragraph (lines 1 and 2 on page 81).

Clause 102(1)

To add (line 7 on page 81) “not later than 20 working days after filing the application”.

Clause 103

To omit “intention to appear” (line 31 on page 81) and substitute “appearance”.

Clause 105

To omit this clause (lines 3 to 9 on page 82) and substitute the following clause:

105 Burden of proof

- (1) In the case of an application for recognition of protected customary rights in a specified area of the common marine and coastal area, the applicant group must prove that the protected customary right —
 - (a) has been exercised in the specified area; and
 - (b) continues to be exercised by that group in the same area in accordance with tikanga.
- (2) In the case of an application for the recognition of customary marine title in a specified area of the common marine and coastal area, the applicant group must prove that the specified area—
 - (a) is held in accordance with tikanga; and
 - (b) has been used and occupied by the applicant group, either—
 - (i) from 1840 to the present day; or
 - (ii) from the time of a customary transfer to the present day.
- (3) In the case of every application for a recognition order, it is presumed, in the absence of proof to the contrary, that a customary interest has not been extinguished.

Clause 106(3)

To insert “or a notice of appearance filed under **section 103**” after “recognition order” (line 20 on page 82).

Clause 108

To omit this clause (lines 2 to 23 on page 83) and substitute the following clause:

108 Form of recognition order

- (1) An applicant group in whose favour the Court grants recognition of a protected customary right or customary marine title must submit a draft order for approval by the Registrar of the Court.
- (2) Every recognition order must specify—
 - (a) the particular area of the common marine and coastal area to which the order applies; and
 - (b) the group to which the order applies; and

- (c) the name of the holder of the order; and
 - (d) contact details for the group and for the holder.
- (3) A protected customary rights order must also include—
- (a) a description of the right, including any limitations on the scale, extent, or frequency of the exercise of the right; and
 - (b) a diagram or map that is sufficient to identify the area.
- (4) Every customary marine title order must include—
- (a) a survey plan that sets out the extent of the customary marine title area, to a standard of survey determined for the purpose by the Surveyor-General; and
 - (b) a description of the customary marine title area; and
 - (c) any prohibition or restriction that is to apply to a wāhi tapu or wāhi tapu area within the customary marine title area.

Clause 109

To omit this clause (lines 24 to 26 on page 83).

Clause 110

To omit this clause (lines 27 to 35 on page 83 and lines 1 to 26 on page 84) and substitute the following clause:

110 Requirements for notification of orders

- (1) Not later than 5 working days after a recognition order has been sealed, the Registrar of the Court must provide a copy of it to—
- (a) the responsible Minister; and
 - (b) the chief executive.
- (2) The responsible Minister must—
- (a) publish a minute of the sealed order, including any wāhi tapu conditions, in the *Gazette*; and
 - (b) send a copy of the sealed order to—
 - (i) the local authorities that have statutory functions in the area of the common marine and coastal area to which the order applies; and
 - (ii) any local authorities with statutory functions in an area adjacent to the area of the common marine and coastal area to which the order applies; and
 - (iii) the Minister of Conservation; and
 - (iv) the Minister of Māori Affairs; and
 - (v) each person who appeared on the application; and

- (vi) any other person that the Court directs.
- (3) If a customary marine title order includes recognition of wāhi tapu or wāhi tapu areas, the responsible Minister must—
 - (a) publicly notify the conditions; and
 - (b) give written notice of the conditions to—
 - (i) the customary marine title group; and
 - (ii) the New Zealand Historic Places Trust.

Clause 111

Subclauses (1) to (3): to omit these subclauses (lines 28 to 38 on page 84 and lines 1 to 3 on page 85) and substitute the following subclauses:

- (1) The Court may—
 - (a) vary a recognition order, including—
 - (i) varying any of the matters referred to in **section 108(2)**; and
 - (ii) varying or cancelling a protected customary right or customary marine title that has been delegated or transferred under **section 55 or 63(2)**; or
 - (b) cancel a recognition order.
- (2) However, the Court may vary a recognition order only if the requirements of **section 53 or 60**, as the case requires, are met by the variation.
- (3) In the case of a variation, the variation—
 - (a) must not have the effect of depriving the group to which the order applied before variation of the benefits of the order; but
 - (b) does not preclude the transfer or delegation of a right in accordance with tikanga.

Subclause (6): to omit “**Sections 101 to 103**” (line 25 on page 85) and substitute “**Sections 99 to 107**”.

To add the following subclause after *subclause (6)* (after line 26 on page 85):

- (7) **Sections 110 and 112A** apply, with the necessary modifications, to the sealing and notification of a variation to, or cancellation of, a recognition order under this section.

Clause 112

Subclause (1): to omit “Part” (line 29 on page 85) and substitute “subpart”.

Subclause (2): to omit this subclause (lines 32 to 35 on page 85) and substitute the following subclause:

- (2) In relation to a proceeding under this subpart, the Crown—
 - (a) may lodge an appeal on a matter of fact or law (whether or not it was a party to the proceedings in the Court) and must be treated as a party to the appeal; or
 - (b) may apply to be an intervener in the proceedings.

New heading and clause 112A

To insert the following heading and clause after *clause 112* (after line 3 on page 86):

Sealing of recognition orders

112A Orders sealed by Court

A recognition order must be sealed—

- (a) on the application of the applicant group; but
- (b) not before the expiry of the appeal period or the disposal of any appeal.

Heading above clause 113

To omit this heading (line 4 on page 86).

Clause 113

To omit this clause (lines 5 to 8 on page 86).

Clause 114

To omit this clause (lines 10 to 20 on page 86) and substitute the following clause:

114 Marine and coastal area register

- (1) The chief executive must keep a marine and coastal area register (the **register**) as a permanent record of—
 - (a) recognition orders, including those varied or cancelled; and
 - (b) agreements brought into effect, including those varied or cancelled; and
 - (c) planning documents registered in accordance with **section 85(2)**; and
 - (d) notices given under **section 59** of any controls imposed by the Minister of Conservation under **section 58**.
- (2) The chief executive must enter a document on the register without delay after—
 - (a) receiving it under **section 85, 95, or 110**; or
 - (b) an agreement is brought into force under **section 94(1)**.
- (3) The chief executive may only enter a document on the register if he or she is satisfied that the document meets all the requirements for registration.
- (4) No compensation is payable by the Crown for any loss or damage arising from the operation of this section.

Clause 118

Subclause (1)(b): to insert “the qualification for appointment,” after “**section 79**,” (lines 21 and 22 on page 87).

To insert the following paragraph after *subclause (1)(f)* (after line 2 on page 88):

- (fa) prescribing the steps that a regional council must or may take in undertaking an inquiry under **section 20(2)**:

Subclause (1)(g): to omit this paragraph (lines 3 to 6 on page 88) and substitute the following paragraph:

- (g) prescribing the fees payable, or the methods or rates by which fees are to be assessed, for—
 - (i) the consideration and processing of applications made, or actions taken, under **sections 37 to 47**;
 - (ii) decisions made under **Schedule 2A**;
 - (iii) public inspection and copying of documents on the register:

Subclause (1)(h): to add “**or 1A**” (line 8 on page 88).

To insert the following paragraph after *subclause (1)(h)* (after line 8 on page 88):

- (ha) prescribing the information that the chief executive may require for the purposes of **section 114**:

New clause 118A

To insert the following clause after *clause 118* (after line 15 on page 88):

118A Minister of Conservation to perform residual management functions

- (1) The Minister of Conservation may perform a managerial or administrative function provided for or contemplated by this Act or by any regulations or bylaws made under **section 119 or 120** in respect of the common marine and coastal area but only if, and to the extent that, the same or similar function is not conferred on the local authority or other person with responsibility for the relevant part of the common marine and coastal area in which the function is to be performed.
- (2) Nothing in this section or in any regulations or bylaws made under **section 119 or 120** limits any power conferred under an enactment on a local authority or any other person that may be exercised in respect of the common marine and coastal area.
- (3) In performing and exercising the functions, duties, and powers under this section and under **sections 119 and 120**, the Minister of Conservation must act consistently with the purpose stated in **section 4**.

Clause 119(1)

Paragraph (a): to insert “or navigation” after “access” (line 22 on page 88).

Paragraph (b): to omit “of the natural features” (line 24 on page 88) and substitute “or protection of the natural environment”.

New clauses 120A and 120B

To insert the following clauses after *clause 120* (after line 29 on page 89):

120A Persons breaching regulations or bylaws may be directed to stop

- (1) If a person in the common marine and coastal area is engaging in an activity that the Director-General or a delegate of the Director-General has reasonable grounds to believe constitutes a breach of any regulations made under **section 119** or any bylaws made under **section 120**, the Director-General or the delegate may direct the person to stop that activity.
- (2) If the Director-General or a delegate of the Director-General has reasonable grounds to believe that the use or the location of a vehicle, vessel, or other moveable thing in the common marine and coastal area constitutes a breach of any regulations made under **section 119** or any bylaws made under **section 120**, the Director-General or the delegate may—
 - (a) take charge, or authorise another person to take charge, of the vehicle, vessel, or thing for the purpose of moving it or preparing it for movement; and
 - (b) move, or authorise another person to move, the vehicle, vessel, or thing to another location.
- (3) A person who intentionally fails to comply with a direction given under **subsection (1)** commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000 or to both.
- (4) Every person who fails to comply with a direction given under **subsection (1)** may be arrested without warrant by any constable.
- (5) The Director-General may from time to time, either generally or particularly, delegate the power conferred by **subsection (1)** or **(2)** to any of the following persons:
 - (a) a warranted officer within the meaning of the Conservation Act 1987;
 - (b) employees of local authorities.
- (6) **Subsection (5)** does not limit sections 41 and 42 of the State Sector Act 1988, and those sections apply with any necessary modifications to any delegation under **subsection (5)**.
- (7) Before a delegate exercises a power under **subsection (1)** or **(2)**, the delegate must produce his or her warrant of appointment or other evidence of his or her authority.

*Local Acts***120B Relationship between local Acts and this Act**

- (1) If a provision of a local Act is inconsistent with a provision of this Act, the provision of this Act prevails.
- (2) Despite **subsection (1)**, to the extent that there is any conflict between this Act and the following Acts, those Acts prevail over this Act:
 - (a) the Timaru Harbour Board Act 1876 Amendment Act, 1881;
 - (b) the Timaru Harbour Board Reclamation and Empowering Act 1980;
 - (c) the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987.

Clause 121(1)

To add (line 34 on page 89) “unless on the facts of any particular case the relevant part of the public foreshore and seabed is excluded from the common marine and coastal area by or under this Act”.

Clause 122

Subclause 2: to insert “**or 1A**” after “**subpart 1**” (line 15 on page 90).

Subclause 3(a): to add “**or 1A**” (line 19 on page 90).

Subclause (4): to insert “**or 1A**” after “**subpart 1**” (line 29 on page 90).

New clause 124AA

To insert the following clause after the cross-heading above *clause 124* (after line 16 on page 91):

124AA Amendment to section 7 of Conservation Act 1987

- (1) This section amends the Conservation Act 1987.
- (2) Section 7 of the Conservation Act 1987 is amended by inserting the following subsection after subsection (1A):

“(1B) In the case of land that is foreshore within the common marine and coastal area, the Minister may declare, by notice in the *Gazette* describing the land, that the land is held for conservation purposes.”

Schedule 1

To omit this schedule (pages 92 to 99).

Schedule 2

Heading to *Schedule 2:* to insert after “**consents**” (line 2 on page 100) “**and controls**”.

Clause 2: to add the following subclause (after line 9 on page 101):

- (4) An approval given by a protected customary rights group is not able to be revoked.

Clause 4: to omit this clause (lines 1 to 13 on page 102) and substitute the following clause:

- 4 Assessment of effects of exercise of protected customary rights**
- (1) An enforcement officer authorised in writing for the purpose by a local authority may do any of the following for the purpose of assessing the effects on the environment of the exercise of a protected customary right:
 - (a) carry out surveys, investigations, tests, or measurements;
 - (b) take samples of any water, air, soil, or vegetation;
 - (c) enter or re-enter land (except a dwelling house).
 - (2) These powers may be exercised—
 - (a) at any reasonable time; and
 - (b) with or without assistance, vehicles, appliances, machinery, or equipment reasonably necessary for the purpose.

Clause 8: to omit *subclause (1)* (lines 23 to 26 on page 104) and substitute the following subclauses:

- (1) For the purpose of imposing controls on the exercise of a protected customary right under this Part, a regional council must, if directed by the Minister of Conservation at any time, and may of its own initiative in the circumstances set out in **subclause (2)**,—
 - (a) carry out an adverse effects assessment of the effects on the environment of exercising a protected customary right in its region; and
 - (b) complete, and give to the Minister, an adverse effects report based on that assessment.
- (1A) If a regional council is directed under **subclause (1)**, it must begin the adverse effects assessment not later than 5 working days after receiving the direction.

Clause 8(3)(b): to omit “latest” (line 10 on page 105) and substitute “later”.

Clause 8(3)(b)(i): to omit this subparagraph (lines 11 and 12 on page 105).

New Schedule 2A

To insert the following schedule after *Schedule 2* (after page 108):

Schedule 2A**ss 64A, 64C****Process by which certain new activities in
customary marine title area become deemed
accommodated activities****Part 1****Deemed accommodated infrastructure**

- 1 Prior to an application being lodged under the Resource Management Act 1991 for any resource consents for proposed infrastructure (within the meaning of **section 64C(1)(a)**) in a customary marine title area, the proposed infrastructure may become a deemed accommodated activity in accordance with this Part.
- 2 Any person listed in **paragraph (b)** of the definition of accommodated infrastructure in **section 64A** may apply to the Minister for Land Information to declare a proposed infrastructure to be a deemed accommodated activity. In this Part, **Minister** means the Minister of Land Information.
- 3 In applying under this Part, the applicant must provide to the Minister the following information:
 - (a) a survey and a plan that—
 - (i) shows the customary marine title area where the proposed infrastructure is to be constructed; and
 - (ii) must meet the requirements of the Cadastral Survey Act 2002 as if it were a cadastral survey within the meaning of that Act; and
 - (b) a detailed description of the proposed infrastructure, including all of the relevant resource consents that will be applied for in support of the proposed infrastructure; and
 - (c) a detailed description of the purpose for which the proposed infrastructure is to be used; and
 - (d) why the applicant considers that the proposed infrastructure complies with **section 64C(1)(a)(iii)**; and
 - (e) an assessment of all practicable alternative locations (within or outside the coastal marine area), and reasons why the proposed infrastructure cannot practicably be constructed in any location outside of the customary marine title area; and
 - (f) a description of the negotiations that have already taken place with the customary marine title group and, on the

Part 1—*continued*

basis of those negotiations, reasons why the applicant considers it cannot reasonably obtain the permission of that group for the proposed infrastructure.

- 4 Upon receipt of an application under **clause 3**, the Minister must consider and decide to—
 - (a) make an initial decision on whether there is sufficient information to demonstrate that all of those requirements and criteria have been adequately addressed; or
 - (b) seek more information from the applicant; or
 - (c) decline the application on the basis that—
 - (i) insufficient information has been provided; or
 - (ii) the proposed infrastructure does not meet all or any of the requirements and criteria set out in **clause 3**.

- 5 For the avoidance of doubt, a decision under **clause 4(a)** is not a substantive decision of the Minister in favour of the classification of the proposed infrastructure as a deemed accommodated activity. It is merely a decision that there is sufficient information for the Minister to consider the matter further with the relevant customary marine title group.

- 6 After making a decision under **clause 4(a)** that there is sufficient information (or after receiving further information under **clause 4(b)**), the Minister must, before determining the application,—
 - (a) provide to the customary marine title group a copy of the application and any further information received from the applicant; and
 - (b) invite the customary marine title group to identify appropriate compensation for the removal of its RMA permission right or conservation permission right and any other affected right associated with the customary marine title for the proposed infrastructure, in the event that it does not wish to agree to the construction of the proposed infrastructure going ahead; and
 - (c) negotiate in good faith with the customary marine title group in an attempt to compensate for the waiver of its permission rights with respect to the application.

- 7 This clause applies if, after a period of 3 months,—
 - (a) the customary marine title group fails to respond to any invitation issued under **clause 6**; or

Part 1—*continued*

- (b) the customary marine title group refuses to negotiate with the Minister; or
 - (c) the Minister and the group do not agree to waive the permission rights.
- 8 If **clause 7** applies, the Minister must consider the application and any material provided by the customary marine title group and any other relevant information and make a decision on—
- (a) whether to waive the customary marine title group's permission rights; and
 - (b) whether there are any other affected rights associated with the customary marine title; and
 - (c) what compensation to provide; and
 - (d) whether to classify the matter as a deemed accommodated activity under **section 64B**.
- 9 In making his or her decision under **clause 8**, the Minister must consider whether the matters set out in **clause 3** have been adequately addressed and, without limiting his or her consideration, the Minister may not agree to waive the permission rights if the Minister is satisfied that the information provided under **clause 3(d) and (e)** does not justify waiver.
- 10 If the customary marine title group agrees to waive the permission rights, or a decision is made by the Minister under **clause 8** to waive the permission rights, then the proposed infrastructure will become a deemed accommodated activity, except that—
- (a) the waiver of the RMA permission right will operate only for the particular resource consents applied for with respect to the proposed infrastructure (and only as far as the proposed infrastructure is defined in the *Gazette* notice set out in **clause 11**); and
 - (b) the waiver of the permission rights will not otherwise take away the legal effect of the customary marine title order or agreement, except as the customary marine title group expressly agrees otherwise or the Minister decides otherwise; and
 - (c) the waiver of the permission rights will only apply to the activity that is the subject of an application under **clause 3** and, unless expressly provided otherwise, it will not prevent the customary marine title group from exercising its permission rights under a customary marine title order or agreement within the same area for any

Part 1—*continued*

- other resource consent application not included in the *Gazette* notice published under **clause 11**; and
- (d) the customary marine title order or agreement will still be a relevant matter for the consent authority when considering the resource consents necessary for the deemed accommodated activity under the Resource Management Act 1991.
- 11 If a proposed infrastructure becomes a deemed accommodated activity under **clause 10**, the Minister must cause a notice to be published in the *Gazette* giving—
- (a) a description of the deemed accommodated activity, including a detailed description of the proposed infrastructure and all resource consents that will be applied for as part of the proposed infrastructure; and
- (b) a description of the customary marine title area and rights that are affected; and
- (c) a description of the purpose for which the infrastructure is to be used.
- 12 The Minister must serve a copy of the *Gazette* notice on the customary marine title group and the relevant regional council.

Part 2

New minerals—related activities

13 Definitions

In this Part,—

activity means any activity—

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

activity agreement means an agreement of the kind described in **clause 15** between the title holder and the permit holder

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

Part 2—*continued***14 Permit holder may request title holder to negotiate activity agreement**

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

15 Contents of activity agreement

- (1) An activity agreement may make provision for the following matters:
 - (a) the periods during which the permit holder is to undertake the activity in the customary marine title area:
 - (b) the parts of the customary marine title area on or in which the permit holder may undertake the activity:
 - (c) the kinds of activity that may be undertaken in the customary marine title area:
 - (d) the conditions to be observed by the permit holder in undertaking the activity in the customary marine title area:
 - (e) the action to be taken by the permit holder in order to protect the environment:
 - (f) the compensation to be paid to the customary marine title group as a consequence of the permit holder undertaking the activity in the customary marine title area:
 - (g) the manner of resolving any dispute arising in connection with the activity agreement:
 - (h) any other matters that the parties to the arrangement may agree to include in the activity agreement.
- (2) In considering whether to agree to an activity agreement, the customary marine title group may have regard to any matters it considers relevant.

Part 2—*continued*

16 Requests for appointment of arbitrator

- (1) The permit holder may serve a written notice on the customary marine title group requesting the group to agree to the appointment of an arbitrator if—
 - (a) the permit holder and the group are unable to agree on an activity agreement; and
 - (b) a period of at least 60 days has expired since the day on which notice was served under **clause 14(1)**.
- (2) The customary marine title group and the permit holder may agree to the appointment of any person as arbitrator.

17 Appointment of arbitrator in default of agreement

- (1) The permit holder or the customary marine title group may apply to the chief executive of the department responsible for the administration of the Crown Minerals Act 1991 for the appointment of an arbitrator if—
 - (a) the customary marine title group and the permit holder are unable to agree on the appointment of an arbitrator; and
 - (b) a period of at least 30 days has expired since the day on which notice was served under **clause 16(1)**.
- (2) Every application must be accompanied by any prescribed fee.
- (3) On receipt of an application the chief executive must as soon as practicable appoint an arbitrator.

18 Arbitration

- (1) If an arbitrator is appointed under **clause 16(2) or 17(3)**, the arbitrator must conduct an arbitration in accordance with the Arbitration Act 1996, and the provisions of that Act (other than those relating to the appointment of arbitrators) apply to the arbitration as if—
 - (a) this clause were an arbitration agreement; and
 - (b) the matters specified in **paragraphs (a) to (g) of clause 15(1)** were matters in dispute that the customary marine title group and the permit holder had agreed to submit to arbitration.
- (2) The arbitrator's award must determine the basis on which the activity is to proceed, on reasonable conditions.

Schedule 3

Item relating to the Conservation Act 1987 (lines 5 to 13 on page 109): to omit this item and substitute the following item:

Conservation Act 1987 (1987 No 65)

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

“**common marine and coastal area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**customary marine title area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**planning document** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Section 7(1) and (1A): omit “or foreshore” in each place it appears.

Section 17H: add:

“(5) When reviewing any part of a conservation management strategy, the Director-General must take into account the matters set out in any planning documents lodged with the Director-General under **section 89** of the Marine and Coastal Area (Takutai Moana) Act **2010** that are relevant to the strategy.”

Section 17I: add:

“(5) When amending any part of a conservation management strategy, the Director-General must take into account the matters set out in any planning documents lodged with the Director-General under **section 89** of the Marine and Coastal Area (Takutai Moana) Act **2010** that are relevant to the strategy.”

Section 24(7C): add “or under **section 42 or 45** of the Marine and Coastal Area (Takutai Moana) Act **2010**” after “1991”.

Section 26ZS(1)(ab): repeal and substitute:

“(ab) the Marine and Coastal Area (Takutai Moana) Act **2010**.”.

Section 39(7): omit “all foreshore and seabed” and substitute “any marine and coastal area”.

Item relating to the Crown Minerals Act 1991: to insert above the item relating to the definition of **public foreshore and seabed** in section 2(1) (above line 15 on page 109) the following item:

Section 2(1): definition of **access arrangement**: repeal and substitute:

“**access arrangement and arrangement** means an arrangement to permit access to land—

“(a) entered into by way of—

“(i) agreement; or

“(ii) determined by an arbiter in accordance with this Act; and

- “(b) between a person desiring to carry out mineral-related activities and either—
 - “(i) the owner (and occupier, if any) of the land; or
 - “(ii) in the case of land in the common marine and coastal area that is not a customary marine title area, the appropriate Minister”.

Item relating to the Crown Minerals Act 1991: to insert below the definition of **common marine and coastal area** (after line 21 on page 109) the following definition:

“**customary marine title agreement** has the meaning given to **agreement** in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

Item relating to the Crown Minerals Act 1991: to insert below the item relating to the definition of **customary marine title order** (after line 27 on page 109) the following items:

Section 2(2): insert after “Crown land” “or land in the common marine and coastal area”.

Section 2(2)(b): omit “Crown land is public foreshore and seabed” and substitute “land is part of the common marine and coastal area”.

Item relating to the Crown Minerals Act 1991: to insert below the item relating to section 25(1A) (after line 35 on page 109) the following items:

Section 32(7): add “except in the case of minerals owned by customary marine title groups, as provided for in **section 82(2)** of the Marine and Coastal Area (Takutai Moana) Act **2010** and subject to **section 83** of that Act”.

Section 49(3): omit “the owner and occupier” and substitute “each owner and occupier, and any customary marine title group”.

Section 49(3): omit “every owner and every occupier of the land” and substitute “each person or group whose consent is required”.

Section 49(4): insert “or customary marine title group” after “occupier”.

Section 50: add:

“(2) This section does not apply in the case of entry onto land that is in the common marine and coastal area.”

Section 53: add:

“(3) Subsection (2) does not apply if the permit relates to land in the common marine and coastal area, but if the permit relates to land described in Schedule 4, the permit holder may exercise the permit only—

- “(a) in respect of land that is not subject to a customary marine title order or agreement; and
- “(b) in accordance with an access agreement agreed in writing between the permit holder and the appropriate Minister.”

Section 54: add:

“(3) Subsection (2) does not apply if the permit relates to land in the common marine and coastal area, but if the permit relates to land described in Schedule 4, the permit holder may exercise the permit only—

“(a) in respect of land that is not subject to a customary marine title order or agreement; and

“(b) in accordance with an access agreement agreed in writing between the permit holder and the appropriate Minister.”

Section 55: add:

“(3) Land within the common marine and coastal area is deemed, for the purpose of subsection (2), not to be within any of the classes of land described in that subsection.”

Section 61(1A): insert “or land of the common marine and coastal area” after “1977”.

Item relating to the Crown Minerals Act 1991: to omit the item relating to section 61(3) (lines 4 and 5 on page 110).

Item relating to the Fisheries Act 1996: to omit this item (lines 6 to 22 on page 110) and substitute the following item:

Fisheries Act 1996 (1996 No 88)

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

“**customary marine title group** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**planning document** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**protected customary right** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**protected customary rights order and agreement** have the meanings given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

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

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

“(d) a planning document lodged with the Minister of Fisheries by a customary marine title group under **section 90** of the Marine and Coastal Area (Takutai Moana) Act **2010**—”.

Heading to section 89B: omit “**customary rights orders**” and substitute “**protected customary rights**”.

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

Section 89B(a): omit “customary rights order under the Foreshore and Seabed Act 2004” and substitute “protected customary rights order or agreement”.

Section 89B(b): omit “customary rights order” and substitute “protected customary rights order or an agreement”.

Section 186ZB: repeal and substitute:

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

This subpart does not apply to fish farming undertaken in accordance with a protected customary rights order or an agreement.”

Item relating to the Forest and Rural Fires Act 1977: to omit this item (lines 23 to 32 on page 110) and substitute the following item:

Forest and Rural Fires Act 1977 (1977 No 52)

Definition of **fire safety margin** in section 2(1): omit “(other than land administered by the Minister of Conservation pursuant to section 9A of the Foreshore and Seabed Endowment Revesting Act 1991)” and substitute “other than the common marine and coastal area or any reclaimed land that is subject to **subpart 3 of Part 2** of the Marine and Coastal Area (Takutai Moana) Act **2010** (as defined in **section 32(1)** of that Act)”.

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

“(v) the common marine and coastal area (as defined in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and

“(va) reclaimed land vested in the Crown under **sections 33 or 34** of that Act; and”.

To insert the following items in their appropriate alphabetical order:

Historic Places Act 1993 (1993 No 38)

Section 2: insert in their appropriate alphabetical order:

“**customary marine title area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**planning document** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Section 14: insert after subsection (3A):

“(3B) The Trust must comply with **section 88** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

Section 20: insert after subsection (6A):

“(6B) In determining an appeal in respect of a decision made under section 14(1)(a) or (b) that relates to a customary marine title

Historic Places Act 1993 (1993 No 38)—*continued*

area, the Court must have particular regard to any planning documents lodged with the New Zealand Historic Places Trust under **section 88** of the Marine and Coastal Area (Takutai Moana) Act **2010** that are relevant to an archaeological site within the customary marine title area.”

Local Government (Rating) Act 2002 (2002 No 6)

Section 5: insert in their appropriate alphabetical order:

“**common marine and coastal area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**customary marine title area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**structure** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Schedule 1: Part 1: clause 2(b) and (c): repeal.

Schedule 1: Part 1: insert after clause 22:

“23 The common marine and coastal area, including any customary marine title area, within the meaning of the Marine and Coastal Area (Takutai Moana) Act **2010**.

“24 The bed of Te Whaanga Lagoon in the Chatham Islands.

“25 Structures that are—

“(a) fixed to, or under, or over any part of the common marine and coastal area; and

“(b) owned, or deemed to be owned, by the Crown under **section 19 or 20** of the Marine and Coastal Area (Takutai Moana) Act **2010**.”

New Zealand Railways Corporation Act 1981 (1981 No 119)

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

“**common marine and coastal area** has the same meaning as in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Paragraph (a) of definition of **railway** in section 2(1): insert “or forming part of the common marine and coastal area” after “the Reserves Act 1977”.

Section 24: insert after paragraph (a):

“(ab) occupy, use, or manage any railway that is located in the common marine and coastal area: ”.

New Zealand Railways Corporation Act 1981 (1981 No 119)—*continued*

Section 117(1): insert “or of the common marine and coastal area” after “a public reserve”.

Public Works Act 1981 (1981 No 35)

Section 165(1): insert: “or any land situated in the common marine and coastal area” after “Crown land or public reserve”.

Item relating to the Resource Management Act 1991: to omit this item (line 5 on page 112 to line 3 on page 120) and substitute the following item:

Resource Management Act 1991 (1991 No 69)

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

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

“**accommodated activity** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**agreement** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**common marine and coastal area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**customary marine title area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**customary marine title group** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**customary marine title order** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**marine and coastal area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**planning document** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**protected customary right** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**protected customary rights area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

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

“**protected customary rights group** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

“**protected customary rights order** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**

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

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

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

Section 6(g): repeal and substitute:

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

Section 12(2): repeal and substitute:

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

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

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

Section 12A(1): repeal and substitute:

“(1) No person may occupy a coastal marine area for the purpose of an aquaculture activity—

“(a) except in an aquaculture management area provided for in a regional coastal plan; or

“(b) if that part of the coastal marine area is in the common marine and coastal area, unless expressly authorised by a coastal permit.”

Heading above section 17A: repeal.

Section 17A: repeal.

Section 17B: repeal.

Section 28(e): repeal.

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

Section 29(1)(p): repeal.

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

“(ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material

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

from, the coastal marine area, to the extent that it is within the common marine and coastal area.”.

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

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

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

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

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

Section 37B(d): repeal.

Section 38(3)(c): repeal.

Section 58(d): omit “in land of the Crown”.

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

Section 61(2A): repeal and substitute:

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

- “(a) the council must take into account any relevant planning document recognised by an iwi authority; and
- “(b) in relation to a planning document prepared by a customary marine title group under **section 84** of the Marine and Coastal Area (Takutai Moana) Act **2010**, the council must, in accordance with **section 91** of that Act,—
 - “(i) recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
 - “(ii) take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.”

Section 62(1)(b): repeal and substitute:

- “(b) the resource management issues of significance to iwi authorities in the region; and”.

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

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

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

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

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

Section 66(2A): repeal and substitute:

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

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

“(b) in relation to a planning document prepared by a customary marine title group under **section 84** of the Marine and Coastal Area (Takutai Moana) Act **2010**, the council must, in accordance with **section 91** of that Act,—

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

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

Section 74(2A): repeal and substitute:

“(2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district.”

Section 79A: repeal.

Section 79B: repeal.

Section 82A: repeal.

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

Section 85A: omit “a significant adverse effect on a recognised customary activity carried out under section 17A(2)” and substitute “an

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

adverse effect that is more than minor on a protected customary right carried out under **Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

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

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

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

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

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

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

Section 87A(2)(a): repeal and substitute:

“(a) the consent authority must grant a resource consent except if—

“(i) section 106 applies; or

“(ii) **section 57(2)** of the Marine and Coastal Area (Takutai Moana) Act **2010** applies; and”.

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

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

Section 95B: add:

“(4) In subsections (1) and (3), the requirements relating to an affected customary marine title group apply only in the case of applications for accommodated activities.”

Section 95F: repeal and substitute:

“95F Status of protected customary rights group

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

“(a) the activity may have adverse effects on a protected customary right carried out in accordance with the requirements of **Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and

“(b) the protected customary rights group has not given written approval for the activity or has withdrawn approval

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

for the activity in a written notice received by the consent authority before the authority has made a decision under this section.”

New section 95G: insert after section 95F:

“95G Status of customary marine title group

A consent authority must decide that a customary marine title group is an affected customary marine title group, in relation to an accommodated activity in the customary marine title area relevant to that group, if—

- “(a) the activity may have adverse effects on the exercise of the rights applying to a customary marine title group under **subpart 3 of Part 3** of the Marine and Coastal Area (Takutai Moana) Act **2010**; and
- “(b) the customary marine title group has not given written approval for the activity in a written notice received by the consent authority before the authority has made a decision under this section.”

Section 104: insert after subsection (2A):

“(2B) When considering a resource consent application for an activity in an area within the scope of a planning document, a consent authority must have regard to any resource management matters set out in that planning document.

“(2C) **Subsection (2B)** applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under **section 91** of the Marine and Coastal Area (Takutai Moana) Bill **2010**.”

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

“(iv) wāhi tapu conditions included in a customary marine title order or agreement:

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

Sections 107A to 107D: repeal.

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

Section 116: add:

“(6) If a resource consent is granted for an activity in a part of the common marine and coastal area where a customary marine title order or agreement is in effect, **section 67(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010** applies.”

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

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

Section 152(1): omit “The Governor-General may, by Order in Council, on the advice of the Minister, in respect of any specified part of the coastal marine area, direct that a consent authority shall not grant a coastal permit in respect of any land of the Crown in that specified part which would authorises the holder of the permit (if granted) to—” and substitute “The Governor-General may, by Order in Council, on the advice of the Minister, direct that a consent authority must not grant a coastal permit, in respect of a specified part of the marine and coastal area (other than in respect of any specified freehold land) that would, if granted, authorise the permit holder—”.

Section 152(4): repeal and substitute:

“(4) The Minister shall not advise the making of an Order in Council under subsection (1) or (2) unless the Minister considers that there is, or is likely to be, in respect of any area to which it is proposed that the Order in Council relate, competing demands for the use of that area for all or any of the activities referred to in subsection (1).”

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

Section 165H: omit “vested in the Crown or a regional council in a coastal marine area” and substitute “in the common marine and coastal area”.

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

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

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

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

Section 237G: repeal and substitute:

“237G Compensation

“(1) This section applies if—

“(a) the bed of a river or lake—

“(i) is vested in the Crown in accordance with section 237A(1)(a); and

“(ii) adjoins, or would adjoin if it were not for an esplanade reserve, any allotment of 4 hectares or more when land is subdivided; or

“(b) land that is within the coastal marine area—

“(i) becomes part of the common marine and coastal area in accordance with section 237A(1)(b); and

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

“(ii) adjoins, or would adjoin if it were not for an esplanade reserve, any allotment of 4 hectares or more created when land is subdivided.

“(2) In the case of land referred to in **subsection (1)(a)**, the Crown or territorial authority, as the case may be, must pay compensation to the registered proprietor of that land, unless the registered proprietor agrees otherwise.

“(3) In the case of land referred to in **subsection (1)(b)**, the Crown must pay compensation to the registered proprietor of that land, unless the registered proprietor agrees otherwise.”

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

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

“(d) to avoid doubt, any land shown on the survey plan as land in the coastal marine area becomes part of the marine and coastal area.”

Section 239(3): repeal and substitute:

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

Heading to section 293A: repeal and substitute “**Determinations on recognition orders and agreements made under Marine and Coastal Area (Takutai Moana) Act 2010**”.

Section 309(4): omit “recognised customary activity carried out in accordance with section 17A(2)” and substitute “protected customary right”.

Section 309(5): omit “337” and substitute “331”, and omit “recognised customary activity” and substitute “protected customary right”.

Section 332(1)(c): omit “; or”.

Section 332(1)(d): repeal.

Section 333(1A): repeal.

Section 354(3): repeal and substitute:

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

“(a) this Act; or

“(b) any other enactment; or

“(c) any instrument or order made under an enactment.”

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

Section 355(1): repeal.

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

Section 355(3): insert “that forms part of a riverbed or lakebed that is not within the coastal marine area and” after “reclaimed land”.

Section 355(6): repeal and substitute:

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

Section 355AA: repeal.

Section 355AB: repeal.

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

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

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

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

“(iii) the extraction of any sand, shingle, shell, and other natural materials from an area described in **subparagraph (i) or (ii)**; and

“(iv) the use of geothermal energy.”.

Schedule 1: clause 2(2)(c): repeal and substitute:

“(c) any customary marine title group in the region.”

Schedule 1: clause 3(1)(e): repeal and substitute:

“(e) any customary marine title group in the area.”

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

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

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

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

Schedule 4: clause 1A: repeal and substitute:

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

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

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

(unless written approval for the proposed activity is given by the protected customary rights group).”

Schedule 12: repeal.

Item relating to Te Ture Whenua Maori Act 1993: to insert the following item after the item relating to the definition of **land** (after line 6 on page 120):

Section 4: insert in its appropriate alphabetical order:

“**common marine and coastal area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Part 2: to omit this Part (lines 16 to 23 on page 120) and substitute the following Part:

Part 2

Regulations amended

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

Clause 3: insert in its appropriate alphabetical order:

“**customary marine title** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Clause 16(g)(ii): revoke and substitute:

“(ii) claims made under **section 92** of the Marine and Coastal Area (Takutai Moana) Act **2010** for recognition of a protected customary right or customary marine title; and”.

Marine Mammals Protection Regulations 1992 (SR 1992/322)

Regulation 2: insert in its appropriate alphabetical order:

“**customary marine title area** has the meaning given in **section 7(1)** of the Marine and Coastal Area (Takutai Moana) Act **2010**”.

Regulation 6: add:

“(2) **Section 75** of the Marine and Coastal Area (Takutai Moana) Act **2010** applies to any application under these regulations for a permit to watch marine mammals within a customary marine title area.”

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

Regulation 10(2)(h): omit “the holder of a customary rights order who” and substitute “a protected customary rights group that”.

Part 2—*continued*

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

Regulation 10(2): insert after paragraph (h):

“(ha) a customary marine title group that, in the opinion of the consent authority, may be adversely affected by the grant of a resource consent for an accommodated activity:”.

Explanatory note

This Supplementary Order paper proposes amendments to the Marine and Coastal Area (Takutai Moana) Bill as it was introduced. It reflects the recommendations presented to the Māori Affairs Select Committee on 8 February 2011 and annexed to the Commentary of that committee when it presented the Bill to the House on 9 February 2011. The most substantial amendments are outlined in this note.

The *Preamble* is amended to include the principle of manaakitanga as an aspect of the relationship of iwi, hapū, and whānau with the foreshore and seabed.

Clause 2 is amended to bring the whole bill into force on the day after the date that the Bill receives the Royal assent, rather than in stages.

New clauses 4A and 4B are relocated from *Part 2 (clauses 14 and 15)*.

Most amendments in *clause 7* are technical, but certain key definitions are amended, including those of **chief executive**, **common marine and coastal area**, **conservation protected area**, and **specified freehold land**; and some new terms are included, such as **council-controlled organisation** and **kaitiakitanga**.

Clauses 8 and 9 are relocated in *Part 3 (clauses 64A to 64C)*.

Clause 13 covers the consequences of natural changes to the coastline. It provides that ownership effects flowing from such changes will continue to be governed by statute law and the common law, except that the Crown and local authorities will always be divested of title to any land that becomes part of the marine and coastal area.

Clause 16 provides for the continuation of ownership of all roads (including any unformed roads, which are commonly referred to as a **paper roads**) that are in the marine and coastal area as at the commencement of the Bill; any such paper road that is in existence on the 5th, 10th, or 15th anniversary of the commencement of the Bill loses its status as a road unless the responsible Minister certifies that it is still intended to proceed with the construction of the road. Paper roads that, after the commencement of the Bill, come into existence in the marine and coastal area will be subject to the no-ownership status; if such a paper road is actually constructed, its ownership will be determined by the relevant statute law.

Clause 19 provides that the person who holds the resource consent for the occupation of a structure in the common marine and coastal area is presumed to own the structure.

Clause 20 requires regional councils to undertake inquiries, in accordance with regulations, into the ownership of a structure where the ownership is uncertain and there is no current resource consent for the structure. The clause is further amended to limit the liability of the Crown for abandoned structures that are deemed to be owned by the Crown.

Clause 21 clarifies that resource consents, as well as any activities that can be lawfully undertaken without a resource consent, are unaffected by the Bill.

Clause 26 expands the compensation available to local authorities. Local authorities may now be compensated if the operation of *clause 11* divests them of title to any land that they have previously purchased.

Clause 27 clarifies that the rights of access to the common marine and coastal area may be exercised without charge.

Clause 30 is relocated as *clauses 118A* and *120A*.

Clause 31 is omitted. That clause would have authorised local authorities to take action in respect of dangerous structures. Adequate provisions are already contained in the Building Act 2004 and in the Resource Management Act 1991.

Clause 35 is amended to extend the types of reclaimed land that may be declared to be Crown land subject to the Land Act 1948 and, accordingly, taken outside the scheme of *subpart 3*. Such declarations may now also be made in respect of reclaimed land that is certified after the commencement of the Bill.

Clause 38 is amended to clarify that applications for grants of interest can be made in respect of proposed reclamation projects.

Clause 44 is amended to stop current applicants for grants of interests in reclamations from withdrawing their current applications in order to reapply, where the fresh application would defeat a competing application.

Clause 44A ensures that existing applicants for grants of interests in reclamations continue to have the benefit of any determinations made in their favour.

Clause 45 is amended to enable the imposition of conditions where reclaimed land is vested in customary marine title groups.

Clause 46 is amended to limit the right of first refusal in respect of reclaimed land to dispositions comprised solely of the reclaimed land and of no other assets.

Clause 47 is amended to require the owner of reclaimed land wishing to sell the land to invite iwi and hapu in the area to tender for the land, following the Crown's refusal to buy the land. This replaces the requirement to offer the reclaimed land to the iwi or a hapu exercising customary authority over the area in which the reclaimed land is located.

Clause 48 is amended to clarify the scope of *Part 3*.

New clauses 49 to 51 include changes to replace the term "customary authority" with "kaitiakitanga", to clarify the notification requirements, to expressly include whānau as participants in conservation processes if they are within the meaning of "affected", and to include a dispute resolution process.

Clause 53 is amended to clarify that commercial aquaculture and fishing activities administered under the Conservation Act 1987 are not activities to which the protected customary right award can be applied. A further amendment removes the exclusion from this award of fisheries regulated or administered under the Conservation Act 1987.

Clause 54 is amended to provide that the obligation to pay coastal occupation charges or certain royalties does not arise for a protected customary rights group in respect of activities within its protected customary rights area. The amendment also excludes non-commercial aquaculture and fishing activities from the right to exercise a protected customary right for commercial benefit.

Clause 57 is amended to clarify that the recognition of a protected customary right does not have retrospective effect but affects the granting of a resource consent (including for a controlled activity) only in respect of applications lodged with a consent authority on or after the date that the relevant recognition order or agreement comes into effect. The amendments also exclude certain accommodated activities (as defined in *new clause 64A*) from being subject to a protected customary rights award.

New clause 60 amalgamates the test for establishing customary marine title with former *clause 62* that described customary transfers. The effect of the amendments is to clarify that a customary transfer, as defined in *subclause (3)*, does not, of itself, preclude a group from establishing customary marine title.

Clause 61 is amended to exclude fishing by persons who are not members of an applicant group as a factor that could, of itself, disentitle the group from establishing customary marine title.

Clause 63 is amended to provide expressly that a customary marine title group may derive commercial benefits from the exercise of customary marine title, and that while the group is not liable for the payment of coastal occupation charges or certain royalties, it is not exempt from having to obtain resource consents and other approvals or permits under the general law for any activities it undertakes in a customary marine title area.

New clause 63A clarifies the scope and limits of the right to delegate customary marine title, to ensure that these powers are not exercised to alienate a customary marine title area permanently from the customary marine title group.

New clauses 64A, 64B, and 64C replace former *clauses 8 and 9*.

New clause 64A defines terms used in these clauses.

New clause 64B states that accommodated activities are not subject to the RMA permission right or the conservation permission right; that is, that they may be carried out in a customary marine title area without permission being granted by the relevant customary marine title group. In all other respects, accommodated activities do not limit other rights arising for a customary marine title group from the recognition of customary marine title. The clause also simplifies and clarifies the scope of the existing activities that are accommodated activities.

New clause 64C defines deemed accommodated activities, a subset of accommodated activities. Deemed accommodated activities are prospective, rather than existing, activities.

Clauses 68 and 69 are amended to clarify that enforcement of the RMA permission right is by way of enforcement proceedings in the Environment Court.

Clause 70 is amended to apply to certain conservation-related applications or proposals, whether they relate solely to a customary marine title area or lie partly outside such as area.

Clause 73 is amended to apply the test of “national importance” (rather than that of “essentiality”) to the Minister’s exercise of the power to override a refusal of permission for a conservation activity.

Clause 83 is amended to clarify that despite the fact that under *clause 82* non-nationalised minerals in a customary marine title area are no longer reserved to the Crown, all existing privileges, rights, obligations, functions, and powers (“existing rights”) in relation to those minerals, and any subsequent rights and privileges arising from the exercise of those existing rights, continue despite *clause 82*. The clause as amended also clarifies that royalties in respect of those minerals are payable to the customary marine title group from the date that recognition of a group’s customary marine title comes into effect, with the amount payable being calculated from the date of the group’s application for recognition of that title.

New clause 84 is amended to clarify the scope and purpose of the planning document that a customary marine title group is entitled to prepare, including the limits that apply to the matters which a planning document may address.

Clause 85 is amended to provide that the registration of a planning document occurs 20 working days after the planning document is lodged with an agency referred to in *clauses 87 to 90*.

New clause 86 clarifies that the obligations arising in respect of a planning document do not apply retrospectively to applications made but not decided before the planning document is lodged.

New clause 91 is amended to clarify the process by which a regional council (**council**) must take cognisance of a registered planning document in its resource consenting and planning processes.

The council must identify in the planning document the matters that relate to resource management issues relevant to the customary marine title area and to parts of the common marine and coastal area outside a customary marine title area.

The council must initiate the process under Schedule 1 of the Resource Management Act 1991 to alter its regional documents as necessary to recognise and provide for the matters identified in the planning document, if any alteration would achieve the purpose of the Resource Management Act 1991.

Until a council alters its regional documents to reflect a planning document, the consent authority of the council determining applications for resource consents must have regard to the matters identified in the planning document as being relevant. Schedule 1 of the Resource Management Act 1991 applies to the process required by *new clause 91(6)*. *New clause 91(12)* provides that if a private plan change request triggers the process required by *new clause 91(6)*, it is the council that must undertake the process of considering and determining whether and

how to alter its regional documents as if the plan change were one initiated by the council.

Clause 94 is amended to provide that a negotiated agreement is of no effect unless and until it is brought into effect,—

- in the case of an agreement for the recognition of protected customary rights, by an Order in Council; and
- in the case of an agreement for the recognition of customary marine title, by an Act of Parliament.

Clause 105 is amended to clarify where, and in respect of which matters, the burden of proof lies when application is made for recognition of protected customary rights or customary marine title.

Clauses 108, 110, and 111 are amended to make technical amendments relating to the High Court process. *Clause 109* is relocated as *new clause 112A*.

Clause 114 now includes planning documents as an item that must be held on the public marine and coastal area register that the chief executive of Land Information New Zealand is responsible for keeping and maintaining.

Clause 118A is to the same effect as existing *clause 30(1), (6), and (7)*.

Clause 119 is amended to allow regulations to be made to protect members of the public exercising rights of navigation.

New clause 120A carries forward the provisions contained in current *clause 30(3), (4), (5), and (8)*. However, the power to give directions to persons in the common marine and coastal area has been limited to cases where regulations under *clause 119* or bylaws under *clause 120* are believed to have been breached. A new power to move vehicles has been inserted.

New clause 120B provides that the Bill prevails over local Acts except for the Timaru Harbour Board Act 1876 Amendment Act 1881, the Timaru Harbour Board Reclamation and Empowering Act 1980, and the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987.

New clause 124AA amends section 7 of the Conservation Act 1987 to empower the Minister of Conservation to declare land in the common marine and coastal area held for conservation purposes, despite the fact that such land is not owned by, or within the control of, the Minister or the Crown prior to any such declaration.

New Schedule 2A is the equivalent of former *Schedule 1*.

Schedule 3 is amended to include a number of new consequential amendments to correct errors and omissions, as well as to reflect amendments to the Bill. These include amendments to the Historic Places Act 1993, the Local Government (Rating) Act 2002, and the New Zealand Railways Corporation Act 1981.