

Foreshore and Seabed Bill

Government Bill

Explanatory note

General policy statement

This Bill establishes a comprehensive framework for recognising rights and interests in the foreshore and seabed. This Bill replaces all previous common law rights and interests in the foreshore and seabed. The Bill does not deal with any customary rights and interests relating to fishing that are created or regulated by—

- the Fisheries Act 1996:
- regulations made under that Act:
- the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Background

This Bill constitutes the Government's response to the Court of Appeal decision on *Attorney-General v Ngati Apa* [2003] 3 NZLR 643. That decision recognised the possibility that Te Ture Whenua Maori Act 1993 would lead to private ownership of the foreshore and seabed. This was not the intention when that Act was developed. Nor was this form of ownership anticipated by the other statutes that control activity in the coastal marine area, in particular the Resource Management Act 1991.

The situation in law now is that there are several different statutory systems for creating or recognising rights in the foreshore and seabed, and potentially several different types of common law rights in these areas. It is unclear how those various rights and interests would be reconciled with one another. Previous legislative attempts to clarify the general status of the foreshore and seabed in the vesting

provisions of the Foreshore and Seabed Endowment Revesting Act 1991 and the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977, did not specifically address the question of customary rights.

Moreover, since the *Ngati Apa* decision, a large number of applications have been filed contesting ownership over much of the coastline. While ownership is contested, it is difficult for the Resource Management Act 1991 and other statutes to continue to control activity in the foreshore and seabed area.

The Government accordingly considers it necessary to clarify the general status of the foreshore and seabed, and the full range of rights and interests that may exist in these areas.

Purpose of Bill

This Bill clarifies the status of the foreshore and seabed and provides for the recognition and protection of customary rights and interests in the public foreshore and seabed (defined as excluding those areas of the foreshore and seabed subject to a freehold interest).

The Government's guiding principles in developing the Bill have been:

- the principle of **access**: there should be open access for all New Zealanders in the public foreshore and seabed:
- the principle of **regulation**: the Crown is responsible for regulating the use of the foreshore and seabed, on behalf of all present and future generations of New Zealanders:
- the principle of **protection**: processes should exist to enable customary interests in the foreshore and seabed to be acknowledged, and specific rights to be identified and protected:
- the principle of **certainty**: there should be certainty for those who use and administer the foreshore and seabed about the range of rights that are relevant to their actions.

Main elements of Bill

The framework for recognising rights and interests in the foreshore and seabed consists of 5 interrelated components—

- vesting in the Crown the full legal and beneficial ownership of the public foreshore and seabed, to preserve it in perpetuity for the people of New Zealand:

- providing general rights of public access and navigation within, on, over, and across the public foreshore and seabed:
- recognising the ancestral connection of Māori groups with particular areas of the public foreshore and seabed, and with that the opportunity for more effective participation in decision-making processes:
- recognising customary activities (**recognised customary activities**) in the public foreshore and seabed, and protecting them under the Resource Management Act 1991:
- enabling a group to seek a declaration by the High Court that they would have been entitled to hold territorial customary rights to an area of the foreshore and seabed, had the full legal and beneficial ownership not been vested in the Crown. That declaration would be followed by discussions between the group and the Crown on redress.

Vesting in the Crown

The full legal and beneficial ownership of the public foreshore and seabed will be vested in the Crown, to preserve it for the people of New Zealand. The Bill provides that the public foreshore and seabed is to be held in perpetuity, and is not able to be sold or disposed of, other than by or under an Act of Parliament.

The vesting will apply across all foreshore and seabed areas except those covered by private titles that have been or are in the process of being registered under the Land Transfer Act 1952.

Lagoons and beds of rivers will be included in the public foreshore and seabed if they form part of the coastal marine area as defined by the Resource Management Act 1991. The public foreshore and seabed will also include Te Whaanga Lagoon in the Chatham Islands.

The Crown will exercise full administrative rights and management and landowner responsibilities, on behalf of all New Zealanders, to the foreshore and seabed that is vested in the Crown.

Public access and navigation

The Bill creates access rights for the public within, on, over, and across the public foreshore and seabed, to enable its continued use and enjoyment by all New Zealanders.

The Bill also codifies the general right of navigation within the foreshore and seabed.

Recognition of ancestral connection

The Bill creates a new jurisdiction for the Māori Land Court to enable it to recognise the ancestral connection of Māori groups with particular areas of the public foreshore and seabed. The Court will be required to recognise ancestral connection in accordance with tikanga Māori. Where there are overlapping ancestral connections the Court will be able to recognise them all.

In addition, the ancestral connection of Māori groups with the public foreshore and seabed will also be able to be recognised by agreement between Māori and the Crown. This could be the result of—

- a negotiated settlement of historical Treaty of Waitangi claims:
- a group holding customary or Māori freehold land abutting the foreshore:
- another agreement in which the Crown acknowledges ancestral connection.

The purpose of these processes is to acknowledge kaitiakitanga and to provide opportunities for more effective participation in decision-making processes by Māori groups who have traditionally cared for the coastline.

Recognition of customary rights by the Māori Land Court

A further new jurisdiction for the Māori Land Court enables it to identify and recognise customary rights in the public foreshore and seabed through a customary rights order. This order recognises an activity, use, or practice, but does not grant an estate or interest in land.

The jurisdiction of the Court will not extend to areas of foreshore or seabed in private title, nor to matters covered by the Wildlife Act 1953, the Marine Mammals Protection Act 1978, or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

In determining applications for this order, the Court will apply a statutory test derived from common law and based on tikanga Māori. The Court must be satisfied that—

- the Māori group claiming the right is an established and identifiable group whose members are whanaunga:

- the activity or practice that is the subject of the claimed customary right has been integral to tikanga Māori:
- the activity or practice has been exercised substantially uninterrupted since 1840, in accordance with tikanga Māori and continues to be so exercised:
- the claimed right is not prohibited by law and has not already been extinguished by law.

Recognition of customary rights by the High Court

The Bill also creates a new jurisdiction for the High Court to identify and recognise the customary rights of any group of New Zealanders in the public foreshore and seabed. The jurisdiction will be subject to the same limits as that of the Māori Land Court, and the High Court will apply a very similar statutory test.

The Government is not aware of the existence of any customary activities that might meet the statutory test, other than Māori customary activities, but nevertheless considers it appropriate to retain the capacity for groups to explore this possibility in the courts.

Effect of customary rights orders

Activities, uses, or practices recognised by the Māori Land Court or the High Court through customary rights orders will also be recognised in decision-making processes on the public foreshore and seabed. The Bill includes amendments to the Resource Management Act 1991 (the **Act**) to protect these rights, including the following:

- all decision-making under the Act must recognise and provide for, as a matter of national importance, the protection of recognised customary activities:
- the Act and relevant plans made under it cannot prevent the exercise of a customary right:
- if another party seeks a resource consent for an activity that would have a significant adverse effect on the exercise of the customary right, the Act will require the resource consent to be declined (unless the customary right holder consented):
- customary rights holders will be able to continue the recognised customary activity without obtaining a resource consent under the Act.

There may be occasional situations where the exercise of a recognised customary activity may have significant adverse effects on the environment. The Bill establishes a new process that allows a local authority to assess the effects of the exercise of a recognised customary activity on a case-by-case basis. The onus will be on local decision-makers to demonstrate that there are significant adverse effects on the environment. Any decision to impose controls on a recognised customary activity would be taken by the Minister of Conservation in consultation with the Minister of Māori Affairs.

The High Court and the common law

The Bill provides a limited jurisdiction for the High Court to find territorial customary rights at common law in the public foreshore and seabed. A group may seek a finding of the Court that they would have been entitled to hold territorial customary rights to an area of the foreshore and seabed, had the full legal and beneficial ownership not been vested in the Crown. The Court must apply the common law, and may look at the full set of rights and interests in the claimed area (including customary fishing rights) to make an overall assessment of whether customary activities would, but for the vesting in the Crown, have amounted to exclusive occupation and possession at common law of a particular area of the public foreshore and seabed.

The Bill provides that the Crown must enter into discussions with the group in whose favour the finding is made. The purpose of such discussions is to consider the nature and extent of any redress that the Crown may give.

Discussions could also take place with the Crown without prior recourse to the High Court.

The Government is not aware of the existence of any circumstances in which customary activities might have amounted to territorial customary rights (other than possibly in the case of Māori customary rights). Although the Bill does not permit territorial customary rights, the Government nevertheless considers it appropriate to retain the capacity for the High Court to make findings of this nature.

It is intended that this Bill be divided into the following 2 separate Bills at the committee of the Whole House stage: a Foreshore and Seabed Bill and a Resource Management Amendment Bill.

Part by Part analysis

Clause 1 is the title clause.

Clause 2 provides for the commencement. The Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Bill, which includes—

- the vesting of the full legal and beneficial ownership of the public foreshore and seabed in the Crown:
- the conferral of general rights of public access and navigation in, on, over, and across the public foreshore and seabed:
- the recognition of the ancestral connection of Māori with the public foreshore and seabed:
- the recognition and protection of ongoing customary rights in areas of the public foreshore and seabed:
- allowing any group to seek a finding from the High Court that the group previously held certain territorial rights which can no longer be recognised and, if that is the case, to enter into formal discussions on redress.

Clause 4 sets out the definitions of terms used in the Bill.

Clause 5 provides that the Bill binds the Crown.

Part 2

Public foreshore and seabed

Right of access

Clause 6 confers on every individual access rights in, on, over, or across the public foreshore and seabed. These rights include the right to engage in recreational activities in the public foreshore and seabed.

Rights of navigation

Clause 7 confers on every person rights of navigation within the foreshore and seabed.

Act replaces certain common law rights and jurisdictions in respect of public foreshore and seabed

Clause 8 states that the common law rights of navigation are replaced by the rights specified in *clause 7*.

The clause also provides that the only fishing rights are those created or regulated by or under fisheries legislation, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

Clause 9 replaces the jurisdiction of the High Court to hear and determine any customary rights claim in respect of the foreshore and seabed with the jurisdiction of the High Court under *clause 29* and *Part 4*, and the jurisdiction of the Māori Land Court under *Part 3*.

Clause 10 states that the Māori Land Court has no jurisdiction to consider an application, made before the commencement of the Bill, if the application relates to an area of the foreshore and seabed and seeks a vesting order or the investigation or determination of the status of any land.

Ownership and management of public foreshore and seabed

Clause 11 vests the full legal and beneficial ownership of the public foreshore and seabed in the Crown, to be held by it as its absolute property.

Clause 12 prevents the alienation of any part of the public foreshore and seabed except by a special Act of Parliament or under certain provisions of the Resource Management Act 1991.

Clause 13 preserves the ownership and use rights of the owners of roads and motorways that are located in the public foreshore and seabed.

Clause 14 provides that where authorised works result in the raising of any adjacent area of the public foreshore and seabed, the raised area continues to be part of the public foreshore and seabed, even though the elevation puts the area above the line of high water mark at mean spring tides. But this applies only if the elevation is not part of the authorised works.

Clause 15 provides for areas of the foreshore and seabed in private title to become part of the public foreshore and seabed on acquisition by the Crown.

Clauses 16 and 17 relate to the registration and surveying of land in the public foreshore and seabed.

Clause 18 precludes claims based on adverse possession or prescriptive title.

Clause 19 allows local authorities, whose title to any area has been divested as a result of the Bill, to apply to the Minister of Conservation for relief.

Clause 20 gives the Minister of Conservation the powers of the Crown as owner of the public foreshore and seabed.

Clause 21 makes provision for access to particular areas of the public foreshore and seabed to be prohibited or restricted.

Clause 22 provides a penalty for intentionally contravening a prohibition or restriction of access to any particular area of the public foreshore and seabed.

Other enactments not affected

Clauses 23 and 24 preserve enactments that regulate areas of the public foreshore and seabed and save licences, permits, consents, or other authorities issued under enactments. The power of the Crown, under an enactment, to accord special or protected status to areas of the foreshore or seabed is also preserved.

Civil liability not affected

Clause 25 clarifies that the Bill does not give rise to any civil liability.

Consequential repeals

Clauses 26 and 27 repeal enactments that previously vested in the Crown areas now included in the public foreshore and seabed.

Findings of High Court with respect to territorial customary rights in public foreshore and seabed

Clauses 28 and 29 enable the High Court to find that a group would, but for the vesting of the full legal and beneficial ownership of the public foreshore and seabed in the Crown by the Bill, have held territorial customary rights to a particular area of the public foreshore and seabed at common law.

Clause 30 precludes a finding of territorial customary rights if the High Court forms the preliminary view that the rights concerned are

able to be considered under *Part 3 or Part 4*, or are covered under fisheries legislation.

Clause 31 sets out the matters that the High Court may take into account in considering an application for a finding on territorial customary rights.

Clause 32 relates to matters of procedure.

Clause 33 provides that if the High Court makes a finding that a group held territorial customary rights, the Court must refer that finding to the Attorney-General and to the Minister of Māori Affairs. The Ministers to whom the finding is referred must enter into discussions with the group in whose favour the finding is made; the purpose of such discussions is to consider the nature and extent of any redress that the Crown may give.

Clause 34 provides that no relief, other than redress from the Crown under *clause 33*, may be claimed in respect of a finding that a group held territorial customary rights.

Part 3

Provisions relating to Māori Land Court and orders it may make

This Part is in 3 subparts.

Subpart 1 (clauses 35 and 36) sets out the jurisdiction of the Māori Land Court to make ancestral connection and customary rights orders and excludes the jurisdiction to make orders more widely than those specified. It provides that only certain provisions of Te Ture Whenua Maori Act 1993 apply to the jurisdiction of the Māori Land Court and the Māori Appellate Court under this Bill.

Subpart 2 (clauses 37 to 53) provides for applications to be made to the Māori Land Court for ancestral connection orders and customary rights orders in relation to particular areas of the public foreshore and seabed (within a time limit within which applications must be made).

The subpart specifies the criteria that the Māori Land Court must apply. It also defines certain matters that are beyond the inquiry of the Māori Land Court in relation to customary rights orders, namely—

- commercial and non-commercial Māori fishing rights declared to be settled by sections 9 and 10 respectively of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:

- activities, uses, or practices that are restricted, controlled, regulated, or prohibited by or under the Wildlife Act 1953 or the Marine Mammals Protection Act 1978.

The subpart includes provisions on the effect of a customary rights order, and the conditions that apply if a commercial benefit is derived from the exercise of a customary rights order.

Orders made under this Part may be varied as to the named holder of the order, and may be cancelled and the customary right extinguished at the request of the holder, subject to procedures set out in the subpart.

Provision is made for protection of wāhi tapu where the principle of public access is inconsistent with the protection of a wāhi tapu.

The subpart also states the limitations that apply as to the effect of orders and on their exercise.

Subpart 3 (clauses 54 to 56) sets out procedural matters relating to the hearing of applications and the appeal rights that apply.

Part 4

High Court jurisdiction in relation to customary rights orders

This Part (*clauses 57 to 71*) sets out the jurisdiction of the High Court to make customary rights orders on the application of any group. This Part mirrors the provisions of *Part 3* as far as those provisions relate to customary rights orders made by the Māori Land Court. It sets out criteria for the High Court to apply in determining an application under this Part. While these provisions reflect the same principles as apply to an inquiry and determination by the Māori Land Court under *Part 3*, they are modified to reflect the fact that this is a jurisdiction that may be accessed by groups of people who are not Māori.

Part 5

Amendments to Resource Management Act 1991

This Part amends the Resource Management Act 1991 (the **Act**) to provide in that Act for the effects of the orders made under the Foreshore and Seabed Bill.

This Part is in 3 subparts.

Subpart 1 (clauses 73 to 103) provides for the definition of terms required in the Resource Management Act 1991 to correspond to the

definitions used in the Foreshore and Seabed Bill. It amends section 6 of the Act to require the protection of recognised customary activities to be dealt with as a matter of national importance.

Clause 75 inserts *new sections 17A and 17B*. These provide for the status and management of recognised customary activities carried out under a customary rights order in accordance with controls that the Minister of Conservation may impose on the exercise of these activities.

This subpart adds to the functions of the Minister of Conservation, regional councils, and enforcement officer. It provides in a number of ways for the status of the holders of ancestral connection and customary rights orders within the scheme of the Act, including participation in the preparation of planning documents.

The subpart provides that access rights and recognised customary activities are matters that may be included in the New Zealand Coastal Policy Statement.

It also makes provision for the holders of customary rights orders to seek to change rules in plans or proposed plans where rules allow activities that could prevent or have a significant adverse effect on a recognised customary activity.

Amendments to the notification provisions set out the circumstances for when the holder of a customary rights order must be treated as being adversely affected. The subpart also provides for the circumstances when restrictions must be imposed on the grant of a resource consent that may have a significant adverse effect on a recognised customary activity.

Consequential amendments are required for the provisions in the Act relating to the Crown's existing rights to resources and to the vesting of land in the coastal marine area when it is subdivided, and the vesting of reclaimed land.

There are amendments to the First and Fourth Schedules of the Act, and a *new Schedule 12* is added.

Subpart 2 (clause 104) makes an amendment to a regulation.

Subpart 3 (clauses 105 and 106) sets out transitional provisions.

Part 6

Provisions relating to public foreshore and seabed register, recognition agreements, and other matters

This Part is in 3 subparts.

Subpart 1 (clauses 107 to 110) requires the Chief Executive of the Ministry of Justice to keep a public register of all orders made under the Bill, as well as the agreements entered into under this Part.

Subpart 2 (clauses 111 to 113) provides a basis for the Minister of Māori Affairs and the Minister in charge of Treaty of Waitangi Negotiations to enter into an agreement with a group of Māori to recognise that group's ancestral connection with a specified area of the public foreshore and seabed. An agreement is to be treated as having the same legal effect as an ancestral connection order made by the Māori Land Court under *Part 3*. In addition, the Ministers may enter into agreements to recognise territorial customary rights. Every such agreement must be recorded in the public foreshore and seabed register and notified to specified persons, including local authorities affected by the agreement.

Subpart 3 (clauses 114 to 117) sets out the regulation-making powers, and a savings provision, and provides that a provision of this Bill prevails over a provision of a local Act that is inconsistent with this Bill. It also provides for consequential and related amendments, as set out in *Schedule 3*.

Schedules

The *Bill* has 4 schedules.

Schedule 1 sets out the procedures for the Māori Land Court in inquiring into and determining applications under *Part 3*, including provisions for the commencement of orders, their content and notification, and procedures relating to the conduct of a hearing by the Māori Land Court.

Schedule 2 sets out the procedures that apply to the High Court in the exercise of its jurisdiction under *Part 4*.

Schedule 3 contains consequential and related amendments. The principal consequential amendments relate to Te Ture Whenua Maori Act 1993 and the Conservation Act 1987.

Schedule 4 contains a *new Schedule 12* of the Resource Management Act 1991. This schedule provides a process for an adverse effects assessment to be carried out and an adverse effects report to be prepared in relation to a recognised customary activity. It also empowers the Minister of Conservation to impose controls if a recognised customary activity has a significant adverse effect on the environment, and provides for the review of those controls.

Regulatory impact statement

The nature and magnitude of the problem and the need for Government action, and the public policy objectives that form the basis for the legislation, are set out in the explanatory note to the Bill.

Feasible options for achieving objectives—the status quo

The status quo would involve,—

- no changes to current law that vests the foreshore and seabed in the Crown. This would mean that it would be perceived that the Crown only has a radical title over the foreshore and seabed, and that title was potentially encumbered by customary rights of Māori:
- public access across and along the foreshore and seabed that was assumed to be in Crown ownership would remain as a general privilege, rather than as a legal right:
- the scope of the common law right of navigation across private title in the foreshore and seabed would remain unclear:
- resource consents for the occupation of the foreshore and seabed and for property adjacent to the foreshore would be considered against an uncertain legal context, because it would not be clear whether regional councils were able to approve consents until customary ownership claims had been resolved:
- allowing applications to proceed before the High Court to investigate the nature and extent of the customary rights of Māori, based on the common law.

In addition, under the status quo, applications before the Māori Land Court would continue to proceed to an inquiry to determine whether the foreshore and seabed land in question is Māori customary land. This leaves it potentially open for the Māori Land Court to issue a private title over the foreshore and seabed. This is an unintended consequence of Te Ture Whenua Maori Act 1993. At this stage it is unclear how those various rights would be reconciled with one another and with the current regulatory systems in place.

Feasible options for achieving objectives—the preferred option

This option involves the development of a new framework to provide a clear and unified system for establishing rights in the foreshore and seabed. Its main features are described in the explanatory

note to the Bill. The intention is to provide a clear and unified system that:

- establishes all rights and interests in the foreshore and seabed; and
- works through the consequences for decision-making under the Resource Management Act 1991 of any customary rights that might be recognised through the Māori Land Court and the High Court; and
- works through a process for integrating customary rights and interests with other systems for allocating and regulating activity in the foreshore and seabed.

Compliance costs

Particular compliance costs will result from the amendments to the Resource Management Act 1991 that are included in the Bill. There will be initial costs for both customary right holders and resource consent applicants in becoming familiar with the new requirements in the Resource Management Act 1991. These costs will vary and will depend on the types and locations of activities in the coastal marine area and the numbers and locations of customary rights that are recognised by the Māori Land Court. These costs can be reduced by ensuring that affected parties are informed of and have assistance with the new processes and requirements.

Compliance costs for holders of foreshore and seabed customary right orders

Customary right holders will incur costs if they challenge a rule in a plan that unreasonably prevents the exercise of a recognised customary right. Such occasions are likely to be rare if they occur at all. It is more likely that customary right holders will participate in the normal review process for any proposed rules in plans.

In the event of a person applying for a resource consent for an activity that could adversely affect a customary right, the holder of the customary right would face the costs of consulting with the consent applicant.

Compliance costs for resource consent applicants

Additional compliance costs may arise from the new requirement for resource consent applicants to assess alternative locations and methods where written approval is withheld from customary right holders who are adversely affected. The Act already requires such an assessment where there are potentially significant adverse effects on the environment. Applications for minor activities could now result in higher costs because applicants will need to undertake an assessment of alternatives where a customary right holder withholds written approval.

The majority (79%) of the 2 500 coastal permits granted annually under the Resource Management Act 1991 are for minor activities in the coastal marine area. It is unclear how many of these would be affected by this new requirement, or how many of these would affect business compliance costs. It is also unclear how onerous it would be to consider alternatives. It may be that an assessment of alternative locations or methods would be contemplated by some resource consent applicants without this additional requirement.

Resource consent applicants already incur compliance costs under the Resource Management Act 1991 in consulting with local Māori on proposed activities. The explicit recognition of particular Māori ancestral connections to areas of the public foreshore and seabed, and of particular customary rights, will bring greater clarity, and possibly reduced costs, to this process.

Administrative costs

Local authorities will need to review their plans and policy statements to check that they do not prevent the reasonable exercise of a customary right. This is likely to be an ongoing cost as new customary rights may be declared at any time. However, it is expected that these costs will gradually reduce for councils as customary rights are identified, and councils develop systems to ensure that their plan-making takes these rights into account.

Local authorities will face additional costs in assessing whether a third-party activity might have a significant adverse effect on the exercise of a customary right. Initially, these costs would be higher as councils develop new processes. Appeal costs might also be greater initially as applicants test decisions, although as case law is built up these costs should diminish.

Additional costs will arise from the requirement that local authorities identify situations where a customary right might be exercised unsustainably and take steps to assess the effects of the activity. The costs of assessing the effects of activities on the environment normally fall to the applicant, but in these cases the onus will be on the regional council to undertake the assessment. It is expected that most customary rights activities should have minor effects, and major expense will not be required.

There are also likely to be initial compliance costs for local authorities in becoming familiar with the new requirements.

The net benefit of the preferred option

The preferred option:

- establishes a new framework for integrating all rights and interests in the foreshore and seabed:
- provides all New Zealanders with the legal right to reasonable and appropriate access across the public foreshore and seabed vested in the people of New Zealand:
- provides certainty to private property holders that their rights and interests in the foreshore and seabed will generally be upheld:
- provides certainty for relevant local government and central government decision-makers that they can continue to proceed to make decisions concerning the use of the foreshore and seabed:
- gives enhanced opportunities to Māori for greater involvement in decision-making processes involving the public foreshore and seabed through the issue of ancestral connection orders:
- enables the recognition and protection of the customary rights that are not adequately recognised and protected at present:
- provides certainty to all New Zealanders about what will happen once a customary right has been identified.

Consultation

On 18 August 2003 the Government released *Protecting Public Access and Customary Rights: Government Proposals for Consultation*, for public comment. That document was open for submissions for 6 weeks until 3 October 2003.

The Government then engaged in an extensive consultation process. This involved the distribution of 15 000 copies of the government proposals for consultation and 23 000 pamphlets. The 0508 Foreshore telephone line fielded over 650 calls for further information.

Over 60 meetings were held with the following groups:

- Māori hui around the Northland area, Auckland, Thames, Maketu, Gisborne, New Plymouth, Wellington, Blenheim, Christchurch, and Invercargill where over 3 000 people attended and 180 oral submissions were heard; and
- interest/sector groups—which represented a wide range of recreational, sports, fishing interests, and local government; and
- public meetings organised by government members of Parliament, in areas where people demonstrated an interest in the issue.

In addition, 2 171 written submissions were received on the government proposals for consultation.

On 17 December 2003 the Government released *Foreshore and Seabed: A Framework* which set out a proposed package of measures that were intended to provide greater certainty of public access, protection of Māori customary rights, and better input for Māori into the management of the coastal marine area.

Since December, Ministers and senior officials have undertaken a dialogue with Māori and other sector/interest groups. This has involved discussing the Government's proposed policy proposals, options for implementation (including the nature of proposed legislative amendments), and the link between the foreshore and seabed policy and other related policy in the coastal marine area.

The Government has also taken into account a report by the Waitangi Tribunal, released on 8 March 2004, on its foreshore and seabed policy.

Hon Dr Michael Cullen

Foreshore and Seabed Bill

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Foreshore and Seabed

<p>34 No relief other than that given by the Crown</p> <p style="text-align: center;">Part 3</p> <p style="text-align: center;">Provisions relating to Māori Land Court and orders it may make</p> <p style="text-align: center;">Subpart 1—Jurisdiction of Māori Land Court and application of Te Ture Whenua Maori Act 1993</p> <p style="text-align: center;"><i>Jurisdiction of Māori Land Court</i></p> <p>35 Jurisdiction of Māori Land Court</p> <p style="text-align: center;"><i>Application of Te Ture Whenua Maori Act 1993</i></p> <p>36 Powers and procedures of Māori Land Court</p> <p style="text-align: center;">Subpart 2—Ancestral connection and customary rights orders</p> <p style="text-align: center;"><i>Applications to Māori Land Court</i></p> <p>37 Applications for orders</p> <p style="text-align: center;"><i>Orders of Māori Land Court</i></p> <p>38 Māori Land Court may make orders</p> <p style="text-align: center;"><i>Determination of applications for ancestral connection orders</i></p> <p>39 Determination of applications for ancestral connection orders</p> <p>40 Overlapping interests</p> <p style="text-align: center;"><i>Determination of applications for customary rights orders</i></p> <p>41 Limits to jurisdiction of Māori Land Court to make customary rights orders</p> <p>42 Determination of applications for customary rights order</p> <p>43 Effect of customary rights order</p> <p>44 Evidence of customary fishing</p> <p style="text-align: center;"><i>Exercise of customary rights order</i></p> <p>45 Powers of holder</p> <p>46 Exercise of customary rights order for commercial benefit</p> <p style="text-align: center;"><i>Variation or cancellation of orders</i></p> <p>47 Orders may be varied</p> <p>48 Cancellation of customary rights order</p> <p>49 Procedures for varying or cancelling orders</p> <p>50 Basis for varying or cancelling orders</p> <p style="text-align: center;"><i>Limitations</i></p> <p>51 Limitation on effect of orders</p> <p>52 Protection of wāhi tapu</p>	<p>53 Limitations on exercise of customary rights order</p> <p style="text-align: center;">Subpart 3—Procedural matters</p> <p style="text-align: center;"><i>Inquiry by way of hearing</i></p> <p>54 Inquiry into applications for orders</p> <p style="text-align: center;"><i>Appeal rights</i></p> <p>55 Rights of appeal against decisions of Māori Land Court</p> <p>56 Further rights of appeal</p> <p style="text-align: center;">Part 4</p> <p style="text-align: center;">High Court jurisdiction in relation to customary rights orders</p> <p style="text-align: center;"><i>Jurisdiction</i></p> <p>57 Jurisdiction of the High Court</p> <p style="text-align: center;"><i>Applications</i></p> <p>58 Applications for orders</p> <p style="text-align: center;"><i>Determination of applications</i></p> <p>59 High Court may make orders</p> <p>60 Limits to jurisdiction of High Court to make orders</p> <p>61 Basis on which High Court may make determination</p> <p>62 Effect of customary rights order</p> <p style="text-align: center;"><i>Exercise of customary rights order</i></p> <p>63 Powers of holder</p> <p>64 Exercise of customary rights order for commercial benefit</p> <p style="text-align: center;"><i>Variation and cancellation</i></p> <p>65 Orders may be varied</p> <p>66 Cancellation of orders</p> <p>67 Basis for varying or cancelling orders</p> <p>68 Recording of orders</p> <p style="text-align: center;"><i>Limitations</i></p> <p>69 Limitations on effect of orders</p> <p>70 Limitations on exercise of customary rights order</p> <p style="text-align: center;"><i>Appeal rights</i></p> <p>71 Rights of appeal against decision of High Court</p> <p style="text-align: center;">Part 5</p> <p style="text-align: center;">Amendments to Resource Management Act 1991</p> <p>72 Resource Management Act 1991 called principal Act in this Part</p> <p style="text-align: center;">Subpart 1—Amendments to principal Act</p> <p>73 Interpretation</p> <p>74 Matters of national importance</p>
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Foreshore and Seabed

<p>75 New heading and sections 17A and 17B inserted</p> <p style="padding-left: 40px;"><i>Recognised customary activities</i></p> <p>17A Recognised customary activity may be exercised in accordance with any controls</p> <p>17B Adverse effects assessment</p> <p>76 Functions of Minister of Conservation</p> <p>77 Information to be supplied to Minister of Conservation</p> <p>78 Delegation of functions by Ministers</p> <p>79 Transfer of powers</p> <p>80 Duty to gather information, monitor, and keep records</p> <p>81 Persons to have powers of consent authority for purposes of sections 37 and 37A</p> <p>82 Authorisation and responsibilities of enforcement officers</p> <p>83 Contents of New Zealand coastal policy statements</p> <p>84 Matters to be considered by regional council</p> <p>85 Contents of regional policy statements</p> <p>86 Imposition of coastal occupation charges</p> <p>87 Matters to be considered by regional council</p> <p>88 Matters to be considered by territorial authority</p> <p>89 New heading and sections 85A to 85C inserted</p> <p style="padding-left: 40px;"><i>Plan must not allow activity that prevents recognised customary activities</i></p> <p>85A Recognised customary activity not prevented by plan</p> <p>85B Holder of customary rights order may make submission or request change</p> <p>85C Powers of Environment Court in relation to plan</p> <p>90 Forming opinion as to who may be adversely affected</p> <p>91 When public notification and service requirements may be varied</p> <p>92 Consideration of applications</p> <p>93 New section 107A inserted</p> <p>107A Restrictions on grant of resource consents</p>	<p>94 Vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority</p> <p>95 Vesting of reserves or other land</p> <p>96 Proceedings to be heard by an Environment Judge</p> <p>97 Power of entry for inspection</p> <p>98 Power of entry for survey</p> <p>99 Crown's existing rights to resources to continue</p> <p>100 Vesting of reclaimed land</p> <p>101 First Schedule amended</p> <p>102 Fourth Schedule amended</p> <p style="padding-left: 20px;">1A Matters that must be included in an assessment of effects on the environment</p> <p>103 New Schedule 12 added</p> <p style="padding-left: 40px;">Subpart 2—Amendment to regulation</p> <p>104 Regulation amended</p> <p style="padding-left: 40px;">Subpart 3—Transitional provision</p> <p>105 Continuation and completion of applications, etc, under principal Act</p> <p>106 Continuation and completion of appeals, etc, under principal Act</p> <p style="text-align: center;">Part 6</p> <p style="text-align: center;">Provisions relating to public foreshore and seabed register, recognition agreements, and other matters</p> <p style="padding-left: 40px;">Subpart 1—Public foreshore and seabed register</p> <p>107 Public foreshore and seabed register</p> <p>108 Requirements for keeping public foreshore and seabed register</p> <p>109 Inspection and copying</p> <p>110 Application of Privacy Act 1993</p> <p style="padding-left: 40px;">Subpart 2—Recognition agreements</p> <p>111 Agreements to recognise ancestral connection</p> <p>112 Agreements to recognise territorial customary rights</p> <p>113 Registration and notification of agreements</p> <p style="padding-left: 40px;">Subpart 3—Regulations, saving, repeals, and amendments</p> <p>114 Regulations</p> <p>115 Saving provision</p> <p>116 Relationship between local Acts and this Act</p>
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<p>117 Consequential and related amendments</p> <hr style="width: 10%; margin: 10px auto;"/> <p style="text-align: center;">Schedule 1</p> <p style="text-align: center;">Procedures of Māori Land Court in exercising jurisdiction in relation to public foreshore and seabed</p>	<p>Schedule 2</p> <p>Procedures of High Court in exercising jurisdiction to determine customary rights orders</p> <p>Schedule 3</p> <p>Consequential and related amendments</p> <p>Schedule 4</p> <p>New Schedule 12 of Resource Management Act 1991</p>
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Foreshore and Seabed Act **2004**.

2 Commencement

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

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to integrate, within existing systems for regulating activities in the public foreshore and seabed, all rights and interests in the public foreshore and seabed by creating a new legal scheme that—

- (a) vests the full legal and beneficial ownership of the public foreshore and seabed in the Crown to ensure that the public foreshore and seabed of New Zealand is preserved in perpetuity for the people of New Zealand; and
- (b) provides for general rights of public access, recreation, and navigation in, on, over, and across the public foreshore and seabed; and
- (c) acknowledges the expression of kaitiakitanga by recognising the ancestral connection of Māori with the public foreshore and seabed; and
- (d) provides for the recognition and protection of ongoing customary rights to undertake or engage in particular activities, uses, or practices in areas of the public foreshore and seabed; and

- (e) enables applications to be made to the High Court to investigate the full extent of the rights that may have been held at common law, and provides for formal discussions on redress if those rights are not able to be fully expressed as a result of this Act.

4 Interpretation

In this Act, unless the context otherwise requires,—

access rights has the meaning set out in **section 6**

ancestral connection order means a public foreshore and seabed ancestral connection order made by the Māori Land Court under **section 38(1)(a)**

Chief Executive means the Chief Executive of the Ministry of Justice

Chief Judge has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

Chief Registrar means the Chief Registrar of the Māori Land Court appointed under section 14 of Te Ture Whenua Maori Act 1993

customary rights order means a public foreshore and seabed customary rights order made by—

- (a) the Māori Land Court under **section 38(1)(b)**; or
- (b) the High Court under **section 59**

foreshore and seabed—

- (a) means the marine area that is bounded,—
 - (i) on the landward side by the high water line at mean high water spring tides; and
 - (ii) on the seaward side, by the outer limits of the territorial sea; and
- (b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
- (c) includes the bed of Te Whaanga Lagoon in the Chatham Islands; and
- (d) includes the air space and the water space above the areas described in **paragraphs (a) to (c)**; and
- (e) includes the subsoil, bedrock, and other matters below the areas described in **paragraphs (a) to (c)**

holder means—

- (a) the legal entity that holds the order, in relation to—

- (i) an order made under **section 38(1)**; and
- (ii) an agreement made under **section 111**; and
- (b) in relation to an order made under **section 59**, the person that represents the group on whose behalf an application is made under **section 58**

legal entity means—

- (a) the legal entity declared by the Māori Land Court to represent a group of Māori for the purposes of holding an order under this Act or the representative of a group of Māori for the purposes of **sections 111 and 112**; and
- (b) in relation to an iwi, hapū, or whānau, a legal entity constituted under another enactment; and
- (c) in relation to a whānau, a natural person

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

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

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

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

order means—

- (a) in relation to orders made under **section 38(1)**, an ancestral connection order, or a customary rights order, or both, as the case may require; and
- (b) in relation to orders made under **section 59**, a customary rights order

public foreshore and seabed—

- (a) means the foreshore and seabed; but
- (b) does not include any land that is, for the time being, subject to a specified freehold interest

public foreshore and seabed register means the register established, administered, and amended by **sections 107 and 108**

public notice means a notice published not fewer than 3 times, with an interval of not less than 7 days between each publication, in—

- (a) a principal metropolitan newspaper circulating predominantly in each of the cities of Auckland, Wellington, Christchurch, and Dunedin; and
- (b) a newspaper circulating predominantly in the area to which the relevant matter applies

recognised customary activity has the meaning it is given in **section 17A** of the Resource Management Act 1991

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

specified freehold interest means an interest that, immediately before the commencement of this Act, a person other than the Crown or a local authority has as the owner of—

- (a) an estate in fee simple for which a certificate of title or computer freehold register—
 - (i) has, before that commencement, been issued; or
 - (ii) is, at that commencement, to be issued on the basis of an instrument lodged with the Registrar before that commencement; or
- (b) Māori freehold land within the meaning of section 4 of Te Ture Whenua Maori Act 1993; or

territorial customary rights has the meaning it is given in **section 28**

- (c) land subject to the Deeds Registration Act 1908

territorial sea has the same meaning as in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

tikanga Māori has the meaning it is given in section 4 of Te Ture Whenua Maori Act 1993

whanaunga has the meaning it is given in section 4 of Te Ture Whenua Maori Act 1993.

5 Act binds the Crown

This Act binds the Crown.

Part 2 Public foreshore and seabed

Right of access

6 Right of access

- (1) In this section, **access rights** means—

- (a) the right to be in or on the public foreshore and seabed; and
 - (b) the right to enter, remain in, and leave the public foreshore and seabed; and
 - (c) the right to pass and repass in, on, over, and across the public foreshore and seabed; and
 - (d) the right to engage in recreational activities in or on the public foreshore and seabed.
- (2) Every natural person has access rights in, on, over, or across the public foreshore and seabed.
- (3) The access rights may be exercised at any time, subject to any limits, including limits on public access, imposed by or under this Act or by or under another enactment.

Rights of navigation

7 Rights of navigation within foreshore and seabed

- (1) Every person has rights of navigation within the foreshore and seabed.
- (2) The rights conferred by **subsection (1)** include—
- (a) a right to pass and repass:
 - (b) a right to temporarily anchor, moor, and ground:
 - (c) a right to load and unload cargo, crew, equipment, and passengers:
 - (d) a right to remain in a place for a convenient time:
 - (e) a right to remain temporarily in a place until wind or weather permits departure or until cargo has been obtained or repairs completed.
- (3) The rights conferred by **subsection (1)** include anything reasonably incidental to the right of navigation.
- (4) The rights conferred by **subsection (1)** may be exercised at any time, subject to any limits imposed under this Act or by or under another enactment.
- (5) Nothing in this section affects New Zealand's international obligations.

Act replaces certain common law rights and jurisdictions in respect of public foreshore and seabed

8 Certain common law rights in respect of foreshore and seabed replaced by enactments

- (1) On and from the commencement of this Act, the common law rights of navigation are replaced by the rights specified in **section 7**.
- (2) On and from the commencement of this Act, no rights of fishing are recognised other than the rights that are created or regulated by or under—
 - (a) the Fisheries Act 1996; and
 - (b) the regulations made under that Act; and
 - (c) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

9 Jurisdiction of High Court

- (1) On and from the commencement of this Act, the jurisdiction of the High Court to hear and determine any customary rights claim is replaced by the jurisdiction of the High Court under **section 29** and **Part 4**, and the jurisdiction of the Māori Land Court in **Part 3**.
- (2) If a customary rights claim is lodged in the High Court, whether before or after the commencement of this Act, the High Court may not take any action other than one of the following:
 - (a) dismiss the claim; or
 - (b) if appropriate, treat the claim as an application under **section 29 or Part 4**; or
 - (c) if appropriate, refer the claim to the Māori Land Court for decision under **Part 3**.
- (3) In this section, **customary rights claim** means any claim in respect of the public foreshore and seabed that is based on the recognition at common law of customary rights, customary title, aboriginal rights, aboriginal title, fiduciary duty of the Crown, or rights, titles, or duties of a similar nature.

10 No jurisdiction of Māori Land Court to consider existing claims for customary title

The Māori Land Court has no jurisdiction to consider an application, and the application is of no effect, if—

- (a) the application relates to an area of the foreshore and seabed; and
- (b) the application is for—
 - (i) a determination of the status of land under section 18(1)(h) of Te Ture Whenua Maori Act 1993; or
 - (ii) a determination or a vesting order under section 18(1)(i) of Te Ture Whenua Maori Act 1993; or
 - (iii) a status order under section 131 of Te Ture Whenua Maori Act 1993; or
 - (iv) an investigation, a determination, or a vesting order under section 132 of Te Ture Whenua Maori Act 1993; or
 - (v) an amendment, under section 138 of Te Ture Whenua Maori Act 1993, to an instrument of title; and
- (c) the application is made before the commencement of this Act.

Ownership and management of public foreshore and seabed

11 Public foreshore and seabed vested in the Crown

- (1) On and from the commencement of this Act, the full legal and beneficial ownership of the public foreshore and seabed is vested in the Crown, so that the public foreshore and seabed is held by the Crown as its absolute property.
- (2) **Subsection (1)** replaces all previous statutory vestings in, and acquisitions of title by, the Crown in respect of any area of the foreshore and seabed.
- (3) **Subsection (1)** does not affect customary rights that are able to be recognised and protected under **Part 3 or Part 4**.
- (4) The Crown must administer the public foreshore and seabed in accordance with this Act and any other enactment that regulates the use of, or activity on, the foreshore and seabed, whether directly or as land of the Crown.
- (5) The Land Act 1948 does not apply to the public foreshore and seabed.

12 Public foreshore and seabed not to be alienated

- (1) No part of the public foreshore and seabed may be alienated or otherwise disposed of.

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- (2) However, **subsection (1)** does not prevent the alienation of any part of the public foreshore and seabed—
- (a) by a special Act of Parliament; or
 - (b) under section 355 of the Resource Management Act 1991.

13 Rights of owners of legal roads and motorways preserved

- (1) This section applies to any road or motorway that—
 - (a) is located in the public foreshore and seabed; and
 - (b) immediately before the commencement of this Act was owned by a person other than the Crown (the **owner**).
- (2) The road or motorway must be regarded as separate property capable of separate ownership from the area under the road or motorway.
- (3) The owner continues to own the road or motorway, but the area under the road or motorway is vested in the Crown on the terms stated in **section 11**.
- (4) The owner is entitled to occupy the area in which the road or motorway is located, including the area above the road or motorway reasonably incidental to its use, for as long as the area is used as a road or motorway.
- (5) This section applies only to formed roads and to formed motorways and, accordingly, unformed roads or road reserves in the public foreshore and seabed are vested in the Crown on the terms stated in **section 11**.
- (6) To avoid doubt, nothing in this section affects **section 6** or **section 7**.
- (7) In this section—
 - (a) **motorway** has the same meaning as in section 2(1) of the Transit New Zealand Act 1989;
 - (b) **road** has the same meaning as in section 315(1) of the Local Government Act 1974.

14 Additions to public foreshore and seabed resulting from works

- (1) This section applies if,—
 - (a) under the authority of an enactment, any works are executed on the public foreshore and seabed; and

- (b) in consequence of the works, an area of the public foreshore and seabed that is immediately adjacent to the works becomes raised in height (whether gradually or imperceptibly or otherwise) so as to be above instead of below the line of high water mark at mean spring tides; and
 - (c) the raising of the area described in **paragraph (b)** does not take place under the authority to execute the works.
- (2) Despite any enactment or rule of law to the contrary, the raised area described in **subsection (1)(b)**—
 - (a) continues to be vested in the Crown as part of the public foreshore and seabed; and
 - (b) remains subject to this Act.
- (3) Despite **section 12**, the Minister of Conservation may, under section 355 of the Resource Management Act 1991, dispose of any raised area described in **subsection (1)(b)**; and, in that case, section 355 applies with any necessary modifications.
- (4) In this section, a reference to works that are authorised includes a reference to any land reclaimed from the public foreshore and seabed under the authority of any Act.

15 Extension of public foreshore and seabed by acquisition of land in private title

- (1) The Crown may purchase or otherwise acquire a specified freehold interest in any part of the foreshore and seabed that is not part of the public foreshore and seabed.
- (2) Any specified freehold interest purchased or otherwise acquired under **subsection (1)**—
 - (a) is vested in the Crown on the terms stated in **section 11**; and
 - (b) becomes subject to this Act.

16 Provisions relating to existing certificates of title

- (1) Every certificate of title or computer freehold register in respect of any part of the public foreshore and seabed that is, at the commencement of this Act, not subject to a current registered interest or a current registered notification must, on the request of the Minister of Conservation and without further authority than this section, be cancelled by the Registrar.

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- (2) If the certificate of title or computer freehold register for any part of the public foreshore and seabed is subject to a current registered interest or current registered notification, the Registrar must, on the request of the Minister of Conservation and without further authority than this section, make any necessary endorsement on the certificate of title or entry in the computer freehold register.
 - (3) A certificate of title or computer freehold register that is endorsed under **subsection (2)** is held in the name of the Crown until the expiration, extinguishment, or determination of the interest or notification, and must then be cancelled by the Registrar on the request of the Minister of Conservation.
 - (4) If the Minister of Conservation makes a request under **subsection (1) or subsection (2)** and the part of the public foreshore and seabed concerned is not electronic transactions land as described in section 25 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002, the Minister of Conservation must also—
 - (a) produce the duplicate of the certificate of title concerned to the Registrar for cancellation or endorsement as the case requires; or
 - (b) certify that the duplicate is unavailable by reason of loss or damage.

17 Survey plans

- (1) The Minister of Conservation may cause a plan of survey of any land that is part of the public foreshore and seabed to be made by a licensed cadastral surveyor in accordance with the requirements of the Cadastral Survey Act 2002 and any rules made under that Act.
- (2) On or after the deposit of a plan of survey that meets the requirements of the Cadastral Survey Act 2002 and any rules made under that Act, the Registrar must, despite anything in the Land Transfer Act 1952, issue to Her Majesty the Queen in right of New Zealand for the purpose of this Act free of charge, a computer freehold register for an estate in fee simple under the Land Transfer Act 1952 in respect of the area to which the plan relates.
- (3) Where a new computer freehold register is issued for the purposes of this Act, the Registrar must cancel any other certificate of title or computer freehold register issued in

respect of the fee simple estate in the area concerned or partially cancel that other title or computer freehold register, as the case requires.

- (4) The Registrar must record against every new computer freehold register issued in accordance with this section the order of priority of any registered interest or registered interest in respect of the area concerned.
- (5) Nothing in this section prevents the Minister of Conservation applying in accordance with the provisions of the Land Transfer Act 1952 for the issue of a new computer freehold register in respect of any area of the public foreshore and seabed.

18 Exclusion of interests in foreshore and seabed founded on adverse possession or prescriptive title

- (1) Despite any other enactment or rule of law, no person may claim an interest in any part of the foreshore and seabed on the ground of adverse possession or prescriptive title.
- (2) No relief may be claimed by any person for any loss or damage arising from this section.
- (3) This section does not limit **section 29**.

19 Local authorities may apply to Minister for relief for loss of divested areas

- (1) A local authority that, as a result of the operation of **section 11**, loses its title to any area in the public foreshore and seabed that it had acquired by purchase, may apply to the Minister of Conservation for relief.
- (2) No court has jurisdiction to hear a claim in respect of a loss of the kind referred to in **subsection (1)**.

20 Ownership functions to be carried out by Minister

The Minister of Conservation has and may exercise in relation to the public foreshore and seabed all the functions, duties, and powers of the Crown as owner of the public foreshore and seabed.

21 Access to areas of public foreshore and seabed may be prohibited or restricted

- (1) The relevant Ministers may from time to time, by notice in the *Gazette*, prohibit or restrict access to any area of the public foreshore and seabed.
- (2) No restriction or prohibition under **subsection (1)** may be inconsistent with any order made under **Part 3 or Part 4** or any right, interest, or authority conferred by or under any other enactment.
- (3) If the relevant Ministers consider that an exemption from a prohibition or restriction imposed under **subsection (1)** is necessary to enable a recognised customary activity to be carried out under an order, the Ministers may, by notice in the *Gazette*, and subject to any conditions stated in the notice, exempt any person or class of person from the prohibition or the exemption.
- (4) The relevant Ministers may, by public notice and notice in the *Gazette*, vary or revoke a notice given under **subsection (1) or subsection (3)**.
- (5) A notice by which a prohibition or restriction is imposed under this section must—
 - (a) specify the area of the public foreshore and seabed to which it relates; and
 - (b) state the reasons for the prohibition or restriction.
- (6) The Minister of Conservation must give or send a copy of every notice given under this section—
 - (a) to every local authority that has statutory functions in respect of the area to which the notice relates; and
 - (b) to the holder concerned; and
 - (c) to the Chief Executive.
- (7) Every regional council notified under **subsection (6)(a)** must take any action (including, without limitation, the erection of signs and fences) required to implement the restriction or prohibition.
- (8) In this section, **relevant Ministers** means—
 - (a) the Minister of Conservation and the Minister of Māori Affairs; or
 - (b) the Minister of Conservation and any other relevant Minister.

22 Failure to comply with section 21

- (1) Any person who intentionally fails to comply with a prohibition or restriction imposed under **section 21** commits an offence punishable on summary conviction by a fine not exceeding \$5,000.
- (2) A person who is entitled to act under a notice issued under **section 21(3)** is not liable under **subsection (1)** for any action taken in accordance with that notice.

*Other enactments not affected***23 Enactments, permits, consents, and other authorities not affected**

- (1) **Section 11** does not affect an enactment that prohibits, limits, or restricts, or provides for the prohibition, limitation, or restriction of any action in respect of any area that is, by this Act, included in the public foreshore and seabed.
- (2) **Section 11** does not affect any licence, permit, consent, or other authority granted under any enactment, whether before, on, or after the commencement of this Act, in respect of any area that is by this Act included in the public foreshore and seabed.

24 Powers to set aside not affected

Section 11 does not affect any power of the Crown, under an enactment, to accord special or protected status to areas of the foreshore or seabed, or to set areas of the public foreshore and seabed aside for specific public purposes.

*Civil liability not affected***25 Civil liability not affected**

Nothing effected by this Act is to be regarded as—

- (a) giving rise to any civil liability; or
- (b) placing any person in breach of a contract, deed, agreement, or other instrument that has effect in respect of the public foreshore and seabed.

*Consequential repeals***26 Repeal of Foreshore and Seabed Endowment Revesting Act 1991**

- (1) The Foreshore and Seabed Endowment Revesting Act 1991 is repealed.
- (2) Despite **subsection (1)**, the Foreshore and Seabed Endowment Revesting Act 1991 continues to have effect in respect of any area—
 - (a) to which that Act applied immediately before the commencement of this Act; and
 - (b) that is not included in the public foreshore and seabed.
- (3) Despite **subsection (1)**, section 6 of the Foreshore and Seabed Endowment Revesting Act 1991 continues in effect.

27 Section 7 of Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 repealed

Section 7 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 is repealed.

*Findings of High Court with respect to territorial customary rights in public foreshore and seabed***28 Meaning of territorial customary rights**

In this Act, **territorial customary rights** means a collection of rights that, until the commencement of this Act,—

- (a) would have been recognised at common law as customary rights, customary title, aboriginal rights, aboriginal title, or as rights or titles of a similar kind; and
- (b) would have amounted at common law to a right to exclusive occupation and possession of a particular area that is included in the public foreshore and seabed.

29 High Court may find that a group held territorial customary rights

The High Court may, on the application of a group, make a finding that the group (or any members of that group) would, but for the vesting of the full legal and beneficial ownership of the public foreshore and seabed in the Crown by **section 11**, have held territorial customary rights to a particular area of the public foreshore and seabed at common law.

30 Finding not to be made if other protection available under law

- (1) The High Court may not make a finding under **section 29** if it forms the preliminary view that any rights identified in the application are rights of a kind that are—
 - (a) able to be considered under **Part 3 or Part 4**; or
 - (b) created or regulated by or under—
 - (i) the Fisheries Act 1996; or
 - (ii) the regulations made under that Act; or
 - (iii) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
- (2) If **subsection (1)(a)** applies, the High Court may do whichever of the following is appropriate:
 - (a) treat the application as an application under **Part 4**;
 - (b) refer the application to the Māori Land Court for consideration under **Part 3**.

31 Matters that may be taken into account

- (1) In considering an application under **section 29**, the Court may, without limitation, take the following matters into account:
 - (a) orders issued by the Māori Land Court to recognise ancestral connection, and to recognise ongoing customary rights to undertake particular activities;
 - (b) evidence about customary fishing activity, including evidence of how any customary fishing activity is now being undertaken in accordance with the Fisheries Act 1996 and regulations made under that Act;
 - (c) any other evidence that it considers relevant to enable it to assess the applicant group's overall territorial association with and exclusive occupation and possession of the area.
- (2) Despite section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, evidence of customary fishing activity can be given to the High Court in support of applications for territorial customary rights.

32 Procedure

- (1) The High Court may, in accordance with section 61 of Te Ture Whenua Maori Act 1993, refer to the Māori Appellate Court any question of tikanga Māori that is raised by an application under **section 29** for the opinion of the Māori

Appellate Court, and the opinion of that court is binding on the High Court.

- (2) Rules not inconsistent with this Act may be made under section 51C of the Judicature Act 1908 regulating the practice and procedure of the High Court or the Court of Appeal or the Supreme Court in relation to any application to the High Court under this Act.

33 Referral of finding to consider redress

- (1) If the High Court makes a finding under **section 29**, the Court must refer that finding to the Attorney-General and to the Minister of Māori Affairs.
- (2) The Ministers to whom the finding is referred must enter into discussions with the group in whose favour the finding is made; the purpose of such discussions is to consider the nature and extent of any redress that the Crown may give.

34 No relief other than that given by the Crown

No relief may be claimed in respect of a finding made under **section 29** other than redress that the Crown may give, on the basis of a finding, under **section 33**.

Part 3

Provisions relating to Māori Land Court and orders it may make

Subpart 1—Jurisdiction of Māori Land Court and application of Te Ture Whenua Maori Act 1993

Jurisdiction of Māori Land Court

35 Jurisdiction of Māori Land Court

The Māori Land Court—

- (a) has jurisdiction under this Act to inquire into and determine applications made under **section 37** for—
- (i) ancestral connection orders; and
 - (ii) customary rights orders; but
- (b) does not have jurisdiction under this Act to make orders or determinations in relation to the public foreshore and seabed, other than—
- (i) the orders referred to in **paragraph (a)**; and

- (ii) any other orders or determinations under a jurisdiction conferred or permitted by this Act; and
- (iii) any incidental orders or determinations under the rules of the Māori Land Court that are reasonably necessary for the Court in its inquiry into and determination of applications made under **section 37**.

Application of Te Ture Whenua Maori Act 1993

36 Powers and procedures of Māori Land Court

- (1) Te Ture Whenua Maori Act 1993 does not apply to the jurisdiction of the Māori Land Court or the Māori Appellate Court under this Act.
- (2) However, the following provisions of Te Ture Whenua Maori Act 1993 apply, with the necessary modifications, to the jurisdiction of those courts under this Act:
 - (a) sections 7 to 16 (which relate to the appointment and tenure of Judges); and
 - (b) section 18(1)(e) (which confers jurisdiction on the Māori Land Court to determine whether a person is a Māori or the descendant of a Māori); and
 - (c) sections 30 to 30J (which provide for the Māori Land Court's jurisdiction to advise on or determine issues of representation); and
 - (d) sections 34 to 36 (which provide for the appointment of additional members of the Māori Land Court); and
 - (e) section 38 (which relates to the exercise of the powers of the Māori Land Court by a Judge); and
 - (f) section 40 (which relates to the power of a Judge to refer matters to a registrar); and
 - (g) sections 41 and 42 (which relate to orders of the Māori Land Court), but only in respect of the jurisdiction exercised by that Court under sections 30 to 30J; and
 - (h) the provisions of Part II (which relate to the Māori Appellate Court), but only in respect of—
 - (i) the jurisdiction exercised by that Court on an appeal relating to sections 30 to 30J of Te Ture Whenua Maori Act 1993; and
 - (ii) (except for sections 61(1) and 64), appeals brought under **section 55(1)(a)**; and

- (i) the provisions of Part III (which relate to both the Māori Land Court and the Māori Appellate Court); but
 - (i) only to the extent that they apply to the jurisdiction of the Māori Land Court or the Māori Appellate Court under this Act; and
 - (ii) not including sections 72, 76, 77, 79(6), 82 to 87, 98(6) to (8), and (9)(e); and
 - (j) provisions expressly referred to in this Act.
- (3) **Schedule 1** applies in relation to the practice and procedure of the Māori Land Court and the Māori Appellate Court in exercising their jurisdiction under this Act.

Subpart 2—Ancestral connection and customary rights orders

Applications to Māori Land Court

37 Applications for orders

- (1) A representative of a group of Māori may, in respect of a defined area of the public foreshore and seabed, apply to the Māori Land Court for—
 - (a) an ancestral connection order;
 - (b) a customary rights order.
- (2) An application under **subsection (1)** must be made not later than 31 December 2015.

Orders of Māori Land Court

38 Māori Land Court may make orders

- (1) The Māori Land Court may—
 - (a) make an ancestral connection order in accordance with **sections 39 and 40**;
 - (b) make a customary rights order in accordance with **sections 41 and 42**.
- (2) An order of the Māori Land Court must be—
 - (a) pronounced orally in open Court; and
 - (b) recorded in the public foreshore and seabed register.
- (3) An order made under this section takes effect in accordance with **clause 6 of Schedule 1**.

Determination of applications for ancestral connection orders

39 Determination of applications for ancestral connection orders

- (1) The Māori Land Court may make an ancestral connection order only if it is satisfied that the order will apply to an established and identifiable group of Māori—
 - (a) whose members are whanaunga; and
 - (b) that has had since 1840, and continues to have, an ancestral connection to the area of the public foreshore and seabed specified in the application.
- (2) The Māori Land Court must have regard to tikanga Māori when exercising its jurisdiction under **subsection (1)**.

40 Overlapping interests

The Māori Land Court may make more than 1 ancestral connection order in respect of the whole or part of the same area of the public foreshore and seabed.

Determination of applications for customary rights orders

41 Limits to jurisdiction of Māori Land Court to make customary rights orders

The Māori Land Court must not inquire into or determine an application for a customary rights order that relates to an activity, use, or practice that is—

- (a) a commercial Māori fishing right declared to be settled in section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
- (b) a non-commercial Māori fishing right declared to be settled in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or
- (c) restricted, controlled, regulated, or prohibited by or under—
 - (i) the Wildlife Act 1953;
 - (ii) the Marine Mammals Protection Act 1978.

42 Determination of applications for customary rights order

- (1) The Māori Land Court may make a customary rights order only if it is satisfied that—

-
- (a) the order applies to an established and identifiable group of Māori whose members are whanaunga; and
 - (b) the activity, use, or practice for which the applicant seeks a customary rights order—
 - (i) is, and has been since 1840, integral to tikanga Māori in relation to the group of Māori; and
 - (ii) has been carried on, exercised, or followed in a substantially uninterrupted manner since 1840 in accordance with tikanga Māori, in the area of the public foreshore and seabed specified in the application; and
 - (iii) continues to be carried on, exercised, or followed in the same area of the public foreshore and seabed in accordance with tikanga Māori; and
 - (iv) is not prohibited by any enactment or rule of law; and
 - (c) the right to carry on, exercise, or follow the activity, use, or practice has not been extinguished as a matter of law.
- (2) To avoid doubt,—
- (a) for the purpose of **subsection (1)(b)(ii)**, an activity, use, or practice has not been carried on, exercised, or followed in a substantially uninterrupted manner if it has not been carried on, exercised, or followed because another activity carried out under an enactment or rule of law has prevented the activity, use, or practice for which a customary rights order is sought from being carried on, exercised, or followed:
 - (b) for the purpose of **subsection (1)(c)**, any right to carry on, exercise, or follow an activity, use, or practice has been extinguished forever if, in relation to the area of the public foreshore and seabed specified in the application,—
 - (i) legal title has been vested in a person or group other than the group of Māori on whose behalf the order is sought, by any means, including—
 - (A) Crown grants made by or under any lawful authority, including ordinances, statutes, or the prerogative; or

- (B) the common law; or
 - (C) a statutory vesting; or
 - (D) administrative action; or
 - (ii) there has been a reclamation of the relevant part of the public foreshore or seabed; or
 - (iii) an interest that is legally inconsistent with the activity, use, or practice for which a customary rights order is sought has been established by any means.
- (3) **Subsection (2)(b)(i)** applies whether or not legal title has subsequently been returned to the Crown.

43 Effect of customary rights order

A customary rights order provides for—

- (a) a right to carry out a recognised customary activity in accordance with **Part 5**; and
- (b) the recognition of, and provision for, recognised customary activities as matters of national importance under **section 6(g)** of the Resource Management Act 1991.

44 Evidence of customary fishing

Despite section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, evidence of the activity of customary fishing may be given to the Māori Land Court in support of an application for a customary rights order.

Exercise of customary rights order

45 Powers of holder

The holder of a customary rights order may, in accordance with tikanga Māori,—

- (a) determine who may carry out a recognised customary activity under the order;
- (b) limit or suspend for any reason a recognised customary activity under the order.

46 Exercise of customary rights order for commercial benefit

- (1) A customary rights order may entitle the group of Māori on whose behalf the order is made to derive a commercial benefit

from carrying out a recognised customary activity under the order.

- (2) However, the exercise of that activity is subject to the scale, extent, and frequency that apply under the order to the recognised customary activity, and to the extent that the exercise of the activity exceeds the scale, extent, or frequency specified for the activity in the order, it is subject to any conditions or limits imposed by or under any enactment or rule of law.

Variation or cancellation of orders

47 Orders may be varied

- (1) The Māori Land Court may vary an order made under this Part by replacing the legal entity named in the order with another legal entity to hold the order on behalf of the group of Māori to whom the order applies.
- (2) A variation made under **subsection (1)** must not have the effect of depriving the group of Māori of the benefits of the order.
- (3) **Clause 3 of Schedule 1** applies to this section and **section 48**.

48 Cancellation of customary rights order

- (1) The Māori Land Court may cancel, in whole or in part, an order made under this Part.
- (2) If an order is cancelled, the right to carry on, exercise, or follow the activity, use, or practice affected by the cancellation is extinguished, and cannot be revived.

49 Procedures for varying or cancelling orders

- (1) **Clause 8 of Schedule 1** applies to the variation or cancellation of an order.
- (2) A variation or cancellation of an order must be—
 - (a) pronounced orally in open Court; and
 - (b) recorded in the public foreshore and seabed register.
- (3) A representative of the group of Māori to whom the order applies may apply to vary or cancel the order under this section if—
 - (a) the legal entity identified as the holder has ceased to exist; or
 - (b) the legal entity is a natural person, and that person has died or no longer has legal capacity.

50 Basis for varying or cancelling orders

The Māori Land Court may vary an order under **section 47** or cancel an order under **section 48** only if it is satisfied that—

- (a) the holder of the order is authorised by the group of Māori to whom the order applies to apply for the variation or cancellation, as the case may be; and
- (b) the holder has given sufficient notice of the application to the group; and
- (c) there has been sufficient opportunity for the group to consider the application and make its views known to the holder; and
- (d) no meritorious objections to the application have been received from or on behalf of the group that would require the Court to decline the application.

*Limitations***51 Limitation on effect of orders**

- (1) **Sections 6 and 7** are not affected by—
 - (a) an ancestral connection order; or
 - (b) a customary rights order.
- (2) However, a prohibition or restriction imposed under **section 21** prevails over **subsection (1)**.

52 Protection of wāhi tapu

- (1) If the Māori Land Court finds, in determining an application for a customary rights order, that **section 6** prevents or is inconsistent with protecting a wāhi tapu by means of the order, the Māori Land Court must refer that finding to the Attorney-General and the Minister of Māori Affairs.
- (2) The Māori Land Court may make a finding under **subsection (1)** only if it considers that recognition and protection of the wāhi tapu are not provided for—
 - (a) by **section 29**; or
 - (b) by or under the Fisheries Act 1996; or
 - (c) by or under Historic Places Act 1993.
- (3) If the Māori Land Court makes a finding and refers it to the Attorney-General and Minister of Māori Affairs under **subsection (1)**, no relief is available except at the discretion of the Attorney-General and Minister of Māori Affairs.

53 Limitations on exercise of customary rights order

A recognised customary activity carried out under a customary rights order is subject to the controls (if any) imposed by the Minister of Conservation under **Schedule 12** of the Resource Management Act 1991.

Subpart 3—Procedural matters*Inquiry by way of hearing***54 Inquiry into applications for orders**

- (1) If the Chief Registrar receives objections to an application made under **section 37**, the Māori Land Court must conduct a public hearing in accordance with **Part 3 of Schedule 1** to inquire into that application.
- (2) If no objections are received to an application, the Māori Land Court must make an order,—
 - (a) in relation to an application for an ancestral connection order, if it is satisfied that it is entitled to do so under **section 39**;
 - (b) in relation to an application for a customary rights order, if it is satisfied that it is entitled to do so under **section 42**.

*Appeal rights***55 Rights of appeal against decisions of Māori Land Court**

- (1) A party to a proceeding who is dissatisfied with a decision of the Māori Land Court may appeal—
 - (a) if that decision relates to an ancestral connection order, to the Māori Appellate Court; and
 - (b) if that decision relates to a customary rights order, to the High Court on a matter of fact or law.
- (2) In relation to a proceeding under this Part, the Crown—
 - (a) may lodge an appeal, whether or not it was a party to the proceeding in the Māori Land Court; and
 - (b) must be treated as a party to the appeal.
- (3) If a question arises on a matter of tikanga Māori on an appeal under **subsection (1)(b)**, the High Court must state a case and refer the question to the Māori Appellate Court.
- (4) Section 61(2) to (4) of Te Ture Whenua Maori Act 1993 applies if a case is stated by the High Court under **subsection (2)**.

- (5) This section prevails over section 58(1) of Te Ture Whenua Maori Act 1993.
- (6) **Clause 10 of Schedule 1** applies to orders made by the Māori Appellate Court in the exercise of its jurisdiction under this Act.

56 Further rights of appeal

- (1) A party who is dissatisfied with—
 - (a) a decision of the Māori Appellate Court relating to an appeal under **section 55(1)(a)** may appeal to the Court of Appeal and the Supreme Court as provided for by sections 58A and 58B of Te Ture Whenua Maori Act 1993;
 - (b) a decision of the High Court made under **section 55(1)(b)** may appeal to the Court of Appeal by leave of the Court of Appeal on a matter of fact or law.
- (2) Section 66 of the Judicature Act 1908 applies to appeals to the Court of Appeal under this section.

Part 4 High Court jurisdiction in relation to customary rights orders

Jurisdiction

57 Jurisdiction of the High Court

- (1) The High Court has jurisdiction to inquire into and determine applications for customary rights orders under this Part.
- (2) **Schedule 2** applies in relation to the practice and procedure of the High Court in exercising its jurisdiction under this Part.

Applications

58 Applications for orders

- (1) A duly authorised representative of a group may, in respect of a specified area of the public foreshore and seabed, apply to the High Court for a customary rights order.
- (2) An application under **subsection (1)** must be made not later than 31 December 2015.

*Determination of applications***59 High Court may make orders**

The High Court may make a customary rights order in accordance with **sections 60 and 61**.

60 Limits to jurisdiction of High Court to make orders

The High Court must not inquire into or determine an application for a customary rights order that relates to an activity, use, or practice that is—

- (a) regulated by or under the Fisheries Act 1996; or
- (b) restricted, controlled, regulated, or prohibited by or under—
 - (i) the Wildlife Act 1953;
 - (ii) the Marine Mammals Protection Act 1978; or
- (c) able to be recognised and protected as a customary right by the Māori Land Court under **Part 3**; or
- (d) in relation to the same group and the same area of the public foreshore and seabed,—
 - (i) the subject of an existing application to the Māori Land Court under **section 37**; or
 - (ii) the subject of an existing order made by the Māori Land Court under **section 38(1)**.

61 Basis on which High Court may make determination

- (1) The High Court may make a customary rights order only if it is satisfied that—
 - (a) the order applies to an established and identifiable group whose members share a distinctive community of interest; and
 - (b) the activity, use, or practice for which the applicant seeks a customary rights order—
 - (i) is, and has been since 1840, integral to the distinctive cultural practices of the group; and
 - (ii) has been carried on, exercised, or followed in a substantially uninterrupted manner since 1840 in the area of the public foreshore and seabed specified in the application; and
 - (iii) continues to be carried on, exercised, or followed in accordance with the cultural practices of the group; and

- (iv) is not prohibited by any enactment or rule of law; and
 - (c) the right to carry on, exercise, or follow the activity, use, and practice has not been extinguished as a matter of law.
- (2) To avoid doubt,—
- (a) for the purpose of **subsection (1)(b)(ii)**, an activity, use, or practice has not been carried on, exercised, or followed in a substantially uninterrupted manner if it has not been carried on, exercised, or followed because another activity carried out under an enactment or rule of law has prevented the activity, use, or practice for which a customary rights order is sought from being carried on, exercised, or followed:
 - (b) for the purposes of **subsection (1)(c)**, a right to carry on, exercise, or follow an activity, use, or practice has been extinguished forever if, in relation to the area of the public foreshore and seabed specified in the application,—
 - (i) legal title has been vested in a person or group other than the group on whose behalf the order is sought by any means, including—
 - (A) Crown grants made by or under any lawful authority, including ordinances, statutes, or the prerogative; or
 - (B) the common law; or
 - (C) a statutory vesting; or
 - (D) administrative action; or
 - (ii) there has been a reclamation of the relevant part of the foreshore or seabed; or
 - (iii) an interest that is legally inconsistent with the activity, use, or practice for which a customary rights order is sought has been established by any means.
- (3) **Subsection (2)(b)(i)** applies whether or not legal title has subsequently been returned to the Crown.

62 Effect of customary rights order

A customary rights order provides for—

- (a) the right to carry out a recognised customary activity in accordance with **Part 5**; and

- (b) recognised customary activities to be recognised and provided for as matters of national importance under **section 6(g)** of the Resource Management Act 1991.

Exercise of customary rights order

63 Powers of holder

The holder of a customary rights order may, in accordance with its distinctive cultural practices,—

- (a) determine who may carry out a recognised customary activity under the order; and
- (b) limit or suspend for any reason a recognised customary activity being carried out under the order.

64 Exercise of customary rights order for commercial benefit

- (1) A customary rights order may entitle the group on whose behalf the order is made to derive a commercial benefit from carrying out a recognised customary activity under the order.
- (2) However, the exercise of that activity is subject to the scale, extent, and frequency that apply to carrying out the recognised customary activity under the order, and to the extent that the exercise of the activity exceeds the scale, extent, or frequency specified for the activity in the order, it is subject to any conditions or limits imposed by or under any enactment or rule of law.

Variation and cancellation

65 Orders may be varied

- (1) The High Court may vary an order made under this Part by replacing the holder named in an order with another person to hold the order on behalf of the group to whom the order applies.
- (2) A variation made under **subsection (1)** must not have the effect of depriving the group on whose behalf the order was made of the benefits of the order.
- (3) **Clause 3 of Schedule 2** applies to this section and **section 66**.

66 Cancellation of orders

- (1) The High Court may cancel, in whole or in part, an order made under this Part.

- (2) If an order is cancelled, the right to carry on, exercise, or follow the activity, use, or practice affected by the cancellation is extinguished, and cannot be revived.

67 Basis for varying or cancelling orders

The High Court may vary an order made under **section 65** or cancel an order under **section 66** only if it is satisfied that—

- (a) the holder of the order is authorised by the group to whom the order applies to apply for the variation or cancellation, as the case may be; and
- (b) the holder has given sufficient notice of the application to the group it represents; and
- (c) there has been sufficient opportunity for the group to consider the application and make its views known to the holder; and
- (d) no meritorious objections to the application have been received from or on behalf of the group that would require the High Court to decline the application.

68 Recording of orders

All orders made under this Part must be entered in the public foreshore and seabed register.

Limitations

69 Limitations on effect of orders

- (1) **Sections 6 and 7** are not affected by a customary rights order made under this Part.
- (2) However, a prohibition or restriction imposed under **section 21** prevails over **subsection (1)**.

70 Limitations on exercise of customary rights order

A recognised customary activity carried out under a customary rights order made under this Part is subject to the controls (if any) imposed by the Minister of Conservation under **Schedule 12** of the Resource Management Act 1991.

*Appeal rights***71 Rights of appeal against decision of High Court**

- (1) A party to a proceeding under this Part who is dissatisfied with a decision of the High Court may appeal to the Court of Appeal on a matter of fact or law.
- (2) In relation to a proceeding under this Part, the Crown—
 - (a) may lodge an appeal on a matter of fact or law, whether or not it was a party to the proceeding in the High Court; and
 - (b) must be treated as a party to the appeal.
- (3) Every appeal made under this section must be commenced by notice of appeal within 2 months after the date of the making of the order appealed from or within such further period as the Court of Appeal may allow.

Part 5**Amendments to Resource Management Act 1991****72 Resource Management Act 1991 called principal Act in this Part**

In this **Part**, the Resource Management Act 1991¹ is called “the principal Act”.

¹ 1991 No 69

Subpart 1—Amendments to principal Act**73 Interpretation**

- (1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
 - “**access rights** has the same meaning as in **section 4** of the Foreshore and Seabed Act **2004**
 - “**adverse effects assessment** means an assessment carried out under **section 17B(1)(a)**
 - “**adverse effects report** means a written report prepared under **section 17B(1)(b)**
 - “**ancestral connection order** means—
 - “(a) a public foreshore and seabed ancestral connection order made by the Māori Land Court under **section 38** of the Foreshore and Seabed Act **2004**; and

“(b) includes, for the purposes of this Act, an agreement made by the Ministers under **section 111** of the Foreshore and Seabed Act **2004**

“**customary rights order** has the same meaning as in **section 4** of the Foreshore and Seabed Act **2004**

“**holder** has the same meaning as in **section 4** of the Foreshore and Seabed Act **2004**

“**recognised customary activity** is an activity, use, or practice carried on, exercised, or followed under a customary rights order”.

(2) Section 2(1) of the principal Act is amended by repealing the definition of regional council and substituting the following:

“**regional council**—

“(a) has the same meaning as in section 5 of the Local Government Act 2002; and

“(b) includes a unitary authority within the meaning of that Act”.

74 Matters of national importance

Section 6 of the principal Act is amended by adding, after paragraph (f), the following paragraph:

“(g) the protection of recognised customary activities.”

75 New heading and sections 17A and 17B inserted

The principal Act is amended by inserting, after section 17, the following heading and sections:

“Recognised customary activities

“**17A Recognised customary activity may be exercised in accordance with any controls**

“(1) A recognised customary activity may be carried out despite—

“(a) sections 9 to 17; or

“(b) a rule in a plan or a proposed plan.

“(2) **Subsection (1)** applies to a recognised customary activity only if that recognised customary activity is carried out—

“(a) under a customary rights order or by a person authorised under **section 45 or section 63** of the Foreshore and Seabed Act **2004**; and

“(b) in accordance with any controls imposed by the Minister of Conservation under **Schedule 12**.

“17B Adverse effects assessment

- “(1) For the purposes of any controls imposed on a recognised customary activity under **Schedule 12**, a regional council must, if requested by the Minister of Conservation at any time, and may of its own initiative in the circumstances set out in **clause 6(2) of Schedule 12**,—
- “(a) carry out an adverse effects assessment of the effects on the environment of a recognised customary activity in its region; and
 - “(b) complete, and give to the Minister an adverse effects report based on that assessment.
- “(2) **Part 2 of Schedule 12** applies to the assessment carried out and to the report prepared under this section.”

76 Functions of Minister of Conservation

Section 28 of the principal Act is amended by adding the following paragraphs:

- “(e) making a decision on any controls to be imposed under **Schedule 12** on a recognised customary activity;
- “(f) requesting an adverse effects report under **section 17B**.”

77 Information to be supplied to Minister of Conservation

Section 28A(b) of the principal Act is amended by adding the word “; or” and by inserting, after paragraph (b), the following paragraph:

- “(c) the exercise of a recognised customary activity in its region—”.

78 Delegation of functions by Ministers

Section 29(1) of the principal Act is amended by inserting, after paragraph (g), the following paragraphs:

- “(ga) making a decision on any controls to be imposed under **Schedule 12** on a recognised customary activity;
- “(gb) requesting an adverse effects report under **section 17B**.”.

79 Transfer of powers

Section 33(2) of the principal Act is amended by inserting, after the words “iwi authority,”, the words “holder of an ancestral connection order,”.

80 Duty to gather information, monitor, and keep records

- (1) Section 35(2)(d) of the principal Act is amended by adding the word “; and”, and by inserting, after paragraph (d), the following paragraph:

“(e) the exercise of a recognised customary activity in its region, including any controls imposed under **Schedule 12** on that activity,—”.

- (2) Section 35(5) of the principal Act is amended by inserting, after paragraph (ja), the following paragraph:

“(jb) records of every customary rights order relating to a recognised customary activity carried out in, and every ancestral connection order relating to, its region; and”.

81 Persons to have powers of consent authority for purposes of sections 37 and 37A

Section 37B of the principal Act is amended by adding the following paragraph:

“(d) the Minister of Conservation, for all matters while carrying out his or her functions under **Schedule 12**.”

82 Authorisation and responsibilities of enforcement officers

- (1) Section 38(3) of the principal Act is amended by omitting the words “either or both”, and substituting the words “1 or more”.

- (2) Section 38(3) of the principal Act is amended by adding the following paragraph:

“(c) compliance with controls imposed under **Schedule 12** on a recognised customary activity.”

83 Contents of New Zealand coastal policy statements

Section 58 of the principal Act is amended by inserting, after paragraph (g), the following paragraphs:

“(ga) national priorities for maintaining and enhancing public access to and along the coastal marine area:

“(gb) recognised customary activities:”.

- 84 Matters to be considered by regional council**
Section 61(2A) of the principal Act is amended by inserting, after the words “iwi authority”, the words “or by a holder of an ancestral connection order”.
- 85 Contents of regional policy statements**
Section 62(1)(b) of the principal Act is amended by inserting, after the words “iwi authorities in,”, the words “, or to holders of ancestral connection orders relating to,”.
- 86 Imposition of coastal occupation charges**
Section 64A of the principal Act is amended by inserting, after subsection (4), the following subsection:
“(4A) A coastal occupation charge must not be imposed on any person occupying the coastal marine area if the person is carrying out a recognised customary activity in accordance with **section 17A(2)**.”
- 87 Matters to be considered by regional council**
Section 66(2A) of the principal Act is amended by inserting, after the words “iwi authority”, the words “or by a holder of an ancestral connection order”.
- 88 Matters to be considered by territorial authority**
Section 74(2A) of the principal Act is amended by inserting, after the words “iwi authority”, the words “or by a holder of an ancestral connection order”.
- 89 New heading and sections 85A to 85C inserted**
The principal Act is amended by inserting, after section 85, the following heading and sections:
“Plan must not allow activity that prevents recognised customary activities
“85A Recognised customary activity not prevented by plan
A plan, a proposed plan, or a change to a plan must not include a rule that would allow an activity that would, or is likely to, prevent or has, or is likely to have, a significant adverse effect on a recognised customary activity carried out in accordance with **section 17A(2)**.

“85B Holder of customary rights order may make submission or request change

- “(1) If the holder of a customary rights order considers that a rule in a plan, a proposed plan, or a change to a plan does not comply with **section 85A**, the holder may—
- “(a) make a submission to the local authority concerned under clause 6 of the First Schedule; or
 - “(b) request a change under clause 21 of the First Schedule; or
 - “(c) apply to the Environment Court for a change to a rule in a plan, a proposed plan, or a change to a plan.
- “(2) A local authority, in determining whether a rule in a plan, a proposed plan, or a change to a plan complies with **section 85A**, must consider the following matters:
- “(a) the effects of the proposed activity on the recognised customary activity; and
 - “(b) the area that the proposed activity will have in common with the recognised customary activity; and
 - “(c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and
 - “(d) the degree to which the recognised customary activity must be carried out to the exclusion of other activities; and
 - “(e) whether the recognised customary activity can be exercised only in a particular area.
- “(3) The provisions of the First Schedule apply to a submission or request made under **subsection (1)(a) or subsection (1)(b)**.

“85C Powers of Environment Court in relation to plan

- “(1) In determining an application made under **section 85B(1)(c)**, the Environment Court must consider—
- “(a) the matters set out in **section 85B(2)**; and
 - “(b) any submissions made on the application by the Minister of Conservation, any local authority concerned, or any other person.
- “(2) If the Environment Court considers that a rule in a plan, a proposed plan, or a change to a plan does not comply with **section 85A**, it—
- “(a) must report its findings to the holder of the customary rights order, the local authority concerned, and the Minister of Conservation; and

“(b) may include a direction to change the rule in the plan, proposed plan, or proposed provision of a plan.

“(3) A report and a direction by the Environment Court under this section has effect as if made under clause 15(3) of the First Schedule.”

90 Forming opinion as to who may be adversely affected

(1) Section 94B(1) of the principal Act is amended by omitting the words “Subsections (2) and (3)”, and substituting the words “Subsections (2) to (4)”.

(2) Section 94B of the principal Act is amended by adding the following subsection:

“(4) However, the holder of a customary rights order must be treated as being adversely affected if, in the opinion of the consent authority, the grant of a resource consent may adversely affect a recognised customary activity carried out in accordance with **section 17A(2)** under that order.”

91 When public notification and service requirements may be varied

Section 94D of the principal Act is amended by adding the following subsection:

“(4) A rule included in a plan under subsection (3) does not waive the need to serve an application if, in the opinion of the consent authority, the grant of a resource consent may adversely affect a recognised customary activity carried out in accordance with **section 17A(2)**.”

92 Consideration of applications

Section 104(3)(c) of the principal Act is amended by inserting, after the expression “section 107”, the expression “, **section 107A**,”.

93 New section 107A inserted

The principal Act is amended by inserting, after section 107, the following section:

“107A Restrictions on grant of resource consents

“(1) A consent authority must not grant a resource consent to do something that will, or is likely to, have a significant adverse

effect on a recognised customary activity carried out in accordance with **section 17A(2)**, unless written approval is given by the holder of the order.

- “(2) In determining whether a proposed activity will, or is likely to, have a significant adverse effect on a recognised customary activity, a consent authority must consider the following matters:
- “(a) the effects of the proposed activity on the recognised customary activity; and
 - “(b) the area that the proposed activity will have in common with the recognised customary activity; and
 - “(c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and
 - “(d) the degree to which the recognised customary activity must be carried out to the exclusion of other activities; and
 - “(e) whether the recognised customary activity can be exercised only in a particular area; and
 - “(f) whether an alternative location or method will avoid, remedy, or mitigate any significant adverse effects of the proposed activity on the recognised customary activity.
- “(3) Despite section 104A, **subsection (1)** may prevent the grant of an application for a resource consent for a controlled activity.”

94 Vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority
Section 237A(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

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

95 Vesting of reserves or other land
Section 239(3)(a) of the principal Act is amended by omitting the words “section 9A of the Foreshore and Seabed Endowment Revesting Act 1991”, and substituting the words “**section 11** of the Foreshore and Seabed Act **2004**”.

96 Proceedings to be heard by an Environment Judge
Section 309 of the principal Act is amended by adding the following subsections:

- “(4) This Part does not apply to a recognised customary activity carried out in accordance with **section 17A(2)**.
- “(5) However, sections 310 to 313 and sections 332 to 337 apply to the exercise of a recognised customary activity.”

97 Power of entry for inspection

Section 332(1) is amended by adding the word “; or” to paragraph (c) and also by adding the following paragraph:

- “(d) any control imposed under **Schedule 12** on a recognised customary activity is being complied with.”

98 Power of entry for survey

Section 333 is amended by inserting, after subsection (1), the following subsection:

- “(1A) Subsection (1) applies for the purpose of assessing the effects on the environment of a recognised customary activity.”

99 Crown’s existing rights to resources to continue

Section 354(3) of the principal Act is amended by omitting the words “the Foreshore and Seabed Endowment Revesting Act 1991,” and substituting the words “the Foreshore and Seabed Act **2004**,”.

100 Vesting of reclaimed land

- (1) Section 355 of the principal Act is amended by inserting, after subsection (3), the following subsections:

“(3A) **Subsection (3B)** applies if any right, title, or interest in land in the coastal marine area vested under subsection (3) relates to land—

- “(a) reclaimed after the commencement of this Act; and
“(b) for which a plan of survey has been approved under section 245.

“(3B) In the case of land described in **subsection (3A)**, the Minister of Conservation must not vest an estate in fee simple in land, but may—

- “(a) vest a leasehold estate in that land if, together with any rights of renewal, it does not exceed 50 years; or
“(b) impose encumbrances or restrictions on the right, title, or interest in order to—
“(i) control the use to which the land may be put; and

“(ii) to protect access rights in the coastal marine area.”

- (2) Section 355(4) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
“(ab) must describe the right, title, or interest vested; and”.

101 First Schedule amended

- (1) Clause 2 of the First Schedule of the principal Act is amended by repealing subclause (2), and substituting the following subclause:

“(2) A proposed regional coastal plan must be prepared by the regional council concerned in consultation with—
“(a) the Minister of Conservation; and
“(b) iwi authorities of the region; and
“(c) the holders of ancestral connection orders relating to the region.”

- (2) Clause 3(1) of the First Schedule of the principal Act is amended by adding to paragraph (d) the word “; and” and also by adding the following paragraph:

“(e) the holders of ancestral connection orders relating to the area.”

- (3) Clause 5(4) of the First Schedule of the principal Act is amended by adding to paragraph (f) the word “; and” and also by adding the following paragraph:

“(g) the holders of ancestral connection orders relating to the area.”

- (4) Clause 20(4) of the First Schedule of the principal Act is amended by adding to paragraph (f) the word “; and” and also by adding the following paragraph:

“(g) the holders of ancestral connection orders relating to the area.”

102 Fourth Schedule amended

The Fourth Schedule of the principal Act is amended by inserting after clause 1, the following clause:

“1A Matters that must be included in an assessment of effects on the environment

An assessment of effects on the environment for the purposes of section 88 must include, in a case where a recognised

customary activity is, or is likely to be, adversely affected, a description of possible alternative locations or methods for the proposed activity (unless written approval for that activity is given by the holder of the customary rights order).”

103 New Schedule 12 added

The principal Act is amended by adding the **Schedule 12** set out in **Schedule 4** of this Act.

Subpart 2—Amendment to regulation

104 Regulation amended

Regulation 10(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (SR 2003/153) is amended by adding the following paragraph:

“(h) the holder of a customary rights order who, in the opinion of the consent authority, may be adversely affected by the grant of a resource consent or the review of consent conditions.”

Subpart 3—Transitional provision

105 Continuation and completion of applications, etc, under principal Act

- (1) This section applies if, before the commencement of this Act,—
 - (a) an application has been made for a resource consent or for any matter in relation to a resource consent (including a change or review of conditions of an existing consent); or
 - (b) a notice of requirement has been given for a designation or a heritage order; or
 - (c) an application has been made to become a requiring authority or a heritage protection authority; or
 - (d) a policy statement, plan, change, or variation has been publicly notified.
- (2) The continuation and completion of a matter referred to in **subsection (1)** (including any rights of appeal) must be in accordance with the principal Act as if this Act had not been enacted.
- (3) However, a submission or request under **section 85B** in relation to a rule in a plan, a proposed plan, or a change to a plan, must

be completed in accordance with the principal Act as amended by this Act.

106 Continuation and completion of appeals, etc, under principal Act

- (1) If, before the commencement of this Act, an appeal has been lodged or an objection made, the continuation and completion of that appeal or objection must be in accordance with the principal Act as if this Act had not been enacted.
- (2) If, before the commencement of this Act, an application for a subdivision consent has been made, the continuation and completion of all proceedings in relation to that subdivision, including the approval and deposit of a survey plan, must be in accordance with the principal Act as if this Act had not been enacted.
- (3) If, before the commencement of this Act, a declaration, enforcement, or abatement action under Part XII of the principal Act has been commenced, the continuation and completion of that action (including any appeals) must be in accordance with the principal Act as if this Act had not been enacted.

Part 6

Provisions relating to public foreshore and seabed register, recognition agreements, and other matters

Subpart 1—Public foreshore and seabed register

107 Public foreshore and seabed register

- (1) The Chief Executive must keep a public foreshore and seabed register as a permanent record of—
 - (a) the orders made, varied, or cancelled by the Māori Land Court or the High Court under this Act; and
 - (b) agreements entered into under **sections 111 and 112**; and
 - (c) any restrictions or prohibitions on access imposed by the Minister of Conservation under **section 21**; and
 - (d) any controls imposed by the Minister of Conservation under **Schedule 12** of the Resource Management Act 1991.
- (2) With the agreement of the holders of the relevant orders, the Chief Executive may attach a customary rights order to an

ancestral connection order made by the Māori Land Court, if both orders—

- (a) relate in whole or in part to the same particular area of the public foreshore and seabed; and
 - (b) have been entered in the public foreshore and seabed register.
- (3) The public foreshore and seabed register is in addition to the records of the Māori Land Court.

108 Requirements for keeping public foreshore and seabed register

- (1) The public foreshore and seabed register kept under **section 107** must be held in the safe custody of the Chief Executive.
- (2) The register may be kept—
 - (a) in an electronic, electromagnetic, optical, digital, or photographic process or system; or
 - (b) as a paper record; or
 - (c) by other means for recording, reproducing, copying, or storing information; or
 - (d) in any combination of these processes, systems, or means.

109 Inspection and copying

- (1) All orders and other documents contained in the public foreshore and seabed register must be available for public inspection and copying, and copies may be supplied to any person upon request upon payment of the prescribed fee (if any).
- (2) The right to inspect and copy orders and other documents includes the right to receive—
 - (a) in the case of an order or other document that is a paper record, a paper copy of the order or other document; and
 - (b) in the case of an instrument recorded by a process, system, or means other than as a paper record, a paper document that records the content of the instrument and complies with **section 108(2)(a) and (b)**.

110 Application of Privacy Act 1993

The register kept under **section 107** is a public register within the meaning of section 58 of the Privacy Act 1993.

Subpart 2—Recognition agreements

111 Agreements to recognise ancestral connection

- (1) The Minister of Māori Affairs and the Minister in charge of Treaty of Waitangi negotiations (the **Ministers**) may enter into an agreement with a group of Māori whose members are whanaunga to recognise the ancestral connection that the group has with a specified area of the public foreshore and seabed.
- (2) An agreement entered into under **subsection (1)**,—
 - (a) has no effect until it is recorded in the public foreshore and seabed register in accordance with **subsection (3)**; and
 - (b) when so recorded, is to be treated as having the same legal effect as an ancestral connection order made by the Māori Land Court under **section 38**.
- (3) An agreement entered into under **subsection (1)** must state—
 - (a) the name of the group of Māori with whom the agreement is made under this section, including, if relevant, any constituent group of that group of Māori; and
 - (b) the legal entity that represents the group of Māori; and
 - (c) the specified area of the public foreshore and seabed to which the agreement relates.
- (4) **Sections 55 and 56** do not apply to agreements made under this section.

112 Agreements to recognise territorial customary rights

The Ministers may enter into an agreement with a group to recognise that, but for the vesting of the full legal and beneficial ownership of the public foreshore and seabed in the Crown by **section 11**, that group would have held territorial customary rights over a specified area of the public foreshore and seabed.

113 Registration and notification of agreements

- (1) When an agreement has been entered into under **sections 111 or 112**, the Ministers must provide a certified copy of the agreement to the Chief Executive, who must record it in the public foreshore and seabed register.
- (2) As soon as is reasonably practicable after an agreement has been recorded in the public foreshore and seabed register, the Chief Executive must serve a copy of the agreement on—

- (a) every local authority to which the agreement relates; and
- (b) the Minister of Conservation; and
- (c) any other person who, in the opinion of the Chief Executive, is affected by the agreement.

Subpart 3—Regulations, saving, repeals, and amendments

114 Regulations

The Governor-General may, by Order in Council, make regulations for any of the following purposes:

- (a) prescribing the duties of the Chief Executive in relation to the public foreshore and seabed register;
- (b) prescribing any act or thing necessary to supplement or make more effectual the provisions of this Act;
- (c) providing for any other matters contemplated by this Act or necessary for giving it full effect.

115 Saving provision

- (1) If, before the commencement of this Act, the Chief Executive of Te Puni Kokiri has set apart as Māori reservation under section 338 of the Te Ture Whenua Maori Act 1993 any Māori freehold land or General land that is in the public foreshore and seabed, the Māori reservation is to be treated as if it were a specified freehold interest for so long as it is set apart under section 338 of Te Ture Whenua Maori Act 1993.
- (2) In this section, **Māori freehold land** and **General land** have the same meaning as in section 4 of Te Ture Whenua Maori Act 1993.

116 Relationship between local Acts and this Act

To avoid doubt, if a provision of a local Act is inconsistent with a provision of this Act, the provision of this Act prevails.

117 Consequential and related amendments

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

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Schedule 1
Procedures of Māori Land Court in exercising
jurisdiction in relation to public foreshore and
seabed

Part 1

Applications under Part 3

1 Requirements for all applications under Part 3

- (1) Applications made to the Māori Land Court under **section 37** must be filed in the office of the Chief Registrar, regardless of the location of the area of the public foreshore and seabed to which the application relates.
- (2) Applications must—
 - (a) be in writing and in the prescribed form (if any); and
 - (b) be accompanied by the prescribed fee (if any); and
 - (c) include—
 - (i) the order that is sought; and
 - (ii) the name of the applicant or, if more than 1 applicant, of each applicant; and
 - (iii) the postal address and other contact details of each applicant; and
 - (iv) a description of the group of Māori on whose behalf the application is made and, if relevant, details of any constituent groups; and
 - (v) the particular area of public foreshore and seabed to which the application relates; and
 - (vi) the legal entity that is proposed to represent the group.

2 Additional requirements relating to applications for customary rights order

An application for a customary rights order must include, in addition to the matters listed in **clause 1**,—

- (a) a description of the activity, use, or practice that is claimed to be the subject of a customary right; and
- (b) the purpose for which the activity, use, or practice is carried on, exercised, or followed; and
- (c) a description of the tikanga Māori that govern the activity, use, or practice; and

Part 1—*continued*

- (d) a description of the scale, extent, and frequency of the activity, use, or practice that is being carried on, exercised, or followed; and
- (e) other matters relevant to the Court's consideration under **section 42**.

3 Requirements for applications to vary or cancel orders

An application made under **sections 47(1) or 48(1)** must include—

- (a) the name of the applicant; and
- (b) the postal address and other contact details of the applicant; and
- (c) a description of—
 - (i) the proposed variation or cancellation and the reasons for seeking the variation or cancellation, as the case may be; and
 - (ii) the process that the applicant has undertaken to consult on the proposed variation or cancellation with the group of Māori on whose behalf the order was made; and
- (d) a statement as to the level of support there is within the group of Māori for the proposed variation or cancellation, as the case may be.

4 Notification of applications

- (1) As soon as is reasonably practicable after an application is made under **section 37**, the Chief Registrar must—
 - (a) give public notice of the application; and
 - (b) publish a notice in the Pānui of every Māori Land Court District.
- (2) The notice required by **subclause (1)** must contain—
 - (a) a brief description of the application, including a description that identifies the particular area of the public foreshore and seabed to which the application relates; and
 - (b) the name of the applicant and the identity of the group of Māori on whose behalf the application is made; and
 - (c) the legal entity proposed to represent the group of Māori on whose behalf the application is made; and

Part 1—*continued*

- (d) in the case of an application for a customary rights order, a description of the activity, use, or practice for which the order is sought; and
- (e) the date by which submissions objecting to or supporting the application must be filed in the office of the Chief Registrar, which must be not less than 20 working days after the first public notice of the application is published; and
- (f) any other matter that the Court directs must be included in the notice.

5 Service of notices of application and appeal

The Chief Registrar must serve notice of an application made under **section 37** or of an appeal made under **section 55(1)(a)** on—

- (a) every local authority affected by the application or appeal; and
- (b) the Minister of Conservation and the Minister of Māori Affairs; and
- (c) any person who, in the opinion of the Chief Registrar, is likely to be directly affected by the application or appeal; and
- (d) other persons as directed by the Court to be served.

Part 2

Orders made by Māori Land Court and Māori
Appellate Court**6 Commencement of orders**

- (1) A minute of an order made under **section 38(1)** must immediately be entered in the records of the Māori Land Court.
- (2) As soon as practicable, the order must be drawn up, sealed, and signed and takes effect according to its tenor on and from the commencement of the day on which it is pronounced.
- (3) However,—
 - (a) an order must not be acted upon until a duplicate of the order has been issued from the Court; and
 - (b) a sealed duplicate order must not be issued from the Court before—
 - (i) the time allowed for an appeal has expired; or

Part 2—*continued*

- (ii) in the event of an appeal, the appeal has been disposed of.

7 Contents of orders of Māori Land Court

- (1) An order of the Māori Land Court made under **section 38(1)**—
 - (a) must specify—
 - (i) the particular area of the public foreshore and seabed to which the order applies; and
 - (ii) the group of Māori to whom the order applies, including, if relevant, any constituent groups of that group to whom the order applies; and
 - (iii) the legal entity declared by the Court to hold the order for the group of Māori to whom the order applies; and
 - (b) must include a plan or map to identify the area of the public foreshore and seabed to which the order applies.
- (2) In addition, a customary rights order must include—
 - (a) a description of the activity, use, or practice that may be carried on, exercised, or followed under the order; and
 - (b) a description of the scale, extent, and frequency of the activity, use, or practice that may be carried on, exercised, or followed under the order, together with a statement of the scale, extent, and frequency of the activity, use, or practice that was, before the commencement of this Act, carried on, exercised, or followed by the group of Māori to which the order applies; and
 - (c) a description of the purpose for which the activity, use, or practice is carried on, exercised, or followed; and
 - (d) a statement that the exercise of a customary activity, use, or practice under the order may be subject to controls imposed by the Minister of Conservation under **Schedule 12** of the Resource Management Act 1991.

8 Notification and service

- (1) As soon as is reasonably practicable after an order has been pronounced by the Māori Land Court under **section 38(2)**, varied under **section 47(1)**, or cancelled under **section 48(1)**, the Chief Registrar must—
 - (a) publish in the *Gazette* a minute of the order; and

Part 2—*continued*

- (b) serve a copy of the order that is pronounced and a notice that complies with **subclause (2)**, on—
 - (i) every local authority to which the order relates; and
 - (ii) the Minister of Conservation and the Minister of Māori Affairs; and
 - (iii) the Chief Executive; and
 - (iv) every person directed by the Court to be served.
- (2) The notice given under **subclause (1)** must state—
 - (a) the date when the order was pronounced; and
 - (b) the particular area of the public foreshore and seabed to which the order applies; and
 - (c) the activity, use, or practice that may be carried on, exercised, or followed under the order and the scale, extent, and frequency of that activity, use, or practice; and
 - (d) the date by which an appeal must be lodged.
- (3) If an order pronounced by the Māori Land Court is appealed, the Chief Registrar must, as soon as is reasonably practicable after the order is made following the determination of the appeal, give notice and serve the order in accordance with **subclause (1)**.

9 Correction of accidental errors in orders

- (1) This clause applies to an order made under **section 38(1)**, varied under **section 47(1)**, or cancelled under **section 48(1)**.
- (2) The Māori Land Court or the Māori Appellate Court may amend an order referred to in **subclause (1)** to correct a clerical mistake or error arising accidentally, whether by an officer of the Court or otherwise, as the Court considers necessary to give effect to the intention of the determination of the Court.
- (3) A correction may be made—
 - (a) on the direction of the Court or Judge; or
 - (b) on an application by a party to the proceedings.
- (4) A correction takes effect on and from the date of the commencement of the order.

Part 2—*continued***10 Commencement of orders made by Māori Appellate Court**

- (1) An order made by the Māori Appellate Court on an appeal under **section 55(1)(a)** takes effect on and from the day specified in the order.
- (2) The Māori Appellate Court may, if it varies an order of the Māori Land Court, specify—
 - (a) that the order takes effect on and from a date not earlier than the date on which the order would have taken effect if there had been no appeal:
 - (b) different dates for the commencement of different provisions of an order.
- (3) An order made by the Māori Land Court by direction of the Māori Appellate Court under section 56(1)(d) of Te Ture Whenua Maori Act 1993 takes effect in accordance with **clause 6**.

Part 3
Hearing**11 Conduct of hearing**

- (1) In conducting a public hearing under this Act, the Māori Land Court and, in the case of an appeal under **section 55(1)(a)**, the Māori Appellate Court—
 - (a) may convene a conference as provided for by section 67 of Te Ture Whenua Maori Act 1993; and
 - (b) must convene a public hearing at a place as near as the Court considers convenient to the locality of the area of the public foreshore and seabed that is the subject of the application, unless the parties agree to a different venue.
- (2) The Māori Land Court may—
 - (a) inquire into more than 1 application in a hearing if the applications relate to public foreshore and seabed areas in the same general locality; and
 - (b) refer matters to a Registrar, as provided for in section 40 of Te Ture Whenua Maori Act 1993; and
 - (c) appoint a barrister or solicitor to assist the Court.

Part 3—*continued*

- (3) Sections 66 to 71 of Te Ture Whenua Maori Act 1993 apply to a hearing conducted under this Act, to the extent that they are consistent with the provisions of this Act.

12 Additional members

- (1) If an inquiry involves matters of tikanga Māori, the Chief Judge may appoint up to 2 additional members (not being Judges of the Māori Land Court) to the Māori Land Court.
- (2) Each person appointed under **subclause (1)** must possess knowledge and experience of tikanga Māori.

13 Parties

A person is entitled to appear and be heard in proceedings relating to an application made under **section 37, section 47(1), or section 48(1)** if the person—

- (a) is an applicant for an order; or
- (b) is a member of the group of Māori on whose behalf an application is made; or
- (c) has filed a submission by the due date and has an interest in the proceeding that is different from an interest in common with the public generally; or
- (d) despite not filing a submission by the due date, has leave of the Court to appear and be heard.
-

Schedule 2 s 58
**Procedures of High Court in exercising jurisdiction
to determine customary rights orders**

Part 1
Applications

1 Requirements for all applications

- (1) Proceedings in the High Court under **Part 4** must be commenced in accordance with the High Court Rules.
- (2) In addition to the matters required by the rules of the High Court, applications must include—
 - (a) a description of the group on whose behalf the application is made; and
 - (b) the particular area of the public foreshore and seabed to which the application relates; and
 - (c) the person that is proposed to represent the group.
- (3) An application must also include—
 - (a) a description of the activity, use, or practice that is claimed to be the subject of a customary right; and
 - (b) the purpose for which the activity, use, or practice is carried on, exercised, or followed; and
 - (c) a description of the distinctive cultural practice that governs the activity, use, or practice; and
 - (d) a description of the scale, extent, and frequency of the activity, use, or practice that is being carried on, exercised, or followed; and
 - (e) other matters relevant to the Court's consideration under **section 61**.

2 Who may apply for customary rights order under Part 4

- (1) An applicant for a customary rights order under **Part 4** must satisfy the Court that the applicant is authorised by the group to act on its behalf to make an application.
- (2) An application to vary or cancel a customary rights order under **section 65 or section 66** must be made by—
 - (a) the holder of the order; or
 - (b) a representative of the group to whom the order applies (other than the holder of the order), if the person identified as the holder has ceased to exist or, being a natural person, has died or no longer has legal capacity.

Part 1—*continued***3 Requirements for applications to vary or cancel orders**

An application to vary or cancel an order under **section 65** or **section 66** must include—

- (a) a description of the group on whose behalf the application is made; and
- (b) a description of the particular area of the public foreshore and seabed to which the application relates; and
- (c) a description of the person that represents the group; and
- (d) a description of—
 - (i) the proposed variation or cancellation and the reasons for seeking the variation or cancellation, as the case may be; and
 - (ii) the process that the applicant has undertaken to consult on the proposed variation or cancellation with the group that the applicant represents; and
- (e) a statement as to the level of support there is within the group for the proposed variation or cancellation, as the case may be.

4 Service of notices of application

- (1) The applicant for an order under **Part 4** must serve notice of the application on—
 - (a) every local authority affected by the application; and
 - (b) the Minister of Conservation and the Minister of Māori Affairs; and
 - (c) any person who, in the Court's opinion, is likely to be directly affected by the application; and
 - (d) other persons directed by the Court to be served.
- (2) An application must be filed in the registry of the Court nearest to the area of the public foreshore and seabed that is the subject of an application for a customary rights order.

5 Notification of application by applicant

- (1) When an application is made under **section 58**, the applicant must give public notice of the application.
- (2) The notice required by **subclause (1)** must contain—
 - (a) a brief description of the application, including a description that identifies the particular area of the

Part 1—*continued*

- public foreshore and seabed to which the application relates; and
- (b) the name of the applicant and the identity of the group on whose behalf the applications is made; and
 - (c) the person proposed to represent the group on whose behalf the application is made; and
 - (d) a description of the activity, use, or practice for which the order is sought; and
 - (e) the date (being not less than 20 working days after the first public notice of the application is published) by which submissions objecting to or supporting the application must be filed in the registry of the High Court in which the proceedings have been filed; and
 - (f) any other matter that the Court directs must be in the notice.

Part 2

Orders issued by High Court

6 Commencement of orders

- (1) An order of the High Court cannot be acted upon until it is sealed in accordance with the rules of the High Court.
- (2) No order may be sealed until the time allowed for appeal has expired or, in the event of appeal, it has been disposed of.
- (3) Once the order has been sealed, the registrar of the High Court must transit a sealed copy of the order to the Chief Executive for recording on the public foreshore and seabed register.

7 Contents of orders of High Court

- (1) An order of the High Court made under **section 59**—
 - (a) must specify—
 - (i) the particular area of the public foreshore and seabed to which the order applies; and
 - (ii) the group to whom the order applies; and
 - (iii) the person declared by the Court to hold the order on behalf of the group to whom the order applies; and
 - (b) must include a plan or map to identify the area of the public foreshore and seabed to which the order relates.
- (2) In addition, the order must include—

Part 2—*continued*

- (a) a description of the activity, use, or practice that may be carried on, exercised, or followed under the order; and
- (b) a description of the scale, extent, and frequency of the activity, use, or practice that may be carried on, exercised, or followed under the order, together with a statement of the scale, extent, and frequency of the activity, use, or practice that was, before the commencement of this Act, carried on, exercised, or followed by the group to whom the order applies; and
- (c) a description of the purpose for which the activity, use, or practice is carried on, exercised, or followed; and
- (d) a statement that the exercise of a customary activity, use, or practice under the order may be subject to controls imposed by the Minister of Conservation under **Schedule 12** of the Resource Management Act 1991.

8 Notification and service

- (1) When the High Court makes an order under **section 59**, the registrar of the High Court must, as soon as reasonably practicable,—
 - (a) publish in the *Gazette* a minute of the order; and
 - (b) serve a copy of the judgment of the Court on—
 - (i) every local authority to which the order relates; and
 - (ii) the Minister of Conservation and the Minister of Māori Affairs; and
 - (iii) the Chief Executive; and
 - (iv) every person directed by the Court to be served.
- (2) The copy of the judgment must be accompanied by a notice which states the date by which an appeal must be lodged.

9 Parties

A person is entitled to appear and be heard in proceedings relating to an application made under **section 58, section 65, or section 66** if the person—

- (a) is a party to the proceedings; or
- (b) is a member of the group on whose behalf an application is made; or

Part 2—*continued*

- (c) has filed a submission by the due date and has an interest in the proceeding that is different from an interest in common with the public generally; or
 - (d) despite not filing a submission by the due date, has leave of the Court to appear and be heard.
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Schedule 3 Consequential and related amendments

Conservation Act 1987 (1987 No 65)

Insert in section 24, after subsection (7B):

“(7C) Nothing in this section applies to the vesting of a right, title, or interest in reclaimed land under section 355 of the Resource Management Act 1991.”

Crown Minerals Act 1991 (1991 No 70)

Insert in section 2(1), in its appropriate alphabetical order:

“**public foreshore and seabed** has the same meaning as in **section 4** of the Foreshore and Seabed Act **2004**”.

Repeal section 2(2) and substitute:

“(2) **Appropriate Minister**, in relation to Crown land, means—

- “(a) the Minister charged with the administration of the land or of the enactment (if any) that the land is subject to; and
- “(b) the Minister of Conservation, if the Crown land is public foreshore and seabed; or
- “(c) the Minister of Lands if **paragraphs (a) and (b)** do not apply; or
- “(d) the Minister determined by the Governor-General in Council, if there is uncertainty as to who is the appropriate Minister.”

Public Works Act 1981 (1981 No 35)

Omit from the definition of **Government work** in section 2 the words “(except land to which section 9A of the Foreshore and Seabed Endowment Revesting Act 1991 applies)” and substitute the words “(except the public foreshore and seabed)”.

Insert in section 2, in its appropriate alphabetical order:

“**public foreshore and seabed** has the same meaning as in **section 4** of the Foreshore and Seabed Act **2004**”.

Omit from section 52(1)(b) the words “foreshore or seabed owned by the Crown” and substitute the words “public foreshore and seabed”.

Omit from section 52(3)(b) the words “foreshore or seabed” and substitute the words “public foreshore and seabed”.

Te Ture Whenua Maori Act 1993 (1993 No 4)Repeal the definition of **land** in section 4 and substitute:

“**land**—

Te Ture Whenua Maori Act 1993 (1993 No 4)—continued

“(a) means—

“(i) Māori land, General land, and Crown land that is on the landward side of mean high water springs; and

“(ii) Māori freehold land that is on the seaward side of mean high water springs; but

“(b) does not include the public foreshore and seabed”.

Insert in the definition of **Registrar**, after the word “includes”, the words “the Chief Registrar and”.

Repeal section 7(2) and substitute:

“(2) The number of Judges appointed under this section must not at any time exceed 8.”

Repeal section 9 and substitute:

“9 **Appointment of temporary Judges**

“(1) Subject to section 11, the Governor-General may whenever in his or her opinion, it is necessary or expedient to make a temporary appointment, appoint 1 or more temporary Judges of the Māori Land Court to hold office for such period as is specified in the warrant of appointment.

“(2) The period specified must not exceed 2 years.

“(3) However, a person appointed under this section may be reappointed.

“(4) A person may not be appointed as a temporary Judge under this section unless that person is eligible for appointment as a Judge under section 7.

“(5) However, a person otherwise qualified who has attained the age of 68 years (including a Judge who has retired after attaining that age) may be appointed as a temporary Judge under this section.

“(6) **Subsection (2)** applies to an appointment made under **subsection (5)**.

“(7) The power conferred by this section may be exercised at any time, even though there may be 1 or more persons holding the office of Judge under section 7 or section 10.

“(8) A person appointed under this section is to be paid, during the term of the appointment, the salary and allowances payable under section 13 to a Judge other than the Chief Judge and the Deputy Chief Judge.”

Omit from section 43(1) the words “to be had”.

Te Ture Whenua Maori Act 1993 (1993 No 4)—continued

Add to section 43 the following subsection:

“(7) Subsection (6) applies, with the necessary modifications, to appeals to the High Court under **section 55(1)(b)** of the Foreshore and Seabed Act **2004**.”

Repeal section 56(2) and substitute:

“(2) The Māori Appellate Court may, as though it were the Māori Land Court,—

“(a) in the case of the powers conferred on it by this section, exercise the discretionary powers conferred on the Māori Land Court; and

“(b) in the case of the powers conferred on it by the Foreshore and Seabed Act **2004**, exercise the discretionary powers conferred on the Māori Land Court by or under that Act.”

Add to section 65 the words “unless they are expressly excluded by another enactment.”

Insert in section 72(1), after the words “proceedings before it”, the words “(other than proceedings under the Foreshore and Seabed Act **2004**)”.

Repeal section 95(3)(b) and substitute the following paragraph:

“(b) prescribing the district or office in which proceedings are to be commenced, and the procedure to be adopted where proceedings are commenced on one district or office but should, under this Act or any other enactment or the rules, have been commenced in another district or office.”

Add to section 98(3) the following paragraph:

“(c) an amicus curiae appointed under the Foreshore and Seabed Act **2004**.”

Insert, after subsection (3) of section 98:

“(3A) Before making an order for payment under subsection (3)(a) in relation to a proceeding under the Foreshore and Seabed Act **2004**, the Court must take into account the financial position of the group of Māori on whose behalf the order is made.”

Schedule 4 s 103
New Schedule 12 of Resource Management Act 1991

Schedule 12 ss 17A, 17B
**Adverse effects assessment and report and controls
in relation to a recognised customary activity**

1 Application

This schedule applies if a customary rights order has been made and appeals (if any) have been disposed of.

Part 1

Controls by the Minister of Conservation

2 Power to impose controls

The Minister of Conservation may impose controls (including terms, standards, and restrictions) on a recognised customary activity only if he or she considers that,—

- (a) the activity has, or may have, a significant adverse effect on the environment; and
- (b) the controls—
 - (i) will not prevent the activity; and
 - (ii) are reasonable and, in the circumstances, not unduly restrictive; and
 - (iii) are necessary to avoid, remedy, or mitigate any significant adverse effects of the activity on the environment.

3 Report and consultation required

- (1) The Minister of Conservation, before imposing controls on a recognised customary activity,—
 - (a) must have received under **clause 11** a copy of an adverse effects report in relation to that activity; and
 - (b) must consult with—
 - (i) the holder of the customary rights order; and
 - (ii) the Minister of Māori Affairs; and
 - (c) may seek any other relevant information and views.
- (2) However, the Minister of Conservation may impose controls on a recognised customary activity without receiving an adverse effects report if the Minister begins his or her own assessment of the effects on the environment of the activity—

Schedule 12—continued**Part 1**—continued

- (a) no later than 20 working days after the customary rights order is made; or
 - (b) at any time after the expiry of the 20 working day period referred to in **paragraph (a)**; and
 - (c) where he or she has not been notified by the relevant regional council that it has begun an adverse effects assessment in accordance with **clause 6**.
- (3) The Minister of Conservation must give written notice to the relevant regional council and the holder of a customary rights order that relates to a recognised customary activity that may be carried out in its region.
- (4) A notice given under **subclause (3)** must be given no later than 5 working days after an adverse effects assessment is begun.

4 Matters to be considered

The Minister of Conservation, when considering whether to impose controls on a recognised customary activity,—

- (a) must have regard to—
 - (i) the effects on the environment of the activity; and
 - (ii) any adverse effects report received by the Minister in relation to that recognised customary activity; and
 - (iii) the views expressed by the persons with whom the Minister has consulted; and
 - (iv) any other relevant information and views that the Minister has received; and
- (b) may have regard to—
 - (i) any relevant national policy statement;
 - (ii) the New Zealand coastal policy statement;
 - (iii) the relevant regional policy statement or proposed regional policy statement;
 - (iv) the relevant regional coastal plan or proposed regional coastal plan;
 - (v) any relevant planning document lodged with the regional council and recognised by an iwi authority, or by the holder of an ancestral connection order, to the extent that the content of the document has a bearing on the resource management issues of the region.

Schedule 12—continuedPart 1—*continued***5 Timing and notification**

The Minister of Conservation must—

- (a) decide whether to impose controls on a recognised customary activity no later than 60 working days after—
 - (i) receiving an adverse effects report on the activity from the regional council; or
 - (ii) giving notice under **clause 3(2)** that the Minister will be carrying out his or her own assessment of that activity; and
- (b) give written notice of his or her decision, and the reasons for it, to—
 - (i) the relevant regional council; and
 - (ii) the holder of the customary rights order; and
 - (iii) the Minister of Māori Affairs; and
 - (iv) the Chief Executive.

Part 2

Adverse effects assessment and report by regional council

6 Adverse effects assessment

- (1) A regional council must, no later than 5 working days after being requested by the Minister of Conservation under **section 17B**, begin an adverse effects assessment.
- (2) A regional council may, of its own initiative, carry out an adverse effects assessment of, and prepare an adverse effects report on, a recognised customary activity for its region—
 - (a) if it begins the assessment no later than 20 working days after the customary rights order is made; or
 - (b) at any time after the expiry of the 20 working day period referred to in **paragraph (a)**, if it considers that the effects on the environment of the activity are, or are likely to be, materially different from the latest of the following—
 - (i) the making of the order; or
 - (ii) the imposition of controls; or
 - (iii) the last review of the controls under **Part 3**; or
 - (c) if it has not been notified by the Minister of Conservation under **clause 3(2)** that the Minister will be carrying out the Minister's own assessment.

Schedule 12—continued

Part 2—continued

7 Notice

- (1) A regional council must give written notice to the Minister of Conservation and the holder of a customary rights order that relates to a recognised customary activity that may be carried out in its region.
- (2) A notice given under **subclause (1)** must be given—
 - (a) no later than 5 working days after the order is made, if the regional council is not carrying out an adverse effects assessment under **clause 6(2)**; or
 - (b) no later than 5 working days after beginning an adverse effects assessment.

8 Process

A regional council, in carrying out an adverse effects assessment of a recognised customary activity,—

- (a) must seek the views of the holder of the customary rights order; and
- (b) may seek any relevant information.

9 Matters to be considered

A regional council, in carrying out an adverse effects assessment of a recognised customary activity—

- (a) must have regard to—
 - (i) the effects on the environment of the activity; and
 - (ii) any relevant information and views it has received; and
- (b) may have regard to—
 - (i) any relevant national policy statement;
 - (ii) the New Zealand coastal policy statement;
 - (iii) its regional policy statement or proposed regional policy statement;
 - (iv) its regional coastal plan or proposed regional coastal plan;
 - (v) any relevant planning document lodged with the regional council and recognised by an iwi authority, or by a holder of an ancestral connection order, to the extent that the content of the document has a bearing on the resource management issues of the region.

Schedule 12—continuedPart 2—*continued***10 Adverse effects report**

- (1) A regional council must complete its adverse effects assessment and adverse effects report no later than 40 working days after giving notice of the assessment under **clause 7**.
- (2) The regional council must include in its adverse effects report—
 - (a) details of the recognised customary activity and the effects on the environment of the recognised customary activity; and
 - (b) an outline of the information received and any views expressed by the holder of the customary rights order; and
 - (c) whether it considers the recognised customary activity has, or may have, a significant adverse effect on the environment; and
 - (d) its recommendations (if any) to the Minister of Conservation on any controls it considers the Minister of Conservation should impose under **clause 2**; and
 - (e) the reasons for any recommendations.

11 Report to be given to Minister of Conservation and holder

No later than 5 working days after completing an adverse effects report, a regional council must give a copy to—

- (a) the Minister of Conservation; and
- (b) the holder of a customary rights order.

Part 3

Review of controls by the Minister of Conservation

12 Review

The Minister of Conservation may—

- (a) review, in accordance with **clauses 13 and 14**, controls imposed on a recognised customary activity; and
- (b) after reviewing the controls,—
 - (i) confirm them; or
 - (ii) revoke them; or

Schedule 12—continued

Part 3—continued

- (iii) revoke them and impose new controls (which may include some or all of the reviewed controls).

13 Procedure for review

- (1) If the Minister of Conservation reviews controls under **clause 12**, he or she must either—
 - (a) request, under **section 17B**, the regional council—
 - (i) to carry out an adverse effects assessment; and
 - (ii) prepare an adverse effects report under **clauses 6 to 11**; or
 - (b) notify the regional council that the Minister will carry out an adverse effects assessment under **clause 3(2)**.
- (2) **Clauses 2 to 5**—
 - (a) apply (with all necessary changes) to a review of controls by the Minister of Conservation; and
 - (b) are to be read in relation to a review as if:
 - (i) all references in those clauses to the Minister of Conservation imposing controls on a recognised customary activity were references to the Minister imposing or confirming controls on a recognised customary activity after a review; and
 - (ii) the words in **clause 3(2)(a)** “no later than 20 working days after the customary rights order is made” were omitted.

14 Timing of review

- (1) The Minister of Conservation—
 - (a) may review the controls imposed on a recognised customary activity at any time; and
 - (b) must carry out a review of those controls if the holder of the customary rights order requests a review in writing.
- (2) **Subclause (1)(b)** applies only—
 - (a) if at least 2 years have passed since the controls were imposed or since they were last reviewed; or
 - (b) the holder considers, on reasonable grounds, that the effects on the environment of the activity are, or are likely to be, materially different from the later of the following:

Schedule 12—continued

Part 3—*continued*

- (i) the imposition of controls; or
- (ii) the last review.