Reprint
as at 1 April 2011

Foreshore and Seabed Act 2004

Public Act	2004 No 93
Date of assent	24 November 2004
Commencement	see section 2

Foreshore and Seabed Act 2004: repealed, on 1 April 2011, by section 5 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)

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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Justice.

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1 Title

This Act is the Foreshore and Seabed Act 2004.

2 Commencement

(1) This section and Part 1 and Part 2 (other than sections 11, 26, 27, and 32 to 45), and sections 98 to 103, and Schedule 2 (other

than the provisions that relate to sections 43, 72, and 98 of Te Ture Whenua Maori Act 1993) come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on 17 January 2005.

Part 1
Preliminary provisions

3 Object

The object of this Act is to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders in a way that enables the protection by the Crown of the public foreshore and seabed on behalf of all the people of New Zealand, including the protection of the association of whānau, hapū, and iwi with areas of the public foreshore and seabed.

4 Purposes

The Act gives effect to the object stated in section 3 by—

(a) vesting the full legal and beneficial ownership of the public foreshore and seabed in the Crown; and

(b) providing for the recognition and protection of ongoing customary rights to undertake or engage in activities, uses, or practices in areas of the public foreshore and seabed; and

(c) enabling 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, if those rights are not able to be fully expressed as a result of this Act, enabling a successful applicant group—

  (i) to participate in the administration of a foreshore and seabed reserve; or

  (ii) to enter into formal discussions on redress; and

(d) providing for general rights of public access and recreation in, on, over, and across the public foreshore and seabed and general rights of navigation within the foreshore and seabed.

5 Interpretation

In this Act, unless the context otherwise requires,—

access rights has the meaning set out in section 7

applicant group means a group that applies, or on whose behalf an application is made, to the High Court for a finding under section 33

board, in relation to a foreshore and seabed reserve, means the board—

(a) that administers the foreshore and seabed reserve; and

(b) whose members are appointed in accordance with section 43

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 50; or

(b) the High Court under section 74

enactment—

(a) has the meaning given to it by section 29 of the Interpretation Act 1999; and

(b) includes—

(i) any bylaws made by a local authority under the authority of an enactment; and

(ii) any plan or proposed plan under the Resource Management Act 1991; and

(iii) any resource consent under the Resource Management Act 1991

foreshore and seabed—

(a) means the marine area that is bounded,—

(i) on the landward side by the line of mean high water springs; and

(ii) on the seaward side, by the outer limits of the territorial sea; and

(b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and
(c) includes the 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)

foreshore and seabed reserve means a specified area of the public foreshore and seabed—
(a) in respect of which a finding in favour of the applicant group has been made by the High Court under section 33; and
(b) that, by order of the High Court under section 43,—
  (i) is set apart and established as a foreshore and seabed reserve; and
  (ii) is administered by a board whose members are guardians of the reserve

guardians means the members of the board of a foreshore and seabed reserve

holder means—
(a) the legal entity that holds an order made under section 50; and
(b) in relation to an order made under section 74, the person that represents the group on whose behalf an application is made under section 68

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

legal entity means—
(a) the legal entity declared by the Māori Land Court to hold a customary rights order made under section 50; and
(b) the person declared by the High Court to hold a customary rights order made under section 74; and
(c) in relation to an iwi, hapū, or whānau, a legal entity constituted under another enactment; and
(d) in relation to a whānau, a natural person

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

management plan means a plan prepared by the guardians of a foreshore and seabed reserve in accordance with section 44

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

natural and physical resources has the same meaning as in section 2(1) of the Resource Management Act 1991

plan has the same meaning as in section 2(1) of the Resource Management Act 1991

proposed plan has the same meaning as in section 2(1) of the Resource Management Act 1991

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 92 and 93

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 same meaning as in section 2(1) of the Resource Management Act 1991

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

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

road—

(a) has the same meaning as in section 315(1) of the Local Government Act 1974; and

(b) includes a motorway within the meaning of section 2(1) of the Government Roading Powers Act 1989

specified freehold interest means an interest that, immediately before the commencement of this section, 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

(c) land subject to the Deeds Registration Act 1908

territorial customary rights has the meaning it is given in section 32

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 same meaning as in section 4 of Te Ture Whenua Maori Act 1993

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

Section 5 **road** paragraph (b): amended, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

6 Act binds the Crown

This Act binds the Crown.

Part 2
Public foreshore and seabed

Rights of access

7 Rights 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 conferred by subsection (2) may be exercised subject to any authorised limits, including prohibitions, on access that are imposed by or under an enactment, including a notice in the *Gazette* issued under section 26.

(4) Unless the enactment or other instrument that authorises a limit of the kind described in subsection (3) otherwise provides, the limit may be applied—

(a) to any or all access rights:

(b) to any method or methods of exercising access rights:

(c) for a definite period or an indefinite period or for periods that arise from time to time:

(d) in respect of 1 or more particular areas or a general area.

Rights of navigation

8 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 rights of navigation.

(4) The rights conferred by subsection (1) may be exercised subject to any authorised limits, including prohibitions, on navigation that are imposed by or under an enactment.

(5) Unless the enactment or other instrument that authorises a limit of the kind described in subsection (4) otherwise provides, the limit may be applied—

(a) to any or all rights of navigation:

(b) to any method or methods of exercising rights of navigation:

(c) for a definite period or an indefinite period or for periods that arise from time to time:

(d) in respect of 1 or more particular areas or a general area.

(6) On and from the commencement of this section, the common law rights of navigation are replaced by the rights specified in this section.

(7) Nothing in this section affects any obligations that are binding on New Zealand under international law.

Rights of fishing

9 Existing fishing rights preserved

Nothing in this Act affects any rights of fishing recognised, immediately before the commencement of this section, by or under an enactment or a rule of law.

Act replaces certain jurisdictions in respect of public foreshore and seabed

10 Jurisdiction of High Court

(1) On and from the commencement of this section, the jurisdiction of the High Court to hear and determine, whether under an enactment or under any rule of law or by virtue of its inherent jurisdiction, any customary rights claim is replaced fully by the jurisdiction of the High Court under section 33 and Part 4, and the jurisdiction of the Māori Land Court under Part 3.

(2) In this section and in section 11, **customary rights claim** means any claim in respect of the public foreshore and seabed that is based on, or relies on, customary rights, customary title, aboriginal rights, aboriginal title, the fiduciary duty of the Crown, or any rights, titles, or duties of a similar nature, whether arising before, on, or after the commencement of this section and whether or not the claim is based on, or relies on, any 1 or more of the following:

(a) a rule, principle, or practice of the common law or equity:
(b) the Treaty of Waitangi:
(c) the existence of a trust:
(d) an obligation of any kind.

11 Action that must be taken on customary rights claim

If a customary rights claim is lodged in the High Court, whether before or after the commencement of this section, the High Court must 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 33 or Part 4; or
(c) if appropriate, refer the claim to the Māori Land Court for decision under Part 3.

12 No jurisdiction of Māori Land Court to consider existing applications relating to foreshore and seabed

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 public 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 section.

Ownership and management of public foreshore and seabed

13 Public foreshore and seabed vested in the Crown

(1) On and from the commencement of this section, 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 does not owe any fiduciary obligation, or any obligation of a similar nature, to any person in respect of the public foreshore and seabed.

(5) The Land Act 1948 does not apply to the public foreshore and seabed.

14 Public foreshore and seabed not to be alienated

(1) Despite any enactment to the contrary, no part of the public foreshore and seabed may be alienated or otherwise disposed of.

(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 enacted after the commencement of this section; or

(b) under section 355, in accordance with sections 355AA or 355AB, of the Resource Management Act 1991.

15 Rights of owners of formed roads and roads under construction preserved

(1) This subsection applies to any road that—

(a) is located in the public foreshore and seabed; and

(b) immediately before the commencement of this section, was owned by a person other than the Crown.

(2) The ownership of a road to which subsection (1) applies is not affected by section 13 if, at the commencement of this section, the road—

(a) has been formed and is being used as a road; or
(b) is being formed.

(3) However, a road vests in the Crown on the terms stated in section 13 if, at any time,—
(a) in the case of a road of the kind described in subsection (2)(a), the road ceases to be used as a road; or
(b) in the case of a road of the kind described in subsection (2)(b), the activities required to form the road are discontinued.

(4) Every road to which subsection (1) applies and that, at the commencement of this section, has not been, or is not being, formed vests in the Crown on the terms stated in section 13 and is deemed to be stopped.

(5) Nothing in this section affects section 7 or section 8.

(6) In this section, **formed** has the meaning corresponding to formation in section 2(1) of the Local Government Act 1974.

16 Rights of owners of fixtures preserved

Section 13 does not affect the ownership in any structure or thing that—
(a) is fixed to, or under or over, any area of the public foreshore and seabed; and
(b) immediately before the commencement of this section, was owned by a person other than the Crown.

17 Rights of lessees, licensees, etc, preserved

(1) In this section, **specified interest** means any lease, licence, permit, consent, or other authorisation (not being a resource consent) granted or to be granted under any enactment, including subsection (5), in respect of any area of the public foreshore and seabed.

(2) A specified interest and any resource consent that, immediately before the commencement of this section, was in effect continues, to the extent to which it is lawful, to have effect according to its tenor.

(3) Subsection (2) is subject to section 42 of the Resource Management (Foreshore and Seabed) Amendment Act 2004.

(4) Every specified interest that is continued by subsection (2) and that has been granted by a person other than the Crown is deemed to have been granted by the Crown.

(5) Every agreement in writing in which the Crown, a Harbour Board, or a local authority agreed to grant a specified interest continues to have effect according to its tenor if the Crown was, immediately before the commencement of this section, bound by the agreement (whether as successor or otherwise).

(6) The Minister of Conservation is authorised to execute on behalf of the Crown any instrument or other document that is required to be executed by the Crown in respect of any specified interest.

(7) The Minister of Conservation may take any proceedings that are necessary to enforce any condition in a specified interest as if the Minister had granted the specified interest.

(8) This section has effect despite sections 13 and 14.

(9) Promptly after the commencement of this section, every local authority that has, before that commencement, granted a specified interest must give the Minister of Conservation, through the Director-General of Conservation, notice of that interest and give the Director-General copies of all documents that are relevant to that interest.

18 Land reclaimed before this Act vests in the Crown if not otherwise owned

(1) This section applies to any land that—

(a) has at any time before the commencement of this section been lawfully or unlawfully reclaimed from the foreshore and seabed; and

(b) is not, at that commencement, subject to a specified freehold interest or an estate in fee simple held by a local authority.

(2) On the commencement of this section, the full legal and beneficial ownership of any land to which this section applies is vested in the Crown, so that the land is held by the Crown as its absolute property.

(3) Subsection (2) does not affect the ownership in any structure or thing that is fixed to, or under or over, any land to which this section applies.

(4) The land vested by subsection (2) is not part of the public foreshore and seabed.

(5) Section 9A of the Foreshore and Seabed Endowment Revesting Act 1991 as continued by section 30(2) has effect in respect of any land to which this section applies.

Section 18(1)(b): amended (with effect from 25 November 2004), on 1 January 2005, by section 60(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107).

19 Status of land not affected if reclaimed, after commencement of this section, from public foreshore and seabed

(1) This section applies to any land that has at any time after the commencement of this section been lawfully or unlawfully reclaimed from the public foreshore and seabed.

(2) Any land to which this section applies—

(a) continues to be vested in the Crown as part of the public foreshore and seabed; and

(b) remains subject to this Act.

(3) Subsection (2) is subject to any Act that vests, or provides for the vesting of, any land to which this section applies in a person other than the Crown.

(4) To avoid any doubt, nothing in subsection (3) applies to any Act that vests, or provides for the vesting of, any land formed by accretion from the public foreshore and seabed.

20 Additions to public foreshore and seabed resulting from activities

(1) This section applies if,—

(a) under an authority granted by or under an enactment, activities are undertaken on, under, or over the public foreshore and seabed; and

(b) as a result of those activities, an area of the public foreshore and seabed that is immediately adjacent to the area in which those activities are carried on becomes raised in height (whether gradually or imperceptibly or

otherwise) so as to be above instead of below the line of mean high water springs.

(2) Despite any enactment or rule of law to the contrary, if the raising of the area described in subsection (1)(b) was not authorised by the authority referred to in subsection (1)(a), the raised area—

(a) continues to be vested in the Crown as part of the public foreshore and seabed; and

(b) remains subject to this Act.

(3) Sections 355, 355AA, and 355AB of the Resource Management Act 1991 apply with any necessary modifications to any area of the kind described in subsection (1)(b), and the Minister of Conservation may, under and in accordance with those sections, vest a right, title, or interest in an area of that kind.

(4) In this section, **activities** includes the reclamation of any land from the public foreshore and seabed.

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

(1) The Crown may purchase or otherwise acquire the whole or part of a specified freehold interest in any land that is wholly or partly within the 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 13; and

(b) becomes subject to this Act.

22 Provisions relating to certificates of title wholly in public foreshore and seabed

(1) The Registrar must, at the request of the Minister of Conservation and without further authority than this section, cancel the whole of any certificate of title or computer freehold register that comprises land that is wholly within the public foreshore and seabed.

(2) Immediately upon the cancellation under subsection (1) of a certificate of title or computer freehold register that is subject to a current registered interest or current registered notifica-

tion, the Registrar must, without further authority than this section,—

(a) issue a computer interest register under section 9 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 for that registered interest or notification; and

(b) record on that computer interest register that the land to which the registered interest or notification relates is vested in the Crown by this Act.

(3) When the interest or notification for which a computer interest register has been issued in accordance with subsection (2)(a) expires or is extinguished or is otherwise determined, the Registrar must, at the request of the Minister of Conservation and without further authority than this section, cancel the computer interest register.

(4) If the Minister of Conservation makes a request under subsection (1) 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

(b) certify that the duplicate is unavailable by reason of loss or damage.

23 Provisions relating to certificates of title to land in public foreshore and seabed and land above line of mean high water springs

(1) If any certificate of title or computer freehold register comprises any land that is part of the public foreshore and seabed as well as any adjacent land (the **adjacent land**) above the line of mean high water springs, either the Minister of Conservation or the owner of the adjacent land may at the cost of the party who initiates it, cause a plan of survey of the adjacent land to be carried out by a registered cadastral surveyor in accordance with the requirements of the Cadastral Survey Act 2002 and any rules made under that Act.

(2) On presentation of a plan prepared in accordance with subsection (1), the Registrar, on payment of the appropriate fee, must, despite anything in the Land Transfer Act 1952, deposit that plan, and—

(a) cancel the certificate of title or computer freehold register that comprises the land within the public foreshore and seabed and the adjacent land; and

(b) issue a computer freehold register under section 7 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 in the name of the owner of the adjacent land; and

(c) note any current registered interest or current registered notification that relates to the adjacent land against that computer freehold register in the order in which it appears on the certificate of title or computer freehold register cancelled under paragraph (a); and

(d) issue a computer interest register under section 9 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 for any registered interest or current registered notification that relates to land within the public foreshore and seabed that was part of the certificate of title or computer freehold register cancelled under paragraph (a).

(3) To avoid doubt, no action taken under this section is subject to section 11 or Part 10 of the Resource Management Act 1991.

24 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 33.

25 Local authorities may apply to Minister for redress for loss of divested areas

(1) A local authority that, as a result of the operation of section 13(1), 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 redress.

(2) An application by a local authority under subsection (1) must be made not later than 12 months after the commencement of this section.

(3) In considering an application by a local authority under subsection (1), the Minister of Conservation must be guided by whichever of the following criteria is applicable:

(a) if the local authority purchased the relevant land at full market value, compensation is to be paid at current market value:

(b) if the local authority did not purchase the relevant land at full market value, redress is limited to compensation for direct financial loss to the local authority arising from the change in ownership, including loss of—

(i) any income that the local authority would, but for the operation of section 13(1), have derived from the relevant part of the public foreshore and seabed; and

(ii) any investment that the local authority made in the land after purchase.

(4) No court has jurisdiction to hear any claim in respect of any loss suffered by a local authority as a result of the operation of section 13(1).

26 Access over areas of public foreshore and seabed may be prohibited or restricted

(1) If, under section 54(2), the Māori Land Court refers a finding to the Minister of Conservation and to the Minister of Māori Affairs, those Ministers may, to the extent that they consider necessary to protect the relevant wāhi tapu, by notice in the *Gazette*, prohibit or restrict access over any area of the public foreshore and seabed.

(2) If, under section 78(2), the High Court refers a finding to the Minister of Conservation, that Minister may, to the extent that the Minister considers necessary to protect the relevant site of significance, by notice in the *Gazette*, prohibit or restrict access over any area of the public foreshore and seabed.

(3) No restriction or prohibition under subsection (1) or subsection (2) 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.

(4) If the Ministers or Minister considers that an exemption from a prohibition or restriction imposed under subsection (1) or subsection (2) is necessary to enable a recognised customary activity to be carried out under an order, the Ministers or Minister 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.

(5) The Ministers or the Minister responsible for a current notice under subsection (1) or subsection (2) or subsection (4) may, by notice in the *Gazette*, vary or revoke the current notice.

(6) The Minister of Conservation must give public notice of every notice in the *Gazette* given under this section.

(7) 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.

(8) 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.

(9) Every regional council notified under subsection (8)(a) must take any reasonable action (including, without limitation, the erection of signs and fences) required to implement the restriction or prohibition.

(10) Every notice given under any of subsections (1), (2), (4), and (5) is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

27 Enforcement of section 26

(1) Any person who intentionally fails to comply with a prohibition or restriction imposed under section 26 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 26(4) is not liable under subsection (1) for any action taken in accordance with that notice.

(3) Wardens may, in accordance with regulations made under section 98, be appointed to promote compliance with any prohibitions or restrictions imposed under section 26.

(4) A warden appointed under subsection (3) has the following functions:

(a) to assist in the implementation under section 26(9) of any prohibition or restriction:

(b) to enter, for the purpose of performing his or her functions, any area of the public foreshore and seabed that is subject to a prohibition or restriction imposed under section 26:

(c) to advise members of the public of prohibitions or restrictions imposed under section 26:

(d) to warn a person to leave an area of the public foreshore and seabed in any case where the warden has reason to believe that the person's presence in the area contravenes a prohibition or restriction imposed under section 26:

(e) to record any failure to comply with a prohibition or restriction imposed under section 26 in any case where the warden has reason to believe that the failure is intentional:

(f) to report to any constable any failure to comply with a prohibition or restriction imposed under section 26 in any case where the warden has reason to believe that the failure is intentional.

Section 27(4)(f): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Other enactments not affected

28 Ownership and administrative functions over public foreshore and seabed to be exercised in accordance with this Act and other enactments

(1) 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.

(2) In exercising the functions, duties, and powers described in subsection (1), the Minister of Conservation must have particular regard to the object stated in section 3.

(3) The public foreshore and seabed must be administered in accordance with this section and any other enactment that regulates the use of, or activities on, the foreshore and seabed, whether directly or as land of the Crown.

(4) Section 13(1) does not affect any power to impose, by or under an enactment, a prohibition, limitation, or restriction in respect of an area of the public foreshore and seabed.

(5) Section 13(1) does not affect any power, by or under an enactment, to accord a special or protected status to an area of the foreshore or seabed, or to set aside any such area for specific public purposes.

(6) Section 13(1) does not affect—

(a) any status that has, by or under an enactment and before the commencement of this section, been accorded to an area of the public foreshore and seabed; or

(b) any specific public purpose for which an area of the public foreshore and seabed has, by or under an enactment and before the commencement of this section, been set aside; or

(c) a prohibition, limitation, or restriction imposed, by or under an enactment and before the commencement of this section, in respect of an area of the public foreshore and seabed.

Civil liability not affected

29 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

30 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 section; and

(b) that is not included in the public foreshore and seabed.

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

Amendment(s) incorporated in the Act(s).

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

32 Meaning of territorial customary rights

(1) In this Act, **territorial customary rights**, in relation to a group, means a customary title or an aboriginal title that could be recognised at common law and that—

(a) is founded on the exclusive use and occupation of a particular area of the public foreshore and seabed by the group; and

(b) entitled the group, until the commencement of this Part, to exclusive use and occupation of that area.

(2) For the purposes of subsection (1)(a), a group may be regarded as having had exclusive use and occupation of an area of the public foreshore and seabed only if—

(a) that area was used and occupied, to the exclusion of all persons who did not belong to the group, by members of

the group without substantial interruption in the period that commenced in 1840 and ended with the commencement of this Part; and

(b) the group had continuous title to contiguous land.

(3) In assessing, for the purposes of subsection (1)(b), whether a group had exclusive use and occupation of an area of the public foreshore and seabed, no account may be taken of any spiritual or cultural association with the area, unless that association is manifested in a physical activity or use related to a natural or physical resource.

(4) For the purposes of this section, the right of a group to exclusive use and occupation of a particular area of the public foreshore and seabed is not lost merely because rights of navigation have from time to time been exercised in respect of the area.

(5) If the area of the public foreshore and seabed over which a group claims a right to exclusive use and occupation was at any time used or occupied by persons who did not belong to the group, the right must be regarded as having been terminated unless those persons—

(a) were expressly or impliedly permitted by members of the group to occupy or use the area; and

(b) recognised the group's authority to exclude from the area any person who did not belong to the group.

(6) In this section,—

contiguous land means any land that is above the line of mean high water springs and that—

(a) is contiguous to the area of the public foreshore and seabed in respect of which the application is made or to any significant part of that area; or

(b) would, but for the presence of any of the following kinds of land, be contiguous to that area or to any significant part of that area:

(i) a marginal strip within the meaning of section 2(1) of the Conservation Act 1987:

(ii) an esplanade reserve within the meaning of section 2(1) of the Resource Management Act 1991:

(iii) a Māori reservation set apart under section 303 of Te Ture Whenua Maori Act 1993:

(iv) a road of any description or a road reserve:
(v) any railway line within the meaning of section 4(1) of the Railways Act 2005:
(vi) any reserve similar in nature to any land of a kind described in any of subparagraphs (i) to (v)

continuous title means a title to any contiguous land that has at all times, since 1840, been held by the applicant group or by any of its members (whether or not the nature or form of that title was, at any time, changed or affected by any Crown grant, certificate of title, lease, or other instrument of title).

(7) To avoid any doubt, in this section, a reference to a member, in relation to a group, includes a past member and a deceased member of the group.

Section 32(6) **contiguous land** paragraph (b)(v): amended, on 1 January 2009, by section 63(2) of the Public Transport Management Act 2008 (2008 No 87).

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

The High Court may, on the application of a group, or on the application of a person authorised by the court to represent the 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 13(1), have held territorial customary rights to a particular area of the public foreshore and seabed at common law.

34 Matters that must be considered and may be taken into account

(1) In determining an application under section 33, the High Court—

(a) must consider any evidence that it thinks relevant to enable it to assess the applicant group's claim to exclusive use and occupation of the area in respect of which the application is made; and

(b) may, without limitation, take into account—

(i) orders issued by the Māori Land Court to recognise ongoing customary rights to undertake particular activities; and

(ii) the applicant group's overall territorial association with the area.

(2) Despite section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, evidence of non-commercial customary fishing activity may be given to the High Court in support of applications under section 33.

(3) For the purposes of this section, the High Court may receive as evidence any oral or written statement, document, matter, or information that the court considers to be reliable, whether or not that evidence would otherwise be admissible.

(4) Subsection (3) is subject to section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and section 6 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

(5) To avoid any doubt, the matters described in subsections (1) and (2) may be called in aid of proof but no finding under section 33 may be made unless the matters set out in section 32 are established.

Section 34(4): amended, on 1 January 2005, by section 60(2) of the Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107).

35 Procedure

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

36 Consequence of successful application under section 33

(1) If the High Court makes a finding under section 33 in favour of an applicant group, the applicant group may apply to the High Court for either of the following orders:

(a) an order referring the finding to the Attorney-General and the Minister of Māori Affairs; or

(b) an order under section 43.

(2) If the High Court is satisfied that an application referred to in subsection (1) is properly made, the High Court must make the order sought.

(3) To avoid doubt, there is no right of appeal in relation to an order of the kind referred to in this section.

37 Reference to Ministers under section 36(1)(a)

(1) If a finding is referred to the Attorney-General and Minister of Māori Affairs under section 36(1)(a), the Ministers must enter into discussions with the applicant group for the purpose of negotiating an agreement as to the nature and extent of the redress to be given by the Crown in recognition of the finding of the High Court under section 33.

(2) An agreement entered into under subsection (1) is of no effect unless, on the joint application of the parties to that agreement the High Court confirms the agreement by order made with the consent of the parties.

(3) The High Court must make an order of the kind described in subsection (2) on being satisfied that the agreement—

(a) accurately records the terms agreed between the parties; and

(b) if applicable, has been ratified in accordance with its terms.

(4) If, after making an application under section 36(1)(a), an applicant group wishes, for any reason, to withdraw from discussions referred to in subsection (1), it may apply to the High Court for an order of the kind described in section 36(1)(b).

(5) If an application is made to the High Court under subsection (4), and the High Court is satisfied that the applicant group has withdrawn from discussions, the High Court must make the order sought by the applicant group.

(6) An order made by the High Court under this section must be sealed before it takes effect.

38 No redress other than that given by the Crown

(1) No claim may be made in respect of a finding made under section 33 other than redress—

(a) that the Crown may give, on the basis of such a finding, following discussions under section 37(1); or

(b) provided in accordance with sections 40 to 43.

(2) If an applicant group applies under section 36(1)(b) or section 37(4), the group is not entitled to seek any other form of redress under this Act or any other enactment for the finding of the High Court under section 33.

(3) No court has jurisdiction to consider the nature or the extent of any matter that the Crown proposes, offers, or gives for the purposes of any redress of the kind described in subsection (1).

39 If no finding made, application may in appropriate cases be considered under Part 3 or Part 4

If the High Court does not make a finding under section 33 but considers that any rights identified in the application are rights of a kind that are more appropriately considered under Part 3 or Part 4, 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.

Foreshore and seabed reserves

40 Purposes and status of foreshore and seabed reserve

(1) The purposes of a foreshore and seabed reserve are—

(a) to acknowledge the exercise of kaitiakitanga by the applicant group over the specified area of the public foreshore and seabed in respect of which a finding is made by the High Court under section 33; and

(b) to enable that area to be held for the common use and benefit of the people of New Zealand.

(2) Neither the guardians of a foreshore and seabed reserve nor the applicant group nor the board is entitled to charge or collect fees or other form of payment from any person or body for the use or occupation of the reserve.

(3) The establishment of an area of public foreshore and seabed as a foreshore and seabed reserve does not, except as otherwise expressly provided for in or under this Act, affect—

(a) the status of the area as public foreshore and seabed vested in the Crown under section 13(1); or

(b) the access rights provided for by section 7; or

(c) the rights of navigation provided for by section 8.

41 Directions of High Court

(1) If an applicant group makes an application under section 36(1)(b) or 37(4), the High Court must direct the persons and bodies listed in subsection (2) jointly to propose, by agreement,—

(a) a charter by which the board must administer the proposed foreshore and seabed reserve; and

(b) the persons or bodies to be represented on the board; and

(c) the resources required for the operation of the board and how its costs will be met.

(2) The directions of the High Court must be given to—

(a) the applicant group on whose behalf the finding is made under section 33; and

(b) the regional council with responsibility under the Resource Management Act 1991 for the area to which the High Court's finding relates; and

(c) the Attorney-General and the Minister of Māori Affairs.

42 Contents of charter

(1) Without limiting the matters to be included in the charter, the draft agreement presented to the High Court under section 41—

(a) must provide for the board to be established as a legal entity; and

(b) must specify—

(i) the powers, authorities, and discretions to be exercised by the members of the board; and

(ii) the number of members that may constitute a board; and

(iii) the manner in which new members of the board must be appointed; and

(iv) the terms for which the members of the board may be appointed or reappointed; and

(v) a policy for the remuneration of members and the payment of members' out of pocket expenses; and

(vi) the circumstances in which a member of a board—
(A) ceases to hold office; and
(B) may be removed from office; and
(vii) the rules of procedure to apply to the meetings of the board; and
(viii) the manner in which the charter may be varied; and
(ix) the process for the board to follow in the preparation, approval, and review of the management plan for the foreshore and seabed reserve; and
(x) the estimated date by which the board is to approve a management plan for the foreshore and seabed reserve; and
(xi) a process for the resolution of any disputes.

(2) In this section, **legal entity** means a legal entity constituted under another enactment.

Establishment, administration, and functions

43 Establishment of foreshore and seabed reserve and appointment of members of board

(1) If the High Court is satisfied that the draft agreement presented under section 41 provides for the matters required by sections 41 and 42, the High Court must, by order,—
(a) set apart and establish as a foreshore and seabed reserve the area of the public foreshore and seabed to which the High Court's finding relates; and
(b) confirm the charter for, and the membership of, the board.

(2) The members of the board confirmed by the High Court under subsection (1)(b), and any new members appointed in accordance with the charter, must be known as the guardians of the specified area of the foreshore and seabed that is to be administered by the board as a foreshore and seabed reserve.

44 Preparation of management plan for foreshore and seabed reserve

(1) The functions of a board appointed to administer a foreshore and seabed reserve include the preparation, approval, and review of a management plan for the foreshore and seabed reserve, in accordance with this subpart and the procedures set out in the charter provided for in sections 41 and 42.

(2) The management plan prepared under subsection (1)—

(a) must be prepared in accordance with Part 2 of the Resource Management Act 1991; and

(b) must not be inconsistent with the provisions of—

(i) the New Zealand coastal policy statement as defined in section 2(1) of the Resource Management Act 1991; or

(ii) any relevant national policy statement.

Service and notification

45 Service and notification of orders

(1) As soon as is reasonably practicable after the High Court has made an order under section 43, the Registrar of the High Court must—

(a) publish in the *Gazette* a minute of the order; and

(b) serve a copy of every order on—

(i) every local authority that has responsibility in the area to which the order relates; and

(ii) the Chief Executive; and

(iii) the Attorney-General, and the Ministers of Conservation and Māori Affairs; and

(iv) every person directed by the court to be served; and

(c) in the case of an order made under section 43, serve a copy of the order on the members of the board whose appointments are confirmed by the High Court under that section.

(2) To avoid doubt, there is no right of appeal in relation to an order of the High Court made under section 43.

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

46 Jurisdiction of Māori Land Court

(1) The Māori Land Court has jurisdiction under this Act to inquire into and determine, in accordance with section 50, an application made under section 48(1) for a customary rights order that relates to a specified area of the public foreshore and seabed.

(2) However, the Māori Land Court does not have jurisdiction under this Act to make orders or determinations in relation to the public foreshore and seabed, other than—

- (a) the orders referred to in subsection (1):
- (b) orders or determinations made under the provisions of Te Ture Whenua Maori Act 1993 that apply under section 47(2):
- (c) orders made under section 53(3):
- (d) findings made under section 54(1)(b):
- (e) incidental orders or determinations made 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 48(1).

(3) Orders of the Māori Land Court made under this section—

- (a) take effect in accordance with clause 6 of Schedule 1; and
- (b) must be—
  - (i) pronounced orally in open court; and
  - (ii) recorded in the public foreshore and seabed register.

Application of Te Ture Whenua Maori Act 1993

47 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 2 (which relate to the Māori Appellate Court), but only in respect of the jurisdiction exercised by that court on an appeal relating to sections 30 to 30J of Te Ture Whenua Maori Act 1993; and
- (i) the provisions of Part 3 (which relate to both the Māori Land Court and the Māori Appellate Court); but
  - (i) only as far as they are applicable 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 in exercising its jurisdiction under this Act.

Subpart 2—Customary rights orders

Applications to Māori Land Court

48 Applications for orders

(1) A whānau, hapū, or iwi, through its authorised representative, may apply to the Māori Land Court for a customary rights order that relates to a specified area of the public foreshore and seabed.

(2) An application under subsection (1) must be made not later than 31 December 2015.

49 Limits to jurisdiction of Māori Land Court under this Part

(1) Despite section 46(1), the Māori Land Court must not inquire into or determine an application for a customary rights order to carry on, exercise, or follow an activity, use, or practice—

(a) that involves the exercise of—

(i) any commercial Māori fishing right or interest, being a right or interest declared to be settled in section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(ii) any non-commercial Māori fishing right or interest, being a right or interest subject to the declarations in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(ab) that involves the exercise of any right or interest of Maori in commercial aquaculture activities on or after 21 September 1992, being a right or interest declared to be settled in section 6 of the Maori Commercial Aquaculture Claims Settlement Act 2004; or

(b) that is regulated by or under the Fisheries Act 1996; or

(c) if the subject of the application is—

(i) wildlife within the meaning of the Wildlife Act 1953, together with any animals specified in Schedule 6 of that Act:

(ii) marine mammals within the meaning of the Marine Mammals Protection Act 1978.

(2) A customary rights order must not be made in respect of an activity, use, or practice on the basis of a spiritual or cultural

association, unless that association is manifested by the relevant whānau, hapū, or iwi in a physical activity or use related to a natural or physical resource.

Section 49(1)(ab): inserted, on 1 January 2005, by section 60(3) of the Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107).

50 Determination of applications for customary rights orders

(1) The Māori Land Court may make a customary rights order, but only if it is satisfied that, in accordance with the provisions of section 51,—

- (a) the order applies to a whānau, hapū, or iwi; 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; and
  - (ii) has been carried on, exercised, or followed in accordance with tikanga Māori 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 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) A prohibition referred to in subsection (1)(b)(iv) does not include a prohibition or restriction imposed by a rule in a plan or proposed plan.

(3) The Māori Land Court may, in respect of the whole or part of the same area of the public foreshore and seabed, grant customary rights orders to—

- (a) more than 1 whānau, hapū, or iwi:
- (b) any combination of 1 or more whānau, hapū, and iwi.

51 Basis on which customary rights orders determined by Māori Land Court

(1) For the purpose of section 50(1)(b)(ii), an activity, use, or practice has not been carried on, exercised, or followed in a substantially uninterrupted manner if it has been or is prevented from being carried on, exercised, or followed by another activity authorised by or under an enactment or rule of law.

(2) For the purpose of section 50(1)(c), a right to carry on, exercise, or follow an activity, use, or practice has been extinguished if, in relation to the area of the public foreshore and seabed specified in the application,—

(a) legal title has been vested by any means in a person or group other than the whānau, hapū, or iwi on whose behalf the order is sought, including—

(i) Crown grants made by or under any lawful authority, including ordinances, statutes, or the prerogative; or

(ii) the common law; or

(iii) a statutory vesting; or

(iv) administrative action; or

(b) there has been a lawful reclamation of the relevant part of the public foreshore or seabed; or

(c) an interest has been established that is legally inconsistent with the activity, use, or practice for which the customary rights order is sought.

(3) For the purpose of subsection (2)(c), a resource consent that relates to an area of the public foreshore and seabed specified in an application for a customary rights order does not, of itself, extinguish a right to carry on, exercise, or follow an activity, use, or practice.

(4) Subsection (2) applies whether or not legal title has subsequently been resumed by the Crown.

Effects

52 Effects of customary rights order

(1) The effects of a customary rights order made under this Part are—

(a) to confer a right on the whānau, hapū, or iwi on whose behalf the order is made to carry out a recognised customary activity in accordance with sections 17A and 17B and Schedule 12 of the Resource Management Act 1991; and

(b) to enable protection of recognised customary activities under the Resource Management Act 1991.

(2) A customary rights order may also entitle the whānau, hapū, or iwi on whose behalf the order is made to derive a commercial benefit from carrying out a recognised customary activity under the order.

(3) However, the exercise of any recognised customary activity, whether or not a commercial benefit is derived from carrying out the activity, is subject to the scale, extent, and frequency specified for the recognised customary activity in the customary rights order.

(4) To the extent that the exercise of a recognised customary activity exceeds the scale, extent, or frequency specified for the activity under the customary rights order, section 17A(1) of the Resource Management Act 1991 does not apply.

53 Powers of holder

(1) The holder of a customary rights order may—

(a) determine who, in accordance with tikanga Māori, may carry out a recognised customary activity under the order:

(b) limit or suspend, in whole or in part, a recognised customary activity carried out under the order—

(i) if written approval is given for a resource consent, as provided for by section 107A(1) of the Resource Management Act 1991; or

(ii) for any other reason that accords with tikanga Māori.

(2) In exercising the functions or carrying out the duties of the holder under this Act, the holder must act in the best interests of the whānau, hapū, or iwi on whose behalf the relevant customary rights order is made.

(3) The Māori Land Court may,—

(a) if application is made by a member of the whānau, hapū, or iwi on whose behalf a customary rights order has been made, review the exercise of powers by the holder of that order by requiring the holder—
  (i) to file in the court a written report:
  (ii) to appear before the court for questioning on that report or on any matter relating to the holder's exercise of his or her functions, duties, and powers under this Part; and
(b) at any time, enforce the duties of the holder by giving directions.

Wāhi tapu

54 Protection of wāhi tapu

(1) This section applies if the Māori Land Court—
  (a) makes a customary rights order in respect of an activity, use, or practice that relates to a wāhi tapu; and
  (b) in so doing, finds that the access rights provided for by section 7 prevent, or are inconsistent with, the protection of the wāhi tapu.

(2) The Māori Land Court must refer a finding of the kind described in subsection (1)(b) to the Minister of Conservation and the Minister of Māori Affairs (the **relevant Ministers**).

(3) If a finding is referred to the relevant Ministers under subsection (2),—
  (a) the relevant Ministers may prohibit or restrict access over an area of the public foreshore and seabed in accordance with section 26; but
  (b) no claim may be made against the Crown in respect of that finding.

Limitations

55 Limitation on effect of orders

(1) The Māori Land Court must not make a customary rights order that restricts, or has the effect of restricting—
  (a) access rights provided for by section 7:
  (b) rights of navigation provided for by section 8.

(2) However, a prohibition or restriction imposed under section 26 prevails over section 7.

56 Limitation 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, in consultation with the Minister of Māori Affairs, under Schedule 12 of the Resource Management Act 1991.

57 Limitation on making exclusive orders

In making a determination under section 50, the Māori Land Court must not make a customary rights order that confers on a whānau, hapū, or iwi an exclusive right to carry on, exercise, or follow an activity, use, or practice in relation to a specified area of the public foreshore and seabed, if, at any time after 1840,—

(a) persons who did not belong to the applicant whānau, hapū, or iwi carried on, exercised, or followed that activity, use, or practice in the specified area; and

(b) those persons—

(i) were not expressly or impliedly permitted by the applicant whānau, hapū, or iwi to carry on, exercise, or follow the activity, use, or practice in the specified area; and

(ii) did not recognise the authority of the applicant whānau, hapū, or iwi to prevent any persons who did not belong to the whānau, hapū, or iwi from carrying on, exercising, or following the activity, use, or practice in the specified area.

Variation or cancellation of orders

58 Orders may be varied

(1) The Māori Land Court may vary an order made under this Part by replacing the holder named in the order with another legal entity to hold the order on behalf of the whānau, hapū, or iwi to whom the order applies.

(2) A variation made under subsection (1) must not have the effect of depriving the whānaū, hapū, or iwi of the benefits of the order.

(3) Clause 5 of Schedule 1 applies to this section and section 59.

59 Cancellation of customary rights order

(1) On application by the holder under section 60, the Māori Land Court may cancel, in whole or in part, for any reason, a customary rights order made under this Part.

(2) However, the Māori Land Court must not cancel an order under subsection (1) in circumstances where the holder has given approval for a resource consent, as provided for by section 107A(1) of the Resource Management Act 1991, until—

(a) the relevant resource consent has been granted by the consent authority; and

(b) the period for an appeal has expired or any appeal has been determined.

(3) 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.

60 Application to vary or cancel orders

(1) An application to vary or cancel a customary rights order may be made only by—

(a) the holder of the order; or

(b) a representative of the whānau, hapū, or iwi to whom the order applies, if the holder—

(i) has ceased to exist; or

(ii) being a natural person, has died or no longer has legal capacity.

(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) Section 61 and clauses 3, 4, 5, and 8 of Schedule 1 apply to the variation or cancellation of an order.

61 Basis for varying or cancelling orders

The Māori Land Court may vary an order under section 58 or cancel an order under section 59 only if it is satisfied that—

(a) the applicant is authorised to apply for the variation or cancellation by the whānau, hapū or iwi to whom the order applies; and

(b) the applicant has given sufficient notice of the application to the whānau, hapū, or iwi; and

(c) there has been sufficient opportunity for the whānau, hapū, or iwi to consider the application and make its views known to the applicant; and

(d) no meritorious objections to the application have been received from or on behalf of the whānau, hapū, or iwi that would require the Māori Land Court to decline the application.

Subpart 3—Procedural matters

Inquiry by way of hearing

62 Inquiry into applications for orders

(1) If the Chief Registrar receives objections to an application made under section 48(1), 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 to an application for a customary rights order are received, the Māori Land Court must make an order if it is satisfied that it is entitled to do so under section 50.

Appeal rights

63 Rights of appeal against decisions of Māori Land Court

(1) This section applies to a party to a proceeding that relates to an application for a customary rights order under section 48(1).

(2) A party who is dissatisfied with a decision of the Māori Land Court relating to a customary rights order may appeal to the High Court on a matter of fact or law.

(3) In 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.

(4) An appeal made under this section must be commenced by notice of appeal, given in accordance with the rules of the High Court,—

(a) within 2 months after the date of the minute of the order appealed from; or

(b) within any further period of time allowed by the High Court.

64 When case must be stated to Māori Appellate Court

(1) If, in an appeal under section 63(2), a question arises on a matter of tikanga Māori, the High Court must state a case and refer the question to the Māori Appellate Court.

(2) Section 61(2) to (4) of Te Ture Whenua Maori Act 1993 applies if a case is stated by the High Court under subsection (1).

65 Further rights of appeal

(1) A party who is dissatisfied with a decision of the High Court made under section 63(2) may appeal to the Court of Appeal by leave of the Court of Appeal on a matter of fact or law.

(2) An opinion of the Māori Appellate Court on a question of tikanga Māori referred to it by the High Court under section 64(1) is not binding on the Court of Appeal.

(3) 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

66 Interpretation

In this Part, **group of natural persons with a distinctive community of interest** and **group** does not include persons whose only connection to the group is as successors in title to any land.

Jurisdiction

67 Jurisdiction of the High Court

The High Court has jurisdiction to inquire into and determine applications for customary rights orders under this Part.

Applications to High Court

68 Applications for orders

(1) The authorised representative of a group of natural persons with a distinctive community of interest may apply to the High Court for a customary rights order that relates to a specified area of the public foreshore and seabed.

(2) An application must be—

(a) made not later than 31 December 2015; and

(b) filed in the registry of the High Court nearest to the area of the public foreshore and seabed that is the subject of an application for a customary rights order.

69 Contents of applications

(1) An application made under section 68 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 identity of the person who is proposed to represent the group.

(2) An application must be supported by 1 or more affidavits that 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 74.

70 Directions as to service

The applicant for a customary rights order under section 68 must serve the application on—

(a) the local authorities that have responsibility for the area of the public foreshore and seabed to which the application relates; and

(b) the Minister of Conservation, through the Director-General of Conservation; and

(c) the Minister of Māori Affairs through the chief executive of Te Puni Kōkiri; and

(d) the Chief Executive; and

(e) any person who, in the opinion of the High Court, is likely to be directly affected by the application.

71 Public notice of application

(1) The applicant must give public notice of an application made under section 68.

(2) The public notice must include, without limitation,—

(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 on whose behalf the application 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 a notice of appearance indicating support for or opposition to the application must be filed in the registry of the High Court in which the proceedings have been filed.

Parties

72 Entitlement to appear

(1) The only persons entitled to appear and be heard in proceedings relating to an application made under section 68 are—

(a) the applicant:

(b) members of the group on whose behalf an application is made:

(c) those with an interest in the proceeding that is different from an interest in common with the public generally and who,—

(i) by the due date, have filed a notice of appearance; or

(ii) despite not giving notice by the due date, have leave of the High Court to appear and be heard.

(2) Despite subclause (1), the Crown is entitled to be a party to a proceeding relating to an application made under Part 4.

Determination of customary rights orders by High Court

73 Limits to jurisdiction of High Court under this Part

(1) Despite section 67, the High Court must not inquire into or determine an application by a group for a customary rights order to carry on, exercise, or follow an activity, use, or practice—

(a) that, in relation to the same group and the same area of the public foreshore and seabed, is—

(i) able to be recognised and protected by an order made by the Māori Land Court under Part 3; or

(ii) the subject of an existing application to the Māori Land Court under section 48(1); or

(iii) the subject of an existing order made by the Māori Land Court under section 50; or

(b) that is regulated by or under the Fisheries Act 1996; or

(c) that involves the exercise of—

(i) any commercial Māori fishing right or interest, being a right or interest declared to be settled in section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(ii) any non-commercial Māori fishing right or interest, being a right or interest subject to the declarations in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(ca) that involves the exercise of any right or interest of Maori in commercial aquaculture activities on or after 21 September 1992, being a right or interest declared to be settled in section 6 of the Maori Commercial Aquaculture Claims Settlement Act 2004; or

(d) if the subject of the application is—

(i) wildlife within the meaning of the Wildlife Act 1953, together with any animals specified in Schedule 6 of that Act:

(ii) marine mammals within the meaning of the Marine Mammals Protection Act 1978.

(2) A customary rights order must not be made in respect of an activity, use, or practice on the basis of a spiritual or cultural association, unless that association is manifested by the relevant group in a physical activity or use related to a natural or physical resource.

Section 73(1)(ca): inserted, on 1 January 2005, by section 60(4) of the Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107).

74 Determination of applications for customary rights orders

(1) The High Court may make a customary rights order, but only if it is satisfied that, in accordance with the provisions of section 75,—

(a) the order applies to a group of natural persons 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 accordance with the distinctive cultural practices of the group, 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 the same area of the public foreshore and seabed in accordance with the distinctive 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, or practice has not been extinguished as a matter of law.

(2) The prohibition referred to in subsection (1)(b)(iv) does not include a prohibition or restriction imposed by a rule in a plan or proposed plan.

(3) The High Court may grant customary rights orders to more than 1 group in respect of the whole or part of the same area of the public foreshore and seabed.

(4) For the purposes of this section, the High Court may receive as evidence any oral or written statement, document, matter, or information that the court considers to be reliable, whether or not that evidence would otherwise be admissible.

75 Basis on which customary rights orders determined by High Court

(1) For the purpose of section 74(1)(b)(ii), an activity, use, or practice has not been carried on, exercised, or followed in a substantially uninterrupted manner if it has been or is prevented from being carried on, exercised, or followed by another activity authorised by or under an enactment or rule of law.

(2) For the purpose of section 74(1)(c), a right to carry on, exercise, or follow an activity, use, or practice has been extinguished if, in relation to the area of the public foreshore and seabed specified in the application,—

(a) legal title has been vested by any means in a person or group other than the group on whose behalf the order is sought, including—

(i) Crown grants made by or under any lawful authority, including ordinances, statutes, or the prerogative; or

(ii) the common law; or

(iii) a statutory vesting; or

(iv) administrative action; or

(b) there has been a lawful reclamation of the relevant part of the public foreshore or seabed; or

(c) an interest has been established that is legally inconsistent with the activity, use, or practice for which a customary rights order is sought.

(3) For the purpose of subsection (2)(c), a resource consent that relates to an area of the public foreshore and seabed specified in an application for a customary rights order does not, of itself, extinguish a right to carry on, exercise, or follow an activity, use, or practice.

(4) Subsection (2) applies whether or not legal title has subsequently been resumed by the Crown.

Effects

76 Effects of customary rights order

(1) The effects of a customary rights order made under this Part are—

(a) to confer a right on the group on whose behalf the order is made to carry out a recognised customary activity in accordance with sections 17A and 17B and Schedule 12 of the Resource Management Act 1991; and

(b) to enable protection of recognised customary activities under the Resource Management Act 1991.

(2) A customary rights order may also entitle the group on whose behalf the order is made to derive a commercial benefit from carrying out a recognised customary activity under the customary rights order.

(3) However, the exercise of any recognised customary activity, whether or not a commercial benefit is derived from carrying out the activity, is subject to the scale, extent, and frequency specified for the recognised customary activity in the customary rights order.

(4) To the extent that the exercise of a recognised customary activity exceeds the scale, extent, or frequency specified for the recognised customary activity in the customary rights order, section 17A(1) of the Resource Management Act 1991 does not apply.

77 Powers of holder

(1) The holder of a customary rights order may—

(a) determine who, in accordance with the distinctive cultural practices of the group on whose behalf the order was made, may carry out a recognised customary activity under the order:

(b) limit or suspend, in whole or in part, a recognised customary activity carried out under the order—

(i) if written approval is given for a resource consent, as provided for by section 107A(1) of the Resource Management Act 1991; or

(ii) for any other reason that accords with the distinctive cultural practices of the group.

(2) In exercising the functions or carrying out the duties of the holder under this Act, the holder must act in the best interests of the group on whose behalf the relevant customary rights order is made.

Sites of significance

78 Protection of sites of significance

(1) This section applies if the High Court—

(a) makes a customary rights order in respect of an activity, use, or practice that relates to a site of significance; and

(b) in so doing, finds that the access rights provided for by section 7 prevent, or are inconsistent with, the protection of the site of significance.

(2) The High Court must refer a finding of the kind described in subsection (1)(b) to the Minister of Conservation.

(3) If a finding is referred to the Minister of Conservation under subsection (2),—

(a) the Minister may prohibit or restrict access over an area of the public foreshore and seabed in accordance with section 26; but

(b) no claim may be made against the Crown in respect of that finding.

(4) In this section, **site of significance** means a site that has a special historical, spiritual, or cultural association for the group on whose behalf the customary rights order is made.

Limitations

79 Limitation on effect of orders

(1) The High Court must not make a customary rights order that restricts, or has the effect of restricting—

(a) access rights provided for by section 7:

(b) rights of navigation provided for by section 8.

(2) However, a prohibition or restriction imposed under section 26 prevails over section 7.

80 Limitation 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.

81 Limitation on making exclusive orders

In making a determination under section 74, the High Court must not make a customary rights order that confers on a group of natural persons an exclusive right to carry on, exercise, or follow an activity, use, or practice in relation to a specified area of the public foreshore and seabed, if, at any time after 1840,—

(a) persons who did not belong to the group carried on, exercised, or followed that activity, use, or practice in the specified area; and

(b) those persons—

(i) were not expressly or impliedly permitted by the applicant group to carry on, exercise, or follow the activity, use, or practice in the specified area; and

(ii) did not recognise the authority of the group to prevent any persons who did not belong to the group from carrying on, exercising, or following the activity, use, or practice in the specified area.

Orders of High Court

82 Contents of orders of High Court

(1) An applicant who has succeeded in an application under this Part must submit a draft order for approval by the Registrar of the High Court.

(2) An order made under this Part must specify—

- (a) the particular area of the public foreshore and seabed to which the order applies; and
- (b) the group to which the order applies; and
- (c) the person declared by the court to hold the order on behalf of the group to whom the order applies.

(3) The order must also include a diagram or map that is sufficient to identify the specified area relevant to the customary rights order.

(4) In addition, the 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 Part, 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.

83 Commencement of orders

An order of the High Court made under this Part—

- (a) must be sealed; and
- (b) cannot be acted upon until it has been recorded on the public foreshore and seabed register.

84 Notification of orders

(1) As soon as is reasonably practicable after the High Court has made an order under this Part, the Registrar of the High Court must—

(a) publish in the *Gazette* a minute of the order; and

(b) serve a copy of the sealed order of the High Court on—

(i) the local authorities that have responsibility for the area of the public foreshore and seabed to which the order relates; and

(ii) the Minister of Conservation, through the Director-General of Conservation; and

(iii) the Minister of Māori Affairs, through the chief executive of Te Puni Kōkiri; and

(iv) the Chief Executive; and

(v) every person directed by the High Court to be served.

(2) The copy of the sealed order must be accompanied by a notice that states the date by which an appeal must be lodged.

(3) If an order of the High Court is appealed, the Registrar of the High Court must, as soon as is reasonably practicable after the determination of the appeal, give notice of that determination in accordance with subsection (1).

Variation and cancellation

85 Orders may be varied

(1) The High Court may vary an order made under this Part by replacing the holder named in the 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.

86 Cancellation of orders

(1) On application under section 87 by the holder of a customary rights order, the High Court may cancel, in whole or in part, for any reason, a customary rights order made under this Part.

(2) However, the High Court must not cancel an order under subsection (1) in circumstances where the holder has given approval for a resource consent, as provided for by section 107A(1) of the Resource Management Act 1991, until—

(a) the relevant resource consent has been granted by the consent authority; and

(b) the period for an appeal has expired or any appeal has been determined.

(3) 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.

87 Application to vary or cancel orders

(1) An application to vary or cancel a customary rights order may be made to the High Court, but only by—

(a) the holder of the order; or

(b) a representative of the group to whom the order applies, if the holder—

(i) has ceased to exist; or

(ii) being a natural person, has died or no longer has legal capacity.

(2) Sections 70 to 72 apply, with the necessary modifications, to an application under this section.

(3) Section 89 applies to the variation or cancellation of an order.

88 Contents of application to vary or cancel orders

An application to vary or cancel an order must include—

(a) a description of the group on whose behalf the application is made; and

(b) a description of the area of the public foreshore and seabed to which the application relates; and

(c) a description of the person who 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 on whose behalf the order is made; 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.

89 Basis for varying or cancelling orders

The High Court may vary an order made under section 85 or cancel an order under section 86 only if it is satisfied that—

(a) the applicant is authorised to apply for the variation or cancellation by the group to whom the order applies; and

(b) the applicant has given sufficient notice of the application to that group it represents; and

(c) there has been sufficient opportunity for that group to consider the application and make its views known to the applicant; and

(d) no meritorious objections to the application have been received from or on behalf of that group that would require the High Court to decline the application.

Appeal rights

90 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) An appeal made under this section must be commenced by notice of appeal, given in accordance with the rules of the court,—

(a) not later than 2 months after the date of the making of the order appealed from; or

(b) within any further period of time allowed by the Court of Appeal.

Recording of orders

91 Orders must be recorded in register

After the time allowed for an appeal has expired or an appeal has been disposed of,—

(a) the Registrar of the High Court must transmit a sealed copy of the order to the Chief Executive; and

(b) the order must be entered in the public foreshore and seabed register.

Part 5
Provisions relating to public foreshore and seabed register, recognition agreements, and other matters

Subpart 1—Public foreshore and seabed register

92 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 under Part 3; and

(b) the orders made by the High Court under section 43; and

(c) the management plan for a foreshore and seabed reserve prepared under section 44; and

(d) the orders made, varied, or cancelled by the High Court under Part 4; and

(e) agreements entered into under section 96; and

(f) any restrictions or prohibitions on access imposed by the Minister of Conservation under section 26; and

(g) any controls imposed by the Minister of Conservation under Schedule 12 of the Resource Management Act 1991.

(2) The public foreshore and seabed register is in addition to the records of the Māori Land Court.

93 Requirements for keeping public foreshore and seabed register

(1) The public foreshore and seabed register kept under section 92 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.

94 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 93(2)(a) and (b).

95 Application of Privacy Act 1993

The register kept under section 92 is a public register within the meaning of section 58 of the Privacy Act 1993.

Subpart 2—Recognition agreements

96 Agreements to recognise territorial customary rights

(1) The Attorney-General and the Minister of Māori Affairs 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 13(1), that group (or any members of the group) would have had a

claim for territorial customary rights over a specified area of the public foreshore and seabed.

(2) An agreement reached under subsection (1) is of no effect until,—

(a) the applicant group makes an application to the High Court; and

(b) the Attorney-General and the Minister of Māori Affairs and the applicant group file affidavits in support of that application; and

(c) the High Court confirms by order that the requirements of sections 32 to 34 are satisfied.

(3) An order made by the High Court under this section must be sealed before it takes effect.

97 Registration and notification of agreements

(1) When an agreement has been entered into under section 96, 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—

(a) notify the agreement in the *Gazette*; and

(b) serve a copy of the agreement on—

(i) the local authorities that have responsibility in the area of the public foreshore and seabed to which the agreement relates; and

(ii) the Minister of Conservation; and

(iii) any other person who, in the opinion of the Chief Executive, is affected by the agreement.

Subpart 3—Regulations, saving, repeals, and amendments

98 Regulations

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

(a) prescribing the duties of the Chief Executive in relation to the public foreshore and seabed register:

(b) providing for the appointment of wardens under section 27 and the termination of such appointments:

(c) prescribing additional functions of wardens appointed under section 27, being functions that are reasonably incidental to the functions specified in section 27:

(d) prescribing any duties or powers to be exercised by wardens for the purpose of performing their functions:

(e) prescribing the means (including, without limitation, identity cards or badges, or both) by which wardens are to be identified:

(f) providing for any other matters contemplated by this Act or necessary for giving it full effect.

(2) Regulations made under subsection (1) must be made on the advice of the Minister of Justice, after consultation with the Minister of Conservation and the Minister of Māori Affairs.

99 Rules governing applications to High Court

(1) Every application to the High Court made under this Act must be by filing an originating application.

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

100 Provision saving Māori reservations

(1) This section applies if, before the commencement of this section, any land that is in the public foreshore and seabed has been set apart as Māori reservation—

(a) by the Chief Executive of Te Puni Kōkiri under section 338 of Te Ture Whenua Maori Act 1993:

(b) on application of the Minister of Māori Affairs under section 339 of Te Ture Whenua Maori Act 1993:

(c) upon the express recommendation of the Māori Land Court under section 340 of Te Ture Whenua Maori Act 1993.

(2) A Māori reservation referred to in subsection (1) must be treated as if it were a specified freehold interest for so long as

it is set apart under section 338, or section 339, or section 340 of Te Ture Whenua Maori Act 1993.

(3) In this section, **Māori freehold land** and **General land** have the same meaning as in section 4 of Te Ture Whenua Maori Act 1993.

101 Status of existing and future agreements between Crown and claimant groups

(1) To avoid doubt, nothing in this Act—

(a) limits or otherwise affects the validity of an agreement entered into between the Crown and a claimant group to settle an historical Treaty of Waitangi claim; or

(b) fetters the ability of the Crown to enter into any agreement with a claimant group in the future to settle an historical Treaty of Waitangi claim.

(2) In this section, **claimant group** means a group of Māori that has entered into a binding settlement of its historical claims against the Crown under the Treaty of Waitangi.

102 Relationship between local Acts and this Act

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

(2) To avoid doubt, subsection (1) prevails over the provisions of any local Act that permits land reclaimed from the sea by accretion by the action of the sea to be vested in any person or body.

(3) Neither subsection (1) nor section 17(4) to (9) applies to the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987.

103 Consequential and related amendments

(1) The Acts specified in Schedule 2 are amended in the manner indicated in that schedule.

(2) The amendment to section 24 of the Conservation Act 1987 as set out in Schedule 2 applies whether or not an application for the vesting of any right, title, or interest in the reclaimed land has been made before or after the commencement of this section.

(3) If, at the commencement of this section, a decision of the Minister of Conservation under section 24A of the Conservation Act 1987 is the subject of court proceedings, any decision of the Minister resulting from those proceedings must be determined as if the amendment to section 24 of the Conservation Act 1987, as set out in Schedule 2, had not been enacted.

Schedule 1

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

Part 1
Applications under Part 3

1 Filing of applications in Māori Land Court

(1) Applications made to the Māori Land Court under section 48(1) 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).

2 Requirements for applications to Māori Land Court

An application to the Māori Land Court for a customary rights order must set out—

(a) the name of the applicant or, if more than 1 applicant, of each applicant; and

(b) the postal address and other contact details of each applicant; and

(c) a description of the whānau, hapū, or iwi on whose behalf the application is made; and

(d) the particular area of public foreshore and seabed to which the application relates; and

(e) the legal entity that is proposed to represent the whānau, hapū, or iwi; and

(f) a description of the activity, use, or practice that is claimed to be the subject of a customary right; and

(g) the purpose for which the activity, use, or practice is carried on, exercised, or followed; and

(h) a description of tikanga Māori governing the activity, use, or practice; and

(i) a description of the scale, extent, and frequency of the activity, use, or practice that is being carried on, exercised, or followed; and

Part 1—*continued*

(j) other matters relevant to the court's consideration under section 50.

3 Notification of applications

(1) As soon as is reasonably practicable after an application is made under section 48(1) and 60(1), 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 whānau, hapū, or iwi on whose behalf the application is made; and

(c) the legal entity proposed to represent the whānau, hapū, or iwi on whose behalf the application is made; and

(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.

4 Service of notices

The Chief Registrar must serve notice of an application made under sections 48(1) or 60(1) on—

(a) the local authorities that have responsibility for the area of the public foreshore and seabed to which the application relates; and

Part 1—*continued*

(b) the Minister of Conservation, through the Director-General of Conservation; and
(c) the Minister of Māori Affairs, through the chief executive of Te Puni Kōkiri; and
(d) the Chief Executive; and
(e) any person who, in the opinion of the Chief Registrar, is likely to be directly affected by the application or appeal; and
(f) other persons as directed by the court to be served.

Variation or cancellation of orders

5 Applications to vary or cancel orders

An application to vary or cancel an order, as provided for under section 60(1), must include—

(a) the name of the applicant and of the whānau, hapū, or iwi on whose behalf the application is made; 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 undertakes to use in consulting on the proposed variation or cancellation with the whānau, hapū, or iwi on whose behalf the order was made; and
(d) a statement as to the level of support there is within the whānau, hapū, or iwi for the proposed variation or cancellation, as the case may be.

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 50 must immediately be entered in the records of the Māori Land Court.

Part 2—*continued*

(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

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

7 Orders of Māori Land Court

(1) An order of the Māori Land Court made under section 50—

(a) must specify—

(i) the particular area of the public foreshore and seabed to which the order applies; and

(ii) the whānau, hapū, or iwi to whom the order applies; and

(iii) the legal entity declared by the court to hold the order for the whānau, hapū, or iwi to whom the order applies; and

(b) must include a diagram 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 section, carried on, exercised, or followed by the whānau, hapū, or iwi 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

Part 2—*continued*

(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.

(3) The diagram or map required by subclause (1)(b) must be sufficient to identify the specified area relevant to the customary rights order.

8 Service and notification of orders of Māori Land Court

(1) As soon as is reasonably practicable after an order has been pronounced by the Māori Land Court, varied under section 58(1), or cancelled under section 59(1), the Chief Registrar must—

(a) publish in the *Gazette* a minute of the order; and

(b) serve a copy of the order that is pronounced and a notice that complies with subclause (2), on—

(i) the local authorities that have responsibility for the area of the public foreshore to which the application relates; and

(ii) the Minister of Conservation, through the Director-General of Conservation; and

(iii) the Minister of Māori Affairs, through the chief executive of Te Puni Kōkiri; and

(iv) the Chief Executive; and

(v) 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 issued following the determination of the ap-

Part 2—*continued*

peal, 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 50, varied under section 58(1), or cancelled under section 59(1).

(2) The Māori Land 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 3
Hearing

10 Conduct of hearing

(1) In conducting a public hearing, as provided for by section 62(1), the Māori Land 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.

11 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.

Parties

12 Entitlement to appear

(1) The only persons entitled to appear and be heard in a proceeding relating to an application made under section 48(1), or an application to vary or cancel an order as provided for in sections 58(1) and 59(1), are those who—

(a) are applicants for an order:

(b) are members of the whānau, hapū, or iwi on whose behalf an application is made:

(c) have an interest in the proceeding that is different from an interest in common with the public generally; and

(i) have filed a submission by the due date; or

(ii) despite not filing a submission by the due date, have leave of the court to appear and be heard.

(2) Despite subclause (1), the Crown is entitled to be a party to a proceeding relating to an application made under Part 3.

Schedule 2

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Consequential and related amendments

Conservation Act 1987 (1987 No 65)
Amendment(s) incorporated in the Act(s).

Crown Minerals Act 1991 (1991 No 70)
Amendment(s) incorporated in the Act(s).

Forest and Rural Fires Act 1977 (1977 No 52)
Amendment(s) incorporated in the Act(s).

Hauraki Gulf Marine Park Act 2000 (2000 No 1)
Amendment(s) incorporated in the Act(s).

Local Government Act 1974 (1974 No 66)
Amendment(s) incorporated in the Act(s).

Public Works Act 1981 (1981 No 35)
Amendment(s) incorporated in the Act(s).

Te Ture Whenua Maori Act 1993 (1993 No 4)
Amendment(s) incorporated in the Act(s).

Contents

1 General
2 Status of reprints
3 How reprints are prepared
4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
5 List of amendments incorporated in this reprint (most recent first)

Notes

1 General

This is a reprint of the Foreshore and Seabed Act 2004. The reprint incorporates all the amendments to the Act as at 1 April 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3): section 5

Public Transport Management Act 2008 (2008 No 87): section 63(2)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Land Transport Management Amendment Act 2008 (2008 No 47): section 50(1)

Maori Commercial Aquaculture Claims Settlement Act 2004 (2004 No 107): section 60

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