

House of Representatives

# Supplementary Order Paper

Tuesday, 16 November 2004

## Foreshore and Seabed Bill

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*Proposed amendments*

Hon Dr Michael Cullen, in Committee, to move the following amendments:

*Clause 2*

To omit this clause (lines 4 and 5 on page 4), and substitute the following clause:

**2 Commencement**

- (1) This section and **Part 1 and Part 2** (other than **sections 9A, 21, and 22**), and sections **72, 73, 83, 94, 95, 99, 100, 100A, 106A, 106B, 114 to 117, and Schedule 3** (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.

*Clause 3*

To omit this clause (lines 8 to 27 on page 4 and lines 1 to 5 on page 5), and substitute the following clauses:

**2A 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.

### 3 Purposes

The Act gives effect to the object stated in **section 2A** 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.

#### Clause 4

To insert, in their appropriate alphabetical order, the following definitions:

**applicant group** means a group that applies, or on whose behalf an application is made, to the High Court for a finding under **section 29**

**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 34E**

**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 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 29**; and
- (b) that, by order of the High Court under **section 34E**,—

- (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

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

**management plan** means a plan prepared by the guardians of a foreshore and seabed reserve in accordance with **section 34F**

**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

**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 Transit New Zealand Act 1989

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

To omit the definition of **ancestral connection order** (lines 9 to 11 on page 5).  
To omit from *paragraph (a)* of the definition of **customary rights order** the expression “**38(1)(b)**” (line 21 on page 5), and substitute the expression “**42**”.  
To omit from *paragraph (b)* of the definition of **customary rights order** the expression “**59**” (line 22 on page 5), and substitute the expression “**61**”.  
To omit from *paragraph (a)(i)* of the definition of **foreshore and seabed** the words “high water line at mean high water spring tides” (lines 25 and 26 on page 5), and substitute the words “line of mean high water springs”.  
To omit *paragraph (a)* of the definition of **holder** (line 39 on page 5 to line 2 on page 6), and substitute the following paragraph:

- (a) the legal entity that holds an order made under **section 42**; and

To omit from *paragraph (b)* of the definition of **holder** the expression “**59**” (line 3 on page 6), and substitute the expression “**61**”.  
To omit *paragraph (a)* of the definition of **legal entity** (lines 7 to 10 on page 6), and substitute the following paragraphs:

- (a) the legal entity declared by the Māori Land Court to hold a customary rights order made under **section 42**; and
- (ab) the person declared by the High Court to hold a customary rights order made under **section 61**; and

To insert in the definition of **local authority**, before the word “meaning” (line 14 on page 6), the word “same”, and to omit the words “it is given” (line 14 on page 6), and substitute the word “as”.

To omit the definition of **Minister** (lines 20 to 23 on page 6).

To omit the definition of **order** (lines 24 to 29 on page 6).

To insert in the definition of **recognised customary activity**, before the word “meaning” (line 6 on page 7), the word “same”, and to omit the words “it is given” (line 6 on page 7), and substitute the word “as”.

To omit from the definition of **recognised customary activity** the expression “**17A**” (line 7 on page 7), and substitute the expression “**2(1)**”.

To omit from the definition of **specified freehold interest** the words “the commencement of this Act” (line 11 on page 7), and substitute the words “commencement of this section”.

To add to the definition of **specified freehold interest** (after line 20 on page 7), the following paragraph:

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

To omit *paragraph (c)* from the definition of **territorial customary rights** (line 23 on page 7).

To insert in the definition of **tikanga Māori**, before the word “meaning” (line 27 on page 7), the word “same”, and to omit the words “it is given” (line 27 on page 7), and substitute the word “as”.

To omit the definition of **whanaunga** (lines 29 and 30 on page 7).

#### Clause 6

To omit from the heading to this clause the word “**Right**” (line 36 on page 7), and substitute the word “**Rights**”.

To omit *subclause (3)* (lines 11 to 13 on page 8), and substitute the following subclauses:

- (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 21**.
- (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.

#### Clause 7

To omit from *subclause (3)* the word “right” (line 28 on page 8), and substitute the word “rights”.

To omit *subclauses (4) and (5)* (lines 29 to 33 on page 8), and substitute the following subclauses:

- (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.

*New heading and clause 7A*

To insert, after *clause 7* (after line 33 on page 8), the following heading and clause:

*Rights of fishing*

**7A 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.

*Heading before clause 8*

To omit the words “*common law rights and*” (line 1 on page 9).

*Clause 8*

To omit this clause (lines 3 to 14 on page 9).

*Clause 9*

To omit *subclause (1)* (lines 16 to 20 on page 9), and substitute the following subclause:

- (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 29** and **Part 4**, and the jurisdiction of the Māori Land Court under **Part 3**.

To omit *subclause (2)* (lines 21 to 29 on page 9).

To omit *subclause (3)* (lines 30 to 34 on page 9), and substitute the following subclause:

- (3) In this section and in **section 9A**, **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.

*New clause 9A*

To insert after *clause 9* (after line 34 on page 9), the following clause:

**9A 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 29 or Part 4**; or
- (c) if appropriate, refer the claim to the Māori Land Court for decision under **Part 3**.

*Heading to clause 10*

To omit the words “**claims for customary title**” (line 36 on page 9), and substitute the words “**applications relating to foreshore and seabed**”.

*Clause 10*

To insert in *paragraph (a)*, before the word “foreshore” (line 1 on page 10), the word “public”.

To omit from *paragraph (c)* the words “this Act” (line 17 on page 10), and substitute the words “this section”.

*Clause 11*

To omit from *subclause (1)* the words “this Act” (line 20 on page 10), and substitute the words “this section”.

To omit *subclause (4)* (lines 29 to 32 on page 10), and substitute the following subclause:

- (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.

*Clause 12*

To omit this clause (lines 35 to 37 on page 10 and lines 1 to 5 on page 11), and substitute the following clause:

**12 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.

*Clause 13*

To omit this clause (lines 6 to 32 on page 11), and substitute the following clauses:

**13 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 11** 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 11** 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 11** and is deemed to be stopped.
- (5) Nothing in this section affects **section 6 or section 7**.
- (6) In this section, **formed** has the meaning corresponding to **formation** in section 2(1) of the Local Government Act 1974.

**13A Rights of owners of fixtures preserved**

- Section 11** 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.

**13B 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 106A 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 11 and 12**.
- (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.

**13C 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.
- (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 26(2)** has effect in respect of any land to which this section applies.

**13D 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.

*Clause 14*

To omit this clause (lines 33 to 37 on page 11 and lines 1 to 20 on page 12), and substitute the following clause:

**14 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.

*Clause 15*

To omit *subclause (1)* (lines 23 to 25 on page 12), and substitute the following subclause:

- (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.

*Clauses 16 and 17*

To omit these clauses (lines 31 to 37 on page 12, lines 1 to 40 on page 13, and lines 1 to 11 on page 14), and substitute the following clauses:

**16 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 notification, 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.

**17 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 Register 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 X of the Resource Management Act 1991.

*Clause 19*

To omit this clause (lines 20 to 27 on page 14), and substitute the following clause:

- 19 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 11(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 11(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 11(1)**.

*Clause 20*

To omit this clause (lines 28 to 32 page 14).

*Clause 21*

To omit from the heading to this clause the word “**to**” (line 1 on page 15), and substitute the word “**over**”.

To omit *subclause (1)* (lines 3 to 5 on page 15), and substitute the following subclauses:

- (1) If, under **section 43B(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.
- (1A) If, under **section 62B(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.

To insert in *subclause (2)*, after the expression “**subsection (1)**” (line 6 on page 15), the expression “**or subsection (1A)**”.

To omit *subclauses (3) and (4)* (lines 10 to 19 on page 15), and substitute the following subclauses:

- (3) If the Ministers or Minister considers that an exemption from a prohibition or restriction imposed under **subsection (1) or subsection (1A)** 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.
- (4) The Ministers or the Minister responsible for a current notice under **subsection (1) or subsection (1A) or subsection (3)** may, by notice in the *Gazette*, vary or revoke the current notice.
- (4A) The Minister of Conservation must give public notice of every notice in the *Gazette* given under this section.

To insert in *subclause (7)*, before the word “action” (line 32 on page 15), the word “reasonable”.

To omit *subclause (8)* (lines 35 to 39 on page 15), and substitute the following subclause:

- (8) Every notice given under any of **subsections (1), (1A), (3), and (4)** 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.

#### *Clause 22*

To omit from the heading to this clause the words “**Failure to comply with**” (line 1 on page 16), and substitute the words “**Enforcement of**”.

To add, after *subclause (2)* (after line 8 on page 16), the following subclauses:

- (3) Wardens may, in accordance with regulations made under **section 114**, be appointed to promote compliance with any prohibitions or restrictions imposed under **section 21**.
- (4) A warden appointed under **subsection (3)** has the following functions:
  - (a) to assist in the implementation under **section 21(7)** 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 21**:
  - (c) to advise members of the public of prohibitions or restrictions imposed under **section 21**:
  - (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 21**:

- (e) to record any failure to comply with a prohibition or restriction imposed under **section 21** in any case where the warden has reason to believe that the failure is intentional:
- (f) to report to any member of the police any failure to comply with a prohibition or restriction imposed under **section 21** in any case where the warden has reason to believe that the failure is intentional.

*Clauses 23 and 24*

To omit these clauses (lines 10 to 25 on page 16), and substitute the following clause:

- 23 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 2A**.
  - (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 11(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 11(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 11(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.

*Clause 26*

To omit from *subclause (2)* the words “this Act” (line 10 on page 17), and substitute the words “this section”.

To omit *subclause (3)* (lines 12 and 13 on page 17).

*New heading Part 2A*

To insert, after *clause 27* (after line 17 on page 17), the following Part heading and subpart heading:

**Part 2A**  
**Territorial customary rights**

Subpart 1—Determination of territorial customary rights

*Clause 28*

To omit this clause (lines 20 to 28 on page 17), and substitute the following clause:

**28 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 2(1) of the Transport Services Licensing Act 1989:
  - (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.

#### *Clause 29*

To insert, after the word “group,” (line 31 on page 17), the words “or on the application of a person authorised by the Court to represent the group,”.

#### *Clause 30*

To omit this clause (lines 1 to 16 on page 18).

#### *Clause 31*

To omit this clause (lines 17 to 34 on page 18), and substitute the following clause:



- 31 Matters that must be considered and may be taken into account**
- (1) In determining an application under **section 29**, 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 29**.
  - (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.
  - (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 29** may be made unless the matters set out in **section 28** are established.

*Clause 33*

To omit this clause (lines 8 to 15 on page 19), and substitute the following clause:

- 33 Consequence of successful application under section 29**
- (1) If the High Court makes a finding under **section 29** 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 that the area of the public foreshore and seabed to which the Court’s finding relates be set apart and established as a foreshore and seabed reserve.
  - (2) If the High Court is satisfied that an application under **subsection (1)** is properly made, the High Court must make the order sought by the applicant group,—
    - (a) in the case of an application made under **subsection (1)(a)**, in accordance with **section 33A**;
    - (b) in the case of an application made under **subsection (1)(b)**, in accordance with **subpart 2**.

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

**33A Reference to Ministers under section 33(1)(a)**

- (1) If a finding is referred to the Attorney-General and Minister of Māori Affairs under **section 33(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 29**.
- (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. [amd]
- (4) If, after making an application under **section 33(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 33(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.

*Clause 34*

To omit this clause (lines 16 to 19 on page 19), and substitute the following clauses:

**34 No redress other than that given by the Crown**

- (1) No claim may be made in respect of a finding made under **section 29** other than redress that the Crown may give, on the basis of such a finding,—
  - (a) following discussions under **section 33(1)(a)**; or
  - (b) in accordance with **subpart 2**.
- (2) If an applicant group applies under **section 33(1)(b)** that a foreshore and seabed reserve be set apart for the group, that 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 29**.

- (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)**.

**34A 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 29** 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**.

Subpart 2—Foreshore and seabed reserves

**34B 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 29**; 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 11(1)**; or
- (b) the access rights provided for by **section 6**; or
- (c) the rights of navigation provided for by **section 7**.

**34C Directions of High Court**

- (1) If an applicant group makes a request under **section 33(1)(b)**, 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 29**; 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.

#### **34D Contents of charter**

- (1) Without limiting the matters to be included in the charter, the draft agreement presented to the High Court under **section 34C**—
  - (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*

**34E 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 34C** provides for the matters required by **sections 34C and 34D**, 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.

**34F 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 34C and 34D**.
- (2) The management plan prepared under **subsection (1)**—
  - (a) must be prepared in accordance with Part II 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*

**34G Service and notification of orders**

- (1) As soon as is reasonably practicable after the High Court has made an order under **section 33 or section 34E**, 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 34E**, 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 34E**.

*Clause 35*

To omit this clause (line 26 on page 19 to line 7 on page 20), and substitute the following clause:

**35 Jurisdiction of Māori Land Court**

- (1) The Māori Land Court has jurisdiction under this Act to inquire into and determine, in accordance with **section 42**, an application made under **section 37(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 36(2)**;
  - (c) orders made under **section 43A(4)**;
  - (d) findings made under **section 43B(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 37(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.

*Clause 36*

To omit *subclause (2)(h)* (lines 33 to 39 on page 20), and substitute the following paragraph:

- (h) the provisions of Part II (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

To omit *subclause (2)(i)(i)* (lines 3 to 5 on page 21), and substitute the following subparagraph:

- (i) only as far as they are applicable under this Act; and

To omit from *subclause (3)* the words “and the Māori Appellate Court” (line 10 on page 21).

To omit from *subclause (3)* the word “their” (line 11 on page 21), and substitute the word “its”.

*Heading to subpart 2*

To omit the words “Ancestral connection and” (line 12 on page 21).

*Clause 37(1)*

To omit this subclause (lines 16 to 20 on page 21), and substitute the following subclause:

- (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.

*Heading before clause 38*

To omit this heading (line 23 on page 21).

*Clause 38*

To omit this clause (lines 24 to 34 on page 21).

*Heading before clause 39*

To omit this heading (lines 1 and 2 on page 22).

*Clauses 39 and 40*

To omit these clauses (lines 3 to 17 on page 22).

*Heading before clause 41*

To omit this heading (line 18 on page 22), and substitute the heading “*Determination of customary rights orders by Māori Land Court*”.

*Clause 41*

To omit this clause (lines 19 to 33 on page 22), and substitute the following clause:

**41 Limits to jurisdiction of Māori Land Court under this Part**

- (1) Despite **section 35(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
  - (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 the Sixth Schedule 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.

*Clause 42*

To omit this clause (line 34 on page 22 to line 11 on page 24), and substitute the following clauses:

**42 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 42A**,—
- (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.



**42A Basis on which customary rights orders determined by  
Māori Land Court**

- (1) For the purpose of **section 42(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 42(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.

*Clause 43*

To omit this clause (lines 12 to 19 on page 24), and substitute the following headings and clauses:

*Effects*

**43 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.

#### **43A 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*

#### **43B 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 6** 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 21**; but
  - (b) no claim may be made against the Crown in respect of that finding.

### *Limitations*

#### **43C 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 6**;
  - (b) rights of navigation provided for by **section 7**.
- (2) However, a prohibition or restriction imposed under **section 21** prevails over **section 6**.

#### **43D 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.

#### **43E Limitation on making exclusive orders**

In making a determination under **section 42**, 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.

*Clause 44*

To omit this clause (lines 20 to 24 on page 24).

*Heading before clause 45*

To omit this heading (line 25 on page 24).

*Clauses 45 and 46*

To omit these clauses (line 26 on page 24 to line 9 on page 25).

*Clause 47*

To omit from *subclause (1)* the words “legal entity” in the first place where they appear (line 13 on page 25), and substitute the word “holder”.

To omit from *subclauses (1) and (2)* the words “group of Māori” (line 14 and line 17 on page 25), and substitute in each case the words “whānau, hapū, or iwi”.

To omit from *subclause (3)* the expression “3” (line 18 on page 25), and substitute the expression “5A”.

*Clause 48(1)*

To omit this subclause (lines 20 and 21 on page 25), and substitute the following subclauses:

- (1) On application by the holder under **section 49**, the Māori Land Court may cancel, in whole or in part, for any reason, a customary rights order made under this Part.
- (1A) 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.

*Clause 49*

To omit this clause (lines 25 to 37 on page 25), and substitute the following clause:

**49 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 50 and clauses 4, 5, 5A, and 8 of Schedule 1** apply to the variation or cancellation of an order.

*Clause 50*

To omit *paragraph (a)* (lines 4 to 6 on page 26), and substitute the following paragraph:

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

To omit from *paragraphs (b) and (c)* the word “holder” (line 7 and line 11 on page 26), and substitute in each case the word “applicant”.

To omit from *paragraphs (b), (c), and (d)* the word “group” (line 8, line 9, and line 13 on page 26), and substitute in each case the words “whānau, hapū, or iwi”.

To insert in *paragraph (d)*, before the word “Court” (line 14 on page 26), the words “Māori Land”.

*Heading before clause 51*

To omit this heading (line 15 on page 26).

*Clauses 51 to 53*

To omit these clauses (line 16 on page 26 to line 5 on page 27).

*Clause 54*

To omit from *subclause (1)*, the expression “**37**” (line 10 on page 27), and substitute the expression “**37(1)**”.

To omit *subclause (2)* (lines 13 to 20 on page 27), and substitute the following subclause:

- (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 42**.

*Clause 55*

To omit this clause (line 22 on page 27 to line 5 on page 28), and substitute the following clause:

**55 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 37(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.

*New clause 55A*

To insert, after *clause 55* (after line 5 on page 28), the following clause:

**55A When case must be stated to Māori Appellate Court**

- (1) If, in an appeal under **section 55(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)**.

*Clause 56*

To omit *subclause (1)* (lines 7 to 14 on page 28), and substitute the following subclauses:

- (1) A party who is dissatisfied with a decision of the High Court made under **section 55(2)** may appeal to the Court of Appeal by leave of the Court of Appeal on a matter of fact or law.
- (1A) An opinion of the Māori Appellate Court on a question of tikanga Māori referred to it by the High Court under **section 55A(1)** is not binding on the Court of Appeal.

*New clause 56A*

To insert, after the *Part 4* heading (after line 19 on page 28), the following clause:

**56A 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.

*Clause 57(2)*

To omit this subclause (lines 24 and 25 on page 28).

*Heading before clause 58*

To add to this heading the words “*to High Court*” (line 26 on page 28).

*Clause 58*

To omit this clause (lines 27 to 32 on page 28), and substitute the following clause:

**58 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.

*New clauses 58A to 58D*

To insert, after *clause 58* (after line 32 on page 28), the following clauses:

**58A Contents of applications**

- (1) An application made under **section 58** 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 61**.

**58B Directions as to service**

The applicant for a customary rights order under **section 58** 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.

**58C Public notice of application**

- (1) The applicant must give public notice of an application made under **section 58**.
- (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*

#### **58D Entitlement to appear**

- (1) The only persons entitled to appear and be heard in proceedings relating to an application made under **section 58** 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**.

#### *Heading before clause 59*

To omit this heading (line 1 on page 29).

#### *Clause 59*

To omit this clause (lines 2 to 4 on page 29).

#### *New heading before clause 60*

To insert, before *clause 60* (after line 4 on page 29), the heading “*Determination of customary rights orders by High Court*”.

#### *Clause 60*

To omit this clause (lines 5 to 21 on page 29), and substitute the following clause:

#### **60 Limits to jurisdiction of High Court under this Part**

- (1) Despite **section 57(1)**, 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 37(1)**; or
    - (iii) the subject of an existing order made by the Māori Land Court under **section 42**; 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
  - (d) if the subject of the application is—
    - (i) wildlife within the meaning of the Wildlife Act 1953, together with any animals specified in the Sixth Schedule 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.

*Clause 61*

To omit this clause (line 22 on page 29 to line 36 on page 30), and substitute the following clauses:

**61 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 61A**,—
  - (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.

**61A Basis on which customary rights orders determined by High Court**

- (1) For the purpose of **section 61(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 61(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.

*Clause 62*

To omit this clause (line 37 on page 30 to line 3 on page 31), and substitute the following headings and clauses:

*Effects*

**62 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.

**62A 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*

#### **62B 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 6** 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 21**; 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*

#### **62C 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 6**;
  - (b) rights of navigation provided for by **section 7**.
- (2) However, a prohibition or restriction imposed under **section 21** prevails over **section 6**.

#### **62D 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.

#### **62E Limitation on making exclusive orders**

In making a determination under **section 61**, 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*

#### **62F 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 whom 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.

**62G 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.

**62H 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)**.

*Heading before clause 63*

To omit this heading (line 4 on page 31).

*Clauses 63 and 64*

To omit these clauses (lines 5 to 23 on page 31).

*Clause 65*

To omit from *subclause (1)* the word “an” in the second place where it appears (line 27 on page 31), and substitute the word “the”.

To omit *subclause (3)* (line 33 on page 31).

*Clause 66(1)*

To omit this subclause (lines 35 and 36 on page 31), and substitute the following subclauses:

- (1) On application under **section 66A** 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.
- (1A) 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.

*New clauses 66A and 66B*

To insert, after *clause 66* (after line 3 on page 32), the following clauses:

**66A 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 58B to 58D** apply, with the necessary modifications, to an application under this section.
- (3) **Section 67** applies to the variation or cancellation of an order.

**66B Contents of application to vary or cancel orders**

- (1) 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.

*Clause 67*

To omit *paragraph (a)* (lines 7 to 9 on page 32), and substitute the following paragraph:

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

To omit from *paragraphs (b) and (c)* the word “holder” (line 10 and line 14 on page 32), and substitute in each case the word “applicant”.

To omit from *paragraphs (b), (c), and (d)* the words “the group” (line 11, line 12, and line 16 on page 32), and substitute in each case the words “that group”.

*Clause 68*

To omit this clause (lines 18 to 20 on page 32).

*Heading before clause 69*

To omit this heading (line 21 on page 32).

*Clauses 69 and 70*

To omit these clauses (lines 22 to 31 on page 32).

*Clause 71(3)*

To omit this subclause (lines 11 to 14 on page 33), and substitute the following subclause:

- (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.

*New heading and clause 71A*

To insert, after *clause 71* (after line 14 on page 33), the following heading and clause:

*Recording of orders*

**71A 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.

*Heading to subpart 1*

To omit this subpart heading (line 22 on page 33).

*Clause 73(1)*

To omit the definition of **adverse effects assessment** (lines 27 and 28 on page 33), and substitute the following definition:

“**adverse effects assessment** means an assessment carried out—

- “(a) by the Minister of Conservation under **Part 1 of Schedule 12**; or
- “(b) by a regional council under **section 17B(1)(a)**, in accordance with **Part 2 of Schedule 12**

To omit the definition of **adverse effects report** (lines 29 and 30 on page 33), and substitute the following definition:

“**adverse effects report** means a written report prepared—



- “(a) by the Minister of Conservation in accordance with **Part 1 of Schedule 12**; or
- “(b) by a regional council under **section 17B(1)(b)**, in accordance with **Part 2 of Schedule 12**

To omit the definition of **ancestral connection order** (line 31 on page 33 to line 3 on page 34).

To omit the definition of **holder** (lines 6 and 7 on page 34), and substitute the following definition:

“**holder**, in relation to a customary rights order, has the same meaning as in **section 4** of the Foreshore and Seabed Act **2004**

To insert, in their appropriate alphabetical order, the following definitions:

“**board**, in relation to a foreshore and seabed reserve, has the same meaning as in **section 4 of the Foreshore and Seabed Act 2004**

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

“**management plan**, in relation to a foreshore and seabed reserve, has the same meaning as in **section 4 of the Foreshore and Seabed Act 2004**

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

#### Clause 75

To omit *new section 17A(2)* of the principal Act (lines 31 to 37 on page 34), and substitute the following new subsection:

- “(2) **Subsection (1)** applies to a recognised customary activity only if that activity is carried out—
  - “(a) in accordance with any controls imposed by the Minister of Conservation under **Schedule 12**; and
  - “(b) by any member of the whānau, hapū, or iwi or of the group, as the case may be, entitled to do so under **section 43 or section 62** of the Foreshore and Seabed Act **2004**; or
  - “(c) by a person authorised by the holder of the customary rights order to carry out the activity under **section 43A(a) or section 62A(a) of the Foreshore and Seabed Act 2004**.

To insert in *new section 17B(1)* of the principal Act, after the word “controls” (line 2 on page 35), the words “that may be”.

To insert in *new section 17B(1)* of the principal Act, after the word “under” (line 3 on page 35) the words “**Part 1 of**”.

To omit from *new section 17B(1)* of the principal Act the word “requested” (line 4 on page 35) and substitute the word “directed”.

To add, after *new section 17B(2)* of the principal Act (after line 13 on page 35), the following subsection:

- “(3) In this section, **regional council** includes the Chatham Islands Council.”

*Clause 76*

To omit this clause (line 14 to 19 on page 35), and substitute the following clause:

**76 Functions of Minister of Conservation**

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

“(e) carrying out his or her functions under **Schedule 12.**”

*Clause 78*

To omit *new paragraph (gb)* of section 29(1) of the principal Act (line 31 on page 35).

*Clause 79*

To omit the words “holder of an ancestral connection order,” (lines 34 and 35 on page 35), and substitute the words “board of a foreshore and seabed reserve.”

*Clause 80*

To insert at the beginning of *new section 35(2)(e)* of the principal Act, before the word “the” (line 5 on page 36), the words “in the case of a regional council.”

To omit *new section 35(5)(jb)* of the principal Act (lines 10 to 12 on page 36), and substitute the following paragraph:

“(jb) in the case of a regional council, records of every customary rights order relating to its region; and” .

To add, after *subclause (2)*, the following subclause (after line 12 on page 36):

(3) Section 35 of the principal Act is amended by adding the following subsection:

“(6) In **subsections (2)(e) and (5)(jb)**, **regional council** includes the Chatham Islands Council.”

*Clause 83*

To insert in *new paragraph (gb)* of section 58 of the principal Act, before the word “recognised” (line 33 on page 36), the words “the protection of” .

*Clause 84*

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

**84 Matters to be considered by regional council**

Section 61 of the principal Act is amended by repealing subsection (2A), and substituting the following subsection:

“(2A) A regional council, when preparing or changing a regional policy statement, must—

“(a) take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region; and

“(b) recognise and provide for the management plan for a foreshore and seabed reserve located in whole or in part

within its region, once the management plan has been lodged with the council.”

*Clause 85*

To omit this clause (lines 5 to 8 on page 37), and substitute the following clause:

**85 Contents of regional policy statements**

The principal Act is amended by repealing section 62(1)(b) and substituting the following paragraph:

- “(b) the resource management issues of significance to—
  - “(i) iwi authorities in the region; and
  - “(ii) the board of a foreshore and seabed reserve, to the extent that those issues relate to that reserve; and”.

*Clause 87*

To omit this clause (lines 16 to 19 on page 37), and substitute the following clause:

**87 Matters to be considered by regional council**

Section 66 of the principal Act is amended by repealing subsection (2A), and substituting the following subsection:

- “(2A) A regional council, when preparing or changing a regional plan, must—
  - “(a) take into account any relevant planning document recognised by an iwi authority and lodged with the council, to the extent that its content has a bearing on resource management issues of the region; and
  - “(b) recognise and provide for the management plan for a foreshore and seabed reserve located in whole or in part within its region, once the management plan has been lodged with the council.”

*Clause 88*

To omit this clause (lines 20 to 23 on page 37), and substitute the following clause:

**88 Matters to be considered by territorial authority**

Section 74 of the principal Act is amended by repealing subsection (2A), and substituting the following:

- “(2A) A territorial authority, when preparing or changing a district plan, must—
  - “(a) take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; and
  - “(b) recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once

the management plan has been lodged with the territorial authority, to the extent that its contents have a bearing on the resource management issues of the district.”

*New clauses 88A and 88B*

To insert, after *clause 88* (after line 23 on page 37), the following clauses:

**88A New sections 79A and 79B inserted**

The principal Act is amended by inserting, after section 79, the following new sections:

“79A **Circumstance when further review required**

“(1) **Section 79B** applies if, after a foreshore and seabed reserve has been set apart and established under **section 34E of the Foreshore and Seabed Act 2004**, a management plan for the foreshore and seabed reserve is—

“(a) prepared and approved by the board of the foreshore and seabed reserve in accordance with **section 34F of the Foreshore and Seabed Act 2004**; and

“(b) lodged with the regional council.

“(2) Within 6 months of a management plan for a foreshore and seabed reserve being lodged as required by **subsection (1)(b)**, the regional council that has responsibility for the area where the reserve is located must commence a full review of its regional policy statement and each regional plan.

“(3) Section 79(4), (5), and (6) applies to a review required by this section.

“79B **Consequence of review under section 79A**

If a regional council, after reviewing a policy statement or plan under **section 79A**, considers that the policy statement or plan—

“(a) requires change in order to recognise and provide for all or part of a management plan for a foreshore and seabed reserve, it must change the policy statement or plan in the manner set out in the First Schedule and this Part:

“(b) can remain without change, it must give public notice of that decision.”

**88B New section 82A inserted**

The principal Act is amended by inserting, after section 82, the following section:

“82A **Dispute relating to review under section 79A**

“(1) This section applies if there is a dispute between a local authority and the board of a foreshore and seabed reserve as to whether a policy statement or plan reviewed under **section 79A(2)** should be changed in order to recognise and provide for the management plan for the reserve.

- “(2) The board may refer a dispute to the Environment Court for a decision resolving the matter.
- “(3) If, after considering the matter referred to it under **subsection (2)**, the Environment Court considers that there should be a change to the policy statement or plan to recognise and provide for the relevant management plan for the foreshore and seabed reserve,—
- “(a) the Environment Court must order the regional council responsible for the policy statement or plan to initiate a change to that policy statement or plan in the manner set out in the First Schedule; or
- “(b) if the Environment Court considers that the dispute relates to a matter of minor significance that does not affect the general intent and purpose of the policy statement or plan, the Environment Court may allow that policy statement or plan to remain unchanged.”

*Clause 89*

To omit from the heading to this clause the words “**to 85C**” (line 24 on page 37), and substitute the words “**and 85B**”.

To omit *new sections 85A to 85C* of the principal Act (line 29 on page 37 to line 5 on page 39), and substitute the following sections:

“**85A Plan or proposed plan must not include certain rules**

A plan or proposed plan must not include a rule that describes an activity as a permitted activity if that activity will, or is likely to, have a significant adverse effect on a recognised customary activity carried out under **section 17A(2)**.

“**85B Process to apply if plan or proposed plan does not comply with section 85A**

- “(1) If the holder of a customary rights order considers that a rule in a plan or proposed plan does not comply with **section 85A**, the holder may—
- “(a) make a submission to the local authority concerned under clause 6 or clause 8 of the First Schedule; or
- “(b) request a change under clause 21 of the First Schedule; or
- “(c) apply to the Environment Court in accordance with **section 293A(3)** for a change to a rule in the plan or proposed plan.
- “(2) A local authority or the Environment Court, as the case may be, in determining whether or not a rule in a plan or proposed plan complies with **section 85A**, must consider the following matters:
- “(a) the effects of the proposed activity on the recognised customary activity; and
- “(b) the area that the proposed activity would have in common with the recognised customary activity; and

- “(c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and
- “(d) the degree to which the recognised customary activity must be carried out to the exclusion of other activities; and
- “(e) whether the recognised customary activity can be exercised only in a particular area.”

*Clause 90(2)*

To omit from *new subsection (4)* of section 94B of the principal Act the words “under that order” (line 16 on page 39).

*Clause 92*

To omit this clause (lines 26 to 29 on page 39), and substitute the following clause:

**92 Consideration of applications**

Section 104(3) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

- “(c) grant a resource consent contrary to—
  - “(i) section 107 or **section 107A** or section 217;
  - “(ii) an Order in Council in force under section 152;
  - “(iii) any regulations;
  - “(iv) a *Gazette* notice referred to in **section 21(1), (1A), and (4)** of the Foreshore and Seabed Act **2004**.”

*Clause 93*

To omit this clause (line 30 on page 39 to line 24 on page 40), and substitute the following clause:

**93 New sections 107A to 107D inserted**

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

**“107A Restrictions on grant of resource consents**

- “(1) A consent authority must not grant an application for a resource consent to do something that will, or is likely to, have a significant adverse effect on a recognised customary activity carried out in accordance with **section 17A(2)**, unless written approval is given for the proposed activity by the holder of the relevant customary rights order.
- “(2) In determining whether a proposed activity will, or is likely to, have a significant adverse effect on a recognised customary activity, a consent authority must consider the following matters:
  - “(a) the effects of the proposed activity on the recognised customary activity; and
  - “(b) the area that the proposed activity would have in common with the recognised customary activity; and
  - “(c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and

- “(d) the degree to which the recognised customary activity must be carried out to the exclusion of other activities; and
  - “(e) whether the recognised customary activity can be exercised only in a particular area; and
  - “(f) whether an alternative location or method would avoid, remedy, or mitigate any significant adverse effects of the proposed activity on the recognised customary activity; and
  - “(g) whether any conditions could be included in a resource consent for the proposed activity that would avoid, remedy, or mitigate any significant adverse effects of the proposed activity on the recognised customary activity.
- “(3) Despite sections 77B(2)(a) and 104A, **subsection (1)** may prevent the grant of an application for a resource consent for a controlled activity.

“107B **Provision for certain infrastructure works and related operations**

- “(1) **Section 107A** does not prevent the grant of a resource consent to carry out—
- “(a) an infrastructure work and its associated operations if—
    - “(i) the infrastructure work and its associated operations were lawfully established before the commencement of **Part 3 of the Foreshore and Seabed Act 2004**; and
    - “(ii) any significant adverse effects of the proposed activity on the recognised customary activity will be, or are likely to be, the same or similar in character, intensity, and scale to those that existed before the application for the resource consent was made:
  - “(b) maintenance work on, to, or in respect of an infrastructure work and its associated operations that were lawfully established before the commencement of the **Part 3 of Foreshore and Seabed Act 2004**, so long as any significant adverse effects of the maintenance work on the recognised customary activity are temporary in nature.
- “(2) In this section, **infrastructure work and its associated operations** is limited to any infrastructure works and associated operations that are owned, operated, or carried out by 1 or more of the following:
- “(a) the Crown, as defined in section 2(1) of the Public Finance Act 1989;
  - “(b) a local authority;
  - “(c) a network utility operator;
  - “(d) an electricity generator as defined in section 2(1) of the Electricity Act 1992:

- “(e) a port company as defined in section 2(1) of the Port Companies Act 1988 or a port operator as defined in section 65OJ(6) of the Local Government Act 1974:
- “(f) the Maritime Safety Authority of New Zealand.

**“107C Circumstances when written approval for resource consent required from holder of customary rights order**

- “(1) This section applies if—
  - “(a) the holder of a customary rights order gives written approval under **section 107A(1)** for a resource consent for a proposed activity; and
  - “(b) the carrying out of the proposed activity under the resource consent would have the effect of suspending or cancelling, in whole or in part, the relevant customary rights order.
- “(2) The holder of the customary rights order must acknowledge in writing that the effect described in **subsection (1)(b)** will occur.
- “(3) Both the written approval given under **section 107A(1)** and the written acknowledgement given under **subsection (2)**—
  - “(a) form part of the application for a resource consent for the proposed activity; and
  - “(b) if a resource consent is granted, form part of the resource consent for that activity.

**“107D Process to apply if grant of resource consent has effect of cancelling customary rights order**

- “(1) If the effect of carrying out the proposed activity under a resource consent granted in the circumstances contemplated by **section 107C** would be permanently to cancel the customary rights order, in whole or in part,—
  - “(a) the holder of the customary rights order must apply to cancel the order, in whole or in part, under **section 49 or section 66A** of the Foreshore and Seabed Act 2004; and
  - “(b) a decision by the consent authority to grant a resource consent for the proposed activity is of no effect until the application referred to in **paragraph (a)** has been determined in accordance with the Foreshore and Seabed Act 2004 and all appeal rights have been pursued.
- “(2) However, if an application to cancel a customary rights order is declined, the relevant resource consent must be treated as if it were declined by the consent authority.”

*New clause 93A*

To insert, after *clause 93* (after line 24 on page 40), the following clause:

**93A Decision on application for restricted coastal activity**

Section 119 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:



- “(6) The Minister of Conservation must not grant a coastal permit for a restricted coastal activity if the activity is contrary to—
- “(a) section 107 or **section 107A** or section 217:
  - “(b) an Order in Council in force under section 152:
  - “(c) any regulations:
  - “(d) a *Gazette* notice referred to in **section 21(1), (1A), and (4) of the Foreshore and Seabed Act 2004**.”

*New clause 95A*

To insert, after *clause 95* (after line 35 on page 40), the following clause:

**95A New section 293A inserted**

The principal Act is amended by inserting, after section 293, the following section:

**“293A Determinations relating to customary rights orders made under Foreshore and Seabed Act 2004**

- “(1) This section applies to a determination made by the Environment Court on—
- “(a) an appeal relating to—
    - “(i) a submission made in reliance on **section 85B(1)(a)**:
    - “(ii) a request made in reliance on **section 85B(1)(b)**:
  - “(b) an application made under **section 85B(1)(c)**.
- “(2) The Environment Court must—
- “(a) determine the matters referred to in **subsection (1)** in accordance with clause 15 of the First Schedule; and
  - “(b) consider the matters set out in **section 85B(2)**.
- “(3) An application made under **section 85B(1)(c)** must be—
- “(a) made in accordance with section 291; and
  - “(b) without limiting the discretion as to service under section 291, served on every relevant local authority.”

*Clause 96*

To omit from *new section 309(5)* of the principal Act the expression “332” (line 3 on page 41), and substitute the expression “330”.

*Clause 99*

To omit this clause (lines 15 to 19 on page 41), and substitute the following clause:

**99 Crown’s existing rights to resources to continue**

Section 354(3) of the principal Act is amended by inserting, after the expression “1991” the words “or the Foreshore and Seabed Act **2004**”.

*Clause 100*

To omit this clause (line 20 on page 41 to line 5 on page 42), and substitute the following clauses:

**100 Vesting of reclaimed land**

- (1) Section 355(3) of the principal Act is amended by omitting the word “The”, and substituting the words “Without limiting **section 355AA**, the”.

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

**100A New sections 355AA and 355AB inserted**

The principal Act is amended by inserting, after section 355, the following sections:

- “**355AA Effect of Foreshore and Seabed Act 2004 on vesting of reclamations**
- “(1) If an application is made under section 355(1) that relates to land reclaimed from the public foreshore and seabed, the Minister of Conservation may vest in the applicant a right, title, or interest in the relevant land under section 355(3).
- “(2) However, **subsection (1)** applies only if, before the commencement of **section 11(1) of the Foreshore and Seabed Act 2004**,—
- “(a) a coastal permit has been granted to carry out the reclamation; or
- “(b) the Minister of Conservation has entered into a written agreement with the applicant to vest a right, title, or interest in the relevant land; or
- “(c) an enactment has provided for a right, title, or interest in the relevant land to be vested in the applicant.
- “(3) If **subsection (1)** does not apply, the Minister of Conservation—
- “(a) must not vest an estate in fee simple in the relevant land; but
- “(b) may vest in the applicant a lesser right, title, or interest in the reclaimed land.
- “(4) **Subsection (3)(b)** applies,—
- “(a) in the case of a port company or port operator referred to in **section 107B(2)(e)**,—
- “(i) for a leasehold interest granted to it, so long as that interest does not exceed 50 years (though it may include a perpetual right of renewal on the same terms as the original lease, to the extent that the land continues to be used for port facilities):
- “(ii) for any other interest granted to it, so long as that interest, together with any rights of renewal, does not exceed 50 years; and
- “(b) in the case of any other entity, so long as the interest granted to it, together with any rights of renewal, does not exceed 50 years.
- “(5) In vesting an interest in reclaimed land under **subsection (4)**, the Minister of Conservation may impose encumbrances or restrictions on the right, title, or interest in order to—
- “(a) control the use to which the land may be put:
- “(b) protect access rights in the coastal marine area, subject to any limits imposed by or under any enactment.

**“355AB Application for renewals**

“(1) The holder of a right, title, or interest granted under **section 355AA(3)(b)**—

“(a) may apply to the Minister of Conservation, not later than 3 months before the expiry of the existing right, title, or interest, for a renewal of the right, title, or interest in the same, or part of the same, relevant land; and

“(b) has the right to have the application considered and determined before any other application may be considered for a right, title, or interest in the same land.

“(2) If an application is made under **subsection (1)**, the holder may continue to operate under the existing right, title, or interest until the application is determined.”

*Clause 101(1)*

To omit *paragraph (c)* from new *clause 2(2)* of the First Schedule of the principal Act (lines 14 and 15 on page 42), and substitute the following paragraph:

“(c) the board of any foreshore and seabed reserve in the region.”

*Clause 101(2), (3), and (4)*

To omit the words “the holders of ancestral connection orders relating to” in each place where they appear (lines 19, 24 and 29 on page 42), and substitute in each case the words “the board of any foreshore and seabed reserve in”.

*Subpart headings before clauses 104 and 105*

To omit this subpart heading (line 8 and line 16 on page 43).

*Clause 105*

To omit this clause (line 17 on page 43 to line 2 on page 44), and substitute the following clause:

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

- (1) This section applies if, before 17 January 2005,—
  - (a) an application has been made for a resource consent or for any matter in relation to a resource consent (including a change or review of conditions of an existing consent); or
  - (b) a policy statement, plan, change, or variation has been publicly notified.
- (2) The continuation and completion of a matter referred to in **subsection (1)** must be in accordance with the principal Act as if this Act had not been enacted.
- (3) However, a submission, request, or application made under **section 85B(1)** in relation to a rule in a plan or a proposed plan must be undertaken in accordance with the principal Act as amended by this Act.

*Clause 106*

To insert, after *subclause (1)* (after line 8 on page 44), the following subclause:

- (1A) However, an appeal lodged after 17 January 2005 must be determined in accordance with the principal Act as amended by this Act.

To omit from *subclauses (2) and (3)* the words “the commencement of this Act” (line 9 and line 15 on page 44), and substitute in each case the words expression “17 January 2005”.

*New clauses 106A and 106B*

To insert, after *clause 106* (after line 20 on page 44), the following clauses:

**106A Coastal permits relating to public foreshore and seabed**

- (1) In this section and **section 106B**, **authorisation** includes, but is not limited to, a leasehold interest in, or a licence to occupy, a specified area of the public foreshore and seabed.
- (2) This section and **section 106B** apply to an activity that is lawfully carried out on or in relation to land in the coastal marine area that,—
- (a) before the commencement of **section 11(1) of the Foreshore and Seabed Act 2004**, was not—
- (i) land of the Crown; or
- (ii) land vested in a regional council; but
- (b) after the commencement of **section 11(1) of the Foreshore and Seabed Act 2004**, is vested in the Crown by that section.
- (3) If an activity is carried out under an authorisation granted by the relevant local authority, as the land owner, to occupy land in, or remove sand, shingle, shell, or other natural material from, the public foreshore and seabed,—
- (a) the authorisation must be treated as a coastal permit for the activity granted under the principal Act; and
- (b) the same terms and conditions apply as applied under the authorisation; and
- (c) the provisions of the principal Act apply.
- (4) Despite **section 13B** of the Foreshore and Seabed Act 2004, a right of renewal under an authorisation referred to in **subsection (3)** does not apply.

**106B Activities carried out without authorisation**

If an activity that involves an occupation of land in, or the removal of sand, shingle, shell, or other natural material from, the public foreshore and seabed is being carried out without an authorisation granted by the relevant local authority, as the land owner, section 12(2) of the principal Act does not apply until 1 January 2008.

*Clause 107*

To omit *subclause (1)(a)* (lines 28 and 29 on page 44), and substitute the following paragraphs:

- (a) the orders made, varied, or cancelled by the Māori Land Court under **Part 3**; and
- (ab) the orders made by the High Court under **Part 2A**; and
- (ac) the management plan for a foreshore and seabed reserve prepared under **Part 2A**; and
- (ad) the orders made, varied, or cancelled by the High Court under **Part 4**; and

To omit from *subclause (1)(b)* the words “**sections 111 and**” (line 30 on page 44), and substitute the word “**section**”.

To omit *subclause (2)* (line 36 on page 44 to line 6 on page 45).

*Clause 111*

To omit this clause (line 2 to line 23 on page 46).

*Clause 112*

To omit this clause (lines 24 to 30 on page 46), and substitute the following clause:

**112 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 11(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 28 to 31** are satisfied.
- (3) An order made by the High Court under this section must be sealed before it takes effect.

*Clause 113*

To omit from *subclause (1)* the words “**sections 111 or 112**” (lines 32 to 33 on page 46), and substitute the words “**section 112**”.

To omit *subclause 2* (line 36 on page 46 to line 5 on page 47), and substitute the following subclause:

- (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.

*Clause 114*

To omit *paragraph (b)* (lines 13 and 14 on page 47), and substitute the following paragraphs:

- (b) providing for the appointment of wardens under **section 22** and the termination of such appointments:
- (ba) prescribing additional functions of wardens appointed under **section 22**, being functions that are reasonably incidental to the functions specified in **section 22**:
- (bc) prescribing any duties or powers to be exercised by wardens for the purpose of performing their functions:
- (bd) prescribing the means (including, without limitation, identity cards or badges, or both) by which wardens are to be identified.

To add, as *subclause (2)* (after line 16 on page 47), the following subclause:

- (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.

*New clause 114A*

To insert, after *clause 114* (after line 16 on page 47), the following clause:

**114A 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.

*Clause 115*

To omit the heading to this clause (line 17 on page 47), and substitute the heading “**Provision saving Māori reservations**”.

To omit *subclause (1)* (lines 18 to 24 on page 47), and substitute the following subclause:

- (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 the Te Ture Whenua Maori Act 1993:
  - (c) upon the express recommendation of the Māori Land Court under section 340.
- (1A) 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.

*New clause 115A*

To insert, after *clause 115* (after line 27 on page 47), the following clause:

**115A 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.

*Clause 116*

To add, as *subclauses (2) and (3)*, the following subclauses (after line 30 on page 47):

- (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 13B(4) to (9)** applies to the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987.

*Schedule 1*

To omit the heading to *clause 1* (line 7 on page 48), and substitute the heading “**Filing of applications in Māori Land Court**”.

To omit from *clause 1(1)*, the expression “**37**” (line 8 on page 48), and substitute the expression “**37(1)**”.

To omit *clause 1(2)(c) and clauses 2 and 3* (line 15 on page 48 to line 22 on page 49), and substitute the following clause:

- 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
- (j) other matters relevant to the Court's consideration under **section 42**.

To omit from *clause 4(1)*, the expression “**37**” (line 25 on page 49), and substitute the expression “**37(1) and 49(1)**”.

To omit from *clause 4(2)(b) and (c)* the words “group of Māori” (lines 34 to 35 and lines 36 to 37 on page 49), and substitute in each case the words “whānau, hapū, or iwi”.

To omit *clause 5* (lines 11 and 21 on page 50), and substitute the following clause:

#### **5 Service of notices**

The Chief Registrar must serve notice of an application made under **sections 37(1) or 49(1)** 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 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.

To insert, after *clause 5* (after line 21 on page 50), the following new heading and clause:



*Variation or cancellation of orders*

**5A Applications to vary or cancel orders**

An application to vary or cancel an order, as provided for under **section 49(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.

To omit from *clause 6(1)* the expression “**38(1)**” (line 26 on page 50), and substitute the expression “**42**”.

To omit the heading to *clause 7* (line 3 on page 51), and substitute the heading “**Orders of Māori Land Court**”.

To omit from *clause 7(1)* the expression “**38(1)**” (line 4 on page 51), and substitute the expression “**42**”.

To omit *clause 7(1)(a)(ii)* (lines 8 to 10 on page 51), and substitute the following subparagraph:

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

To omit from *clause 7(1)(a)(iii)* and *(2)(b)* the words “group of Māori” (line 12 and lines 24 to 25 on page 51), and substitute in each case the words “whānau, hapū, or iwi”.

To omit from *clause 7(2)(b)* the words “this Act” (line 24 on page 51), and substitute the words “this section”.

To omit from *clause 7(1)(b)* the word “plan” (line 14 on page 51), and substitute the word “diagram”.

To add, after *clause 7(2)* (after line 31 on page 51), the following subclause:

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

To omit the heading to *clause 8* (line 32 on page 51), and substitute the heading “**Service and notification of orders of Māori Land Court**”.

To omit from *clause 8(1)* the words “under **section 38(2)**” (line 34 on page 51).

To omit *clause 8(1)(b)(i)* and *(ii)* (lines 3 to 6 on page 52), and substitute the following subparagraphs:

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

To omit from *clause 8(3)* the word “made” (line 20 on page 52), and substitute the word “issued”.

To omit from *clause 9(1)* the expression “**38(1)**” (line 24 on page 52), and substitute the expression “**42**”.

To omit from *clause 9(2)* the words “or the Māori Appellate Court” (line 26 on page 52).

To omit *clause 10* (lines 1 to 16 on page 53).

To omit from *clause 11(1)* the words “under this Act” (line 20 on page 53), and substitute the words “, as provided for by **section 54(1)**”, and to omit the words “and, in the case of an appeal under **section 55(1)(a)**, the Māori Appellate Court” (lines 21 and 22 on page 53).

To omit *clause 13* (lines 10 to 21 on page 54), and substitute the following heading and clause:

#### *Parties*

### **13 Entitlement to appear**

- (1) The only persons entitled to appear and be heard in a proceeding relating to an application made under **section 37(1)**, or an application to vary or cancel an order as provided for in **sections 47(1) and 48(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*

To omit this schedule (line 1 on page 55 to line 5 on page 59).

#### *Schedule 3*

To insert, after the item relating to section 24(7C) of the Conservation Act 1987 (after line 7 on page 60), the following items:

Insert, in paragraph (a) of section 26ZS(1), after the expression “1991”, the words “so far as it is saved by **section 26(2) of the Foreshore and Seabed Act 2004**”.

Insert, after paragraph (a) in section 26ZS(1) the following paragraph:

“(ab) the Foreshore and Seabed Act **2004**.”.

Omit from Schedule 1 the following item:

“The Foreshore and Seabed Endowment Revesting Act 1991”.

To insert after the item relating to section (2) of the Crown Minerals Act 1991 (after line 23 on page 60), the following items:

**Forest and Rural Fires Act 1977** (1977 No 52)

Insert in section 2(1), in paragraph (a)(v) of the definition of **State area**, after the expression “1991”, the words “, so far as it is saved by **section 26(2) of the Foreshore and Seabed Act 2004**”.

Insert in section 2(1), after paragraph (a)(v) of the definition of **State area**:

“(va) the public foreshore and seabed administered by the Minister of Conservation under the Foreshore and Seabed Act **2004**; and”.

Omit from section 2(1), from paragraph (b) of the definition of **State area**, the words “paragraph (a)(v)”, and substitute the words “paragraphs (a)(v) and (a)(va)”.

**Hauraki Gulf Marine Park Act 2000** (2000 No 1)

Repeal from Schedule 1 the item “Foreshore and Seabed Endowment Revesting Act 1991” and substitute the item “Foreshore and Seabed Act **2004**”.

**Local Government Act 1974** (1974 No 66)

Insert in section 345, after subsection (1):

“(1A) To avoid doubt, this section does not apply to the public foreshore and seabed within the meaning of the Foreshore and Seabed Act **2004**.”

**Te Ture Whenua Maori Act 1993** (1993 No 4)

Omit from new subsection (7) of section 43 the expression “**55(1)(b)**”, and substitute the expression “**55(2)**”.

Omit the item relating to section 56(2).

Omit from new subsection (3A) of section 98 the words “group of Māori”, and substitute the words “whānau, hapū, or iwi”.

*Schedule 4: new Schedule 12*

To omit *clause 1* (lines 6 to 8 on page 63), and substitute the following clause:

**1 Application and interpretation**

- (1) This schedule applies if a customary rights order has been made and appeals (if any) have been disposed of.
- (2) In this schedule, **regional council** includes the Chatham Islands Council.

To omit *clause 3* (line 24 on page 63 to line 13 on page 64), and substitute the following clause:

**3 Prerequisites before controls may be imposed**

- (1) The Minister of Conservation must not impose controls on a recognised customary activity under **clause 2** unless—
  - (a) the Minister has either—
    - (i) received, under **clause 11**, a copy of an adverse effects report in relation to that activity; or
    - (ii) carried out his or her own adverse effects assessment and completed his or her own adverse effects report; and
  - (b) the Minister has consulted with the holder of the customary rights order and the Minister of Māori Affairs.
- (2) In addition to the consultation required by **subclause (1)(b)**, the Minister of Conservation may seek any relevant information and views before imposing controls on a recognised customary activity.
- (3) The Minister of Conservation must not undertake an assessment under **subclause (1)(a)(ii)** if, before he or she has begun an assessment, the relevant regional council notifies the Minister of Conservation under **clause 7** that it is carrying out an adverse effects assessment of the recognised customary activity in accordance with **clause 6**.
- (4) The Minister of Conservation must give written notice of his or her decision to carry out an adverse effects assessment under **subclause (1)(a)(ii)** not later than 5 working days after making that decision, to—
  - (a) the relevant regional council; and
  - (b) the holder of the relevant customary rights order.

To omit *clause 4(b)(iv)* (lines 31 and 32 on page 64), and substitute the following subparagraph:

- (iv) any relevant plan or proposed plan:

To omit from *clause 4(b)(v)* the words “or by the holder of an ancestral connection order,” (lines 35 and 36 on page 64).

To add to *clause 5(b)(iv)* (line 15 on page 65) the words “of the Ministry of Justice”.

To omit *clauses 6 and 7* (line 18 on page 65 to line 11 on page 66), and substitute the following clauses:

**6 Adverse effects assessment**

- (1) A regional council must, not later than 5 working days after being so directed by the Minister of Conservation under **section 17B**, begin an adverse effects assessment of a recognised customary activity that may be carried out in its region.
- (2) If a regional council has not been notified by the Minister of Conservation under **clause 3(4)** that the Minister intends to carry out his or her own adverse effects assessment, the regional council may, of its own initiative, carry out an

adverse effects assessment of, and prepare an adverse effects report on, the recognised customary activity.

- (3) However, the regional council may only carry out an assessment under **subclause (2)** if—
- (a) it begins the assessment, for any reason, not later than 20 working days after the customary rights order is made; or
  - (b) at any time after the expiry of the 20 working day period referred to in **paragraph (a)**, it considers that the effects of the activity on the environment are, or are likely to be, materially different from those effects considered when, whichever is the latest,—
    - (i) the customary rights order was made; or
    - (ii) controls were last imposed; or
    - (iii) the controls were last reviewed under **Part 3** of this schedule.

## 7 Notice regarding adverse effects assessment

- (1) A regional council must give written notice regarding an adverse effects assessment in relation to a recognised customary activity if—
- (a) it decides to carry out an adverse effects assessment under **clause 6(2)**; or
  - (b) in the period between the date the relevant customary rights order was made and 20 working days after that date, it decides not to carry out an adverse effects assessment; or
  - (c) it is directed by the Minister of Conservation under **clause 6(1)** to begin an adverse effects assessment.
- (2) The written notice required by **subclause (1)** must be given to—
- (a) the Minister of Conservation; and
  - (b) the holder of the relevant customary rights order.
- (3) Written notice given under **subclause (1)** must be given,—
- (a) for an assessment required by the Minister of Conservation under **clause 6(1)**, not later than 5 working days after receiving a direction from that Minister;
  - (b) for an assessment under **clause 6(3)(a) or (b)**, not later than 5 working days after deciding to carry out an adverse effects assessment;
  - (c) for a decision referred to in **subclause (1)(b)**, not later than 25 working days after the customary rights order was made.

To omit *clause 9(b)(iv)* (lines 30 and 31 on page 66), and substitute the following subparagraph:

- (iv) any relevant plan or proposed plan:

To omit from *clause 9(b)(v)* the words “or by a holder of an ancestral connection order,” (lines 34 and 35 on page 66).

To omit from *clause 13(1)(b)* the expression “**3(2)**” (line 12 on page 68), and substitute the expression “**3(4)**”.

To omit *clause 13(2)(b)* (lines 16 to 24 on page 68), and substitute the following paragraph:

- (b) are to be read, in relation to a review, as if all references in those clauses to controls imposed by the Minister of Conservation on a recognised customary activity were references to controls on a recognised customary activity imposed or confirmed by the Minister after a review.

To omit *clause 14(2)* (line 31 on page 68 to line 2 on page 69), and substitute the following subclause:

- (2) The holder of a customary rights order may request a review under **subclause (1)(b)** only if—
- (a) at least 2 years have passed since the controls were imposed or since they were last reviewed; or
- (b) the holder considers, on reasonable grounds, that the effects of the activity on the environment are, or are likely to be, materially different from those effects considered when, whichever is the later,—
- (i) the controls were last imposed; or
- (ii) the controls were last reviewed under **Part 3** of this schedule.

### Explanatory note

This Supplementary Order Paper sets out amendments to the Foreshore and Seabed Bill (the **Bill**) necessary to implement refinements to the Government’s policy for the future ownership and management of the public foreshore and seabed. These refinements have been developed after taking into account the public submissions made to the Fisheries and Other Sea-related Legislation Committee.

*Part 1* includes a new object provision (*clause 2A*) and amends the purpose provision. The intention is to convey that, as a whole, the Bill concerns the balancing of rights and interests in the public foreshore and seabed, by clarifying that the objective of the Bill is to preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders in a way that enables the Crown to protect—

- the public foreshore and seabed on behalf of all the people of New Zealand; and
- the association of whānau, hapū and iwi with areas of the public foreshore and seabed.

*Clause 2* is amended to defer the commencement of the provisions in the Bill that relate to court proceedings until 17 January 2005.

*Clause 4* is amended to include definitions associated with new or amended provisions in the Bill. These include definitions for the new redress mechanism set out in *new Part 2A*.

*Part 2: clauses 6 and 7* are amended to clarify that regulatory authorities are not prevented from stipulating the means by which access or navigation may be effected or restricted.

*Clause 7A* clarifies that nothing in this Act affects any rights of fishing.

*Clause 9* is amended to:

- better define the effect of the Bill on the jurisdiction of the High Court and Māori Land Court:
- clarify that the High Court cannot consider claims to customary rights in the public foreshore and seabed that are based on the Treaty of Waitangi or claims of Crown obligations under trust or equity.

Amendments to *clauses 11 and 12* clarify the effect of the vesting of the public foreshore and seabed in the Crown. Amendments also provide for formed roads to remain within the purview of the current controlling authority for so long as the road is used, and for unformed roads to be vested in the Crown and deemed to be stopped (*clause 13*).

*New clauses 13A to 14* clarify the status of—

- existing structures within the public foreshore and seabed:
- existing leases, licences, and other authorisations relating to the public foreshore and seabed:
- land reclaimed from the sea—
  - before the commencement of the relevant clause:
  - after the commencement of the relevant clause:
- land reclaimed from the sea by accretion adjacent to authorised works.

*New clauses 16 and 17* make technical changes relevant to the certificate of title or computer freehold register in relation to land in or adjacent to the public foreshore and seabed.

*New clause 19* clarifies the basis on which redress may be available to a local authority that loses title to an area of the public foreshore and seabed as a result of the Bill.

*New Clause 21* clarifies the circumstances in which access over the public foreshore and seabed may be restricted or prohibited and the method for public notification if this power is used. *Gazette* notices published under this clause are subject to the Regulations (Disallowance) Act 1989. *Clause 22* is amended to provide more fully for the enforcement of prohibitions or restrictions imposed under *clause 21*.

*New clause 23* continues the provision of the previous *clause 20*, clarifying the principles that apply to the administration of the public foreshore and seabed.

*New Part 2A: new subpart 1 (new clauses 28-33)* refines the jurisdiction of the High Court to consider applications for territorial customary rights. Further guidance is provided to the Court as to the criteria for determining whether, but for the Bill, a particular group would have had territorial customary rights at common law.

Amendments include requiring applicants to demonstrate that the claimed territorial customary rights—

- existed in 1840 and have continued in a substantially uninterrupted manner;
- involve exclusive use and occupation of a particular area of the public foreshore and seabed;
- can be demonstrated by physical use and occupation, rather than intangible cultural or spiritual associations;
- are based on continuous title to land contiguous to the all of the relevant area of the public foreshore and seabed, or a significant part of it.

*New clause 31* outlines the matters that must be considered and those that may be taken into account by the High Court when considering an application for territorial customary rights. The new clause clarifies the nature of the evidence that the High Court may receive (*clause 31(3)*).

*Clause 33 and new clause 33A* provide that, where an applicant group is successful before the High Court, the group may apply for an order, either—

- that the finding be referred to the Attorney General and the Minister of Māori Affairs, who must enter into discussions with the group to negotiate redress; or
- that the area of the public foreshore and seabed to which the Court's finding relates be set apart and established as a foreshore and seabed reserve (*new clause 33*).

The High Court must make these orders if it is satisfied of the matters provided for in *clause 33A*.

If, for any reason, an applicant group wishes to withdraw from the discussions it has undertaken with Ministers, it may apply to the High Court for an order that the relevant area of the public foreshore and seabed reserve be set apart and established as a foreshore and seabed reserve.

*New clause 34A* provides a discretion for the High Court to refer an unsuccessful application for territorial customary rights to the Māori Land Court under its *Part 3* jurisdiction or for consideration by the High Court under its *Part 4* jurisdiction.

*New subpart 2 (clauses 34B to 34G)* provides—

- for the purposes and status of a foreshore and seabed reserve;
- that the High Court must direct that the successful applicant group, the relevant regional council, and the Attorney-General and Minister of Māori Affairs, jointly, by agreement, present to the Court the proposed membership of a board to administer the reserve, a charter setting out how the board will do that, and how it is to be resourced; and
- the basic requirements for the contents of the charter; and
- for the High Court to confirm by order the establishment of the reserve and the appointment of the members of its first board (who will be known as the guardians of the particular reserve); and
- that the functions of the board will include the preparation, approval, and review of a management plan under which the reserve will be administered; and



- that the management plan must be prepared in accordance with Part II of the Resource Management Act 1991 and must not be inconsistent with the New Zealand coastal policy statement and any other relevant national policy statement; and
- for notification of the establishment of a reserve and its board in the *Gazette*, service of the order of the High Court.
- that the Foreshore and Seabed Reserve must be registered in the foreshore and seabed register.

*Part 3:* All clauses are removed that provided for ancestral connection orders and conferred a jurisdiction on the Māori Land Court to recognise the ancestral connection of Māori with the public foreshore and seabed.

Amendments to the provisions for customary rights orders recognised by the Māori Land Court include the following:

- applications may only be made by whānau, hapū and iwi (*clause 37(1)*);
- customary rights orders cannot be recognised purely on the basis of a cultural or spiritual association; there must be a physical activity, use or practice related to a physical or natural resource (*clause 41(2)*);
- customary rights orders must not be described as an exclusive right to carry out an activity, use or practice unless there is evidence that exclusive rights have been asserted and recognised by third parties (*clause 43E*);
- protections for whānau, hapū, and iwi have been built in for the powers of the holder of an order (*clause 43A*) and for the right to cancel an order (*new clauses 48, 49, 50(a)*).

*Part 4:* the provisions for customary rights orders recognised by the High Court are amended as follows:

- applications cannot be made by groups whose only connection is ownership of land (*clause 56A*);
- customary rights orders can only be made on the basis of physical activities, and not purely cultural or spiritual associations (*clause 60(2)*);
- customary rights orders must not be described as an exclusive right to carry out an activity, use or practice unless there is evidence that exclusive rights have been asserted and recognised by third parties (*clause 62E*);
- the procedures applying to this High Court jurisdiction have been incorporated into *Part 4* from the former Schedule 2 (*clauses 58(2), 58A, 58B, 58C, 58D, 62F, 62G, and 62H*);
- the scope of the evidence that the High Court may receive is clarified (*clause 61(4)*);
- there are protections for a group on whose behalf an order has been made as to the powers of the holder of an order (*clause 62A*) and for the right to cancel an order (*new clauses 66, 66A, 66B, 67(a)*).

*Part 5:* Further amendments are made to the Resource Management Act 1991 (the **RMA**), including amendments—

- to reflect the changes made to the customary rights orders provisions, and in particular the new redress mechanism inserted by *subpart 2 of new Part 2A* (*clauses 84, 85, 87, 88, 88A, and 88B*):

- to refine the protection of recognised customary activities carried out as a consequence of being granted a customary rights order (*clause 89*):
- to require a consent authority to decline an application to carry out an activity that will have a significant adverse effect on a recognised customary activity, unless written approval is given by the holder of the customary right order (*clause 93*, inserting *new section 107A*):
- to provide an exemption from *new section 107A* for consents allowing for maintenance of, and new consents relating to, existing infrastructure works and associated operations (*new section 107B*):
- to provide for the situation when approval is given by a customary rights order holder for a resource consent and the process to be followed if the grant of a resource consent would effectively cancel a customary rights order (*new sections 107C and 107D*):

*Clause 100* is amended to provide certain exemptions and qualifications to the restriction that otherwise applies to the vesting of reclamations in fee simple title:

- the existing reclamation vesting provisions of the RMA apply if a resource consent for a reclamation has been granted before the enactment of the Bill:
- there is an exemption from the restriction if a coastal permit has been granted for the reclamation before the commencement of the Bill, or if an enactment has vested an interest, right, or title in the reclaimed land, or the Crown has entered into a written agreement with the party concerned to vest an interest, right, or title in a reclamation (*new clause 100A*, inserting *new section 355AA*):
- port companies are given an automatic right of renewal of leases over reclaimed land necessary for port infrastructure, on the same terms and conditions and without having to negotiate a new lease (*new section 355AA(4)*):
- any other lessee with an interest in reclaimed land who applies for a new lease before the expiry of the lease has the right to have that application considered ahead of other applications and may continue to operate until the application is determined (*new section 355AB*).

*New clauses 106A and 106B* relate to transitional arrangements for existing activities involving occupation of the public foreshore and seabed and the extraction of certain natural resources. If they are carried out under an authorisation granted by the relevant local authority, that authorisation is deemed to be a coastal permit. If there is no authorisation for the activity, there is a period of grace before the restrictions of section 12(2) of the RMA apply.

*Part 6: clause 107* is amended to extend the matters that must be included in the foreshore and seabed register.

*New clause 112* provides that agreements reached between the Crown and an applicant group in respect of a claim to a territorial customary right (as defined in *clause 28(1)*) do not have effect until, the agreement is confirmed by order of the High Court, in accordance with the procedure required by the clause.

*New clause 115(1)* clarifies the nature of the Māori reservation set apart under Te Ture Whenua Maori Act 1993 that qualify under this savings provision.

The regulation-making power of *clause 114* is extended to cover the appointment of wardens for the purposes of *clause 22*. Any regulations made must be made on the advice of the Minister of Justice after consultation with the Ministers of Conservation and Māori Affairs.

*New clause 114A* provides a power to make rules of the High Court for the purposes of the Bill. All applications made to the High Court must be made by originating application.

*New clause 115A* clarifies that the Bill does not limit or affect the validity of agreements reached between the Crown and Māori claimants in respect of historical Treaty of Waitangi claims, nor fetters the Crown's power to enter into future such agreements.

*New section 116(2) and (3)* clarifies that the Bill overrides the provisions of local Acts that permit land reclaimed from the sea by accretion to be vested in a person or body, and provides a particular exemption for Wellington Waterfront Limited to the general principle that the Bill overrides any inconsistent provisions in local Acts.

*Schedule 1* includes technical amendments to reflect amendments to the provisions of *Part 3*.

*Schedule 2* is omitted. *Schedule 2* provided the procedures of the High Court in exercising its jurisdiction to determine customary rights orders. These procedures are now provided under *Part 4* of the Act.

*Schedule 3* is further consequentially amended.

Amendments to *Schedule 4* clarify how the RMA applies to recognised customary activities.

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