



## MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011

# OVERVIEW OF THE ACT

Information for local government

### INTRODUCTION

This information paper provides a general overview of provisions in the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) of particular relevance to local authorities. It is one of a series of four papers explaining different aspects of the Act for local government practitioners.

The other three information papers are:

- Part 2: Interests in land and structures, residual Crown functions, public rights, subdivision and reclamations.
- Provisions for protecting customary interests.
- Customary marine title group planning document.

### PURPOSE OF THE ACT

The Act came into force on 1 April 2011.

The purpose of the Act is to:

- a) establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand;
- b) recognise the mana tuku iho<sup>1</sup> exercised in the marine and coastal area by iwi, hapū, and whānau as tangata whenua;
- c) provide for the exercise of customary interests in the common marine and coastal area (CMCA); and
- d) acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).

The Act repeals the Foreshore and Seabed Act 2004 (the 2004 Act) and restores the customary interests extinguished by that Act.

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<sup>1</sup> Defined in section 9 of the Act as inherited right or authority derived in accordance with tikanga.

## WHAT DOES THE ACT DO?

### The Act:

- Applies to the area formerly known as the foreshore and seabed, which is now known as the marine and coastal area.
- Creates a common space in the marine and coastal area (the CMCA) that cannot be owned by anyone and therefore cannot be sold.
- Provides legal recognition and protection of customary interests in the CMCA, through protected customary rights (PCRs) and customary marine title (CMT).
- Provides that local authorities are prohibited from granting a resource consent for an activity that will, or is likely to, have more than minor adverse effects on the exercise of a PCR (with some exceptions) unless the PCR group gives its approval.
- Provides that the rights conferred by CMT include the right to give or decline permission for activities being carried out under a resource consent in a CMT area (with some exceptions) and the right of CMT groups to create a planning document.
- Provides that the exercise of rights associated with CMT and PCR cannot limit or affect:
  - resource consents in place at the commencement of the Act;
  - any activities that can be lawfully undertaken without resource consent or other authorisation (except in a wāhi tapu area – see below);
  - resource consents for emergency activities;
  - future coastal permits to allow existing aquaculture activities to continue on the same site; and
  - in the case of CMT, activities in the national and regional interest such as certain future infrastructure and regional council research and monitoring.
- Creates two pathways for establishing legal recognition of PCR and CMT: in the High Court or via a recognition agreement directly with the Crown.
- Requires that where a recognition agreement recognises CMT then that part of the agreement must be given effect through legislation.
- Provides for public rights of free access, fishing and navigation to coexist with CMT, except in wāhi tapu areas (defined areas of significance to CMT holders, such as burial grounds).

## WHERE DOES THE ACT APPLY?

The Act applies to the marine and coastal area. This area equates in most respects with the 'coastal marine area' as defined in the Resource Management Act 1991 (RMA). It extends from MHWS on the landward side to the outer limits of the territorial sea. Where the line of MHWS crosses a river, the landward boundary of the marine and coastal area is the same as the boundary of the coastal marine area under the RMA.

The marine and coastal area includes the CMCA, which is the marine and coastal area excluding existing private titles, the bed of Te Whaanga Lagoon in the Chatham Islands and land held by the Crown as:

- a conservation area under section 2(1) of the Conservation Act 1987; or
- a national park under section 2 of the National Parks Act 1980; or

- a reserve under section 2(1) of the Reserves Act 1977.

## **WHAT DOES THE ACT MEAN FOR LOCAL AUTHORITIES?**

A number of additional provisions in the Act are particularly relevant for local authorities.

These include:

### **Part 2**

- On commencement of the Act, the Crown and every local authority were divested of land in the CMCA to the extent this land had not already been divested by the 2004 Act. Local authorities can seek redress from the Minister of Conservation for any such land acquired after commencement of the 2004 Act, provided this was by purchase and the claim is accepted by the Minister.
- The Crown is deemed to be the owner of any 'abandoned' structures in the CMCA. A structure is considered abandoned if it has no current resource consent and if, after following a specified process of inquiry, the relevant council is unable to determine the identity or whereabouts of the owner.
- The ownership of roads remains with the current owner and formed roads are not part of the CMCA. Unformed roads are excluded from the CMCA for a temporary period allowing local authorities to promote or initiate formation of roads they wish to be permanently excluded from the CMCA.
- The reclamation provisions provide greater certainty than under the 2004 Act. Changes include provision for an interest in land to be determined before a reclamation is completed (vesting happens after completion), and the ability for developers (including local authorities) to obtain fee simple title. Applicants seeking an interest in reclaimed land must apply to Land Information New Zealand (LINZ). Fees payable to LINZ to cover the cost of processing applications are set out in the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012.

### **Part 3**

#### *Protected customary rights*

- No requirement on a PCR holder to obtain any resource consent for the customary activity, use or practice that would otherwise be required.
- A requirement on local authorities to monitor the exercise of PCR, and provision to apply to the Minister of Conservation for controls to be imposed on such rights.
- The ability for local authorities to carry out an assessment of environmental effects of a PCR at their own initiative, or when requested to do so by the Minister of Conservation (as a prerequisite to the Minister making a decision on whether to impose controls on the exercise of the relevant right).

#### *Applications for customary marine title*

- A requirement on those intending to make a resource consent application to notify and seek the views of any group which has applied for CMT in the area to which the resource consent application applies.

### *Planning documents*

- A requirement on local authorities to initiate a process to determine whether to alter their regional policy statements and regional coastal plans, and if so to what extent, to 'recognise and provide for' matters in a planning document applying within a CMT area. Decisions on alterations must follow the process set out in Schedule 1 of the RMA and meet the requirements of Part 5 of the RMA.

### *Wāhi tapu within CMT areas*

- A requirement on local authorities to take appropriate action to encourage public compliance with conditions applying to a wāhi tapu area.

### **Disclaimer**

*Although every effort has been made to ensure that this guidance document is as accurate as possible, the Ministry of Justice will not be held responsible for any action arising out of its use. Direct reference should be made to the Marine and Coastal Area (Takutai Moana) Act 2011 and expert advice should be sought if necessary.*