

## MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL

The Marine and Coastal Area (Takutai Moana) Bill was passed on 24 March 2011 (the Bill). The Bill represents a significant change in the legal regime for the ownership and management of the coastal area around New Zealand.

The Bill represents the culmination of many years of litigation and law reform, including the Court of Appeal's Ngāti Apa decision, the development and implementation of the Foreshore and Seabed Act 2004, negotiations with iwi under that Act, and the Ministerial Review Panel and law reform process leading to the passing of this Bill. The Bill was introduced on 6 September 2010 and, since the Select Committee process, has been amended by twelve Supplementary Order Papers. At the time of publication of this legal update, Royal assent to the Bill had not been announced.

### Key implications

The Bill repeals the Foreshore and Seabed Act 2004 and restores any customary interests in the common marine and coastal area (CMCA) that were extinguished by that Act. Neither the Crown nor any other person can own, or is capable of owning, the CMCA. The CMCA does not include land in the coastal marine area that is already in private ownership, or that is held by the Crown as a conservation area, a national park or a reserve.

The Bill restores the right of Māori to seek customary marine title through the Courts, guarantees the rights of all New Zealanders to access the CMCA free of charge, and preserves navigation and fishing rights in the CMCA. There are also a number of other changes including in relation to the legal regime concerning reclaimed land.

This update briefly sets out the 3 levels of protection for Māori customary interests - participation rights, protected customary rights, and customary marine title. Some of these protections could have a significant impact on the regulation of activities in the CMCA.

### Participation rights

A decision-maker must have particular regard to the views of affected iwi, hapū or whānau when considering certain conservation related applications or proposals in the CMCA. The relevant applications or processes cover matters such as marine reserves, marine mammal sanctuaries, conservation protected areas, concessions, marine mammal strandings and commercial watching permits.

### Protected customary rights

The Bill provides for "protected customary rights", which are rights that have been exercised since 1840, that continue to be exercised in a particular area of the CMCA in accordance with tikanga (whether in the same way or in an evolved manner) and that have not been extinguished as a matter of law.

Protected customary rights may be recognised by the High Court, or through an agreement with the Crown. A consent authority must not grant a resource consent for an activity (including a controlled activity) in an area in which a protected customary right has been recognised if the activity will, or is likely to, have adverse effects that are more than minor on the exercise of the protected customary right. That restriction does not apply where the protected customary rights group gives approval to the proposed activity. However, the existence of a protected customary right does not limit or affect the grant of a resource consent relating to specific activities, such as existing aquaculture and certain infrastructure.

### Customary marine title

Under the Bill an applicant group may seek recognition of customary marine title for a specified area if the group can prove it holds the area in accordance with tikanga, and has either exclusively used and occupied the area from 1840 to the present day without substantial interruption, or received the area through a customary transfer.

Customary marine title may be recognised by the High Court or through an agreement with the Crown. This form of title does not include a right to alienate or otherwise dispose of the area but confers on the customary marine title group a set of rights to influence the management of, and activities in, the area.

One of these rights, the RMA permission right, allows the customary marine title group to give or decline permission for an activity that is to be carried out under a resource consent within the customary marine title area. Another, a conservation permission right, works in a similar way regarding conservation processes and concessions within the customary marine title area.

The Bill sets out certain exclusions from the effect of customary marine title. These exclusions (called "accommodated activities") can be carried out within a customary marine title area without being subject to a permission right. Some examples are certain infrastructure and associated operations, activities under existing resource consents, the management of reserves and sanctuaries, emergency activities, scientific research or monitoring and activities under new resource consents for existing aquaculture.

### Timeframes

Māori groups have 6 years from the commencement of the Act to register their interest to negotiate with the Crown, or to file an application for a recognition order with the Court.

### For more information

This is a high-level overview of the Marine and Coastal Area (Takutai Moana) Bill. If you would like more information on this Bill, please contact us.

Please click [here](#) if you would like to attend a seminar on the Bill and the implications of it.

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