



# Resource Management (Foreshore and Seabed) Amendment Act 2004

Public Act 2004 No 94  
Date of assent 24 November 2004  
Commencement see section 2

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**Schedule**  
**New Schedule 12 of Resource Management Act 1991**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Resource Management (Foreshore and Seabed) Amendment Act 2004.
- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

**2 Commencement**

- (1) This section and sections 3, 13, 27, 28, 33, 34, 35, 42, and 43 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.

**3 Interpretation**

- (1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:  
“**access rights** has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

“**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

“**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

“**board**, in relation to a foreshore and seabed reserve, has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

“**customary rights order** has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

“**foreshore and seabed reserve** has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

“**holder**, in relation to a customary rights order, has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

“**management plan**, in relation to a foreshore and seabed reserve, has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

“**public foreshore and seabed** has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

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

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

“**regional council**—

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

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

**4 Matters of national importance**

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

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

**5 New heading and sections 17A and 17B inserted**

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

*“Recognised customary activities*

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

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

“(a) sections 9 to 17; or

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

“(2) Subsection (1) applies to a recognised customary activity only if that 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 52 or section 76 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 53(1)(a) or section 77(1)(a) of the Foreshore and Seabed Act 2004.

**“17B Adverse effects assessment**

“(1) For the purposes of any controls that may be imposed on a recognised customary activity under Part 1 of Schedule 12, a regional council must, if directed by the Minister of Conservation at any time, and may of its own initiative in the circumstances set out in clause 6(2) of Schedule 12,—

“(a) carry out an adverse effects assessment of the effects on the environment of a recognised customary activity in its region; and

“(b) complete, and give to the Minister an adverse effects report based on that assessment.

“(2) Part 2 of Schedule 12 applies to the assessment carried out and to the report prepared under this section.

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

**6 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.”

**7 Information to be supplied to Minister of Conservation**

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

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

**8 Delegation of functions by Ministers**

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

“(ga) making a decision on any controls to be imposed under Schedule 12 on a recognised customary activity:”.

**9 Transfer of powers**

Section 33(2) of the principal Act is amended by inserting, after the words “iwi authority,”, the words “board of a foreshore and seabed reserve,”.

**10 Duty to gather information, monitor, and keep records**

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

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

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

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

(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.”

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

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

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

**12 Authorisation and responsibilities of enforcement officers**

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

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

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

**13 Contents of New Zealand coastal policy statements**

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

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

“(gb) the protection of recognised customary activities:”.

**14 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.”

## **15 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”.

## **16 Imposition of coastal occupation charges**

Section 64A of the principal Act is amended by inserting, after subsection (4), the following subsection:

“(4A) A coastal occupation charge must not be imposed on any person occupying the coastal marine area if the person is carrying out a recognised customary activity in accordance with section 17A(2).”

## **17 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.”

## **18 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.”

## **19 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 43 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 44 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.”

## 20 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.”

## 21 New heading and sections 85A and 85B inserted

The principal Act is amended by inserting, after section 85, the following heading and sections:

*“Plan must not allow activity that prevents recognised customary activities*

### “85A 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.”

**22 Forming opinion as to who may be adversely affected**

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

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

“(4) However, the holder of a customary rights order must be treated as being adversely affected if, in the opinion of the consent authority, the grant of a resource consent may

adversely affect a recognised customary activity carried out in accordance with section 17A(2).”

### **23 When public notification and service requirements may be varied**

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

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

### **24 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 26(1), (2), and (5) of the Foreshore and Seabed Act 2004:”.

### **25 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 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 650J(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 60 or section 87 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.”

**26 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 26(1), (2), and (5) of the Foreshore and Seabed Act 2004.”

**27 Vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority**

Section 237A(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

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

**28 Vesting of reserves or other land**

Section 239(3)(a) of the principal Act is amended by omitting the words “section 9A of the Foreshore and Seabed Endowment Revesting Act 1991”, and substituting the words “section 13 of the Foreshore and Seabed Act 2004”.

**29 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.”

**30 Proceedings to be heard by Environment Judge**

Section 309 of the principal Act is amended by adding the following subsections:

“(4) This Part does not apply to a recognised customary activity carried out in accordance with section 17A(2).

“(5) However, sections 310 to 313 and sections 330 to 337 apply to the exercise of a recognised customary activity.”

**31 Power of entry for inspection**

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

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

**32 Power of entry for survey**

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

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

**33 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”.

**34 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”.

**35 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 13(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.”

### **36 First Schedule amended**

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

“(2) A proposed regional coastal plan must be prepared by the regional council concerned in consultation with—

“(a) the Minister of Conservation; and

“(b) iwi authorities of the region; and

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

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

“(e) the board of any foreshore and seabed reserve in the area.”

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

“(g) the board of any foreshore and seabed reserve in the area.”

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

“(g) the board of any foreshore and seabed reserve in the area.”

### **37 Fourth Schedule amended**

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

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

An assessment of effects on the environment for the purposes of section 88 must include, in a case where a recognised customary activity is, or is likely to be, adversely affected, a description of possible alternative locations or methods for the

proposed activity (unless written approval for that activity is given by the holder of the customary rights order).”

**38 New Schedule 12 added**

The principal Act is amended by adding the Schedule 12 set out in the Schedule.

**39 Regulation amended**

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

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

**40 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.

**41 Continuation and completion of appeals, etc, under principal Act**

- (1) If, before the commencement of this section, an appeal has been lodged or an objection made, the continuation and completion of that appeal or objection must be in accordance with the principal Act as if this Act had not been enacted.

- (2) However, an appeal lodged after 17 January 2005 must be determined in accordance with the principal Act as amended by this Act.
- (3) If, before 17 January 2005, an application for a subdivision consent has been made, the continuation and completion of all proceedings in relation to that subdivision, including the approval and deposit of a survey plan, must be in accordance with the principal Act as if this Act had not been enacted.
- (4) If, before 17 January 2005, a declaration, enforcement, or abatement action under Part XII of the principal Act has been commenced, the continuation and completion of that action (including any appeals) must be in accordance with the principal Act as if this Act had not been enacted.

#### **42 Coastal permits relating to public foreshore and seabed**

- (1) In this section and section 43, **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 43 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 13(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 13(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 17 of the Foreshore and Seabed Act 2004, a right of renewal under an authorisation referred to in subsection (3) does not apply.

**43 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.

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## Schedule

### New Schedule 12 of Resource Management Act 1991

ss 17A, 17B

### Schedule 12

#### Adverse effects assessment and report and controls in relation to a recognised customary activity

#### 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.

#### Part 1

#### Controls by the Minister of Conservation

#### 2 Power to impose controls

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

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

#### 3 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.

**Schedule 12**—continued

## Part 1—continued

- (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.

**4 Matters to be considered**

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

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

**Schedule 12**—continued

## Part 1—continued

has a bearing on the resource management issues of the region.

**5 Timing and notification**

The Minister of Conservation must—

- (a) decide whether to impose controls on a recognised customary activity no later than 60 working days after—
  - (i) receiving an adverse effects report on the activity from the regional council; or
  - (ii) giving notice under clause 3(4) that the Minister will be carrying out his or her own assessment of that activity; and
- (b) give written notice of his or her decision, and the reasons for it, to—
  - (i) the relevant regional council; and
  - (ii) the holder of the customary rights order; and
  - (iii) the Minister of Māori Affairs; and
  - (iv) the chief executive of the Ministry of Justice.

## Part 2

Adverse effects assessment and report by regional council

**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—

**Schedule 12**—continued**Part 2**—continued

- (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:

**Schedule 12**—continued**Part 2**—continued

- (c) for a decision referred to in subclause (1)(b), not later than 25 working days after the customary rights order was made.

**8 Process**

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

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

**9 Matters to be considered**

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

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

**10 Adverse effects report**

- (1) A regional council must complete its adverse effects assessment and adverse effects report no later than 40 working days after giving notice of the assessment under clause 7.
- (2) The regional council must include in its adverse effects report—

**Schedule 12**—continued

## Part 2—continued

- (a) details of the recognised customary activity and the effects on the environment of the recognised customary activity; and
- (b) an outline of the information received and any views expressed by the holder of the customary rights order; and
- (c) whether it considers the recognised customary activity has, or may have, a significant adverse effect on the environment; and
- (d) its recommendations (if any) to the Minister of Conservation on any controls it considers the Minister of Conservation should impose under clause 2; and
- (e) the reasons for any recommendations.

**11 Report to be given to Minister of Conservation and holder**

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

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

## Part 3

## Review of controls by the Minister of Conservation

**12 Review**

The Minister of Conservation may—

- (a) review, in accordance with clauses 13 and 14, controls imposed on a recognised customary activity; and
- (b) after reviewing the controls,—
  - (i) confirm them; or
  - (ii) revoke them; or
  - (iii) revoke them and impose new controls (which may include some or all of the reviewed controls).

**13 Procedure for review**

- (1) If the Minister of Conservation reviews controls under clause 12, he or she must either—

**Schedule 12**—continuedPart 3—*continued*

- (a) request, under section 17B, the regional council—
    - (i) to carry out an adverse effects assessment; and
    - (ii) prepare an adverse effects report under clauses 6 to 11; or
  - (b) notify the regional council that the Minister will carry out an adverse effects assessment under clause 3(4).
- (2) Clauses 2 to 5—
- (a) apply (with all necessary changes) to a review of controls by the Minister of Conservation; and
  - (b) are to be read, in relation to a review, as if 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.

**14 Timing of review**

- (1) The Minister of Conservation—
- (a) may review the controls imposed on a recognised customary activity at any time; and
  - (b) must carry out a review of those controls if the holder of the customary rights order requests a review in writing.
- (2) 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.
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**Legislative history**

16 November 2004	Divided from Foreshore and Seabed Bill (Bill 129-1), third reading
24 November 2004	Royal assent

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This Act is administered in the Ministry for the Environment.

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