

# **Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

#### **Purposes of amendments**

This Bill amends the Marine and Coastal Area (Takutai Moana) Act 2011. The purposes of the amendments are—

- to define the applicable requirements for recognition of customary marine title (namely, requirements for, and for proof of, exclusive use and occupation of a specified area from the start to the end of the applicable period (from 1840 to the present day or, if applicable, from 1840 to the time of a customary transfer, or from the time of a customary transfer to the present day) without substantial interruption); and
- in particular, to alter aspects of the law that are expressed, for example, in parts of *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252 and of other judgments specified in the Bill.

#### **Altered aspects of law**

The altered aspects of the law include those altered by provisions that—

- define an applicant group's exclusive use and occupation of a specified area of the common marine and coastal area from the start to the end of the applicable period:
- require the group's use and occupation of that area to be exclusive in that the group has had both the intention and the ability to control that area, to the exclusion of others, from the start to the end of the applicable period:

- require that no substantial interruption has occurred to the group’s exclusive use and occupation of that area from the start to the end of the applicable period:
- define substantial interruption to the group’s exclusive use and occupation of that area as meaning any 1 or more substantial interruptions to 1 or both of the following:
  - the group’s use and occupation of that area:
  - the exclusivity of the group’s use and occupation of that area:
- clarify how substantial interruption to the group’s exclusive use and occupation of that area can be caused, and when it has not occurred:
- clarify what inferences are permitted, and require particular regard to be had to specified matters, in determining whether the group has had exclusive use and occupation of that area from the start to the end of the applicable period:
- clarify when customary marine title is extinguished as a matter of law by a vesting of a title as owner to any part of the common marine and coastal area (for example, to the bed of a navigable river, to the extent that the bed of the river is any part of that area):
- clarify what the group must prove in an application for the recognition of customary marine title in that area.

### **Application of amendments and transitional, savings, and related provisions**

The transitional, savings, and related provisions inserted by this Bill ensure that—

- the amendments do not apply to or affect a decision relating to whether customary marine title exists in an area (a **CMT decision**) made before or at midnight on 25 July 2024 (the **announcement time**):
- the amendments apply to a CMT decision made after the announcement time:
- certain CMT decisions made in the interim period (starting at the announcement time, and ending on the commencement of this Bill), and related agreements and orders made, have no legal effect, and never have had legal effect:
- the High Court is enabled to continue to hear or rehear, all or any part of affected applications in order to consider and determine how the amendments affect those applications:
- a person is not entitled to compensation of any kind on account of the operation of the amendments.

### **Departmental disclosure statement**

The Office for Māori Crown Relations—Te Arawhiti is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=83>

### Regulatory impact statement

The Office for Māori Crown Relations—Te Arawhiti produced a regulatory impact statement on 19 September 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.tearawhiti.govt.nz/publications/information-releases/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

The *Preamble* sets out background to the Bill.

*Clause 1* is the Title clause.

*Clause 2* relates to commencement. The Bill, if enacted, comes into force on the day after Royal assent.

## Part 1

### Amendments to Marine and Coastal Area (Takutai Moana) Act 2011

*Clause 3* indicates that *Part 1* amends the Marine and Coastal Area (Takutai Moana) Act 2011 (the **principal Act**).

*Clause 4* amends the principal Act's Preamble. The amendments ensure that the Act's Preamble includes background to the amendments proposed in the Bill.

*Clause 5* amends section 9(1) (interpretation). The amendment inserts new definitions of the terms applicable period, CMT Amendment Act, CMT amendments, exclusive use and occupation, and substantial interruption.

*Clause 6* inserts *new sections 9A to 9C*.

*New section 9A* is about the purposes, application, and overriding effect of the principal Act's provisions as amended by this Bill. *New section 9A(1)(b) and (4)(b)* refers to particular statements of the law made by the courts that are overturned by this Bill because they are inconsistent with the principal Act as amended (*see also new sections 59A and 59B* inserted by *clause 12*).

*New section 9B* imposes a duty on a decision maker (including the High Court) to interpret the principal Act's provisions as amended by this Bill in a way that promotes their purposes, application, and effect (as stated in *new section 9A*). Under *new section 9A(3) and (4)(a)*, *new section 9B* prevails over the following provisions of the principal Act:

- section 4 (purpose):
- section 6 (customary interests restored):

- section 7 (Treaty of Waitangi (te Tiriti o Waitangi)).

*New section 9C* relates to the transitional, savings, and related provisions in *new Schedule 1AA* (inserted by *clause 11*).

*Clause 7* inserts *new sections 57A and 57B* and a cross-heading.

*New section 57A* applies to a group or its members that is or are—

- an applicant group; or
- making a customary transfer; or
- a group or members of a group to whom a customary transfer was made.

*New section 57A* defines whether, for the purposes of the principal Act, the group or its members has, had, or have exclusive use and occupation of a specified area of the common marine and coastal area from the start to the end of the applicable period without substantial interruption.

*New section 57A* provides that the group or its members has, had, or have exclusive use and occupation of the area from the start to the end of the applicable period without substantial interruption only if the group or its members had both the intention and the ability to control the area, to the exclusion of others, from the start to the end of the applicable period without substantial interruption.

If that definition is met, then the group or its members, for the purposes of section 58(1)(b)(i), (3)(c)(ii), and (d)(ii), has, had, or have exclusively used and occupied the area (*see* section 18 (Parts of speech have corresponding meaning) of the Legislation Act 2019).

*New section 57B* defines substantial interruption, as it relates to a group's exclusive use and occupation of a specified area of the common marine and coastal area, for the purposes of the principal Act (for example, for *new section 57A*, section 58(1)(b)(i), (3)(c)(ii), and (d)(ii), and *new section 106(2)(b)*). The definition provides that **substantial interruption** to a group's exclusive use and occupation of a specified area of the common marine and coastal area—

- means any 1 or more substantial interruptions to 1 or both of the following:
  - the group's use and occupation of that area:
  - the exclusivity of the group's use and occupation of that area:
- requires a decision maker (including the High Court) to consider the nature, extent, duration, and cause of any interruption to the group's exclusive use and occupation of the specified area:
- can be caused (without limiting *new section 57B(a)*) by an activity (including, without limitation, an activity that is, or includes, fishing or navigation) carried out—
  - wholly or partly in that area; and
  - by a person, or persons, who did not belong to the group; and
  - with or without any authorisation by or under legislation:

- can be caused (without limiting *new section 57B(a)*) by changes to use and occupation, or to an activity carried out,—
  - wholly or partly in that area; and
  - by a person, or persons, who did belong to the group; and
  - with or without any authorisation by or under legislation:
- can be caused (without limiting *new section 57B(a) to (d)*) by the combined or cumulative effects of, or of changes to, 2 or more activities each of the kind described in *new section 57B(c) or (d)*:
- has not occurred (despite *new section 57B(a) to (e)*, but re-enacting the effect of section 58(2)) only because an activity is carried out wholly or partly in that area under a resource consent granted at any time between—
  - the commencement of the principal Act; and
  - the effective date.

*Clause 8* amends section 58 (customary marine title).

*Clause 8(1)* inserts *new section 58(1A)*.

*New section 58(1A)* provides that, in considering whether the requirements of section 58(1)(b)(i), (3)(c)(ii), or (3)(d)(ii) are met, no inference may be drawn about all or any of the geographic scope, continuity, or exclusivity of a group's use and occupation of a specified area in a period unless that inference—

- is based on evidence of a physical activity, or of a use, related to natural and physical resources (within the meaning of section 2(1) of the Resource Management Act 1991) in all or part of the area, by the group in that period; and
- is not based on a spiritual or cultural association with all or part of the area unless that association is manifested in a physical activity, or in a use, related to natural and physical resources (as defined in the Resource Management Act 1991) in all or part of the area, by the group in that period.

*Clause 8(2)* repeals section 58(2), the effect of which is re-enacted in *new section 57B(f)*.

*Clause 8(3)* replaces section 58(4) with *new section 58(4) to (7)*.

*New section 58(4)* re-enacts section 58(4), but without the opening words (which state that section 58(4) does not limit section 58(2)). The effect of those opening words is continued in *new section 58(7)(a)*.

*New section 58(5)* ensures that, for the purposes of *new section 58(4)*, customary marine title is extinguished as a matter of law if, in relation to a specified area of the common marine and coastal area,—

- legal title was vested, before 17 January 2005, in a legal person or a group, other than the applicant group, by any means, including—
  - Crown grants made by or under any lawful authority, including ordinances, statutes, or the prerogative; or

- the common law; or
- a statutory vesting; or
- administrative action; or
- an interest has been established that is legally inconsistent with exclusive use and occupation of the area by the applicant group.

*New section 58(6)* provides that *new section 58(5)* applies even if the person is the Crown or a local authority and is, under section 11(3), divested of that title as owner, because—

- section 11(3) does not revive customary interests in any part of the common marine and coastal area that existed before any vesting of title, or establishment of an interest, divested under section 11(3); and
- section 6 only restores and gives legal expression in accordance with the principal Act to customary interests in the common marine and coastal area that were extinguished by the Foreshore and Seabed Act 2004.

*New section 58(7)* ensures that *new section 58(4)*—

- does not limit *new section 57B* (which sets out the requirements for determining whether substantial interruption has occurred to an applicant group's exclusive use and occupation); and
- is not limited by *new section 58(5) and (6)* (which states some ways, but not the only ways, that customary marine title is extinguished as a matter of law for the purposes of *new section 58(4)*).

*Clause 9* amends section 59 (matters relevant to whether customary marine title exists). The amendments insert *new section 59(1), (2), and (2A)*, and amend section 59(3) and (4).

*New section 59(1)* replaces section 59(1), which specifies matters that may be taken into account in determining whether customary marine title exists in a specified area of the common marine and coastal area. *New section 59(1)* states that the matters to which a decision maker (including the High Court) must have particular regard in determining whether customary marine title exists in a specified area of the common marine and coastal area include whether the applicant group or any of its members—

- own land abutting all or part of the specified area and have done so, without substantial interruption, for all of the applicable period:
- exercise non-commercial customary fishing rights in all or part of the specified area, and have done so for all of the applicable period:
- exercise non-commercial customary fishing rights in named fishing grounds in all or part of the specified area, and have done so for all of the applicable period:
- have marae near all or part of the specified area.

*New section 59(2)* re-enacts section 59(2), and ensures that section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 does not limit *new section 59(1)(b)*.

*New section 59(2A)* provides that, in complying with *new section 59(1)(a), (b), or (c)*, the decision maker must also have particular regard to the extent to which there has been such ownership, or such exercise of fishing rights in the specified area, for all of the applicable period. *New section 59(2A)* therefore re-enacts and extends section 59(1)(b).

Section 59(3) is amended to clarify that the use at any time, by persons who are not members of an applicant group, of a specified area of the common marine and coastal area for fishing or navigation does not, of itself, preclude the applicant group from establishing the existence of customary marine title, unless that use causes or contributes to substantial interruption under *new section 57B*.

Section 59(4) is amended as a consequence of *new section 59(1)(a)* replacing section 59(1)(a)(i).

*Clause 10* replaces section 106(2). *New section 106(2)* requires that, in the case of an application for the recognition of customary marine title in a specified area of the common marine and coastal area, the applicant group must prove that the group—

- holds the specified area in accordance with tikanga, as required by section 58(1)(a); and
- had exclusive use and occupation of the specified area from the start to the end of the applicable period without substantial interruption, as required by section 58(1)(b)(i) or (ii).

*Clause 11* inserts *new Schedule IAA*.

*Part 1 of new Schedule IAA* contains transitional, savings, and related provisions as follows:

- *clause 1* contains definitions:
- *clause 2* ensures that the amendments made by this Bill do not apply to or affect a CMT decision made before or at the announcement time:
- *clause 3* ensures that the amendments made by this Bill apply to a CMT decision made after the announcement time:
- *clause 4* ensures that certain CMT decisions made in the interim period, and related agreements and orders made, have no legal effect and never have had legal effect:
- *clause 5* enables the High Court to continue to hear, or rehear, all, or any part of, affected applications, in order to consider and determine how the amendments affect those applications:
- *clause 6* ensures that a person is not entitled to compensation of any kind on account of the operation of the amendments.

## Part 2

### Aspects of law altered by CMT Amendment Act

*Clause 12* inserts *new sections 59A and 59B*.

*New section 59A* sets out descriptions of the aspects of law that are altered by the Bill.

*New section 59B* includes references to parts of decisions made by the senior courts or the Crown interpreting the test applying to an application for customary marine title under the principal Act.



*Hon Paul Goldsmith*

# **Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill**

Government Bill

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## Preamble

In 2023, in *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252, the Court of Appeal interpreted provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 about the requirements for recognition of customary marine title. The Court’s interpretation of those provisions changed the effect that Parliament intends them to have, and materially reduced those requirements (for example, that an applicant group must prove exclusive use and occupation of a specified area from the start to the end of the applicable period without substantial interruption). Amendments to those provisions are needed to ensure that they have the effect that Parliament intends. The enactment of this legislation makes those amendments: 5  
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### The Parliament of New Zealand therefore enacts as follows:

- 1 Title** 15  
This Act is the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act **2024**.
- 2 Commencement**  
This Act comes into force on the day after Royal assent.

- |   |  |    |
|---|--|----|
| <b>Part 1</b>   |  |    |
| <b>Amendments to Marine and Coastal Area (Takutai Moana) Act 2011</b> |  |    |
| <b>3</b>  | <b>Principal Act</b><br>This Part amends the Marine and Coastal Area (Takutai Moana) Act 2011. |    |
| <b>4</b>  | <b>Preamble amended</b>  |    |
| (1)   | In the Preamble, before recital (1), insert:<br><i>Background to Act as enacted</i>            | 25 |
| (2)   | In the Preamble, after recital (4), insert:  |    |

*Background to amendments made by CMT Amendment Act*

- (5) In 2023, in *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252, the Court of Appeal interpreted provisions of this Act about the requirements for recognition of customary marine title. The Court’s interpretation of those provisions changed the effect that Parliament intends them to have, and materially reduced those requirements (for example, that an applicant group must prove exclusive use and occupation of a specified area from the start to the end of the applicable period without substantial interruption). Amendments to those provisions are needed to ensure that they have the effect that Parliament intends. The enactment of the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act **2024** makes those amendments:

**5 Section 9 amended (Interpretation)**

In section 9(1), insert in their appropriate alphabetical order:

**applicable period**, for a determination of whether customary marine title exists in a specified area of the common marine and coastal area (*see* sections **57A**, **57B**, 58, 59, 95, 98, and 106), means the period specified (as applicable)—

- (a) in section 58(1)(b)(i) (from 1840 to the present day); or
- (b) in section 58(3)(c)(ii) and for the purposes of section 58(1)(b)(ii) (from 1840 to the time of a customary transfer); or
- (c) in section 58(3)(d)(ii) and for the purposes of section 58(1)(b)(ii) (from the time of a customary transfer to the present day)

**CMT Amendment Act** means the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act **2024**

**CMT amendments** means this Act’s provisions as amended, inserted, or replaced by the CMT Amendment Act

**exclusive use and occupation** has the meaning given in **section 57A**

**substantial interruption** has the meaning given in **section 57B**

**6 New sections 9A to 9C inserted**

Before section 10, insert:

**9A Customary marine title amendments: purposes, application, and overriding effect**

*Purposes*

- (1) The purposes of the CMT amendments (for example, sections **57A**, **57B**, 58, 59, and 106) are—
- (a) to define the applicable requirements for recognising customary marine title (namely, requirements for, and for proof of, exclusive use and occu-

	<p>pation of a specified area from the start to the end of the applicable period without substantial interruption); and</p> <p>(b) in particular, to alter aspects of the law that are—</p> <p>(i) specified in <b>section 59A</b>; and</p> <p>(ii) expressed, for example, in the parts of the judgments specified in <b>section 59B</b>.</p>	5
	<p><i>Application</i></p> <p>(2) The customary marine title, agreements, and orders to which the CMT amendments apply are specified in <b>Part 1 of Schedule 1AA</b>.</p>	
	<p><i>Effect overrides other law</i></p> <p>(3) The CMT amendments prevail over any other law.</p> <p>(4) In particular, any <b>other law</b>, for the purposes of <b>subsection (3)</b>, includes any law in all or any of the following:</p> <p>(a) any provision of this Act that is not a CMT amendment, for example, sections 4, 6, and 7 of this Act:</p> <p>(b) without limitation, the reasoning and conclusions in the parts of the judgments specified in <b>section 59B</b>.</p> <p>(5) <b>Subsection (4)</b> and <b>section 59B</b> (including the parts of the judgments specified in that section) do not limit the generality of <b>subsection (3)</b>.</p>	10
<b>9B</b>	<b>Customary marine title amendments: interpretation</b>	20
	<p><i>Provisions to which duty applies</i></p> <p>(1) This section applies to—</p> <p>(a) the CMT amendments; and</p> <p>(b) in particular, sections <b>57A</b>, <b>57B</b>, 58, 59, and 106 of this Act.</p>	
	<p><i>Duty to interpret provisions to promote their purposes, application, and effect</i></p> <p>(2) A decision maker (including the Court) must interpret the CMT amendments in a way that promotes their purposes, application, and effect (as stated in <b>section 9A</b>).</p>	25
	<p><i>Relationship with other sections</i></p> <p>(3) Under <b>section 9A(3) and (4)(a)</b>, this section prevails over—</p> <p>(a) section 4 (purpose):</p> <p>(b) section 6 (customary interests restored):</p> <p>(c) section 7 (Treaty of Waitangi (te Tiriti o Waitangi)).</p>	30
<b>9C</b>	<b>Transitional, savings, and related provisions</b>	
	The transitional, savings, and related provisions set out in <b>Schedule 1AA</b> have effect according to their terms.	35

7 New sections 57A and 57B and cross-heading inserted

In Part 3, after the subpart 3 heading, insert:

<i>Interpretation matters</i>	
<b>57A Meaning of exclusive use and occupation</b>	
(1) This section applies to a group or its members that is or are—	5
(a) an applicant group; or	
(b) making a customary transfer; or	
(c) a group or members of a group to whom a customary transfer was made.	
(2) This section defines whether, for the purposes of this Act, the group or its members has, had, or have exclusive use and occupation of a specified area of the common marine and coastal area from the start to the end of the applicable period without substantial interruption.	10
(3) The group or its members has, had, or have <b>exclusive use and occupation</b> of the area from the start to the end of the applicable period without substantial interruption only if the group or its members had both the intention and the ability to control the area, to the exclusion of others, from the start to the end of the applicable period without substantial interruption.	15
<b>57B Meaning of substantial interruption</b>	
In this Act, <b>substantial interruption</b> , to a group's exclusive use and occupation of a specified area of the common marine and coastal area,—	20
(a) means any 1 or more substantial interruptions to 1 or both of the following:	
(i) the group's use and occupation of that area:	
(ii) the exclusivity of the group's use and occupation of that area:	
(b) requires a decision maker (including the Court) to consider the nature, extent, duration, and cause of any interruption to the group's exclusive use and occupation of the specified area:	25
(c) can be caused (without limiting <b>paragraph (a)</b> ) by an activity (including, without limitation, an activity that is or includes fishing or navigation) carried out—	30
(i) wholly or partly in that area; and	
(ii) by a person, or persons, who did not belong to the group; and	
(iii) with or without any authorisation by or under legislation:	
(d) can be caused (without limiting <b>paragraph (a)</b> ) by changes to the use and occupation, or to an activity carried out,—	35
(i) wholly or partly in that area; and	
(ii) by a person, or persons, who did belong to the group; and	

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(iii) with or without any authorisation by or under legislation:</li> <li>(e) can be caused (without limiting <b>paragraphs (a) to (d)</b>) by the combined or cumulative effects of, or of changes to, 2 or more activities of the kind described in <b>paragraph (c) or (d)</b>:</li> <li>(f) has not occurred (despite <b>paragraphs (a) to (e)</b>) only because, in relation to that area, an activity is carried out wholly or partly in that area under a resource consent granted at any time between— <ul style="list-style-type: none"> <li>(i) the commencement of this Act; and</li> <li>(ii) the effective date.</li> </ul> </li> </ul>	5
<b>8 Section 58 amended (Customary marine title)</b>	10
(1) After section 58(1), insert:	
<ul style="list-style-type: none"> <li>(1A) In considering whether the requirements of subsection (1)(b)(i), (3)(c)(ii), or (3)(d)(ii) are met, no inference may be drawn about all or any of the geographic scope, continuity, or exclusivity of a group's use and occupation of a specified area in a period unless that inference— <ul style="list-style-type: none"> <li>(a) is based on evidence of a physical activity, or of a use, related to natural and physical resources (within the meaning of section 2(1) of the Resource Management Act 1991) in all or part of the area, by the group in that period; and</li> <li>(b) is not based on a spiritual or cultural association with all or part of the area unless that association is manifested in a physical activity, or in a use, related to natural and physical resources (within the meaning stated in <b>paragraph (a)</b>) in all or part of the area, by the group in that period.</li> </ul> </li> </ul>	15
(2) Repeal section 58(2).	
(3) Replace section 58(4) with:	25
(4) Customary marine title does not exist if that title is extinguished as a matter of law.	
<ul style="list-style-type: none"> <li>(5) For the purposes of <b>subsection (4)</b>, customary marine title is extinguished as a matter of law if, in relation to a specified area of the common marine and coastal area,— <ul style="list-style-type: none"> <li>(a) legal title was vested, before 17 January 2005, in a legal person or a group, other than the applicant group, by any means, including— <ul style="list-style-type: none"> <li>(i) Crown grants made by or under any lawful authority, including ordinances, statutes, or the prerogative; or</li> <li>(ii) the common law; or</li> <li>(iii) a statutory vesting; or</li> <li>(iv) administrative action; or</li> </ul> </li> <li>(b) an interest has been established that is legally inconsistent with exclusive use and occupation of the area by the applicant group.</li> </ul> </li> </ul>	30
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- (6) **Subsection (5)** applies even if the person is the Crown or a local authority and is, under section 11(3), divested of that title as owner, because—
- (a) section 11(3) does not revive customary interests in any part of the common marine and coastal area that existed before any vesting of title, or establishment of an interest, divested under section 11(3); and 5
  - (b) section 6 only restores and gives legal expression in accordance with this Act to customary interests in the common marine and coastal area that were extinguished by the Foreshore and Seabed Act 2004.
- (7) **Subsection (4)**—
- (a) does not limit **section 57B** (which sets out the requirements for determining whether substantial interruption has occurred to an applicant group’s exclusive use and occupation); and 10
  - (b) is not limited by **subsections (5) and (6)** (which state some ways, but not the only ways, that customary marine title is extinguished as a matter of law for the purposes of **subsection (4)**). 15

**9 Section 59 amended (Matters relevant to whether customary marine title exists)**

- (1) Replace section 59(1) and (2) with:
- (1) Matters to which a decision maker (including the Court) must have particular regard in determining whether customary marine title exists in a specified area of the common marine and coastal area include whether the applicant group or any of its members— 20
- (a) own land abutting all or part of the specified area and have done so, without substantial interruption, for all of the applicable period: 25
  - (b) exercise non-commercial customary fishing rights in all or part of the specified area, and have done so for all of the applicable period: 25
  - (c) exercise non-commercial customary fishing rights in named fishing grounds in all or part of the specified area, and have done so for all of the applicable period: 30
  - (d) have marae near all or part of the specified area. 30
- (2) To avoid doubt, section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 does not limit **subsection (1)(b)**.
- (2A) In complying with **subsection (1)(a), (b), or (c)**, the decision maker must also have particular regard to the extent to which there has been such ownership, or such exercise of fishing rights in the specified area, for all of the applicable period. 35
- (2) In section 59(3), after “does not, of itself, preclude the applicant group from establishing the existence of customary marine title”, insert “, unless that use causes or contributes to substantial interruption under **section 57B**”.

- (3) In section 59(4), replace “subsection (1)(a)(i)” with “**subsection (1)(a)**”.

**10 Section 106 amended (Burden of proof)**

Replace section 106(2) with:

- (2) In the case of an application for the recognition of customary marine title in a specified area of the common marine and coastal area, the applicant group must prove that the group—
- (a) holds the specified area in accordance with tikanga, as required by section 58(1)(a); and
  - (b) had exclusive use and occupation of the specified area from the start to the end of the applicable period without substantial interruption, as required by section 58(1)(b)(i) or (ii).

**11 New Schedule 1AA inserted**

Before Schedule 1, insert the **Schedule 1AA** set out in the **Schedule** of this Act.

**Part 2**

**Aspects of law altered by CMT Amendment Act**

**12 New sections 59A and 59B inserted**

After section 59, insert:

**59A Outline of aspects of law altered by CMT Amendment Act**

The altered aspects of the law referred to in **section 9A(1)(b)** include alterations made by provisions that—

- (a) define a group’s exclusive use and occupation of a specified area of the common marine and coastal area from the start to the end of the applicable period:
- (b) require the group’s use and occupation of the area to be exclusive in that the group has had both the intention and the ability to control that area, to the exclusion of others, from the start to the end of the applicable period:
- (c) require that no substantial interruption has occurred to the group’s exclusive use and occupation of that area from the start to the end of the applicable period:
- (d) define substantial interruption to the group’s exclusive use and occupation of that area as meaning any 1 or more substantial interruptions to 1 or both of the following:
  - (i) the group’s use and occupation of that area:
  - (ii) the exclusivity of the group’s use and occupation of that area:



- (e) clarify how substantial interruption to the group’s exclusive use and occupation of that area can be caused, and when it has not occurred:
- (f) clarify what inferences are permitted, and require particular regard to be had to specified matters, in determining whether the group has had exclusive use and occupation of that area from the start to the end of the applicable period without substantial interruption: 5
- (g) clarify when customary marine title is extinguished as a matter of law by a vesting of a title as owner to any part of the common marine and coastal area (for example, to the bed of a navigable river, to the extent that the bed of the river is any part of that area): 10
- (h) clarify what the group must prove in an application for the recognition of customary marine title in that area.

**59B Parts of judgments referred to in section 9A**

The parts of judgments referred to in **section 9A(1)(b) and (4)(b)** as being altered and overridden include— 15

- (a) *Colin Francis Reeder and Ngā Pōtiki ā Tamapāhore Trust on behalf of Ngā Pōtiki* [2021] NZHC 2726, [2022] 3 NZLR 304 (12 October 2021) at [29]–[41], relating to the meaning of exclusive use and occupation from 1840 to the present day:
- (b) *Ngāti Pāhauwera and others* [2021] NZHC 3599 (22 December 2021) at [178]–[180] and [462], relating to the meaning of exclusive use and occupation in accordance with tikanga: 20
- (c) *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252 (18 October 2023) at [109], [416], [426]–[430], [434], and [435]–[437], relating to the meaning of exclusive use and occupation without substantial interruption (section 58(1)(b)), including where the burden of proof lies (under section 106): 25
- (d) *Ngāi Tūmapūhia-ā-Rangi Hapū Inc on behalf of Ngā Uri o Ngāi Tūmapūhia ā Rangi Hapū and others* [2024] NZHC 309 (26 February 2024) at [88]–[93], [103], [107] and [108], [192] and [193], and [620]–[625], relating to the meaning of exclusive use and occupation without substantial interruption, the relevance of tikanga to that test, and including the burden of proof and the requirement for continuity: 30
- (e) *Ngā Hapū o Tokomaru Ākau and others* [2024] NZHC 682 (25 March 2024; reissued redacted version 1 May 2024) at [100]–[104], [105]–[108], and [393]–[395], relating to the meaning of use and occupation, exclusivity, substantial interruption, and the burden of proof under section 106: 35

- (f) *Muriwai Maggie Jones on behalf of Ngāi Tai Iwi and the Uri of Ngāi Tai Iwi* [2024] NZHC 1373 (28 May 2024; reissued 29 May 2024) at [112] and [116], relating to the scope of substantial interruption and continuity.

**Schedule**  
**New Schedule 1AA inserted into**  
**Marine and Coastal Area (Takutai Moana) Act 2011**

s 11

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

ss 9A, 9C

**Part 1**  
**Provisions relating to CMT Amendment Act**

**1 Definitions**

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In this Part, unless the context otherwise requires,—

**announcement time** means midnight on 25 July 2024

**commencement** means the commencement of the CMT Amendment Act

**CMT Amendment Act** has the meaning given in section 9(1)

**CMT amendments** has the meaning given in section 9(1)

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**CMT decision** means a decision relating to whether customary marine title exists in a specified area of the common marine and coastal area and that is—

(a) a decision made by the responsible Minister on behalf of the Crown relating to a notice of intention (*see* section 95)—

(i) to seek an agreement recognising customary marine title; and

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(ii) given by an applicant group; or

(b) a decision made by the Court (as defined in this clause) relating to an application (*see* sections 98 and 100)—

(i) for a recognition order recognising customary marine title; and

(ii) made by an applicant group

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**decision made by the Court**, for the purposes of **paragraph (b)** of the definition of CMT decision, includes, but is not limited to, each of the following done, made, or issued by or on behalf of the Court:

(a) an interlocutory decision (for example, a direction, minute, or order) of any kind:

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(b) any consideration or any hearing, of any kind, in part or in full, of 1 or both of—

(i) an interlocutory matter:

(ii) a substantive matter:

(c)	a substantive decision (for example, a direction, minute, or order) of any kind	
	<b>interim period</b> means the period that—	
(a)	starts at the announcement time; and	
(b)	ends on the commencement	5
	<b>old law</b> means the following (as in force before the announcement time):	
(a)	subpart 3 (customary marine title) of Part 3 (customary interests):	
(b)	provisions of this Act that relate to that subpart (for example, related definitions in section 9 and related provisions in section 106 (burden of proof)).	10
<b>2</b>	<b>CMT amendments do not apply to CMT decision made at announcement time</b>	
	<i>Main rule</i>	
(1)	The CMT amendments do not apply to or affect a CMT decision made—	
(a)	before or at the announcement time; and	15
(b)	under the old law.	
(2)	The CMT amendments also do not apply to or affect the following, made before the announcement time, that give effect to a CMT decision of a kind specified in <b>subclause (1)</b> :	
(a)	an agreement made and entered into under section 95 that recognises and provides for customary marine title:	20
(b)	a customary marine title order made under section 98(1) that recognises customary marine title.	
	<i>Related interlocutory applications, appeals, or rehearings</i>	
(3)	The old law continues to apply for any interlocutory application, appeal, or rehearing related to a CMT decision of a kind specified in <b>subclause (1)</b> .	25
	<i>If CMT decision not given effect to in agreement or order</i>	
(4)	This clause applies even if, at the announcement time, a CMT decision of a kind specified in <b>subclause (1)</b> is not given effect to in—	
(a)	an agreement made and entered into under section 95 that recognises and provides for customary marine title; or	30
(b)	a customary marine title order made under section 98(1) that recognises customary marine title.	
(5)	A CMT decision to which <b>subclause (4)</b> applies may, after the announcement time, be given effect to in an agreement or an order specified in <b>subclause (4)(a) or (b)</b> .	35

**3 CMT amendments apply to CMT decision made after announcement time**

*Main rule*

- (1) The CMT amendments apply to a CMT decision made after the announcement time.

*Related interlocutory applications, appeals, or rehearings*

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- (2) The CMT amendments apply for any interlocutory application, appeal, or rehearing related to a CMT decision of a kind specified in **subclause (1)**.

*Effect of consideration, without decision, at announcement time*

- (3) This clause applies even if, at the announcement time,—

- (a) the Crown has considered, but has not decided, whether the applicant group has satisfied the Crown that the group has satisfied the requirements of the old law; or

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- (b) the Court has considered, but has not decided, whether the applicant group has satisfied the Court that the group meets the requirements of the old law.

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**4 Certain CMT decisions made in interim period, and related agreements and orders made, have no legal effect and never have had legal effect**

*CMT decisions based on old law (as in force in interim period)*

- (1) A CMT decision must be taken to have no legal effect, and never to have had legal effect, if it was made—

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- (a) in the interim period; and

- (b) in accordance with the old law (as in force in the interim period).

*Related agreements*

- (2) An agreement must be taken to have no legal effect, and never to have had legal effect,—

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- (a) if it was made and entered into—

- (i) in the interim period; and

- (ii) under section 95; and

- (b) to the extent that it gives effect to a CMT decision to which **subclause (1)** applies.

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*Related customary marine title orders*

- (3) A customary marine title order must be taken to have no legal effect, and never to have had legal effect, if it—

- (a) was made—

- (i) in the interim period; and

- (ii) under section 98(1); and

- (b) gives effect to a CMT decision to which **subclause (1)** applies.

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- 5 Court may continue to hear, or rehear, affected applications**
- Application to which clause applies*
- (1) This clause applies to an applicant group’s application for a recognition order for customary marine title if, at the announcement time, the Court has considered, but has not decided, whether the group has satisfied the Court that the group meets the requirements of the old law. 5
- Court may continue to hear, or rehear, all, or any part of, application*
- (2) The court may, after the commencement, and in a way that complies with **clause 3**,— 10
- (a) continue to hear or rehear, all, or any part of, the application; and
- (b) invite and consider related further submissions from all or any parties to, or other participants in, the application.
- 6 No entitlement to compensation**
- A person is not entitled to compensation of any kind on account of the operation of the CMT amendments. 15