

# Recognising customary rights

under the Marine and Coastal Area (Takutai Moana) Act 2011



MINISTRY OF  
**JUSTICE**  
*Tahiā o te Ture*

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## Purpose of this guide

This document has been developed to guide iwi, hapū and whānau through the steps needed to apply to have their customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). This document also aims to help all New Zealanders understand how customary rights are determined under the Act.

The guide outlines the purpose and intent of the Act, and what is meant by customary marine title and protected customary rights. It then outlines the two pathways available to applicant groups – applications to the High Court or direct engagement with the Crown. Funding is covered, and a glossary of terms is provided at the end of the guide.

# Background to the Marine and Coastal Area Act 2011

The Marine and Coastal Area (Takutai Moana) Act (the Act) came into force in April 2011. It acknowledges the importance of the marine and coastal area to all New Zealanders.

The Act sets out a framework to protect the interests of all New Zealanders in the marine and coastal area. Section 4 of the Act states that the purpose of the Act is to:

- establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand
- recognise the mana tuku iho exercised in the marine and coastal area by iwi, hapū and whānau as tangata moana
- provide for the exercise of customary interests in the common marine and coastal area
- acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).

Mana tuku iho is universally recognised by the Act. It is not something groups have to apply for.

The Act creates two areas: the marine and coastal area, and the common marine and coastal area.

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## Marine and coastal area

The marine and coastal area extends from mean high water springs (roughly the highest point washed by the tide) to 12 nautical miles offshore. It runs along the whole coastline of New Zealand, including off-shore islands.

## Common marine and coastal area

The common marine and coastal area is the marine and coastal area (see above), except for certain conservation areas and existing private titles. Private titles include any land that is owned by any person other than the Crown. It includes Māori customary land and Māori freehold land.

The Act creates a special status for the common marine and coastal area, meaning neither the Crown nor any other person can own it.

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## Public access

Existing legal public access to the common marine and coastal area is not affected by the Act. The Act guarantees the continuation of free legal public access in, on or over the common marine and coastal area. Anyone can continue to walk, swim, sail, kayak, fish or have a picnic in the common marine and coastal area. The Act also preserves and protects existing recreational fishing rights, navigation rights and all other existing uses.

Restrictions on public access in the common marine and coastal area continue to apply under other statutes. For example, coastal permits for occupation of part of the coastal marine area under the Resource Management Act 1991 can restrict access in order to protect the viability of a development or address risks to public health and safety.

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## Recognising customary interests

The Act provides for iwi, hapū and whānau to have their customary rights in the common marine and coastal area determined. This is called **customary marine title**. This interest in land does not allow the land to be sold or for the public to be excluded.

In order to prove customary marine title in a particular area, a group must have had exclusive use and occupation of the area since 1840 without substantial interruption, and have held the area in accordance with tikanga. Customary marine title gives certain rights under the Act. It is not possible to negotiate additional rights.

Iwi, hapū or whānau can also seek recognition of certain customary activities such as waka launching and gathering natural materials. These are called **protected customary rights**. The activities must have existed at 1840 and have been continually undertaken since then. Where protected customary rights are recognised they are exempt from resource consent requirements and coastal occupation charges. A resource consent cannot be granted if it is likely to have adverse effects that are more than minor on the exercise of a protected customary right.

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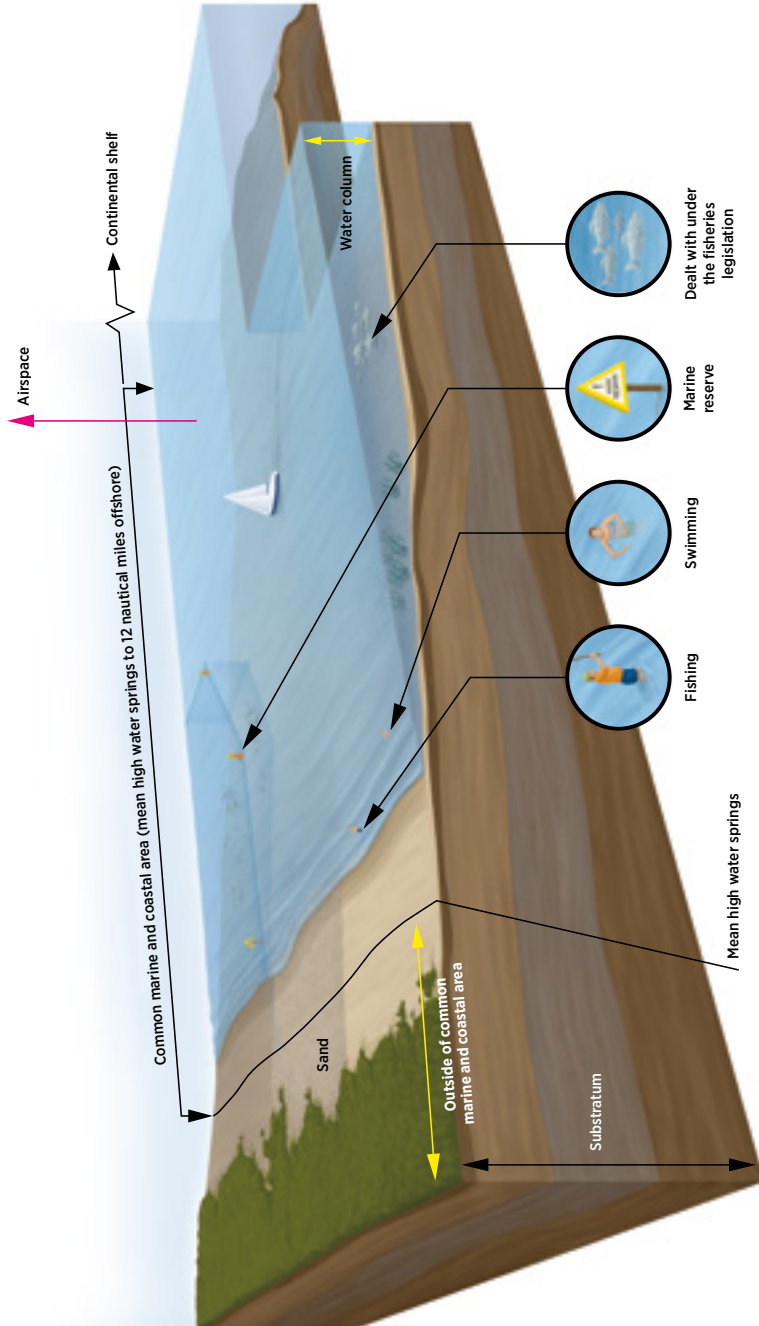
## Applying for customary rights recognition

There are two pathways for iwi, hapū or whānau to apply for recognition of their customary rights. They can apply to engage directly with the Crown or apply to the High Court. The same legal tests apply and the same package of rights is available under both pathways. Groups have until 3 April 2017 to apply for recognition of their customary interests under either pathway.

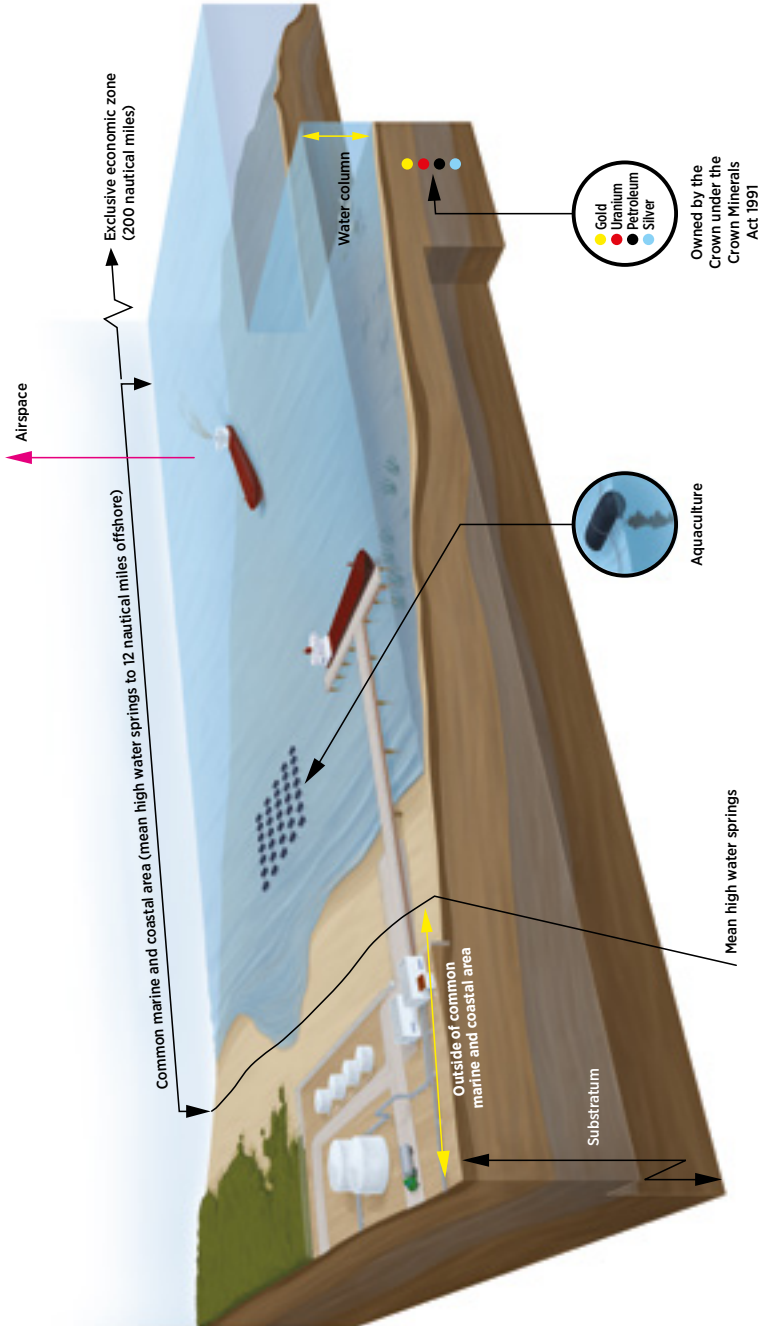
The Marine and Coastal Area team within the Ministry of Justice administers the Act and engages with groups applying to the Crown for recognition of their customary interests.

This guide is current as at August 2014. To date there have been no decisions made on the existence of protected customary rights or customary marine title by either the Crown or the High Court. This guide will be updated regularly as implementation of the Act progresses.

# EXAMPLES OF RECREATIONAL ACTIVITIES IN THE COMMON MARINE AND COASTAL AREA



# EXAMPLES OF COMMERCIAL ACTIVITIES IN THE COMMON MARINE AND COASTAL AREA



# Customary marine title and protected customary rights

## TWO PATHWAYS, SAME OUTCOME

The Act provides two ways for iwi, hapū or whānau to apply to have their customary rights recognised under the Act:

1. Apply directly to the Crown to have a customary marine title or a protected customary right recognised by agreement with the Crown.
2. Apply through the High Court to have a customary marine title or a protected customary right recognised by an order of the High Court.

The Act sets out tests for customary marine title and protected customary rights. For the rights to be recognised, the tests have to be met. The tests are the same whether the application has been made to the Crown or the High Court.

All applications, whether to the Crown or the High Court, must be filed by 3 April 2017.

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## Customary marine title

Customary marine title recognises the customary relationship of an iwi, hapū or whānau with the common marine and coastal area. Customary marine title can't be sold. Free public access, fishing and other recreational activities are allowed to continue in customary title areas.

Customary marine title gives applicant groups the ability, with some exceptions, to say yes or no to activities that need resource consents or permits in the customary title area. All of the rights that come with customary marine title are shown in the table on the following pages.

For customary marine title to be recognised over an area the applicant group must demonstrate it holds part of the common marine and coastal area in accordance with tikanga and has exclusively used and occupied the area without substantial interruption since 1840, or since the time of a customary transfer.



When looking at whether customary marine title exists, the Crown and the High Court can take into account:

- who owns the land right behind the area (abutting land)
- non-commercial customary fishing rights in the area.

The Act states that if the area has been used for fishing or navigation this does not necessarily stop an applicant group from meeting the test for customary marine title.

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## Protected customary rights

Protected customary rights can be granted for a customary activity like collecting hāngi stones or launching waka in the common marine and coastal area.

A protected customary right lets the applicant group carry out the protected activity without needing a resource consent. Local authorities can't issue resource consents that would have adverse effects that are more than minor on a protected activity, unless the applicant group agrees.

For protected customary rights to be recognised, an applicant group must prove it has exercised a certain customary activity in accordance with tikanga since 1840 and continues to exercise the activity, in one way or another.

A protected customary right does not include an activity that:

- is regulated under the Fisheries Act 1996
- is a commercial aquaculture activity
- involves the exercise of any commercial or non-commercial Māori fishing right
- relates to wildlife or marine mammals
- is based on a spiritual or cultural association, unless that association is shown by a physical activity or use of resources.

Note that non-commercial aquaculture, including enhancement activities, and whitebaiting can potentially be protected customary rights.

## EFFECT OF CUSTOMARY MARINE TITLE (CMT) RECOGNITION

Instrument	Effect
RMA permission right	CMT group may give or withhold permission for a new activity that is carried out under a resource consent to the extent it is carried out in the CMT area. Some activities are excluded from this permission right. These are called 'accommodated activities'. The accommodated activities are set out in section 64 of the Act.
Conservation permission right	<p>CMT group can give or withhold permission for applications for specified conservation activities in a CMT area. These activities are:</p> <ul style="list-style-type: none"> <li>• declaring/extending marine reserves</li> <li>• declaring/extending a conservation protected area</li> <li>• applications for a concession.</li> </ul> <p>However, the Crown may declare or extend an existing conservation protected area or marine reserve without the permission of the CMT group if the project is nationally significant. The decision maker must have regard to the views of the CMT group and other matters when making this decision.</p>
Marine Mammal Watching Permits	The Crown must notify the CMT group of any applications for Marine Mammal Watching Permits in a CMT area and recognise and provide for their views.
Coastal Policy Statements	The Crown must seek and consider the views of CMT groups on any change, review or revocation of a Coastal Policy Statement.
Wāhi tapu protection right	CMT group can seek recognition of a wāhi tapu or wāhi tapu area (which allows prohibitions or restrictions on access). The wāhi tapu may be recognised if there is evidence to establish the connection of the group with the wāhi tapu and access prohibitions or restrictions can be put in place if the evidence establishes this is needed to protect the wāhi tapu.
Ownership of minerals	CMT groups gain ownership of minerals other than petroleum, gold, silver and uranium within a CMT area. Ngai Tahu ownership of pounamu is not affected by the Act.

Instrument	Effect
Ownership of taonga tūturu	CMT groups gain interim ownership of taonga tūturu found in CMT areas. Any competing claims for ownership must be lodged within six months and a decision on ownership is determined under the Protected Objects Act 1975. If no competing claims are lodged the CMT group becomes the owner.
Planning document	CMT groups can prepare a planning document that identifies issues, objectives and policies for the regulation and management of resources within CMT areas. The planning document may include matters that may be regulated under conservation legislation, the Heritage New Zealand Pouhere Taonga Act 2014, the Local Government Act 2002 and the Resource Management Act 1991. The Marine and Coastal Area Act specifies the weight that must be given to the matters in a planning document when decisions are being made under each of these statutes.

# How to apply to engage directly with the Crown

To determine whether the tests for protected customary rights and customary marine title have been met, the Crown works through three stages: pre-engagement (including preliminary appraisal), engagement and finalisation.

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## 1. Pre-engagement

The Act describes an applicant group as 'one or more iwi, hapū or whānau'.

An applicant group needs to appoint a party to represent it. This party makes the application, liaises with the Marine and Coastal Area team in the Ministry of Justice and manages the applicant's side of the engagement process. This representative can be a person or a legal entity (such as a runanga or trust). If the latter, it will be necessary to identify a formal contact point for the Ministry of Justice, such as a chairperson, secretary or lawyer.

### **GROUP APPLIES TO ENGAGE WITH CROWN**

An application form is available on our website at [justice.govt.nz](http://justice.govt.nz)

The application form needs to:

- identify the iwi, hapū or whānau (the applicant group)
- identify the representative(s) acting on behalf of the applicant group with details of how they were appointed
- provide a detailed description of the area being applied for in the case of customary marine title
- in the case of protected customary rights, describe any customary activity, use or practice for which protection is sought and the location
- provide brief evidence in support of the customary marine title or protected customary rights application meeting the tests in the Act
- indicate whether other groups claim to have customary interests in the application area and the outcome of discussions with those groups to reduce overlaps or apply for joint exclusivity
- provide information on the level and extent of third-party use.

The final deadline for filing applications is 3 April 2017. The research in support of these applications, and their outcomes, does not have to be finished by this date.

Applications should be addressed to the Minister:

Minister for Treaty of Waitangi Negotiations  
Parliament Buildings  
Private Bag 18041  
Wellington 6160  
New Zealand

Once a completed application form has been received the Marine and Coastal Area team will contact the applicant group and notify them that they are considered an applicant group under the Act.

### **CROWN NOTIFIES RELEVANT LOCAL AUTHORITIES AND OTHER PARTIES (UNDER SECTION 62 OF THE ACT)**

Once all required information is received the Marine and Coastal Area team writes to the regional and territorial local authorities (district and regional councils) for the area, the Department of Conservation, Environmental Protection Authority, and the Ministry of Business, Innovation and Employment informing them of the application. From that time, anyone who applies for a resource consent or permit in the area must tell the applicant group, and seek its views, under section 62(2) of the Act.

Information about applications is made publicly available on the Ministry of Justice website – [justice.govt.nz/treaty-settlements/office-of-treaty-settlements/marine-and-coastal-area-takutai-moana](http://justice.govt.nz/treaty-settlements/office-of-treaty-settlements/marine-and-coastal-area-takutai-moana)

### **PRELIMINARY APPRAISAL**

The next thing the Marine and Coastal Area team does is undertake a preliminary appraisal. This involves some basic research about the area to help the Minister decide whether and when to engage with an applicant group.

Among other things, the preliminary appraisal assesses whether:

- the applicant group appears to have been located in the surrounding area since 1840 (this could be indicated by ownership of adjacent land and local marae, pā or other housing close to the coast)
- evidence is available to support the applicant group's use of the area since 1840, including customary fishing grounds, the presence of culturally

important areas such as wāhi tapu and urupa and evidence of other tikanga-based activities practised by the group

- there is anything in the application area that could be an obvious impediment to the tests being met.

The applicant group is given a draft of the preliminary appraisal and asked to comment on it.

## **MINISTER DECIDES WHETHER OR NOT TO ENGAGE**

The preliminary appraisal and the applicant group's comments on it are given to the Minister. The Minister considers these when deciding whether or not to engage. Under the Act it is up to the Minister to decide whether to engage with a group or not.

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## **2. Engagement**

If the Minister decides to engage with an applicant group, the Minister writes to them outlining the next steps. If the Minister decides not to engage with an applicant group, the Minister writes to them explaining why the Minister has decided not to engage, and gives possible further options (like applying to the High Court).

## **MARINE AND COASTAL AREA TEAM PREPARES TERMS OF ENGAGEMENT**

If the Minister decides to engage with an applicant group, the Marine and Coastal Area team writes a Terms of Engagement with the applicant group. The Terms of Engagement provides background information, defines the terms used and sets out the steps in the engagement process. The engagement process includes the Marine and Coastal Area team and the applicant jointly:

- gathering evidence to determine whether the group meets the tests in the Act
- drafting a protected customary rights recognition agreement and/or customary marine title recognition agreement
- developing the structure and processes for a post-recognition governance entity (PRGE) to administer the protected customary rights/customary marine title agreement
- developing the process for ratifying the protected customary rights recognition agreement/customary marine title recognition agreement and the PRGE
- identifying a process for signing the recognition agreement.

At this stage the applicant group seeks a formal appointment from the iwi, hapū or whānau in whose name the application has been brought. This appointment process needs to show that the iwi, hapū or whānau appoint the applicant group to apply for and hold a protected customary rights or customary marine title agreement on their behalf. More detail is provided below.

Once the Marine and Coastal Area team and the applicant group sign the Terms of Engagement, the applicant group and the Crown formally commence engagement on the application.

### **APPLICANT GROUP SEEKS FORMAL APPOINTMENT FROM THE IWI, HAPŪ OR WHĀNAU IT REPRESENTS**

Applicant groups are expected to formally seek or confirm an appointment from the iwi, hapū or whānau in whose name the application has been brought.

Tikanga and circumstances will determine the exact appointment process for each group. For an appointment to be recognised, the Marine and Coastal Area team will assess whether the appointment process is fair and honest and achieves some of the following outcomes:

- provides enough public notice to members that an appointment is being sought and:
  - notices are advertised so as to inform as many of the applicant group's members as possible
  - notices have event times and locations that allow the maximum number of members to attend
- provided enough information to members about the purpose of the appointment, especially:
  - a clearly stated purpose (which is to apply for and hold a protected customary rights recognition agreement or enter into a customary marine title agreement, for the purposes of section 95 of the Act)
  - gives members the time to consider the information and make their views known by:
    - having clearly stated issues that need to be discussed
    - providing the chance to discuss and debate these issues
- gives members the chance to make decisions together
- for larger groups, makes decisions by giving participants the chance to vote and the percentage of support was not too low.

The Minister of Māori Affairs and the Minister for Treaty of Waitangi Negotiations provide written confirmation of an appointment once the applicant group has consulted its members.

### **Handling challenges to an application or appointment**

If other groups challenge an application or appointment then the Marine and Coastal Area team will, among other things:

- recheck the information supplied in the original application
- recheck the appointment process outcomes and ensure that:
  - the applicant group is representative of and accountable to the iwi, hapū or whānau linked to the common marine and coastal area in the application
  - the applicant group is appointed by the iwi, hapū or whānau to apply for and hold a protected customary rights recognition agreement, or enter into a customary marine title agreement on behalf of the applicant group, for the purposes of section 95 of the Act
  - the appointment process is fair, open and transparent.

A challenge to an appointment is not by itself enough to prevent an application being processed. Such challenges can delay the Minister's decision about whether and when to formally engage as the Crown determines whether the challenge has merit.

If an iwi, hapū or whānau wants to challenge the appointment or application of another group they can approach that group, the Marine and Coastal Area team or the Minister to discuss their concerns. The Marine and Coastal Area team will work through their concerns with them. This may include sharing relevant historical and contemporary material and reports with the group.

## **RESEARCH**

Before entering an agreement with an applicant group for protected customary rights or customary marine title, the Crown must be satisfied that the tests set out in the Act are met. The Minister determines if the tests are met on the basis of comprehensive information provided to him by officials, the affidavits presented by the applicant group and information provided by the general public (through a third-party enquiry).

Information provided by the evidence must cover the use and occupation of the common marine and coastal area and the relevant tikanga. Historical and contemporary information about the group's use of the area is gathered by the



applicant group and combined with research into public sources undertaken by the Crown and information from third parties.

All of the information collected is subject to the Official Information Act 1982. It may be made public following a request under the Official Information Act, to enable affected groups to participate effectively in the investigation of protected customary rights or customary marine title or to enhance the transparency of decision making under the Marine and Coastal Area (Takutai Moana) Act. There may be grounds for withholding certain information – as provided for in the Official Information Act – but these reasons may be outweighed by other considerations that render it desirable, in the public interest, to make the information available, including an interest in having a transparent investigation into rights and the need for third parties to be able to participate effectively in the enquiry.

### **THIRD-PARTY ENQUIRY IDENTIFIES ALL EXISTING RIGHTS AND INTERESTS IN THE COMMON MARINE AND COASTAL AREA**

A third-party enquiry is essential for identifying all existing rights and interests in the common marine and coastal area, so that the Crown can ensure it is protecting the rights and interests of all New Zealanders.

The Marine and Coastal Area team coordinates a third-party enquiry as part of every engagement. The Marine and Coastal Area team invites other groups to submit in writing their interests in the common marine and coastal area covered by an application (including neighbouring iwi, hapū or whānau, owners of abutting properties, community or environmental groups, the Fish and Game Council, and district or regional councils). Copies of all submissions are provided to the applicant group.

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## **3. Finalisation**

If the Minister is satisfied there is a legal basis for recognising a customary marine title or protected customary right, they will write to the applicant group agreeing to recognise the right(s) in the form of a recognition agreement.

If the Minister is not satisfied there is a legal basis for recognising a customary marine title or protected customary right, they will write to the applicant group giving reasons why the Crown could not agree to recognise the interests sought, and outlining possible next steps.

## **DRAFT RECOGNITION AGREEMENT DEVELOPED**

The recognition agreement defines the contents of the protected customary right or customary marine title. Most of the information needed for the recognition agreement will have already been collected by the applicant group and the Marine and Coastal Area team.

The Marine and Coastal Area team will develop a recognition agreement and give it to the applicant group for comment.

## **APPLICANT GROUP RATIFIES THE DRAFT RECOGNITION AGREEMENT**

The Crown needs to be sure that the members of the applicant group agree with the draft recognition agreement and authorise their representative(s) to sign it. The members of the applicant group need to receive copies of the draft agreement and have time to discuss it and ask questions. They then need to vote on the draft agreement, either at hui or by postal ballot. This is called ratification.

For ratification to be recognised by the Crown, the applicant group must be able to show that the process is fair, open and transparent and:

- provides enough public notice to members that ratification is being sought
- provides enough information to members about the purpose of the ratification (which is to ratify a protected customary rights recognition agreement or customary marine title agreement, for the purposes of section 95 of the Act)
- gives members of the applicant group time to consider the text of the recognition agreement and make their views known.

If ratification is successful, the recognition agreement can be jointly signed by the Minister and the applicant group's appointed representative(s).

## **GIVING LEGAL EFFECT TO THE RECOGNITION AGREEMENT**

The Minister must give legal effect to the recognition agreement:

- For protected customary rights, the Minister seeks an Order in Council giving effect to the protected customary right recognition agreement in accordance with section 96 of the Act.
- For customary marine title, the Minister proposes for introduction to Parliament legislation giving effect to the recognition agreement in accordance with section 96 of the Act.

# How to apply to the High Court

The High Court has its own application process for obtaining recognition orders. More information about this can be found on the Marine and Coastal Area website ([justice.govt.nz/maca](http://justice.govt.nz/maca)) and in the High Court rules. When applying for a recognition order in the High Court, applicants have to meet the same tests as applicants who engage with the Crown. The rights that come with a successful application to the High Court are the same as for a recognition agreement with the Crown. Filing an application with the High Court will involve legal costs.

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## Applying to the High Court for a recognition order

The Act provides that a protected customary right or customary marine title relating to the common marine and coastal area can be recognised by an order of the High Court.

### WHEN DO APPLICATIONS NEED TO BE FILED BY?

Applications must be filed with the High Court by 3 April 2017. There is no date by when the court must make a finding.

### WHO CAN APPLY TO THE HIGH COURT?

Under the Act an applicant group is one or more iwi, hapū or whānau and includes a legal entity (whether corporate or unincorporated) or natural person appointed by the iwi, hapū or whānau to represent that applicant group.

### WHAT CAN AN APPLICANT APPLY FOR?

An applicant can apply to the High Court for an order recognising a protected customary right or customary marine title.

## WHEN CAN THE COURT MAKE AN ORDER?

The court can make an order for a protected customary right if it is satisfied that:

- the applicant group has exercised the right since 1840
- the applicant group continues to exercise the right in a particular part of the common marine and coastal area in accordance with tikanga (although it might have evolved over time)
- the right is not extinguished as a matter of law.

The court can make an order for customary marine title if it is satisfied that:

- the applicant group holds the specified area of the common marine and coastal area in accordance with tikanga
- the applicant group has, in relation to the specified area:
  - exclusively used and occupied it from 1840 to the present day without substantial interruption, or
  - received it, at any time after 1840, through a customary transfer in accordance with the Act.

The court can receive any oral or written statement, document or matter or information that it considers reliable as evidence, and can refer to the Māori Appellate Court or pūkenga (a court expert with knowledge and experience of tikanga) for opinion or advice on matters related to tikanga.

## MAKING AN APPLICATION

The authorised representative of the group should apply to the court using an originating application. The High Court rules set out how to prepare documents to be filed with the court. As this requires specific skills, we recommend that applicant groups contract a legal representative to help them develop an application and submit it to the High Court.

Specific sections of the Act also set out the requirements for applications to the High Court. Section 101 of the Act sets out the requirements for the contents of the application. An application for a recognition order must:

- state whether it is an application for recognition of a protected customary right or of customary marine title, or both
- if it is an application for recognition of a protected customary right, describe that customary right
- describe the applicant group

- identify the particular part of the common marine and coastal area the application is for
- state the grounds on which the application is made
- name a person to be the holder of the order as a representative of the applicant group
- specify contact details for the group and for the person named to hold the order
- be supported by an affidavit or affidavits that set out in full the basis on which the applicant group claims to be entitled to the recognition order
- contain any other information required by regulations made under section 118(1)(i) of the Act.

An affidavit is a written statement sworn or affirmed before a lawyer, court registrar or Justice of the Peace. The High Court rules set out the requirements for the content and form of affidavits.

The New Zealand Legislation website will have any updates on regulations under the Marine and Coastal Area Act: [legislation.govt.nz](http://legislation.govt.nz)

### **WHERE SHOULD APPLICATIONS BE FILED?**

Talk to your lawyer or nearest High Court registry about which registry to file your application in. Applications should usually be filed in the High Court registry nearest to the common marine and coastal area to which the application relates. Find the nearest High Court registry on the Ministry of Justice's website: [justice.govt.nz](http://justice.govt.nz)

### **WHAT WILL HAPPEN AFTER THE APPLICATION IS FILED?**

The court determines whether the requirements of section 101 of the Act (concerning the contents of the application) have been fulfilled.

## WHAT ELSE NEEDS TO BE DONE WITH APPLICATIONS?

### Service

Once the application is received and initially processed by the High Court, the applicant group must send the application to:

- the local council(s) in the area (it is possible that the proceeding will then come before the court for a case management conference)
- the Solicitor-General (Crown Law Office, PO Box 2858, Wellington 6140)
- any other person who the High Court considers is likely to be directly affected by the application.

### Public notice

The applicant group must give public notice of the application no later than 20 working days after filing the application. This is done by publishing a notice in a newspaper which circulates in the entire area likely to be affected by the application. The public notice needs to include at least the following information:

- the name of the applicant group and its description as an iwi, hapū or whānau
- a brief description of the application, including whether it is an application for recognition of a protected customary right or customary marine title or both
- a description of the particular common marine and coastal area to which the application relates
- the name of the person who is proposed as the holder of the order
- in the case of an application for recognition of a protected customary right, a description of the right
- a date for filing a notice of appearance in support of or in opposition to the application by interested people (such as a neighbouring group) who wishes to appear and be heard (this must not be less than 20 working days after the public notice is published)
- which High Court the notice of appearance needs to be filed in.

The court can ask for proof that the applicant group has publicly notified and served the application.

## WILL IT COST TO APPLY?

When an application is filed the applicant group must pay a filing fee to the High Court.

During the High Court process, the applicant group can also incur other costs such as public notice, court fees, hearing fees, lawyers' fees and personal expenses to attend court hearings.

## WHERE WILL HEARINGS TAKE PLACE?

At the moment the High Court in Wellington is managing most of the cases. No cases have been completed yet. Eventually applications will be managed by the High Courts in Auckland, Wellington and Christchurch. These are known as the sole High Court registries. If an application is filed in another High Court, the court file will be transferred to the appropriate sole High Court registry.

The table below shows each sole registry in bold, and the filing registries in their cluster.

<b>Auckland</b>	<b>Wellington</b>	<b>Christchurch</b>
Whangarei	Napier	Timaru
Rotorua	Palmerston North	Dunedin
Gisborne	Whanganui	Invercargill
New Plymouth	Nelson	Greymouth
Hamilton	Blenheim	
Tauranga	Masterton	

## WHAT HAPPENS WHEN THE HIGH COURT MAKES A FINDING?

If the court recognises a customary marine title or protected customary right the applicant must submit a draft order for approval by the registrar of the court. Requirements for draft orders are available on the New Zealand Legislation website: [legislation.govt.nz](http://legislation.govt.nz)

Staff at the filing registry will arrange for the order to be published, notified and registered.

# Funding

The government will contribute to the costs of engagement with the Crown or the High Court. Contact the Marine and Coastal Area team for more information.

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## Crown engagement

If the Minister decides to engage with the applicant group then funding is assessed during the development of the Terms of Engagement. Financial help is tailored to the individual circumstances of each group using matrices that take into account the type of rights applied for, the size of the applicant group and the size and complexity of the application area. Maximum amounts of financial help are available for specified costs tagged to milestones. It does not cover all costs.

In most cases, applicant groups are partly reimbursed for specified and reasonable costs (like legal fees, research, communications and travel). The Ministry of Justice pays costs in advance where an applicant group can demonstrate that their inability to pay affects their ability to complete their application. The applicant group must provide a quote for the costs for which they are seeking funding.

The Ministry of Justice authorises payments to applicants (or their suppliers) once invoices or receipts are provided to the Marine and Coastal Area team and a standard form is completed.

Applicants will not receive financial help if they apply in the High Court and through Crown engagement at the same time. Funding will not be provided to have a judge review the Crown's decision that the tests in the Act have not been met or to appeal the High Court's decision on applications under the Act.

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## High Court

Contact the Marine and Coastal Area team for more information.



# Glossary of terms

<b>Abutting land</b>	Land that borders the common marine and coastal area in which an applicant group is seeking to have customary rights recognised.
<b>Applicant</b>	One or more iwi, hapū or whānau groups that seek to have their protected customary rights or customary marine title recognised under Part 4 of the Act.
<b>Application</b>	Identifies the iwi, hapū or whānau (the applicant group) and representative(s) acting on behalf of the applicant group, including the representative's appointment details. Describes in detail the area being applied for and the customary interests for which recognition is sought.
<b>Appointment</b>	Process by which an iwi, hapū or whānau selects and appoints a representative to engage with the Crown to have a customary marine title or protected customary right recognised.
<b>Coastal Policy Statement</b>	A National Policy Statement under the Resource Management Act 1991 that guides local authorities in their day-to-day management of the coastal environment.
<b>Common marine and coastal area (CMCA)</b>	The marine and coastal area (see below), excluding existing private titles and certain conservation areas.
<b>Conservation area</b>	Any land or foreshore that is being held under the Conservation Act 1987 for conservation purposes, or land where an interest is held under the Conservation Act 1987 for conservation purposes.
<b>Conservation permission right</b>	The permission right that a customary marine title group may exercise under a customary marine title order or an agreement in relation to the conservation activities specified in section 71(3) of the Act.

<b>Customary marine title (CMT)</b>	Comes from a common law concept that recognises property rights of indigenous people that have continued since or before acquisition of Crown sovereignty to the present day. It is inalienable – the land cannot be sold – and cannot be converted to freehold title. Recognises the relationship that has existed, and will continue to exist, between iwi, hapū and whānau and the common marine and coastal area.
<b>Customary marine title area</b>	Any part of the common marine and coastal area where a customary marine title order or customary marine title recognition agreement applies.
<b>Customary marine title group</b>	The group that has the legal right to a customary marine title (see above).
<b>Customary marine title order</b>	An order of the High Court recognising customary marine title.
<b>Customary marine title recognition agreement</b>	Defines the contents of the customary marine title. Most of the information will be collected by the applicant group and the Marine and Coastal Area team in the evidence-gathering phase.
<b>High Court</b>	The court pathway for applicants for protected customary rights and/or customary marine title. Has virtually unlimited jurisdiction in civil cases. Able to apply the common law and has a vast body of experience on a wide range of legal matters, including Māori and Treaty issues.
<b>Mana tuku iho</b>	Inherited right or authority derived in accordance with tikanga.
<b>Manaakitanga</b>	Hospitality; reciprocity of kindness, respect and humanity.
<b>Marine and coastal area</b>	The area between the line of mean high water springs and the outer limits of the territorial sea (12 nautical miles from shore). Includes the air space and water space above the land, and the subsoil, bedrock and other matters below.
<b>Marine and Coastal Area team</b>	Advises the Minister for Treaty of Waitangi Negotiations on the implementation and administration of the Act, engages with applicant groups under the Act for recognition agreements, and instructs the Crown Law Office to represent the Crown in applications to the High Court under the Act for recognition orders.

<b>Marine Mammal Watching Permit</b>	The permit required from the Department of Conservation if a business wants to offer whale watching, swimming with dolphins, viewing seals or anything involving marine mammals, including filming above, on or under the water.
<b>Mean high water springs</b>	The average of the levels of each pair of successive high waters during that period of about 24 hours in each semi-lunation (approximately every 14 days), when the range of the tide is greatest (Spring Range).
<b>Nautical mile</b>	A unit of distance that is approximately one minute of arc measured along any meridian. By international agreement it has been set at 1852 metres exactly.
<b>Non-Crown owned minerals</b>	Minerals other than those within the meaning of section 10 of the Crown Minerals Act 1991; or pounamu to which section 3 of the Ngai Tahu (Pounamu Vesting) Act 1997 applies (see section 83).
<b>Order in Council</b>	A type of law made by the Executive Council presided over by the Governor-General.
<b>Planning document</b>	Can be prepared by a customary marine title (CMT) group in accordance with its tikanga. Identifies issues relevant to the regulation and management of the group's CMT area and sets out the group's regulatory and management objectives for its CMT area and policies for achieving those objectives.
<b>Private title</b>	Any land that is owned by any person other than the Crown. Includes Māori customary land and Māori freehold land. The common marine and coastal area excludes existing private titles.
<b>Protected customary right (PCR)</b>	Recognises and protects customary activities, uses and practices that are exercised in the common marine and coastal area (examples are collecting hangi stones or launching waka).
<b>Protected customary rights area</b>	Any part of the common marine and coastal area where a protected customary rights order or protected customary rights recognition agreement applies.
<b>Protected customary rights group</b>	The group that has the legal right to a protected customary right.

<b>Protected customary rights order</b>	An order of the High Court recognising protected customary rights of a group.
<b>Protected customary rights recognition agreement</b>	Defines the contents of the protected customary right. Most of the information will be collected by the applicant group and the Marine and Coastal Area team in the evidence-gathering phase.
<b>Public access</b>	The Act guarantees the continuation of free legal public access in, on or over the common marine and coastal area. Anyone can continue to walk, swim, sail, kayak, fish or have a picnic in the common marine and coastal area.
<b>Public notice</b>	The public notification an applicant group applying to the High Court for a recognition order must give no later than 20 working days after filing their application with the court. The notice must be published in a newspaper circulating in the entire area likely to be affected by the application. Details that the notice must contain are given in section 103(2) of the Marine and Coastal Area Act.
<b>Pūkenga</b>	A court expert with knowledge and experience of tikanga Māori that the courts can consult when hearing applications for customary marine title and/or protected customary rights.
<b>Ratification</b>	Voting by members of the applicant group on whether or not to accept the draft recognition agreement (voting can be at hui or by postal ballot).
<b>Recognition agreement</b>	An agreement entered into by the applicant group and the responsible Minister on behalf of the Crown recognising a protected customary right or customary marine title.
<b>Recognition order</b>	Recognition by the High Court of a protected customary right and/or customary marine title for an applicant group.
<b>Responsible Minister</b>	The Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for administering any provision in the Act.
<b>RMA permission right</b>	The right held by a customary marine title group under a customary marine title order to give or withhold permission for an activity that is carried out under a resource consent to the extent it is carried out in the CMT area.

<b>Section 62</b>	Section 62(3) of the Act provides that anyone applying for a resource consent, permit or approval in the common marine and coastal area must first notify and seek the views of any CMT/PCR groups in the area.
<b>Taonga tuturu</b>	An object that relates to Māori culture, history or society and is more than 50 years old.
<b>Third-party enquiry</b>	Process run by the Marine and Coastal Area team when researching a CMT/PCR seeking information from the public on their use and occupation of the part of the common marine and coastal area applied for.
<b>Wāhi tapu</b>	A place sacred to Māori in the traditional, spiritual, religious, ritual or mythological sense.
<b>Wāhi tapu protection right</b>	May be recognised if there is evidence the group is connected with the wāhi tapu in accordance with tikanga and if there is evidence to establish that any proposed prohibitions or restrictions on access are needed to protect the wāhi tapu.





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