



Coastlines: spatial planning for land and sea

Implications of the Marine & Coastal Area (Takutai Moana) Act 2011

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Outline

- **Introduction: The Marine and Coastal Area (Takutai Moana) Act 2011 ("MCAA")**
- **Protected customary rights**
 - Test
 - Right of holders / impacts on other users
 - Controls
- **Customary marine title**
 - Test
 - Right of holders / impacts on other users

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The MCAA

- Repeals the Foreshore and Seabed Act 2004
- Applies to the area formerly known as the foreshore and seabed (from mean high water springs out to the outer limits of the territorial sea) which is now known as the *marine and coastal area*
- Creates the *common marine and coastal area* ("CMCA"), a common space in the marine and coastal area which is that part of the marine and coastal area previously owned by the Crown (excludes existing private titles and Crown-owned land in the form of Conservation Areas, National Parks, or Reserves)
- Provides for new forms of statutory recognition for Maori customary interests in the CMCA, including through *protected customary rights* and *customary marine title*

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Protected customary rights

- **Test**
 - Rights which were exercised since 1840 and continue to be exercised in accordance with tikanga today (in the same way or in a way that has evolved over time)
- **Rights of holders / impacts on other users**
 - Protected customary rights may be exercised without resource consent
 - A consent authority must not grant consent for an activity in a protected customary rights area if the activity will, or is likely to, have adverse effects that are more than minor on the exercise of a protected customary right, unless the relevant customary rights group gives its written approval, or one of a range of exceptions applies
- **Controls**
 - If the Minister of Conservation determines that the exercise of a protected customary right has, or is likely to have, a significant adverse effect on the environment, the Minister may impose controls on the exercise of the right
 - Any person, including local authorities, can apply to the Minister for controls to be imposed

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Customary marine title

- **Test**
 - Exists if a group holds a specified area of the CMCA in accordance with tikanga and has exclusively used and occupied that part of the CMCA without substantial interruption from 1840 to today
- **Rights of holders / impacts on other users**
 - RMA permission right ("veto right"): the holder of customary marine title can give or decline permission for an activity that requires a resource consent in the title area
 - Exceptions: **accommodated activities** and **deemed accommodated activities**
 - Conservation permission right
 - Wahi tapu
 - "Planning documents"
 - Implications for decision-makers and councils

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Conclusion

- **The recognition of customary interests has been a vexed issue in New Zealand law and politics for many years**



- **It remains to be seen whether the MCAA will more effectively balance the competing interests in the marine and coastal area**
- **It will have significant impacts on users and regulators of the coastal environment, including councils, iwi, and infrastructure operators**

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