



Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Public Act 2012 No 72
Date of assent 3 September 2012
Commencement see section 2

Contents

		Page
1	Title	9
2	Commencement	9
Part 1		
Preliminary provisions		
Subpart 1—Outline, definitions, and application		
3	Outline of Act	9
4	Interpretation	12
5	Successors	16
6	Meaning of effect	16
7	Meaning of marine management regime	17
8	Act binds the Crown	17
9	Application to ships and aircraft of New Zealand Defence Force and foreign States	19
Subpart 2—Purpose and principles		
10	Purpose	19
11	International obligations	20
12	Treaty of Waitangi	20

Subpart 3—Functions, duties, and powers

Functions, duties, and powers

13	Functions of Environmental Protection Authority	20
14	Restriction on ministerial direction to Environmental Protection Authority	21
15	Powers of Environmental Protection Authority	21
16	Restriction on Environmental Protection Authority's power to delegate	21
17	Environmental Protection Authority to keep records	22

Māori Advisory Committee

18	Function of Māori Advisory Committee	23
----	--------------------------------------	----

Power of Minister of Conservation

19	Power of Minister of Conservation to declare threatened species	23
----	---	----

Part 2

Duties and restrictions

20	Restrictions on activities in exclusive economic zone and in or on continental shelf	23
----	--	----

Existing activities and planned petroleum activities

21	Certain existing activities may continue	24
22	Planned petroleum activities may commence and continue	25
23	Certain existing activities that become prohibited may continue	26

Unauthorised activities

24	Unauthorised activities must stop	27
----	-----------------------------------	----

General matters

25	Duty of persons operating in exclusive economic zone or on continental shelf	27
26	Relationship with other legal requirements	28

Part 3

Requirements and consents

Subpart 1—Regulations

Regulation of activities and environment of exclusive economic zone and continental shelf

27	Regulations prescribing standards, methods, or requirements	29
----	---	----

2012 No 72	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	
28	Regulations classifying areas of exclusive economic zone or continental shelf	30
29	Regulations classifying activities	30
	<i>Regulations generally</i>	
30	Regulations	31
	<i>Provisions applying to all regulations</i>	
31	Application of regulations	32
32	Process for developing or amending regulations	32
33	Matters to be considered for regulations	33
34	Information principles	34
	<i>Types of activity</i>	
35	Permitted activities	34
36	Discretionary activities	34
37	Prohibited activities	35
	Subpart 2—Marine consents	
	<i>Application for marine consent</i>	
38	Application for marine consent	35
39	Impact assessment	35
40	Obligation to deal with application promptly	36
41	Environmental Protection Authority may return incomplete application	37
42	Request for further information	37
43	Response to request	37
44	Environmental Protection Authority may obtain advice	38
45	Public notice of consent applications	39
	<i>Submissions</i>	
46	Making of submissions	39
47	Time limit for submissions	40
48	Advice of submissions to applicant	40
49	Meetings and mediation to resolve matters before decision	40
	<i>Hearings</i>	
50	Obligation to hold hearing	40
51	Hearing date and notice	41
52	Time limit for hearing	41
53	Hearings to be public and without unnecessary formality	41
54	Persons who may be heard at hearings	42
55	Provisions relating to hearings	42
56	Control of hearings	42

57	Directions to provide evidence within time limits	43
58	Directions before or at hearings	43
	<i>Decisions</i>	
59	Environmental Protection Authority's consideration of application	44
60	Matters to be considered in deciding extent of adverse effects on existing interests	46
61	Information principles	46
62	Decisions on applications for marine consents	47
63	Conditions of marine consents	47
64	Adaptive management approach	48
65	Bonds	48
66	Monitoring conditions	49
67	Observers	50
68	Time limits for Environmental Protection Authority's decision	50
69	Decision of Environmental Protection Authority to be in writing	51
70	Notification of Environmental Protection Authority's decision	51
71	When marine consent commences	51
	<i>Nature of consent</i>	
72	Consents neither real nor personal property	51
	<i>Duration of marine consent</i>	
73	Duration of marine consent	52
74	Exercise of marine consent while applying for new consent	53
	<i>Transfer of marine consents</i>	
75	Transfer of consents	53
	<i>Review of duration and conditions of marine consent</i>	
76	Environmental Protection Authority may review duration and conditions	54
77	Contents of notice of review	55
78	Notice of review to consent holder and public notice	55
79	Further information, advice, submissions, and hearing	56
80	Matters to be considered in review	56
81	Decisions on review of consent conditions	56
82	Decision on review of duration of consent	57
83	Process for minor changes to consent conditions	57

84	Minor corrections of marine consents	58
	<i>Cancellation of marine consents</i>	
85	Lapsing of consent if not exercised	58
86	Cancellation of consent if not exercised	59
87	Change or cancellation of consent conditions on application by consent holder	59
	Subpart 3—Marine consents for cross-boundary activities	
88	Interpretation	60
89	Application of this subpart	61
	<i>EPA may decide whether joint or separate applications for consent required</i>	
90	Application for consent for cross-boundary activity	61
91	Joint application for consent for cross-boundary activity	62
92	Separate applications for consents for cross-boundary activity	62
93	Environmental Protection Authority may require joint application	62
94	Decision to separate joint application for consent	63
	<i>Processing of joint application</i>	
95	Application of sections 96 and 97	64
96	Environmental Protection Authority to administer process	64
97	Relevant consent authority and EPA to share information	65
98	Separate decisions on marine consent and resource consent applications	66
	<i>Nationally significant cross-boundary activities</i>	
99	Application for consent for nationally significant cross-boundary activity referred to board of inquiry	66
100	EPA must provide board of inquiry with necessary information	67

Part 4

Objections, appeals, and enforcement

Subpart 1—Objections and appeals

Objections

101	Right of objection to Environmental Protection Authority against certain decisions	68
102	Procedure for making or hearing objection	69
103	Decision on objection	69
104	Appeals against decisions on objections	69

	<i>Appeal to High Court on question of law</i>	
105	Appeals on question of law	69
106	Notice of appeal	70
107	Right to appear and be heard on appeal	71
108	Parties to appeal	71
109	Representation at proceedings	71
110	Dismissal of appeal	72
111	Date of hearing	72
112	Application of High Court Rules	73
	<i>Appeal to Court of Appeal</i>	
113	Appeal to Court of Appeal	73
	Subpart 2—Enforcement	
114	Proceedings to be heard by Environment Judge	73
	<i>Enforcement order</i>	
115	Enforcement order	73
116	Application for enforcement order	75
117	Notice of application for enforcement order	75
118	Right to be heard	75
119	Decision on application for enforcement order	76
120	Interim enforcement order	76
121	Application to change or cancel interim enforcement order	77
122	Compliance with enforcement order	77
123	Change or cancellation of enforcement order	78
124	Restriction on certain applications for enforcement orders	78
	<i>Abatement notices</i>	
125	Abatement notices	79
126	Compliance with abatement notice	79
127	Form and content of abatement notice	79
128	Cancellation of abatement notice	80
129	Appeals	80
130	Restrictions on certain abatement notices	81
131	Proceedings in Environment Court	81
	<i>Offences and penalties</i>	
132	Offences	81
133	Penalties	82
134	Strict liability and defences	83
135	Liability of principal for acts of agents	84
136	Commencement of offence proceedings	85

137	Limitation period	85
	<i>Appointment and powers of enforcement officers</i>	
138	Enforcement officers	85
139	Exercise of powers	86
140	Power to require certain information	86
141	Power of entry for inspection	86
	Part 5	
	Miscellaneous, transitional provisions, and consequential amendments	
	Subpart 1—Miscellaneous	
	<i>Protection of the Crown and others</i>	
142	Protection of the Crown and others	88
	<i>Cost recovery</i>	
143	Principles of cost recovery	88
144	Methods of cost recovery	90
145	Cost recovery to relate generally to financial year	90
146	Charges to be prescribed by regulations	91
147	Charges constitute debt due to Environmental Protection Authority	92
	<i>Service of documents</i>	
148	Service of documents	92
149	Service on master or owner of ship	93
	<i>Incorporation by reference</i>	
150	Incorporation by reference of written material in regulations	94
151	Effect of amendments to, or replacement of, material incorporated by reference in regulations	94
152	Proof of material incorporated by reference	94
153	Effect of expiry of material incorporated by reference	95
154	Access to material incorporated by reference	95
155	Application of Standards Act 1988 not affected	96
156	Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference	96
157	Application of Regulations (Disallowance) Act 1989	96
	<i>Protection of sensitive information</i>	
158	Protection of sensitive information	97
	<i>Waivers and extension of time limits</i>	
159	Power of waiver and extension of time limits	98

160	Requirements for waivers and extensions	99
	Subpart 2—Transitional provisions	
	<i>Existing activities</i>	
161	Existing petroleum activities that become discretionary	99
162	Existing petroleum mining activities involving structures or pipelines	100
163	Other existing activities that become discretionary	101
164	Existing activities that become prohibited	102
	<i>Mineral prospecting and exploration under Continental Shelf Act 1964</i>	
165	Mineral prospecting and exploration may commence and continue	102
	<i>Planned petroleum activities</i>	
166	Planned petroleum activities that become discretionary	103
	<i>Unauthorised activities</i>	
167	Unauthorised activities must stop	104
	Subpart 3—Amendments to other Acts	
	<i>Consequential amendments to Biosecurity Act 1993</i>	
168	Biosecurity Act 1993 amended	104
169	Relationship with other enactments	104
170	Section 7A replaced (Relationship with Resource Management Act 1991)	105
	7A Relationship with Resource Management Act 1991	105
	7B Relationship with Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	106
	7C Public notice of decision to exempt action	107
	7D Regulations may continue exemption	108
	<i>Amendment to Continental Shelf Act 1964</i>	
171	Amendment to Continental Shelf Act 1964	108
	<i>Amendments to Crown Organisations (Criminal Liability) Act 2002</i>	
172	Amendments to Crown Organisations (Criminal Liability) Act 2002	108
	<i>Amendment to Environment Act 1986</i>	
173	Amendment to Environment Act 1986	109

	<i>Amendment to Environmental Protection Authority Act 2011</i>	
174	Amendment to Environmental Protection Authority Act 2011	109
	<i>Amendment to Fisheries Act 1996</i>	
175	Amendment to Fisheries Act 1996	109
	<i>Amendments to Resource Management Act 1991</i>	
176	Amendments to Resource Management Act 1991	110
	<i>Amendment to Search and Surveillance Act 2012</i>	
177	Amendment to Search and Surveillance Act 2012	110

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
- 2 Commencement**
 - (1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
 - (2) Any provision that has not earlier been brought into force comes into force on 1 July 2014.

Part 1
Preliminary provisions

Subpart 1—Outline, definitions, and application

- 3 Outline of Act**
 - (1) This section is a guide to the overall scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act.

Part 1

- (2) Subpart 1—
- (a) defines terms used in the Act; and
 - (b) provides that the Act binds the Crown; and
 - (c) provides for the application of the Act to the ships and aircraft of the New Zealand Defence Force and foreign States.
- (3) Subpart 2—
- (a) sets out the purpose of the Act; and
 - (b) provides that the Act continues or enables the implementation of New Zealand's international obligations relating to the marine environment; and
 - (c) specifies how the Crown's responsibility to give effect to the principles of the Treaty of Waitangi is recognised and respected by provisions of the Act.
- (4) Subpart 3 sets out the functions, duties, and powers of the Environmental Protection Authority and the Māori Advisory Committee, and regulates—
- (a) the Minister's power to direct the EPA in relation to certain powers, duties, or functions exercised or performed by the EPA; and
 - (b) the EPA's power to delegate its decision-making function in relation to applications for marine consents to a committee or a board of inquiry hearing a resource consent application in relation to the same cross-boundary activity.

Part 2

- (5) Part 2 sets out the duties and restrictions imposed by this Act, including,—
- (a) in section 20, restrictions on activities; and
 - (b) in sections 21 and 23, ongoing transitional provision for activities that are being carried out when the regulations that apply to them are amended or replaced and a marine consent is required as a result. The activities may continue in specified circumstances; and
 - (c) in section 22, provision for petroleum activities that, although authorised, had not commenced when new regulations come into force that change the rules for those activities and a marine consent is required as a result.

An activity may commence if the person planning to undertake the activity first provides an impact assessment to the EPA; and

- (d) in section 25, a duty on every person to avoid, remedy, or mitigate the adverse effects of their activities on the environment and a duty to provide sufficient training, supervision, and resources to their employees to ensure compliance with the Act; and
- (e) clarification in section 26 that compliance with the Act does not mean a person need not comply with other legal requirements and vice versa.

Part 3

- (6) Subpart 1 provides for the making of regulations—
 - (a) prescribing standards for activities, the effects of activities, and the environment; and
 - (b) classifying areas of the exclusive economic zone and continental shelf; and
 - (c) classifying activities as permitted, discretionary, or prohibited; and
 - (d) prescribing administrative requirements.
- (7) Subpart 1 also provides for—
 - (a) a process for developing regulations; and
 - (b) matters that the Minister must take into account in developing regulations; and
 - (c) information principles that apply to the Minister in developing regulations.
- (8) Subpart 2 sets out the standard process for applying for a marine consent and matters that the EPA must consider in deciding whether to grant or refuse to grant a consent, and provides for the review of the conditions and duration of consents.
- (9) Subpart 3 sets out the process for applying for consent for an activity that straddles the boundary between the territorial sea and the exclusive economic zone, including a cross-boundary activity that includes a matter of national significance.

Part 4

- (10) Subpart 1 provides for objections to the EPA and appeals to the High Court on a question of law.

- (11) Subpart 2 provides for enforcement of the Act by providing for—
- (a) the Environment Court to issue enforcement orders under section 115; and
 - (b) enforcement officers to serve abatement notices under section 125; and
 - (c) offences and penalties under sections 132 and 133; and
 - (d) the appointment of enforcement officers under section 138 and their powers.

Part 5

- (12) Subpart 1 deals with miscellaneous matters, including—
- (a) protection of the Crown and others from liability; and
 - (b) cost recovery; and
 - (c) service of documents; and
 - (d) provision for the incorporation by reference into regulations of written material; and
 - (e) protection of sensitive information; and
 - (f) waivers and extension of time limits.
- (13) Subpart 2 sets out transitional arrangements.
- (14) Subpart 3 makes a number of amendments to other Acts.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- abatement notice** means a notice served under section 125
- activity** means an activity restricted by section 20
- adaptive management approach** has the meaning given in section 64(2)
- applicant** means a person who makes an application for a marine consent under section 38
- chief executive** means the chief executive of the department
- consent holder** or **holder**, in relation to a consent, means the person who has been granted a consent under section 62 or to whom a consent has been transferred under section 75
- continental shelf** has the same meaning as in section 2(1) of the Continental Shelf Act 1964
- Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

department means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

discretionary activity means an activity that is a discretionary activity under section 36(1)

disturb includes excavate, drill, tunnel, or dredge

enforcement officer means an enforcement officer appointed under section 138

enforcement order means an order made under section 115

environment means the natural environment, including ecosystems and their constituent parts and all natural resources, of—

- (a) New Zealand;
- (b) the exclusive economic zone;
- (c) the continental shelf;
- (d) the waters beyond the exclusive economic zone and above and beyond the continental shelf

Environmental Protection Authority or **EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

exclusive economic zone means the exclusive economic zone of New Zealand as defined in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

existing interest means, in relation to New Zealand, the exclusive economic zone, or the continental shelf (as applicable), the interest a person has in—

- (a) any lawfully established existing activity, whether or not authorised by or under any Act or regulations, including rights of access, navigation, and fishing;
- (b) any activity that may be undertaken under the authority of an existing marine consent granted under section 62;
- (c) any activity that may be undertaken under the authority of an existing resource consent granted under the Resource Management Act 1991;
- (d) the settlement of a historical claim under the Treaty of Waitangi Act 1975;
- (e) the settlement of a contemporary claim under the Treaty of Waitangi as provided for in an Act, including the

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:

- (f) a protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011

impact assessment means the impact assessment described in section 39

information includes analysis

information principles means the information principles set out in sections 34 and 61

Māori Advisory Committee means the committee established under section 18 of the Environmental Protection Authority Act 2011

marine consent or **consent** means a consent granted under section 62

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

natural resources,—

- (a) in relation to the exclusive economic zone, includes seabed, subsoil, water, air, minerals, and energy, and all forms of organisms (whether native to New Zealand or introduced); and
- (b) in relation to the continental shelf, means the mineral and other non-living resources of the seabed and subsoil and sedentary species

notice of review means a notice served under section 78

permitted activity means an activity that is permitted under section 35(1)

person, subject to section 5, includes the Crown, a corporation sole, and also a body of persons, whether incorporated or unincorporated

prescribed means prescribed by regulations, and, in relation to forms, means prescribed by regulations or approved by the chief executive of the EPA

prohibited activity means an activity that is prohibited under section 37(1)

public notice means a notice—

- (a) published in a daily newspaper in—
 - (i) each of the cities of Auckland, Wellington, Christchurch, and Dunedin; and
 - (ii) the region adjacent to the area that is the subject of an application for a marine consent; and
- (b) which must also be published on the EPA's Internet site

regional council—

- (a) has the same meaning as in section 5 of the Local Government Act 2002; and
- (b) includes a unitary authority within the meaning of that Act

regulations means regulations made under this Act

review means a review of the conditions or duration of a consent under section 76

sedentary species means living organisms that, at their harvestable stage,—

- (a) are immobile on or under the seabed; or
- (b) are unable to move except in constant physical contact with the seabed or subsoil

serve means serve in accordance with section 148 or 149, and

service has a corresponding meaning

standard means a standard prescribed by regulations made under section 27

structure—

- (a) means any building, equipment, or device; and
- (b) includes—
 - (i) an offshore installation, artificial island, or floating platform; and
 - (ii) a ship used in connection with any offshore installation, artificial island, or floating platform; but
- (c) does not include a submarine pipeline

submarine cable has the same meaning as in section 2 of the Submarine Cables and Pipelines Protection Act 1996

submarine pipeline has the same meaning as in section 2 of the Submarine Cables and Pipelines Protection Act 1996

submission means a written or an electronic submission

submitter means a person who makes a submission under section 46

threatened species includes any species that—

- (a) falls within the definition of threatened species in section 2(1) of the Biosecurity Act 1993; or
- (b) is declared to be a threatened species or an at-risk species by the Minister of Conservation under section 19

wāhi tapu has the same meaning as in section 2 of the Historic Places Act 1993

warship has the same meaning as in section 2(1) of the Maritime Transport Act 1994

waste or other matter has the same meaning as in section 257 of the Maritime Transport Act 1994.

- (2) The following terms have the same meanings as in section 2(1) of the Resource Management Act 1991:
 - (a) **biological diversity**:
 - (b) **iwi authority**:
 - (c) **region**:
 - (d) **tikanga Māori**.

5 Successors

- (1) In this Act, unless the context otherwise requires, any reference to a **person**, however described or referred to (including applicant and consent holder), includes the successor of that person.
- (2) For the purposes of this Act, where the person is a body of persons that is unincorporated, the successor includes a body of persons that is corporate and composed of substantially the same members.

6 Meaning of effect

- (1) In this Act, unless the context otherwise requires, **effect** includes—
 - (a) any positive or adverse effect; and
 - (b) any temporary or permanent effect; and
 - (c) any past, present, or future effect; and

- (d) any cumulative effect that arises over time or in combination with other effects; and
 - (e) any potential effect of high probability; and
 - (f) any potential effect of low probability that has a high potential impact.
- (2) Subsection (1)(a) to (d) apply regardless of the scale, intensity, duration, or frequency of the effect.

7 Meaning of marine management regime

- (1) In this Act, unless the context otherwise requires, **marine management regime** includes the regulations, rules, and policies made and the functions, duties, and powers conferred under an Act that applies to any 1 or more of the following:
 - (a) territorial sea:
 - (b) exclusive economic zone:
 - (c) continental shelf.
- (2) The marine management regimes referred to in this section include those established under the following Acts:
 - (a) Biosecurity Act 1993:
 - (b) Continental Shelf Act 1964:
 - (c) Crown Minerals Act 1991:
 - (d) Defence Act 1990:
 - (e) Fiordland (Te Moana o Atawhenua) Marine Management Act 2005:
 - (f) Fisheries Act 1996:
 - (g) Hauraki Gulf Marine Park Act 2000:
 - (h) Marine and Coastal Area (Takutai Moana) Act 2011:
 - (i) Marine Mammals Protection Act 1978:
 - (j) Marine Reserves Act 1971:
 - (k) Maritime Transport Act 1994:
 - (l) Resource Management Act 1991:
 - (m) Submarine Cables and Pipelines Protection Act 1996:
 - (n) Wildlife Act 1953.

8 Act binds the Crown

- (1) This Act binds the Crown, except as provided in this section and section 9.

- (2) This Act does not apply to any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security.
- (3) An enforcement order may be made against an instrument of the Crown, in accordance with this Act, only if—
 - (a) the instrument of the Crown is a Crown organisation; and
 - (b) the order is made against the Crown organisation in its own name.
- (4) Subsection (3) applies despite section 17(1)(a) of the Crown Proceedings Act 1950.
- (5) An instrument of the Crown may be prosecuted for an offence against this Act only if—
 - (a) the instrument of the Crown is a Crown organisation; and
 - (b) the offence is alleged to have been committed by the Crown organisation; and
 - (c) the proceedings are commenced—
 - (i) by the EPA or an enforcement officer; and
 - (ii) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and
 - (iii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.
- (6) However, subsection (5) is subject to section 8(4) of the Crown Organisations (Criminal Liability) Act 2002 (which provides that a court may not sentence a Crown organisation to pay a fine in respect of an offence against this Act).
- (7) If a Crown organisation is not a body corporate, it is to be treated as if it were a separate legal personality for the purposes of—
 - (a) making an enforcement order against it; and
 - (b) enforcing an enforcement order in relation to it.
- (8) Except to the extent and in the manner provided for in subsections (3) to (7), the Crown may not—
 - (a) have an enforcement order made against it; or
 - (b) be prosecuted for an offence against this Act.

9 Application to ships and aircraft of New Zealand Defence Force and foreign States

- (1) This Act does not apply to any of the following:
- (a) warships of the New Zealand Defence Force;
 - (b) warships of any other State;
 - (c) aircraft of the New Zealand Defence Force;
 - (d) aircraft of the defence forces of any other State;
 - (e) any ship owned or operated by any State other than New Zealand, if the ship is being used by the State for wholly governmental purposes;
 - (f) the master and crew of any warship, aircraft, or ship referred to in paragraphs (a) to (e);
 - (g) defence areas as defined in section 2 of the Defence Act 1990.
- (2) In this section, a ship that is being used for commercial purposes, or both commercial and governmental purposes, is not being used for wholly governmental purposes.

Subpart 2—Purpose and principles**10 Purpose**

- (1) The purpose of this Act is to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while—
- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of the environment; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- (3) In order to achieve the purpose, decision-makers must—
- (a) take into account decision-making criteria specified in relation to particular decisions; and

- (b) apply the information principles to the development of regulations and the consideration of applications for marine consent.

11 International obligations

This Act continues or enables the implementation of New Zealand's obligations under various international conventions relating to the marine environment, including—

- (a) the United Nations Convention on the Law of the Sea 1982;
- (b) the Convention on Biological Diversity 1992.

12 Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act,—

- (a) section 18 (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise the Environmental Protection Authority so that decisions made under this Act may be informed by a Māori perspective; and
- (b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and
- (c) sections 33 and 59, respectively, require the Minister and the EPA to take into account the effects of activities on existing interests; and
- (d) section 45 requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.

Subpart 3—Functions, duties, and powers

Functions, duties, and powers

13 Functions of Environmental Protection Authority

- (1) The Environmental Protection Authority has the following functions:

- (a) to decide applications for marine consents:
 - (b) to monitor compliance with this Act:
 - (c) to enforce the requirements of this Act, and of regulations made and consents granted under it:
 - (d) to approve forms for the purposes of—
 - (i) subparts 2 and 3 of Part 3, which deal with marine consents:
 - (ii) sections 101 to 103, which deal with objections:
 - (iii) sections 125 to 128, which deal with abatement notices:
 - (e) to promote public awareness of the requirements of this Act:
 - (f) to perform any other function specified in this Act.
- (2) However, the EPA may not approve a form for a purpose if a form has been prescribed by regulations for the same purpose.

14 Restriction on ministerial direction to Environmental Protection Authority

The Minister may not give a direction under section 103 of the Crown Entities Act 2004 that relates to the exercise of any power, duty, or function of the Environmental Protection Authority under section 13(a) and (c), and Parts 3 and 4.

15 Powers of Environmental Protection Authority

The Environmental Protection Authority has all the powers that are reasonably necessary to enable it to carry out its functions under this Act.

16 Restriction on Environmental Protection Authority's power to delegate

Despite section 17 of the Environmental Protection Authority Act 2011, the Environmental Protection Authority must not delegate its power to decide an application for a marine consent or make a decision on a review of a consent under section 62, 81, or 82 (as appropriate), except to—

- (a) a committee appointed under clause 14 of Schedule 5 of the Crown Entities Act 2004; or
- (b) a board of inquiry as provided for in section 99(2).

17 Environmental Protection Authority to keep records

- (1) The Environmental Protection Authority must keep records and make available information—
 - (a) that is relevant to the performance of its functions under this Act; and
 - (b) in particular, to enable the public and persons undertaking or proposing to undertake activities in the exclusive economic zone or in or on the continental shelf to be better informed of their duties and of the functions, powers, and duties of the EPA and to participate effectively under this Act.
- (2) In particular, the EPA must keep and make available—
 - (a) copies of all material incorporated by reference into regulations; and
 - (b) records of every—
 - (i) application for a marine consent:
 - (ii) decision made by the EPA on or related to an application for a consent:
 - (iii) change to the conditions of a consent:
 - (iv) cancellation of a consent:
 - (v) notice of review and decision on a review:
 - (vi) transfer of a marine consent:
 - (vii) objection and decision on an objection; and
 - (c) a summary of all written complaints received in the preceding 5 years (or if the Act has been in force for less than 5 years then for the period that the Act has been in force) concerning alleged breaches of the Act, regulations, or the conditions of a marine consent, and information explaining how the EPA dealt with each complaint.
- (3) In this section, **make available** means the information must be kept at the offices of the EPA and made available to members of the public on request and may be kept on an Internet site maintained by, or on behalf of, the EPA.
- (4) Section 158 overrides this section.

*Māori Advisory Committee***18 Function of Māori Advisory Committee**

The Māori Advisory Committee may provide advice to the Environmental Protection Authority in accordance with sections 19 and 20 of the Environmental Protection Authority Act 2011.

*Power of Minister of Conservation***19 Power of Minister of Conservation to declare threatened species**

- (1) The Minister of Conservation may, by notice in the *Gazette*, declare a marine species to be a threatened or an at-risk species.
- (2) The Minister must not declare a marine species to be threatened or at-risk unless the species is classified as threatened or at-risk under the New Zealand Threat Classification System.
- (3) In this section, **New Zealand Threat Classification System** means the system maintained by the Department of Conservation for assessing the risk of extinction of New Zealand species and classifying the species according to that risk.

Part 2**Duties and restrictions****20 Restrictions on activities in exclusive economic zone and in or on continental shelf**

- (1) No person may undertake an activity described in subsection (2) in the exclusive economic zone or in or on the continental shelf unless the activity is a permitted activity, authorised by a marine consent, or authorised by section 21, 22, or 23.
- (2) The activities referred to in subsection (1) are—
 - (a) the construction, placement, alteration, extension, removal, or demolition of a structure on or under the seabed:
 - (b) the construction, placement, alteration, extension, removal, or demolition of a submarine pipeline on or under the seabed:
 - (c) the placement, alteration, extension, or removal of a submarine cable on or from the seabed:

- (d) the removal of non-living natural material from the seabed or subsoil:
 - (e) the disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on the seabed or subsoil:
 - (f) the deposit of any thing or organism in, on, or under the seabed:
 - (g) the destruction, damage, or disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on marine species or their habitat.
- (3) No person may undertake an activity described in subsection (4) in the waters of the exclusive economic zone unless the activity is a permitted activity, authorised by a marine consent, or authorised by section 21, 22, or 23.
- (4) The activities referred to in subsection (3) are—
 - (a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure or part of a structure:
 - (b) the causing of vibrations (other than vibrations caused by the normal operation of a ship) in a manner that is likely to have an adverse effect on marine life:
 - (c) the causing of an explosion.
- (5) However, this section—
 - (a) does not apply to lawful fishing for wild fish under the Fisheries Act 1996; and
 - (b) does not affect the following activities that are regulated or prohibited by the Maritime Transport Act 1994:
 - (i) the dumping or storing of radioactive waste or other radioactive matter; or
 - (ii) the storing of toxic or hazardous waste; or
 - (iii) the dumping of waste or other matter.

*Existing activities and planned petroleum
activities*

21 Certain existing activities may continue

- (1) This section applies to an existing activity if—
 - (a) the activity was classified as a permitted activity by regulations; and

- (b) new regulations come into force that amend or replace the regulations described in paragraph (a) (the **new regulations**); and
 - (c) the activity was lawfully established before the new regulations come into force; and
 - (d) the effects of the activity on the environment and existing interests are of the same or similar character, intensity, and scale as the effects that existed before the new regulations came into force; and
 - (e) the activity requires a marine consent as a result of the amendment or replacement of the regulations described in paragraph (a).
- (2) The activity may continue without a marine consent for a prescribed period or, if no period is prescribed for the activity, for 6 months from the date on which the new regulations come into force.
- (3) If the person undertaking the activity applies for a marine consent within the period described in subsection (2), the activity may continue after the period has expired until the application—
 - (a) is decided under section 62 and any appeals are determined; or
 - (b) is returned as incomplete under section 41 and any objections and appeals are determined.
- (4) If the application for a marine consent described in subsection (3) was returned by the EPA under section 41, subsection (3) applies to any new application that replaces the returned application.

22 Planned petroleum activities may commence and continue

- (1) This section applies to a planned petroleum activity if—
 - (a) the activity was classified as a permitted activity by regulations; and
 - (b) new regulations come into force that amend or replace the regulations described in paragraph (a) (the **new regulations**); and
 - (c) the activity requires a marine consent as a result of the amendment or replacement of the regulations described in paragraph (a).

- (2) The activity may commence without a marine consent after the new regulations come into force.
- (3) However, before the activity may commence, the person intending to undertake the activity must—
 - (a) prepare an impact assessment for the activity; and
 - (b) provide the impact assessment to the EPA.
- (4) Section 41 applies to the impact assessment as if it were an application for a marine consent.
- (5) If the person undertaking the activity complies with subsection (3), the activity may continue without a marine consent for a prescribed period or, if no period is prescribed for the activity, for 6 months from the date on which the new regulations come into force.
- (6) If the person undertaking the activity applies for a marine consent within the period described in subsection (5), the activity may continue after the period has expired until the application—
 - (a) is decided under section 62 and any appeals are determined; or
 - (b) is returned as incomplete by the EPA under section 41 and any objections and appeals are determined.
- (7) If the application for a marine consent described in subsection (6) was returned by the EPA under section 41, subsection (6) applies to any new application that replaces the returned application.
- (8) In this section, **planned petroleum activity** means an activity involved with the exploration, prospecting, or mining for petroleum if, before the new regulations come into force,—
 - (a) the exploration, prospecting, or mining for petroleum with which the activity is involved is authorised by a permit that is granted under section 25 of the Crown Minerals Act 1991 or authorised by an existing privilege preserved under section 107 of that Act; and
 - (b) the activity has not commenced.

23 Certain existing activities that become prohibited may continue

- (1) This section applies to an existing activity if—

- (a) the activity was classified as a permitted activity by regulations, or was authorised by a marine consent in accordance with the regulations; and
 - (b) new regulations come into force that amend or replace the regulations described in paragraph (a) (the **new regulations**); and
 - (c) the activity becomes a prohibited activity as a result of the amendment or replacement of the regulations described in paragraph (a); and
 - (d) the activity was lawfully established before the new regulations come into force.
- (2) The activity may continue—
 - (a) for the duration of the consent, if the activity is authorised by a marine consent; or
 - (b) for a period prescribed by regulations, if the activity is not authorised by a consent.

Unauthorised activities

24 Unauthorised activities must stop

- (1) This section applies to an activity authorised to continue by section 21, 22, or 23 once the activity is no longer authorised to continue by one of those sections.
- (2) The person undertaking the activity must—
 - (a) stop the activity; and
 - (b) in stopping the activity, comply with any regulations or consent conditions that apply to the stopping of the activity; and
 - (c) comply with any instructions of the Environmental Protection Authority that relate to the stopping of the activity.

General matters

25 Duty of persons operating in exclusive economic zone or on continental shelf

- (1) Every person carrying out, or proposing to carry out, an activity in the exclusive economic zone or on the continental shelf has—

- (a) a general duty to avoid, remedy, or mitigate the adverse effects of the activity on the environment; and
 - (b) a duty to provide—
 - (i) training and supervision to all the person’s employees who are engaged in an activity in the exclusive economic zone or on the continental shelf in order to ensure compliance with this Act, regulations, and any marine consent; and
 - (ii) sufficient resources to the employees to ensure compliance with this Act, regulations, and any marine consent, including establishing appropriate management systems.
- (2) The duties referred to in subsection (1) are not enforceable against any person, and no person is liable to any other person for a breach of a duty.
- (3) However, despite subsection (2), an enforcement order may be made under section 115 or an abatement notice may be served under section 125 to require a person to comply with subsection (1)(a) if adverse effects result or are likely to result from a breach of this Act, regulations, or a marine consent.

26 Relationship with other legal requirements

To avoid doubt,—

- (a) compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, and rules of law; and
- (b) compliance with any Act, regulations, or rule of law does not remove the need to comply with this Act.

Part 3

Requirements and consents

Subpart 1—Regulations

Regulation of activities and environment of exclusive economic zone and continental shelf

27 Regulations prescribing standards, methods, or requirements

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe technical standards, methods, or requirements for—
 - (a) activities that are carried out in the exclusive economic zone or in or on the continental shelf;
 - (b) the effects of activities carried out in the exclusive economic zone or in or on the continental shelf, including effects that occur in the territorial sea or in the waters above and beyond the continental shelf;
 - (c) assessing the state of the environment of the exclusive economic zone and the continental shelf.
- (2) The regulations may include—
 - (a) qualitative or quantitative standards;
 - (b) methods for classifying a natural resource;
 - (c) requirements in relation to methods, processes, or technology to implement standards;
 - (d) transitional provisions, including provisions that—
 - (i) prescribe a period in relation to an activity for the purposes of section 21, 22, or 23;
 - (ii) specify when and to what extent regulations apply to an application for a marine consent made before the regulations come into force;
 - (iii) provide for any other matters necessary for facilitating or ensuring an orderly transition when applicable regulations are amended or replaced.
- (3) However, the Minister must not recommend the making of regulations unless he or she is satisfied that the requirements of sections 32 to 34 have been met.

28 Regulations classifying areas of exclusive economic zone or continental shelf

- (1) Regulations made under section 27 may identify and provide for areas of the exclusive economic zone or the continental shelf that—
 - (a) are important or especially vulnerable because of their biophysical characteristics; or
 - (b) are important for specific uses; or
 - (c) must be managed in co-ordination with other marine management regimes; or
 - (d) are, or are likely to be, the subject of competition or conflict arising from the incompatibility of different activities; or
 - (e) are experiencing, or likely to experience, cumulative adverse environmental effects.
- (2) The regulations may close an area of the exclusive economic zone or the continental shelf to all or any activities described in section 20.

29 Regulations classifying activities

- (1) Regulations made under section 27 may—
 - (a) prohibit an activity; or
 - (b) allow an activity without a marine consent or describe the activity as permitted; or
 - (c) allow an activity with a marine consent or describe the activity as discretionary; or
 - (d) require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by a regulation; or
 - (e) require a person undertaking a specified permitted activity to give specified information about the activity to the Environmental Protection Authority.
- (2) If regulations provide for an activity to be a permitted activity, the regulations may specify terms and conditions that apply to the activity.
- (3) If regulations provide for an activity to be a discretionary activity, the regulations may specify—
 - (a) terms and conditions that apply to the activity (including conditions described in section 63):

- (b) the matters that must be addressed by terms and conditions imposed on the marine consent by the Environmental Protection Authority.
- (4) The regulations must not provide for an activity to be a permitted activity if, in the Minister's opinion,—
 - (a) the activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and
 - (b) it is more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent.

Regulations generally

30 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
 - (a) requiring the holder of a marine consent to gather information and keep records relating to the exercise of the consent and to supply information to the Environmental Protection Authority;
 - (b) prescribing forms;
 - (c) prescribing the amounts of charges payable or the method by which they are to be assessed or calculated, and the persons liable to pay the charges;
 - (d) providing for any other matters contemplated by this Act and necessary for its administration or necessary for giving it full effect.
- (2) However, the Minister must not recommend the making of regulations under subsection (1)(a) or (c) unless he or she is satisfied that the requirements of section 32 have been met.
- (3) Nothing in subsection (2) or section 32 requires consultation in relation to specific charges, or the specific levels of charges, so long as the charges set are reasonably within the scope of any general consultation, and a failure to comply with subsection (2) does not affect the validity of any regulations made for the purposes of this Act.

Provisions applying to all regulations

31 Application of regulations

- (1) A regulation may apply to all or any part of the exclusive economic zone and the continental shelf and to any or all activities described in section 20 that are carried out in the exclusive economic zone or in or on the continental shelf.
- (2) A regulation may apply to the effects of an activity even if the effects occur in the territorial sea or the waters beyond the exclusive economic zone.
- (3) Different requirements or standards may apply in relation to different activities and different classes of the same activity.

32 Process for developing or amending regulations

- (1) Before making a recommendation to the Governor-General under section 27 or 30(1)(a) or (c), the Minister must comply with subsection (2).
- (2) The Minister must—
 - (a) notify the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected of—
 - (i) the proposed subject matter of the regulations; and
 - (ii) in the case of regulations to which section 27 applies, the Minister's reasons for considering that the regulations are consistent with the purpose of the Act; and
 - (b) establish a process that the Minister considers gives the public, iwi authorities, and persons whose existing interests are likely to be affected adequate time and opportunity to comment on the subject matter of the proposed regulations.
- (3) However, the Minister need not comply with subsection (2) if the Minister is recommending the making of an amendment to regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

33 Matters to be considered for regulations

- (1) This section and section 34 apply when the Minister is developing regulations for the purposes of section 27.
- (2) The Minister must have regard to any comments made under section 32(2).
- (3) The Minister must take into account—
 - (a) any effects on the environment or existing interests of allowing an activity with or without a marine consent, including—
 - (i) cumulative effects; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
 - (b) the effects on the environment or existing interests of other activities undertaken in the exclusive economic zone or in or on the continental shelf, including—
 - (i) the effects of activities that are not regulated under this Act; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
 - (c) the effects on human health that may arise from effects on the environment; and
 - (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
 - (e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
 - (f) New Zealand's international obligations; and
 - (g) the economic benefit to New Zealand of an activity; and
 - (h) the efficient use and development of natural resources; and
 - (i) the nature and effect of other marine management regimes; and
 - (j) best practice in relation to an industry or activity; and
 - (k) in relation to whether an activity is classified as permitted or discretionary, the desirability of allowing the pub-

- lic to be heard in relation to the activity or type of activity; and
- (l) any other relevant matter.

34 Information principles

- (1) When developing regulations under section 27, the Minister must—
- (a) make full use of the information and other resources available to him or her; and
- (b) base decisions on the best available information; and
- (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary.
- (4) In this section, **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

Types of activity

35 Permitted activities

- (1) An activity is a permitted activity if it is described in regulations as a permitted activity.
- (2) A person may undertake a permitted activity without a marine consent provided that the activity complies with any terms and conditions specified for the activity in regulations.
- (3) A person intending to undertake a permitted activity must notify the Environmental Protection Authority before undertaking the activity if required to do so by regulations made under this Act.

36 Discretionary activities

- (1) An activity is a discretionary activity if regulations—

- (a) describe the activity as discretionary; or
 - (b) allow the activity with a marine consent; or
 - (c) do not classify the activity as permitted, discretionary, or prohibited.
- (2) A person must have a marine consent before undertaking a discretionary activity.
- (3) Subsection (2) is subject to section 21.

37 Prohibited activities

- (1) An activity is a prohibited activity if it is described in regulations as a prohibited activity.
- (2) No person may apply for a marine consent for a prohibited activity and a consent for a prohibited activity must not be granted.
- (3) No person may undertake a prohibited activity.
- (4) Subsection (3) is subject to section 23.

Subpart 2—Marine consents

Application for marine consent

38 Application for marine consent

- (1) Any person may apply to the Environmental Protection Authority for a marine consent to undertake a discretionary activity.
- (2) An application must—
 - (a) be made in the prescribed form; and
 - (b) fully describe the proposal; and
 - (c) include an impact assessment prepared in accordance with section 39.

39 Impact assessment

- (1) An impact assessment must—
 - (a) describe the activity for which consent is sought; and
 - (b) describe the current state of the area where it is proposed that the activity will be undertaken and the environment surrounding the area; and
 - (c) identify the effects of the activity on the environment and existing interests (including cumulative effects and

- effects that may occur in New Zealand or in the sea above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
 - (d) identify persons whose existing interests are likely to be adversely affected by the activity; and
 - (e) describe any consultation undertaken with persons described in paragraph (d) and specify those who have given written approval to the activity; and
 - (f) include copies of any written approvals to the activity; and
 - (g) specify any possible alternative locations for, or methods for undertaking, the activity that may avoid, remedy, or mitigate any adverse effects; and
 - (h) specify the measures that the applicant intends to take to avoid, remedy, or mitigate the adverse effects identified.
- (2) An impact assessment must contain the information required by subsection (1) in—
- (a) such detail as corresponds to the scale and significance of the effects that the activity may have on the environment and existing interests; and
 - (b) sufficient detail to enable the Environmental Protection Authority and persons whose existing interests are or may be affected to understand the nature of the activity and its effects on the environment and existing interests.
- (3) The impact assessment complies with subsection (1)(c) and (d) if the Environmental Protection Authority is satisfied that the applicant has made a reasonable effort to identify the matters described in those paragraphs.
- (4) The measures that must be specified under subsection (1)(h) include any measures required by another marine management regime and any measures required by or under the Health and Safety in Employment Act 1992 that may have the effect of avoiding, remedying, or mitigating the adverse effects of the activity on the environment or existing interests.

40 Obligation to deal with application promptly

After receiving an application for a marine consent, the Environmental Protection Authority must deal with the application as promptly as is reasonable in the circumstances.

41 Environmental Protection Authority may return incomplete application

- (1) If the Environmental Protection Authority decides that an application does not include an impact assessment that complies with section 39 or any information required by this Act, it may return the application to the applicant as incomplete.
- (2) The EPA may seek advice under section 44 to assist it in determining whether an impact assessment complies with section 39.
- (3) The EPA must return an incomplete application and give the applicant a written explanation for its finding that the application is incomplete within 10 working days after the application is received by the EPA.
- (4) If, after the EPA returns an application as incomplete, the application is sent to the EPA again, the application is to be treated as a new application.
- (5) The applicant may object under section 101 to a decision under subsection (1).

42 Request for further information

- (1) The Environmental Protection Authority may request an applicant to provide further information relating to an application.
- (2) A request may be made at any reasonable time before a hearing under section 50 or, if no hearing is to be held, before the EPA makes a decision on the application.
- (3) A request must be in writing and set out the EPA's reasons for requesting further information.
- (4) The EPA must provide a copy of the information provided by the applicant to every submitter as soon as practicable after the later of—
 - (a) the day on which the EPA receives the information;
 - (b) the date on which the submitter makes a submission.

43 Response to request

- (1) An applicant who receives a request under section 42(1) must, within 5 working days after the date of the request,—
 - (a) provide the information; or

- (b) write to the Environmental Protection Authority telling it that the applicant agrees to provide the information; or
 - (c) write to the EPA telling it that the applicant refuses to provide the information.
- (2) After the EPA receives the applicant's letter under subsection (1)(b), the EPA must—
 - (a) set a reasonable time within which the applicant must provide the information; and
 - (b) write to the applicant telling it the date by which the applicant must provide the information.
- (3) The EPA must consider the application under section 59 even if the applicant—
 - (a) does not respond to the request; or
 - (b) agrees to provide the information under subsection (1)(b) but does not do so; or
 - (c) refuses to provide the information under subsection (1)(c).

44 Environmental Protection Authority may obtain advice

- (1) The Environmental Protection Authority may—
 - (a) commission an independent review of the impact assessment;
 - (b) commission any person to provide a report on a matter described in paragraph (d);
 - (c) seek advice from the Māori Advisory Committee on any matter related to the application;
 - (d) seek advice from any person on any aspect of—
 - (i) an application for a marine consent; or
 - (ii) the activity to which an application relates.
- (2) The EPA must tell an applicant in writing that it intends to commission a review or report or seek advice and include reasons for wanting to commission a review or report or seek advice.
- (3) Subsection (1) applies at any reasonable time before a hearing or, if no hearing is to be held, before a decision on the application is made.

- (4) The applicant for a consent may object under section 101 to a decision to commission a review or a report, or to seek advice.
- (5) The EPA must, as soon as is reasonably practicable after receiving the advice or report (including a report on the results of a review), notify the applicant and every submitter that the advice or report is available at the EPA's office.

45 Public notice of consent applications

- (1) If the Environmental Protection Authority is satisfied that an application for a marine consent is complete, it must give public notice of the application and also must serve a copy of the notice on—
 - (a) Ministers with responsibilities that may be affected by the activity for which consent is sought;
 - (b) Maritime New Zealand;
 - (c) any of the following that the EPA considers may be affected by the application:
 - (i) iwi authorities;
 - (ii) customary marine title groups;
 - (iii) protected customary rights groups;
 - (d) other persons that the EPA considers have existing interests that may be affected by the application;
 - (e) regional councils whose regions may be affected by the application.
- (2) The application must be notified within 10 working days after the date on which the EPA is satisfied that the application is complete.
- (3) The notice must—
 - (a) be in the prescribed form; and
 - (b) give a summary of the application for consent; and
 - (c) specify where the application is available for inspection.

Submissions

46 Making of submissions

- (1) Any person may make a submission to the Environmental Protection Authority about an application for a marine consent.
- (2) A submission must be in the prescribed form.

- (3) A submitter must provide a copy of the submission to the applicant as soon as is reasonably practicable after serving it on the EPA.

47 Time limit for submissions

Submissions must be made not later than 20 working days after public notification of the application under section 45.

48 Advice of submissions to applicant

As soon as is reasonably practicable after the closing date for submissions, the Environmental Protection Authority must give the applicant a list of all the submissions that it has received.

49 Meetings and mediation to resolve matters before decision

- (1) The Environmental Protection Authority may request the applicant for a marine consent and 1 or more submitters to meet to discuss any matters in dispute in relation to the application for consent, or to enter mediation to resolve a dispute.
- (2) The person who conducts the meeting or mediation must report to the EPA and the persons who were at the meeting or mediation on the outcome of the meeting or mediation.
- (3) The report must set out—
- (a) the matters that were agreed at the meeting or mediation; and
 - (b) the matters that were not resolved.
- (4) The report must not include anything communicated or made available at the meeting or during the mediation on a without prejudice basis.

Hearings

50 Obligation to hold hearing

The Environmental Protection Authority—

- (a) may conduct a hearing on an application for a consent if the EPA considers it necessary or desirable; but
- (b) must conduct a hearing if the applicant or a submitter requests a hearing.

51 Hearing date and notice

- (1) If a hearing of an application for a marine consent is to be held, the Environmental Protection Authority must fix a commencement date and time and the place of the hearing.
- (2) The date for the commencement of any hearing must not be later than 40 working days after the closing date for submissions on the application.
- (3) The EPA must give at least 20 working days' notice of the commencement date and time and the place of a hearing to—
 - (a) the applicant; and
 - (b) every submitter on the application who stated that he or she wished to be heard and who has not subsequently advised that he or she does not wish to be heard.
- (4) The EPA may give directions as to evidence and the general conduct of the hearing.

52 Time limit for hearing

A hearing must be completed not later than 40 working days after the first day of the hearing.

53 Hearings to be public and without unnecessary formality

- (1) A hearing must be held in public unless the Environmental Protection Authority directs, under section 158(3)(a), that the whole or part of a hearing is to be held with the public excluded.
- (2) The EPA must establish a procedure for a hearing that is appropriate and fair in the circumstances.
- (3) In determining an appropriate and fair procedure for a hearing, the EPA must—
 - (a) avoid unnecessary formality; and
 - (b) recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori, and the Maori Language Act 1987 applies accordingly.
- (4) No person may question a party or witness unless the EPA gives permission.

54 Persons who may be heard at hearings

- (1) At a hearing, the applicant and every submitter who stated that he or she wished to be heard at the hearing may speak (either personally or through a representative) and call evidence.
- (2) However, the Environmental Protection Authority may, if it considers that there is likely to be excessive repetition, limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support.
- (3) The Environmental Protection Authority may proceed with a hearing even if the applicant or a submitter who stated that he or she wished to be heard fails to appear at the hearing if the EPA considers it fair and reasonable to do so.

55 Provisions relating to hearings

- (1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing:
 - (a) section 4 (which gives powers to maintain order):
 - (b) section 4B (which relates to evidence):
 - (c) section 4D (which gives power to summon witnesses):
 - (d) section 5 (which relates to the service of a summons):
 - (e) section 6 (which relates to the protection of witnesses):
 - (f) section 7 (which relates to allowances for witnesses).
- (2) Every summons to a witness to appear at a hearing must be in the prescribed form and be signed on behalf of the Environmental Protection Authority or by the chairperson of the committee that is to conduct the hearing.
- (3) All allowances for a witness must be paid by the party on whose behalf the witness is called.
- (4) At a hearing, the following persons must give to the EPA any information and advice that is relevant and reasonably necessary to decide the application if the EPA asks for it:
 - (a) a person who reviewed the impact assessment or provided advice under section 44:
 - (b) a person who is heard or represented at the hearing.

56 Control of hearings

The Environmental Protection Authority may exercise a power under section 57 or 58 after considering whether the

scale and significance of the hearing makes the exercise of the power appropriate.

57 Directions to provide evidence within time limits

- (1) The Environmental Protection Authority may direct the applicant to provide briefs of evidence to the EPA before the hearing.
- (2) The applicant must provide its briefs of evidence at least 15 working days before the hearing.
- (3) The EPA may direct a submitter who is intending to call expert evidence to provide briefs of the evidence to the EPA before the hearing.
- (4) The submitter must provide the briefs of evidence at least 10 working days before the hearing.
- (5) The EPA must, as soon as practicable after the EPA receives the briefs of evidence, give—
 - (a) a copy of the applicant's brief of evidence to every submitter; and
 - (b) a copy of a submitter's briefs of evidence to the applicant.

58 Directions before or at hearings

- (1) Before or at the hearing, the Environmental Protection Authority may do 1 or more of the following:
 - (a) specify the order of business at the hearing, including the order in which evidence and submissions are presented;
 - (b) direct that evidence and submissions be—
 - (i) recorded; or
 - (ii) taken as read; or
 - (iii) limited to matters in dispute;
 - (c) direct the applicant, when presenting evidence or a submission, to present it within a time limit;
 - (d) direct a submitter, when presenting evidence or a submission, to present it within a time limit.
- (2) At the hearing, the EPA may seek advice on an application or the activity to which the application relates under section 44(1), if the applicant agrees.

- (3) The EPA must provide copies of the advice to the applicant and submitters.
- (4) At the hearing, the EPA may direct a person presenting a submission not to present—
 - (a) the whole submission, if all of it is irrelevant or not in dispute; or
 - (b) any part of the submission that is irrelevant or not in dispute.
- (5) Before or at the hearing, the EPA may direct that a submission or a part of a submission be struck out if the EPA considers—
 - (a) that the submission, or the part, is frivolous or vexatious; or
 - (b) that the submission, or the part, discloses no reasonable or relevant case; or
 - (c) that it would be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.
- (6) If the EPA gives a direction under subsection (5), it must record the reasons for the direction and give a copy of the reasons to the submitter whose submission is affected by the direction.

Decisions

59 Environmental Protection Authority's consideration of application

- (1) This section and sections 60 and 61 apply when the Environmental Protection Authority is considering an application for a marine consent and submissions on the application.
- (2) The EPA must take into account—
 - (a) any effects on the environment or existing interests of allowing the activity, including—
 - (i) cumulative effects; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
 - (b) the effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity, including—

- (i) the effects of activities that are not regulated under this Act; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
 - (c) the effects on human health that may arise from effects on the environment; and
 - (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
 - (e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
 - (f) the economic benefit to New Zealand of allowing the application; and
 - (g) the efficient use and development of natural resources; and
 - (h) the nature and effect of other marine management regimes; and
 - (i) best practice in relation to an industry or activity; and
 - (j) the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity; and
 - (k) relevant regulations; and
 - (l) any other applicable law; and
 - (m) any other matter the EPA considers relevant and reasonably necessary to determine the application.
- (3) The EPA must have regard to—
- (a) any submissions made and evidence given in relation to the application; and
 - (b) any advice, reports, or information it has sought and received in relation to the application; and
 - (c) any advice received from the Māori Advisory Committee.
- (4) When considering an application affected by section 74, the EPA must also have regard to the value of the investment in the activity of the existing consent holder.
- (5) Despite subsection (3), the EPA must not have regard to—
- (a) trade competition or the effects of trade competition; or

- (b) the effects on climate change of discharging greenhouse gases into the air; or
 - (c) any effects on a person's existing interest if the person has given written approval to the proposed activity.
- (6) Subsection (5)(c) does not apply if the person has given written approval but the person withdraws the approval by giving written notice to the EPA—
 - (a) before the date of the hearing, if there is one; or
 - (b) if there is no hearing, before the EPA decides the application.

60 Matters to be considered in deciding extent of adverse effects on existing interests

In considering the effects of an activity on existing interests under section 59(2)(a), the Environmental Protection Authority must have regard to—

- (a) the area that the activity would have in common with the existing interest; and
- (b) the degree to which both the activity and the existing interest must be carried out to the exclusion of other activities; and
- (c) whether the existing interest can be exercised only in the area to which the application relates; and
- (d) any other relevant matter.

61 Information principles

- (1) When considering an application for a marine consent, the Environmental Protection Authority must—
 - (a) make full use of its powers to request information from the applicant, obtain advice, and commission a review or a report; and
 - (b) base decisions on the best available information; and
 - (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to making a decision under this Act, the information available is uncertain or inadequate, the EPA must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be refused, the EPA must first consider

whether taking an adaptive management approach would allow the activity to be undertaken.

- (4) Subsection (3) does not limit section 63 or 64.
- (5) In this section, **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

62 Decisions on applications for marine consents

- (1) After complying with sections 59 to 61, the EPA may—
 - (a) grant an application for a marine consent, in whole or in part, and issue a consent; or
 - (b) refuse the application.
- (2) To avoid doubt, the EPA may refuse an application for a consent if it considers that it does not have adequate information to determine the application.
- (3) If the EPA grants the application, it may issue the consent subject to conditions under section 63.

63 Conditions of marine consents

- (1) The Environmental Protection Authority may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests.
- (2) The conditions that the EPA may impose include, but are not limited to, conditions—
 - (a) requiring the consent holder to—
 - (i) provide a bond for the performance of any 1 or more conditions of the consent;
 - (ii) obtain and maintain public liability insurance of a specified value;
 - (iii) monitor, and report on, the exercise of the consent and the effects of the activity it authorises;
 - (iv) appoint an observer to monitor the activity authorised by the consent and its effects on the environment;
 - (v) make records related to the activity authorised by the consent available for audit;

- (b) that together amount or contribute to an adaptive management approach.
- (3) However, the EPA must not impose a condition on a consent if the condition would be inconsistent with this Act or any regulations.
- (4) To avoid doubt, the EPA may not impose a condition to deal with an effect if the condition would conflict with a measure required in relation to the activity by another marine management regime or the Health and Safety in Employment Act 1992.

64 Adaptive management approach

- (1) The Environmental Protection Authority may incorporate an adaptive management approach into a marine consent granted for an activity.
- (2) An **adaptive management approach** includes—
 - (a) allowing an activity to commence on a small scale or for a short period so that its effects on the environment and existing interests can be monitored:
 - (b) any other approach that allows an activity to be undertaken so that its effects can be assessed and the activity discontinued, or continued with or without amendment, on the basis of those effects.
- (3) In order to incorporate an adaptive management approach into a marine consent, the EPA may impose conditions under section 63 that authorise the activity to be undertaken in stages, with a requirement for regular monitoring and reporting before the next stage of the activity may be undertaken or the activity continued for the next period.
- (4) A stage may relate to the duration of the consent, the area over which the consent is granted, the scale or intensity of the activity, or the nature of the activity.

65 Bonds

- (1) A bond required under section 63(2)(a)(i) may be given for the performance of any 1 or more conditions of a marine consent that the Environmental Protection Authority considers appropriate and may continue after the expiry of the consent

to secure the ongoing performance of conditions relating to long-term effects, including—

- (a) a condition relating to the alteration, demolition, or removal of structures:
 - (b) a condition relating to remedial, restoration, or maintenance work:
 - (c) a condition providing for ongoing monitoring of long-term effects.
- (2) A condition of a consent that describes the terms of the bond may—
- (a) require that the bond be given before the consent is exercised or at any other time:
 - (b) provide that the liability of the holder of the consent be not limited to the amount of the bond:
 - (c) require the bond to be given to secure performance of conditions of the consent, including conditions relating to any adverse effects on the environment or existing interests that become apparent during or after the expiry of the consent:
 - (d) require the holder of the consent to provide such security as the EPA thinks fit for the performance of any condition of the bond:
 - (e) require the holder of the consent to provide a guarantor (acceptable to the EPA) to bind itself to pay for the carrying out of a condition in the event of a default by the holder or the occurrence of an adverse environmental effect requiring remedy:
 - (f) provide that the bond may be varied, cancelled, or renewed at any time by agreement between the holder and the EPA.
- (3) If the EPA considers that an adverse effect may continue or arise at any time after the expiration of a marine consent, the EPA may require that a bond continue for a specified period that the EPA thinks fit.

66 Monitoring conditions

- (1) A condition imposed under section 63(2)(a)(iii) may require the consent holder to do 1 or more of the following:
- (a) make and record measurements:

- (b) take and supply samples:
 - (c) carry out analyses, surveys, investigations, inspections, or other specified tests:
 - (d) carry out the procedures in paragraphs (a) to (c) in a specified manner:
 - (e) provide information to the EPA or a person specified by the EPA at a specified time or times:
 - (f) provide information to the EPA or a person specified by the EPA in a specified manner:
 - (g) comply with the condition at the consent holder's expense.
- (2) This section does not limit section 63(2)(a)(iii).

67 Observers

- (1) A condition imposed under section 63(2)(a)(iv) that requires the holder of a consent to appoint an observer must specify in detail the observer's duties in relation to the activity.
- (2) The consent holder may appoint a person to be an observer only if the person is approved by the EPA for that purpose.
- (3) The EPA must approve a person to be an observer in relation to a consent if—
 - (a) the person has the appropriate training, skill, and experience to perform the duties; and
 - (b) the EPA is satisfied that the person is able to perform the duties independently of the consent holder.

68 Time limits for Environmental Protection Authority's decision

The Environmental Protection Authority must make its decision on an application for a marine consent as soon as is reasonably practicable and,—

- (a) if a hearing is held, no later than 20 working days after the conclusion of the hearing; or
- (b) if a hearing is not held, no later than 20 working days after the closing date for making submissions under section 47.

69 Decision of Environmental Protection Authority to be in writing

Every decision of the EPA on an application for a marine consent must be in writing and include reasons for the decision.

70 Notification of Environmental Protection Authority's decision

- (1) The Environmental Protection Authority must—
 - (a) give a copy of its decision on an application for a marine consent to—
 - (i) the applicant; and
 - (ii) all submitters; and
 - (iii) the Māori Advisory Committee; and
 - (iv) any other person or organisation that the EPA considers appropriate; and
 - (b) give public notice of the decision.
- (2) The notice must—
 - (a) be in the prescribed form; and
 - (b) give a summary of the decision; and
 - (c) specify where the full decision is available for inspection.
- (3) The EPA must comply with this section as soon as practicable after it has made its decision.

71 When marine consent commences

- (1) A marine consent that has been granted commences—
 - (a) when the time for lodging an appeal against the grant of the consent expires and no appeal has been lodged; or
 - (b) when the High Court determines the appeal or all persons who lodged appeals withdraw their appeals.
- (2) Subsection (1) does not apply if the marine consent specifies that the consent commences on a later date.

*Nature of consent***72 Consents neither real nor personal property**

- (1) A marine consent is neither real nor personal property.
- (2) A marine consent—

- (a) vests in the personal representative of the holder of the consent on the death of the holder, as if the consent were personal property, and the personal representative may deal with the consent to the same extent as the holder would have been able to do; and
 - (b) vests in the Official Assignee on the bankruptcy of an individual who is the holder of a consent, as if it were personal property, and the Official Assignee may deal with the consent to the same extent as the holder would have been able to do; and
 - (c) must be treated as property for the purposes of the Protection of Personal and Property Rights Act 1988.
- (3) If the conditions of the consent are inconsistent with subsection (2), the conditions override that subsection.
- (4) The holder of a marine consent may grant a charge over the consent as if it were personal property, but the consent may be transferred only to the chargee, or by or on behalf of the chargee, to the same extent as it could be transferred by the holder.
- (5) The Personal Property Securities Act 1999 applies in relation to a marine consent as if the consent were personal property within the meaning of that Act.
- (6) Subsection (4) overrides subsection (5).

Duration of marine consent

73 Duration of marine consent

- (1) The duration of a marine consent is—
 - (a) 35 years after the date of the granting of the consent; or
 - (b) a period less than 35 years that is specified in the consent.
- (2) When determining the duration of the consent, the Environmental Protection Authority must—
 - (a) comply with sections 59 and 61; and
 - (b) take into account the duration sought by the applicant; and
 - (c) take into account the duration of any other legislative authorisations granted or required for the activity that is the subject of the application for consent.

74 Exercise of marine consent while applying for new consent

- (1) Subsection (3) applies when—
- (a) a marine consent is due to expire; and
 - (b) the holder of the consent applies to the Environmental Protection Authority for a new consent for the same activity; and
 - (c) the application is made at least 6 months before the expiry of the existing consent.
- (2) Subsection (3) also applies when—
- (a) a marine consent is due to expire; and
 - (b) the holder of the consent applies to the Environmental Protection Authority for a new consent for the same activity; and
 - (c) the application is made in the period that—
 - (i) begins 6 months before the expiry of the existing consent; and
 - (ii) ends 3 months before the expiry of the existing consent; and
 - (d) the EPA, in its discretion, allows the holder to continue to undertake the activity under the existing consent.
- (3) The holder may continue to undertake the activity under the existing consent until—
- (a) a new consent is granted and all appeals are determined; or
 - (b) a new consent is declined and all appeals are determined.

Transfer of marine consents

75 Transfer of consents

- (1) The holder of a marine consent—
- (a) may transfer the whole or any part of the consent to another person; but
 - (b) may not transfer the whole or any part of the consent to another location.
- (2) The transfer of a marine consent has no effect until written notice of the transfer is given to the Environmental Protection Authority.

*Review of duration and conditions of marine
consent*

**76 Environmental Protection Authority may review duration
and conditions**

- (1) The Environmental Protection Authority may serve notice on a consent holder of its intention to review the duration of a marine consent or the conditions of the consent—
 - (a) at any time or times specified for that purpose in the consent for any of the following purposes:
 - (i) to deal with any adverse effect on the environment that may arise from the exercise of the consent and with which it is appropriate to deal after the consent has been granted;
 - (ii) any other purpose specified in the consent;
 - (b) if regulations take effect that prescribe standards, to ensure that the conditions are consistent with the standards, methods, or requirements;
 - (c) to deal with any adverse effects on the environment or existing interests that arise and that—
 - (i) were not anticipated when the consent was granted; or
 - (ii) are of a scale or intensity that was not anticipated when the consent was granted;
 - (d) if the information made available to the EPA by the applicant for the consent for the purposes of the application contained inaccuracies that materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions;
 - (e) if information becomes available to the EPA that was not available to the EPA when the consent was granted and the information shows that more appropriate conditions are necessary to deal with the effects of the exercise of the consent.
- (2) The EPA must, in accordance with section 78, serve notice on a consent holder of its intention to review the conditions of a marine consent if required by an order made under section 133(5)(b).

77 Contents of notice of review

- (1) A notice of review must—
 - (a) specify that the duration of the consent is to be reviewed, if that is the case; and
 - (b) identify the conditions to be reviewed; and
 - (c) give reasons for the review; and
 - (d) specify the information that the Environmental Protection Authority took into account in deciding to review the conditions, if the review is under section 76(1)(d) or (e); and
 - (e) tell the consent holder whether a charge is payable and, if so, the estimated amount of the charge.
- (2) A notice of review may—
 - (a) propose new consent conditions; or
 - (b) propose a change in the duration of a consent; or
 - (c) invite the consent holder to propose new consent conditions within 20 working days after service of the notice.

78 Notice of review to consent holder and public notice

- (1) If the Environmental Protection Authority serves a notice of review on a consent holder, the EPA must also give public notice of its intention to review the conditions or duration of a marine consent.
- (2) The EPA must serve a copy of the public notice on the persons specified in section 45(1) and that provision applies as if reference to an application for a marine consent were reference to a notice of review.
- (3) The public notice must—
 - (a) be in the prescribed form; and
 - (b) give a summary of the notice of review; and
 - (c) specify where the notice of review is available for inspection.
- (4) The EPA must comply with subsections (1) and (2) within—
 - (a) 30 working days after the date on which the EPA serves the notice of review on the consent holder, if the consent holder is invited to propose new conditions; or
 - (b) 10 working days after the date on which the EPA serves the notice of review on the consent holder, if paragraph (a) does not apply.

79 Further information, advice, submissions, and hearing

- (1) Sections 42 to 58 apply, with all necessary modifications, to a review of a marine consent as if—
 - (a) the notice of review were an application for a marine consent; and
 - (b) the consent holder were the applicant for the marine consent.
- (2) However, section 44(1)(a) does not apply to a review.

80 Matters to be considered in review

When reviewing the conditions of a marine consent, the Environmental Protection Authority—

- (a) must—
 - (i) consider the matters in sections 59 and 60 as provided for in those sections; and
 - (ii) comply with section 61; and
 - (iii) have regard to whether the activity allowed by the consent will continue to be viable after the proposed change of conditions; and
- (b) in the case of a review under section 76(2), must have regard to any reasons that the court provided for making the order requiring the review; and
- (c) may have regard to the manner in which the activity authorised by the consent has been undertaken.

81 Decisions on review of consent conditions

- (1) The Environmental Protection Authority may change a condition of a marine consent on a review under section 76 only if 1 or more of the circumstances specified in that section apply.
- (2) Sections 63 to 71 (which relate to conditions, decisions, notification, and commencement) and sections 105 and 113 (which relate to appeals) apply, with all necessary modifications, to a review as if—
 - (a) the review were an application for a marine consent; and
 - (b) the consent holder were an applicant for a marine consent.
- (3) The EPA may cancel a consent if the review was initiated under section 76(1)(c), (d), (e), or (2) and the activity author-

ised by the consent has significant adverse effects on the environment or existing interests.

- (4) If the EPA cancels a consent, the EPA may—
 - (a) set a timetable for the consent holder to cease the activity; and
 - (b) direct the consent holder to take any other action in relation to any structures used for the activity; and
 - (c) direct the consent holder to take action to avoid, remedy, or mitigate adverse effects caused by the activity.
- (5) The consent holder must comply with the timetable set by the EPA and with any other directions of the EPA.
- (6) The consent holder may object, under section 101, to a decision to change a condition of a consent or to cancel a consent.
- (7) To avoid doubt, the power to change a condition includes the power to cancel a condition or impose a new condition.

82 Decision on review of duration of consent

- (1) The Environmental Protection Authority may shorten the duration of a marine consent on a review under section 76 only if the effects of the activity authorised by the consent, or the scale or intensity of the effects, were not anticipated when the consent was granted and shortening the duration is the only way to avoid, remedy, or mitigate the effects appropriately.
- (2) The EPA may extend the duration of a consent on a review under section 76 only if the monitoring of the effects shows that the effects are minor or may be avoided, remedied, or mitigated by imposing conditions.
- (3) A change in the duration of a consent after a review must not result in the duration of the consent exceeding 35 years.
- (4) The consent holder may object, under section 101, to a decision to shorten or not to extend the duration of a consent.

83 Process for minor changes to consent conditions

- (1) If the Environmental Protection Authority considers that a review is likely to be limited to minor changes to the conditions of a consent, it may deal with the review without notifying the review under section 78.

- (2) If the EPA deals with a review under subsection (1), section 79 does not apply to the review.
- (3) However, despite subsection (2), the EPA must allow the consent holder to make a submission and request a hearing.
- (4) As a result of a review under this section, the EPA may not—
 - (a) cancel a consent; or
 - (b) make changes to the conditions of a consent that are more than minor.
- (5) The consent holder may object, under section 101, to a decision by the EPA to change consent conditions.

84 Minor corrections of marine consents

The EPA may issue an amended consent to correct minor mistakes or defects in a consent within 15 working days after the granting of the consent.

Cancellation of marine consents

85 Lapsing of consent if not exercised

- (1) A marine consent lapses on the date specified in the consent or, if no date is specified, 5 years after the date of commencement of the consent unless, before the consent lapses,—
 - (a) the consent is given effect to; or
 - (b) an application is made to the Environmental Protection Authority to extend the period after which the consent lapses, and the EPA decides to grant an extension after taking into account—
 - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
 - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
 - (iii) relevant enactments.
- (2) The consent holder may object, under section 101, to a decision of the EPA under subsection (1)(b) not to extend the period after which the consent lapses.

86 Cancellation of consent if not exercised

- (1) The Environmental Protection Authority may cancel a marine consent by written notice served on the consent holder if the consent has been exercised in the past but has not been exercised during the preceding 5 years.
- (2) However, despite subsection (1), the consent holder may ask the EPA to revoke the notice no later than 3 months after service of the notice.
- (3) In deciding whether to revoke the notice, the EPA must take into account—
 - (a) whether the applicant has obtained approval from persons whose existing interests may be adversely affected by the revocation of the notice; and
 - (b) how any regulations classify and provide for the activity authorised by the consent in relation to the area to which the consent relates.
- (4) Subsection (1) does not apply if the consent expressly provides otherwise.
- (5) The consent holder may object, under section 101, if the EPA refuses to revoke a notice.

87 Change or cancellation of consent conditions on application by consent holder

- (1) The holder of a marine consent may request the Environmental Protection Authority to change or cancel a condition of the consent.
- (2) Sections 38 to 71 apply, with all necessary modifications, as if—
 - (a) the request were an application for a marine consent; and
 - (b) the references to a marine consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.
- (3) However, if the EPA considers that the requested change or cancellation is likely—
 - (a) to affect the existing interests of only some of the persons described in subsection (4), it may notify those per-

- sons and may, but need not, give public notice of the request under section 45; or
- (b) to be limited to minor matters, it may deal with the request under section 83.
- (4) For the purposes of determining who is adversely affected by the change or cancellation, the EPA must consider, in particular, every person who—
- (a) made a submission on the original application; and
- (b) has an existing interest that may be affected by the change or cancellation.
- (5) If the EPA decides, under subsection (3)(a), not to give public notice of the request, the EPA may, but need not, give public notice of its decision under section 70.
- (6) The consent holder may object, under section 101, if the EPA refuses to change or cancel the condition as requested by the consent holder.

Subpart 3—Marine consents for cross-boundary activities

88 Interpretation

In this subpart, unless the context otherwise requires,—

assessment of environmental effects means the assessment of effects on the environment required by section 88(2)(b) of the Resource Management Act 1991

coastal marine area has the meaning given to it by section 2(1) of the Resource Management Act 1991

consent authority has the meaning given to it by section 2(1) of the Resource Management Act 1991

cross-boundary activity means an activity that is carried out partly in the exclusive economic zone or in or on the continental shelf and partly in New Zealand

joint application for consent or **joint application** means an application that comprises both an application for a resource consent under the Resource Management Act 1991 and an application for a marine consent under this Act

relevant consent authority means—

- (a) the consent authority responsible for a district or region in which part of a cross-boundary activity is or is intended to be undertaken; or
- (b) the Minister of Conservation, in relation to the coastal marine areas of the Kermadec Islands, the Snares Islands, the Bounty Islands, the Antipodes Islands, the Auckland Islands, Campbell Island, and the islands adjacent to Campbell Island

resource consent has the meaning given to it by section 2(1) of the Resource Management Act 1991.

89 Application of this subpart

- (1) This subpart applies to a proposal to undertake a cross-boundary activity that cannot be carried out without—
 - (a) a resource consent for the part of the activity that is carried out in the coastal marine area; and
 - (b) a marine consent for the part of the activity that is carried out in the exclusive economic zone or in or on the continental shelf.
- (2) However, this subpart does not apply if a part of the activity to be carried out in the coastal marine area is a restricted coastal activity under section 117 of the Resource Management Act 1991.

EPA may decide whether joint or separate applications for consent required

90 Application for consent for cross-boundary activity

A person who intends to undertake a cross-boundary activity may—

- (a) prepare a joint application for consent that complies with the requirements of—
 - (i) this Act and any regulations in relation to the part of the activity that relates to the exclusive economic zone or the continental shelf; and
 - (ii) the Resource Management Act 1991, and any regulations, national environmental standards, or regional or district plans made under that Act, in

relation to the part of the activity that relates to New Zealand; or

- (b) apply for a marine consent and a resource consent for a cross-boundary activity separately, whether concurrently or at different times.

91 Joint application for consent for cross-boundary activity

- (1) This section applies if a person makes a joint application for consent.
- (2) The joint application must be sent to both the relevant consent authority and the Environmental Protection Authority.
- (3) The joint application must include an assessment of effects that complies with section 88(2)(b) of the Resource Management Act 1991 and section 39 of this Act.
- (4) The joint application may specify that the application for resource consent is lodged with the EPA under section 145 of the Resource Management Act 1991.

92 Separate applications for consents for cross-boundary activity

Subpart 2 applies to an application for a marine consent if a person—

- (a) applies separately for consents for a cross-boundary activity, as described in section 90(b); or
- (b) applies for a marine consent in relation to a cross-boundary activity and does not apply for a resource consent for the activity.

93 Environmental Protection Authority may require joint application

- (1) At any time before or during the processing of an application for a marine consent for a cross-boundary activity, the Environmental Protection Authority may decide (whether on a request by the applicant or on its own initiative) that the application ought to be processed and heard (if a hearing is held) with an application for resource consent for the activity.

- (2) Subsection (1) applies despite a decision by an applicant to apply separately for resource and marine consents under section 90(b) and despite section 92.
- (3) In the case described in subsection (1), the EPA may decide—
 - (a) not to proceed with the notification or hearing of the application for a marine consent until the application for resource consent is lodged with it and the relevant consent authority; or
 - (b) return the application for a marine consent to the applicant as incomplete under section 41.
- (4) The EPA must inform the applicant of its decision under subsection (1) as soon as practicable after making the decision.
- (5) If the EPA makes the decision in subsection (3)(a) and the applicant then lodges an application for a resource consent for the cross-boundary activity, the application for resource consent and the application for a marine consent are a new joint application for consent made on the date on which the application for a resource consent was lodged.

94 Decision to separate joint application for consent

- (1) At any time during the processing of a joint application for consent, the Environmental Protection Authority may decide that the application for a resource consent and the application for a marine consent that comprise the joint application must cease to be processed as a joint application and continue to be processed separately.
- (2) Subsection (1) applies only if—
 - (a) the EPA and the relevant consent authority agree that the applications are sufficiently unrelated that a joint process is not necessary; or
 - (b) the application for resource consent does not require public notification under the Resource Management Act 1991; or
 - (c) a hearing is required for one application but not the other; or
 - (d) the joint processing of the applications for resource consent and marine consent that comprise the joint application for consent is not administratively efficient.

- (3) In any case described in subsection (1),—
 - (a) the relevant consent authority must resume processing the application for resource consent under the Resource Management Act 1991; and
 - (b) the EPA must resume processing the application for a marine consent under subpart 2.
- (4) The EPA must cease processing a joint application for consent if—
 - (a) the Minister for the Environment or the Minister of Conservation (in relation to a proposal of national significance) directs that the application for a resource consent be referred to the Environment Court for decision under section 142(2)(b) or 147(1)(b) of the Resource Management Act 1991; or
 - (b) the relevant consent authority agrees to the applicant's request made under section 87D of the Resource Management Act 1991 to allow the application to be determined by the Environment Court.
- (5) In the case described in subsection (4)(a), section 149T of the Resource Management Act 1991 applies to the application for resource consent.
- (6) In the case described in subsection (4)(b), sections 87F(2) to (5) and 87G to 87I of the Resource Management Act 1991 apply to the application for resource consent.
- (7) In both cases described in subsection (4), the EPA must resume processing the application for a marine consent under subpart 2.

Processing of joint application

95 Application of sections 96 and 97

Sections 96 and 97 apply to the processing of a joint application for consent while the application is a joint application.

96 Environmental Protection Authority to administer process

- (1) The Environmental Protection Authority is responsible for ensuring the efficient and co-ordinated processing of a joint application for consent for a cross-boundary activity.

- (2) The EPA must, in relation to the joint application, liaise with the relevant consent authority to—
 - (a) prepare a request for further information under section 42 so that, where practicable, the request covers all the information needed in relation to the whole cross-boundary activity; and
 - (b) ensure that the application is notified jointly by the EPA and the relevant consent authority; and
 - (c) set a closing date for the making of submissions; and
 - (d) receive submissions and provide copies of them to the consent authority; and
 - (e) set the hearing time, date, and venue, and notify submitters of those matters; and
 - (f) set the procedure for the hearing; and
 - (g) provide general administrative services.
- (3) The EPA may extend a time period that applies to the processing of the application for a marine consent in order to ensure that—
 - (a) the application for a marine consent is notified jointly with the application for resource consent;
 - (b) submissions on the applications close on the same date;
 - (c) the applications are heard (if there is a hearing) at the same time and place.
- (4) Section 160(1) and (2) do not apply to the exercise by the EPA of the power to extend a time period under subsection (3).

97 Relevant consent authority and EPA to share information

- (1) The Environmental Protection Authority and the relevant consent authority must provide each other with copies of all information and reports relating to the application received by them after the joint application has been made.
- (2) The EPA and the relevant consent authority must provide the information as soon as practicable after they receive the information or report.

98 Separate decisions on marine consent and resource consent applications

- (1) The Environmental Protection Authority must decide the application for a marine consent that is part of a joint application for consent.
- (2) Sections 59 to 71 apply to the application for a marine consent.
- (3) The relevant consent authority must decide the application for a resource consent that is part of a joint application.
- (4) Sections 104 to 116 of the Resource Management Act 1991 apply to the application for resource consent.

*Nationally significant cross-boundary activities***99 Application for consent for nationally significant cross-boundary activity referred to board of inquiry**

- (1) This section applies if the application for a resource consent for the part of the cross-boundary activity that is to be carried out in the coastal marine area is or is part of a proposal of national significance referred to a board of inquiry under section 142(2)(a) or 147(1)(a) of the Resource Management Act 1991.
- (2) The Environmental Protection Authority may delegate to the board of inquiry the EPA's functions in relation to an application for a marine consent that relates to the part of the activity that is to be carried out in the exclusive economic zone or in or on the continental shelf.
- (3) If the EPA delegates its functions under subsection (2), sections 50 to 58 of this Act do not apply to the application for a marine consent and, instead,—
 - (a) the EPA must process and the board of inquiry must decide the application for a marine consent together with the associated application for a resource consent; and
 - (b) the provisions of the Resource Management Act 1991 specified in subsection (5) apply to the processing of the application for marine consent as if the application for a marine consent were a matter lodged with the EPA under section 145(1)(a) of the Resource Management Act 1991.
- (4) If subsection (3) applies, the EPA must—

- (a) notify the application for a marine consent under section 45 of this Act, if it has not already been notified; and
 - (b) receive submissions made under section 46.
- (5) The provisions referred to in subsection (3)(b) are—
 - (a) section 149L (which deals with the conduct of the inquiry):
 - (b) section 149Q (which requires the board to produce a draft report) except subsections (2)(e) and (f) and (3)(b) and (c):
 - (c) section 149R (which requires the board to produce a final report)—
 - (i) as if subsection (2)(a) of that section referred to the day on which the EPA gave public notice under section 45 of this Act; but
 - (ii) not including subsections (3)(e) and (f) and (4)(b) and (c):
 - (d) section 149S (which allows the Minister to extend the time by which the board must report)—
 - (i) as if subsection (2)(b)(i) of that section referred to the day on which the EPA gave public notice under section 45 of this Act; but
 - (ii) not including subsection (4)(b):
 - (e) section 149V (which provides for appeals against decisions to be on questions of law only) as if the reference to section 149R(4)(a) to (f) were a reference to section 149R(4)(a), (d), (e), and (f).

100 EPA must provide board of inquiry with necessary information

- (1) This section applies if an application for a marine consent is to be decided by a board of inquiry.
- (2) The EPA must provide the board of inquiry with each of the following things as soon as is reasonably practicable after receiving it:
 - (a) the application for the marine consent:
 - (b) all the information received by the EPA that relates to the application or the activity:
 - (c) the submissions received by the EPA on the application.

- (3) The EPA must also prepare or commission a report on the key issues relating to the application and the activity, including—
 - (a) any relevant provisions of regulations made under this Act; and
 - (b) a statement on whether the application covers all aspects of the activity for which a marine consent is required.
- (4) The EPA must provide a copy of the report to—
 - (a) the board of inquiry; and
 - (b) the relevant consent authority; and
 - (c) the applicant; and
 - (d) every submitter.

Part 4

Objections, appeals, and enforcement

Subpart 1—Objections and appeals

Objections

101 Right of objection to Environmental Protection Authority against certain decisions

- (1) An applicant for a marine consent may object to a decision of the Environmental Protection Authority to—
 - (a) return an incomplete application under section 41;
 - (b) commission a review or report, or seek advice under section 44.
- (2) A submitter whose submission or part of whose submission is struck out under section 58(5) may object to the decision of the EPA to strike out the submission or part of the submission.
- (3) A consent holder may object to a decision of the EPA to—
 - (a) change a condition of a consent or cancel a consent under section 81;
 - (b) shorten or refuse to extend the duration of a consent under section 82;
 - (c) make a minor change to a condition under section 83;
 - (d) refuse to extend the period after which a consent lapses under section 85;
 - (e) cancel a consent under section 86;

- (f) refuse to change or cancel a condition as requested by the consent holder under section 87.

102 Procedure for making or hearing objection

- (1) An objection made under section 101 must be made in writing to the Environmental Protection Authority not later than 15 working days after the decision is notified to the person affected by the decision.
- (2) The notice of objection must set out the reasons for the objection.
- (3) The EPA must—
 - (a) give the person who made the objection an opportunity to be heard; and
 - (b) consider and decide the objection within 20 working days after receipt of the notice of objection.

103 Decision on objection

- (1) The Environmental Protection Authority may—
 - (a) dismiss the objection; or
 - (b) uphold the objection in whole or in part.
- (2) Not later than 5 working days after the EPA makes a decision on an objection, it must send a copy of the decision to—
 - (a) the person who made the objection; and
 - (b) any other person the EPA considers appropriate.
- (3) A decision must include the reasons for the decision.

104 Appeals against decisions on objections

- (1) Any person who has made an objection under section 101 may appeal to the High Court against the decision on the objection only on a question of law.
- (2) This section does not apply to a person who has exercised a right of appeal under section 105 relating to the same matter.

Appeal to High Court on question of law

105 Appeals on question of law

- (1) The applicant for a consent or any submitter on an application for a consent may appeal to the High Court against the whole

or a part of a decision of the Environmental Protection Authority to—

- (a) grant an application for a consent; or
 - (b) decline an application; or
 - (c) impose any conditions on a consent.
- (2) The holder of a consent or any submitter on the review of a consent may appeal to the High Court against the whole or a part of a decision of the Environmental Protection Authority to—
- (a) change a condition of a consent under section 81(1); or
 - (b) shorten, extend, or refuse to extend the duration of a consent under section 82; or
 - (c) cancel a consent under section 81(2).
- (3) The holder of a consent or any submitter may appeal to the High Court against the whole or a part of a decision of the EPA to refuse to change or cancel a condition as requested by the consent holder under section 87.
- (4) An appeal lodged under this section may be only on a question of law.
- (5) This section is in addition to the rights provided for in section 101.

106 Notice of appeal

- (1) An appellant must file a notice of appeal with the Registrar of the High Court in Wellington within 15 working days after the date on which the appellant is notified of the decision of the Environmental Protection Authority.
- (2) The appellant must also serve a copy of the notice of the appeal on the EPA within the time limit specified in subsection (1).
- (3) The notice of appeal must specify—
- (a) the decision or part of the decision appealed against; and
 - (b) the error of law alleged by the appellant; and
 - (c) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and
 - (d) the relief sought.
- (4) The appellant must serve a copy of the notice of appeal on—
- (a) the applicant or consent holder, if the appellant is not the applicant or consent holder; and

- (b) any submitter on the application for consent, or a change of the consent conditions, or a review of consent conditions.
- (5) The appellant must comply with subsection (4) no later than 5 working days after the appeal is filed.
- (6) The EPA must send a copy of the whole of the decision appealed against to the Registrar of the High Court as soon as is reasonably practicable after receiving the notice of appeal.

107 Right to appear and be heard on appeal

- (1) The applicant for, or holder of, the consent to which the appeal relates and any submitters who wish to appear on an appeal to the High Court must give notice of intention to appear to—
 - (a) the appellant; and
 - (b) the Registrar of the High Court; and
 - (c) the Environmental Protection Authority.
- (2) The notice to appear must be served within 10 working days after the person was served with the notice of appeal.

108 Parties to appeal

The parties to an appeal before the High Court are—

- (a) the appellant; and
- (b) the Environmental Protection Authority; and
- (c) a person who gives notice of intention to appear under section 107; and
- (d) a person who becomes a party to an appeal under section 109.

109 Representation at proceedings

- (1) The following persons may be a party to any proceedings before the High Court under this Act:
 - (a) the Attorney-General, representing a relevant aspect of the public interest;
 - (b) the relevant consent authority in relation to proceedings affecting a cross-boundary activity to which subpart 3 of Part 3 applies.

- (2) A person described in subsection (1) may become a party to the proceedings by giving notice to the High Court and to all other parties within 15 working days after—
 - (a) the period for lodging a notice of appeal ends, if the proceedings are an appeal;
 - (b) the proceedings are commenced, in any other case.
- (3) The notice given under subsection (2) must state—
 - (a) the proceedings in which the person has an interest; and
 - (b) whether the person supports or opposes the proceedings and the reasons for that support or opposition; and
 - (c) if applicable, the grounds for seeking representation under subsection (1)(a); and
 - (d) an address for service.
- (4) A person who becomes a party to the proceedings under this section may appear and call evidence in accordance with subsection (5).
- (5) Evidence must not be called under subsection (4) unless it is on matters within the scope of the appeal or other proceeding.
- (6) A person who becomes a party to the proceedings under this section may not oppose the withdrawal or abandonment of the proceedings unless the proceedings were brought by a person who made a submission in the previous proceedings on the same matter.

110 Dismissal of appeal

The High Court may dismiss an appeal if—

- (a) the appellant does not appear at the hearing of the appeal; or
- (b) the appellant does not proceed with the appeal with due diligence and another party applies to the court to dismiss the appeal.

111 Date of hearing

- (1) An appeal is ready for hearing when the appellant notifies the Registrar of the High Court that the notice of appeal has been served on all parties to the proceedings.

- (2) The Registrar must arrange a hearing date as soon as practicable after being notified that the notice of appeal has been served on all parties to the proceedings.

112 Application of High Court Rules

The High Court Rules apply if a procedural matter is not provided for by sections 105 to 111.

Appeal to Court of Appeal

113 Appeal to Court of Appeal

Section 144 of the Summary Proceedings Act 1957 applies to a decision of the High Court on an appeal filed under section 105 of this Act as if the decision had been made under section 107 of the Summary Proceedings Act 1957.

Subpart 2—Enforcement

114 Proceedings to be heard by Environment Judge

- (1) All proceedings in relation to enforcement orders must be heard by an Environment Judge sitting alone or by the Environment Court.
- (2) Proceedings relating to an interim enforcement order must be heard by—
- (a) an Environment Judge sitting alone; or
 - (b) in the District Court by a District Court Judge who is an Environment Judge.
- (3) Proceedings under section 132 must be heard in the District Court by a District Court Judge who is an Environment Judge.
- (4) Despite subsections (2) and (3), the proceedings described in those subsections need not be heard by a District Court Judge who is an Environment Judge if the Chief District Court Judge directs otherwise.

Enforcement order

115 Enforcement order

- (1) In this Part, **enforcement order** means an order made by the Environment Court or an Environment Judge (or by another

Judge in accordance with section 114) that does 1 or more of the following:

- (a) requires a person to stop doing something, or prohibits the person from starting to do something that, in the opinion of the court, breaches or is likely to breach this Act, any regulations, or a marine consent:
 - (b) requires a person to do something that, in the opinion of the court, is necessary to—
 - (i) ensure that the person complies with this Act, any regulations, or a marine consent; or
 - (ii) avoid, remedy, or mitigate any actual or likely adverse effects on the environment or existing interests that result from any breach of this Act, regulations, or a marine consent by the person:
 - (c) requires a person to pay money to or reimburse any other person for any actual and reasonable costs and expenses which that other person has incurred or is likely to incur in taking reasonable measures to avoid, remedy, or mitigate any adverse effect on the environment or existing interests, where the person against whom the order is sought fails to comply with—
 - (i) an order under any other paragraph of this subsection; or
 - (ii) regulations or a marine consent; or
 - (iii) any of that person's other obligations under this Act:
 - (d) changes or cancels a consent if—
 - (i) the court is of the opinion that the information provided to the Environmental Protection Authority by the applicant contained inaccuracies relevant to the enforcement order sought that materially influenced the decision to grant the consent; and
 - (ii) the effects of the exercise of the consent are such that more appropriate conditions are needed or the consent should be cancelled.
- (2) For the purposes of subsection (1)(c), **actual and reasonable costs** includes the costs of investigation, supervision, and monitoring of the adverse effect on the environment, and the

costs of any actions required to avoid, remedy, or mitigate the adverse effect.

- (3) In subsection (1), an act done or to be done, or any adverse effects caused, by a person includes an act done or to be done, or adverse effects caused, on the person's behalf.
- (4) An enforcement order may be made on such terms and conditions as the Environment Court thinks fit (including the payment of any charge provided for by regulations, the provision of security, or the entry into a bond for performance).
- (5) An enforcement order will, if the court so states, apply to the personal representatives, successors, and assigns of a person to the same extent as it applies to that person.

116 Application for enforcement order

- (1) The Environmental Protection Authority, an enforcement officer, or any other person may apply to the Environment Court for an enforcement order.
- (2) The application for an enforcement order must be in the prescribed form and specify the relief sought.
- (3) Part 11 of the Resource Management Act 1991 applies as if the application were made under Part 12 of that Act.

117 Notice of application for enforcement order

- (1) The applicant for an enforcement order must serve notice of the application for the order—
 - (a) on every person directly affected by the application; and
 - (b) if the applicant is not the EPA or an enforcement officer, on the EPA.
- (2) The notice must be—
 - (a) in the prescribed form; and
 - (b) served within 5 working days after the application is made to the Environment Court.

118 Right to be heard

Before deciding an application for an enforcement order, the Environment Court must—

- (a) hear the applicant for the enforcement order; and

- (b) hear the person against whom the order is sought, if the person wishes to be heard.

119 Decision on application for enforcement order

After considering an application for an enforcement order, the Environment Court may—

- (a) make an order under section 115; or
- (b) refuse the application.

120 Interim enforcement order

- (1) Sections 115 to 119 apply to an application for, and the determination of the application for, an interim enforcement order, except as provided in this section.
- (2) If an Environment Judge or a District Court Judge considers there is an imminent risk of serious adverse effects resulting from a breach of the Act, regulations, or a marine consent, the Judge may make an interim enforcement order—
 - (a) without requiring service of notice in accordance with section 117; and
 - (b) without holding a hearing.
- (3) Before making an interim enforcement order, the Environment Judge or the District Court Judge must consider—
 - (a) what the effect of not making the order would be on the environment and existing interests; and
 - (b) whether the applicant has given an appropriate undertaking as to damages; and
 - (c) whether the Judge should hear the applicant or any person against whom the interim order is sought; and
 - (d) such other matters as the Judge thinks fit.
- (4) The Judge must direct the applicant for the interim enforcement order or another person to serve a copy of the interim enforcement order on the person against whom the order is made.
- (5) The interim enforcement order takes effect on and from the date on which it is served or such later date as the order specifies.

121 Application to change or cancel interim enforcement order

- (1) This section applies to a person—
 - (a) against whom an interim enforcement order has been made; and
 - (b) who was not heard by the Judge who made the order before the order was made.
- (2) The person may apply, as soon as practicable after service of the order, to an Environment Judge or a District Court Judge to change or cancel the order.
- (3) The Environment Judge or the District Court Judge may confirm, change, or cancel the interim enforcement order after hearing from the person, the applicant, and any other person the Judge thinks fit.
- (4) An interim enforcement order stays in force until an application for an enforcement order under section 115 is determined, or until cancelled by an Environment Judge or a District Court Judge under subsection (3), or cancelled by the Environment Court under section 123.

122 Compliance with enforcement order

- (1) Where an enforcement order is made against a person and that enforcement order is served on that person, that person must—
 - (a) comply with the order; and
 - (b) unless the order directs otherwise, pay all the costs of complying with the order.
- (2) If a person against whom an enforcement order is made fails to comply with the order, any person may, with the consent of the Environment Court,—
 - (a) comply with the order on behalf of the person who fails to comply with the order, and for this purpose, enter upon any land or enter any structure (with a constable if the structure is a dwellinghouse or a marae); and
 - (b) recover the costs of doing so as a debt due from that person.

123 Change or cancellation of enforcement order

- (1) The applicant for an enforcement order or the person against whom an enforcement order is made may apply to the Environment Court in the prescribed form to change or cancel the order.
- (2) Subsection (1) does not limit section 121(2).
- (3) Sections 117 to 119 (which relate to notification, hearing, and decision) apply to every application under subsection (1) as if it were an application for an enforcement order.

124 Restriction on certain applications for enforcement orders

- (1) No person may apply to the Environment Court for an enforcement order of a kind specified in any of section 115(1)(a) to (c) in respect of anything done or to be done—
 - (a) by or on behalf of the Director of Maritime New Zealand under section 248 or 249 of the Maritime Transport Act 1994; or
 - (b) by or on behalf of any person in accordance with any instructions issued under either of those sections of that Act; or
 - (c) by or on behalf of any on-scene commander under section 305 or 311 of that Act or in accordance with a direction given under section 310 of that Act; or
 - (d) by or on behalf of the master or owner of any ship, or the owner or operator of any oil transfer site or offshore installation, or any other person, in accordance with a direction given under section 305 of that Act.
- (2) No person may apply for an enforcement order of a kind specified in section 115(1)(c) in respect of any actual or reasonable costs where—
 - (a) the costs that a person has incurred or is likely to incur constitute pollution damage (as defined in section 342 of the Maritime Transport Act 1994); and
 - (b) in respect of those costs, the person is liable in damages under Part 25 of that Act.
- (3) Neither the Environment Court nor any other court may make an order relating to such damage in any proceedings (including prosecutions for offences) under this Act.

*Abatement notices***125 Abatement notices**

- (1) An enforcement officer may serve on any person an abatement notice requiring the person—
- (a) to stop doing something, or prohibiting the person from starting to do something, that, in the opinion of the enforcement officer, contravenes or is likely to contravene this Act, any regulations, or a marine consent:
 - (b) to do something that, in the opinion of the enforcement officer, is necessary to ensure the person complies with this Act, regulations made under it, or a marine consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment or existing interests.
- (2) In subsection (1), something done, or any adverse effects caused, by a person includes something done, or an adverse effect caused, on the person's behalf.
- (3) An abatement notice may be made subject to conditions that are reasonable in the circumstances.
- (4) An enforcement officer must not serve an abatement notice unless the enforcement officer has reasonable grounds for believing that any of the circumstances described in subsection (1) exist.

126 Compliance with abatement notice

Any person on whom an abatement notice is served must—

- (a) comply with the notice within the period specified in the notice; and
- (b) unless the notice directs otherwise, pay all the costs and expenses of complying with the notice.

127 Form and content of abatement notice

An abatement notice must be in the prescribed form and must state—

- (a) the name of the person to whom it is addressed; and
- (b) the reasons for the notice; and
- (c) the action required to be taken or discontinued or not undertaken; and

- (d) the reasonable period within which the action must be taken or discontinued, having regard to the circumstances giving rise to the abatement notice; and
- (e) the consequences of not complying with the notice; and
- (f) the rights of appeal under section 129.

128 Cancellation of abatement notice

- (1) The Environmental Protection Authority may cancel an abatement notice at any time if it considers that the abatement notice is no longer required.
- (2) A person who is directly affected by an abatement notice may apply in writing to the EPA to change or cancel the abatement notice.
- (3) The EPA must consider the application as soon as practicable and may confirm, change, or cancel the abatement notice.
- (4) In deciding an application, the EPA must have regard to—
 - (a) the purpose for which the abatement notice was given; and
 - (b) the effect of a change or cancellation of the notice on the purpose for which the notice was given; and
 - (c) any other matter the EPA thinks fit.
- (5) The EPA must give written notice to any person subject to an abatement notice of its decision under subsection (1) to cancel the abatement notice, or, under subsection (3), to confirm, change, or cancel the notice.
- (6) The EPA must also give written notice of its decision under subsection (3) to the person who applied under subsection (2).

129 Appeals

- (1) A person served with an abatement notice may appeal to the Environment Court against the whole or any part of the notice.
- (2) Notice of an appeal must—
 - (a) be in the prescribed form; and
 - (b) state the reasons for the appeal and the relief sought; and
 - (c) state any matters required by regulations; and

- (d) be lodged with the Environment Court and served on the EPA within 15 working days after service of the abatement notice on the person who lodged the appeal.
- (3) Part 11 of the Resource Management Act 1991 applies as if the appeal were lodged under Part 12 of that Act.

130 Restrictions on certain abatement notices

No person may serve an abatement notice on a person in respect of anything done or to be done by or on behalf of—

- (a) the Director of Maritime New Zealand under section 248 or 249 of the Maritime Transport Act 1994; or
- (b) a person in accordance with instructions issued under either of those sections; or
- (c) an on-scene commander under section 305 or 311 of that Act or in accordance with a direction given under section 310 of that Act; or
- (d) the master or owner of a ship, or the owner or operator of an oil transfer site or offshore installation, or any other person, in accordance with a direction given under section 305 or 311 of that Act.

131 Proceedings in Environment Court

Sections 299 to 308 of the Resource Management Act 1991 apply to proceedings in the Environment Court under this Act.

Offences and penalties

132 Offences

- (1) A person commits an offence against this Act who breaches, or permits a breach of, any of the following:
 - (a) section 20 (which imposes restrictions on activities):
 - (b) an enforcement order:
 - (c) an abatement notice:
 - (d) section 24 or 167 (which require a person to comply with the EPA's instructions when stopping an activity).
- (2) A person commits an offence against this Act who breaches, or permits a breach of, any of the following:

- (a) a requirement under section 35(3) to notify the Environmental Protection Authority of permitted activities to be undertaken:
 - (b) a requirement to provide certain information to an enforcement officer under section 140:
 - (c) a direction given by the EPA under section 158 in relation to the protection of sensitive information:
 - (d) an order (other than an enforcement order) made by the Environment Court or the High Court.
- (3) Every person commits an offence against this Act who—
 - (a) wilfully obstructs, hinders, resists, or deceives any person in the execution of any powers conferred on that person by or under this Act; or
 - (b) contravenes or permits a contravention of any summons or order to give evidence issued or made under section 55.

133 Penalties

- (1) A person who commits an offence against section 132(1) is liable on conviction,—
 - (a) in the case of a natural person, to a fine not exceeding \$300,000:
 - (b) in the case of a person other than a natural person, to a fine not exceeding \$10 million.
- (2) Every person who commits an offence against section 132(1) is also liable on conviction, if the offence is a continuing one, to a fine not exceeding \$10,000 for every day or part of a day during which the offence continues.
- (3) A person who commits an offence against section 132(2) is liable on summary conviction to a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues.
- (4) A person who commits an offence against section 132(3) is liable on summary conviction to a fine not exceeding \$1,500.
- (5) If a person is convicted of an offence against section 132, the court may, instead of or in addition to imposing a fine, make 1 or more of the following orders:

- (a) an order specified in section 115;
 - (b) an order requiring the Environmental Protection Authority to serve notice, under section 76(2), of the review of a marine consent held by the person, but only if the offence involves an act or omission that breaches the consent.
- (6) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act is a continuing offence.

134 Strict liability and defences

- (1) In a prosecution for an offence of breaching, or permitting a breach of, section 20, it is not necessary to prove that the defendant intended to commit the offence.
- (2) It is a defence to a prosecution of the kind referred to in subsection (1) if the defendant proves—
- (a) that—
 - (i) the action or event to which the prosecution relates was necessary for the purposes of saving or protecting life or health, or preventing serious damage to property, or avoiding an actual or likely adverse effect on the environment or existing interests; and
 - (ii) the conduct of the defendant was reasonable in the circumstances; and
 - (iii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred; or
 - (b) that the action or event to which the prosecution relates resulted from an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage, and in each case—
 - (i) the action or event could not reasonably have been foreseen or been provided against by the defendant; and
 - (ii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred.

- (3) Subsection (2) applies only if the defendant delivers to the prosecutor within 7 days after the service of the summons, or such further time as the court may allow, a written notice—
 - (a) stating that the defendant intends to rely on subsection (2); and
 - (b) specifying the facts that support his or her reliance on subsection (2).
- (4) However, the court may grant leave to the defendant to rely on subsection (2) even if the defendant does not comply with subsection (3).

135 Liability of principal for acts of agents

- (1) The consequence specified in subsection (2) applies if a person (the **agent**) commits an offence against this Act while—
 - (a) acting as an agent (including a contractor) or employee of another person (the **principal**); or
 - (b) in charge of a ship owned by another person (the **principal**).
- (2) The principal is liable in the same manner and to the same extent as if the principal had personally committed the offence.
- (3) The liability of the principal is without prejudice to the liability of the agent.
- (4) Despite subsection (2), if proceedings are brought in reliance on that subsection, it is a defence if the defendant proves,—
 - (a) in the case of a natural person (including a partner in a firm), that—
 - (i) he or she did not know, nor could reasonably be expected to have known, that the offence was to be or was being committed; or
 - (ii) he or she took all reasonable steps to prevent the commission of the offence; or
 - (b) in the case of a person other than a natural person, that—
 - (i) neither the directors (if any) nor any person involved in the management of the defendant knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or
 - (ii) the defendant took all reasonable steps to prevent the commission of the offence; and

- (c) the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
- (5) If a person other than a natural person is convicted of an offence against this Act, a director (if any), or a person involved in the management of, the defendant is guilty of the same offence if it is proved that—
 - (a) the act or omission that constituted the offence took place with his or her authority, permission, or consent; and
 - (b) he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

136 Commencement of offence proceedings

Only an enforcement officer may lay an information in respect of an offence under this Act.

137 Limitation period

- (1) An information in respect of an offence against this Act may be laid no later than 6 months after the time when the breach giving rise to the offence first became known, or should have become known, to the enforcement officer.
- (2) The period of 6 months does not run while the person charged (being a natural person) is beyond the outer limits of the territorial sea.
- (3) This section overrides section 14 of the Summary Proceedings Act 1957.

Appointment and powers of enforcement officers

138 Enforcement officers

- (1) The Environmental Protection Authority may appoint a person described in subsection (2) to be an enforcement officer for either or both of the following purposes:
 - (a) to ensure compliance with this Act, regulations, and marine consents; or
 - (b) to exercise the power of inspection under section 141.

- (2) A person is eligible for appointment as an enforcement officer if the person—
 - (a) has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to the person; or
 - (b) is an employee of the EPA who is suitably qualified and trained.
- (3) The EPA must supply each enforcement officer with a warrant that—
 - (a) states the full name of the person; and
 - (b) includes a summary of the powers conferred on the person under this Act.
- (4) An enforcement officer who holds a warrant issued under this section must, on the termination of his or her appointment, surrender the warrant to the EPA.

139 Exercise of powers

- (1) An enforcement officer may exercise the powers under this Act, in accordance with his or her warrant, only for the purposes for which he or she was appointed.
- (2) An enforcement officer exercising a power under this Act must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity.

140 Power to require certain information

- (1) This section applies if an enforcement officer believes on reasonable grounds that a person is committing or has committed an offence against this Act.
- (2) The enforcement officer may require the person to give the officer the following information:
 - (a) if the person is a natural person, his or her full name, address, and date of birth;
 - (b) if the person is not a natural person, the person's full name and address.

141 Power of entry for inspection

- (1) An enforcement officer may at all reasonable times, for the purpose specified in subsection (3), enter and inspect—

- (a) a place, vehicle, vessel, or structure in New Zealand or the exclusive economic zone, except a dwellinghouse or marae; and
 - (b) a structure located on the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
 - (c) a vessel in the waters above the continental shelf that is beyond the exclusive economic zone.
- (2) The inspection power authorises the person exercising it to—
 - (a) inspect any item found in a place, vehicle, vessel, or structure entered in accordance with subsection (1):
 - (b) take a sample of any substance:
 - (c) conduct examinations, tests, inquiries, and demonstrations:
 - (d) require the production of, and copy, any document or part of a document.
- (3) The purpose for which the power to enter and inspect may be exercised is to determine whether the following are being complied with:
 - (a) this Act, any regulations, or a marine consent:
 - (b) an abatement notice:
 - (c) an enforcement order.
- (4) The power to enter and inspect may only be exercised in relation to a place, vehicle, vessel, or structure described in subsection (1) if the enforcement officer is expressly authorised in writing by the Environmental Protection Authority to enter that place, vehicle, vessel, or structure.
- (5) Before an enforcement officer exercises a power to board and inspect a foreign vessel under subsection (1)(c), the officer must send a copy of the authority described in subsection (4) to the Secretary of Foreign Affairs.
- (6) The provisions of Part 4 (except subparts 2 and 8, and sections 118 and 119) of the Search and Surveillance Act 2012 apply in respect of the powers conferred by this section.
- (7) In this section,—
enter, in relation to a vessel, means board

foreign vessel means a vessel that is not a New Zealand ship within the meaning of that term in the Ship Registration Act 1992.

Part 5

Miscellaneous, transitional provisions, and consequential amendments

Subpart 1—Miscellaneous

Protection of the Crown and others

142 Protection of the Crown and others

The following persons are not liable for any loss or damage caused or any expense incurred as a result of a person lawfully carrying out functions or duties under this Act:

- (a) the Crown:
- (b) the chief executive of the Environmental Protection Authority:
- (c) the Environmental Protection Authority:
- (d) an enforcement officer.

Cost recovery

143 Principles of cost recovery

- (1) The Environmental Protection Authority must take all reasonable steps to recover so much of the direct and indirect costs incurred in performing its functions and providing services under this Act as are not provided for by money appropriated by Parliament for the purpose.
- (2) The functions and services include those performed in relation to—
 - (a) assisting a person in the preparation of an application for a marine consent, whether or not the application is made:
 - (b) receiving, processing, and deciding applications for marine consents:
 - (c) receiving impact assessments provided under section 22, 161, or 166:
 - (d) administering, monitoring, and supervising marine consents:

- (e) certifying that an activity complies with regulations:
 - (f) advising a person proposing to undertake a permitted activity:
 - (g) processing information that regulations require a person undertaking a permitted activity to provide, and monitoring a permitted activity if the monitoring is required by regulations:
 - (h) reviewing the conditions or duration of a marine consent.
- (3) In determining the most appropriate method of cost recovery under section 144, and its level, in any particular case, the Minister must have regard, as far as is reasonably practicable, to the following criteria:
- (a) equity, in that funding for a particular function or service or a particular class of function or service should generally, and to the extent practicable, be recovered from—
 - (i) the person, or class of persons, who benefits from the performance of the function or service and at a level proportional to the person's or class of persons' benefit from the function or service; or
 - (ii) the person, or class of persons, whose action or inaction gives rise to the exercise of the function at a level proportional to the person's or class of persons' contribution to the cost of performing the function:
 - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
 - (c) justification, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the performance of the relevant function or service:
 - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to a function or service for the recovery period in which the function or service is performed.
- (4) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based

on usage, and, without limiting the way in which charges may be set, a charge may be set at a level or in a way that—

- (a) is determined by calculations that involve an averaging of costs or potential costs:
- (b) takes into account costs or potential costs of functions or services that do not directly benefit the person who pays the charge, but which are an indirect or potential cost arising from the performance of the function or service in question to a class of persons.

144 Methods of cost recovery

Costs may be recovered for the purpose of section 143(1) by 1 or more of the following methods:

- (a) fixed charges:
- (b) charges based on a scale or formula or at a rate determined on an hourly or other unit basis:
- (c) charges for actual and reasonable costs spent in or associated with the performance of a function or service:
- (d) estimated charges, or charges based on estimated costs, paid before the performance of the function or service, followed by reconciliation and an appropriate further payment or refund after performance of the function or service:
- (e) refundable or non-refundable deposits paid before performance of the function or service.

145 Cost recovery to relate generally to financial year

- (1) Any regulations that prescribe a charge that applies in any financial year—
 - (a) must have been made before the start of the financial year; but
 - (b) apply in that year and all subsequent years until revoked or replaced, except as the regulations may otherwise provide.
- (2) Subsection (1) does not prevent the alteration or setting during any financial year of a charge payable in that year, if either—
 - (a) the charge is reduced, removed, or restated without substantive alteration; or
 - (b) in the case of an increase or a new charge,—

- (i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the increase or the new charge; and
 - (ii) the Minister is satisfied that those persons, or their representatives, agree or do not substantially disagree with the increase or the new charge.
- (3) Despite subsection (1), regulations may prescribe a charge during the financial year in which this Act commences, and subsection (2)(b)(ii) does not apply.
- (4) Subsection (1) does not prevent the amendment of any regulation prescribing a charge if any substantive alteration effected by the amendment is for the purpose of correcting an error.
- (5) In any financial year, recovery may be made of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

146 Charges to be prescribed by regulations

- (1) Regulations may be made under section 30 prescribing charges for the purposes of this Act.
- (2) The charges may be prescribed using any 1 or more of the methods specified in section 144.
- (3) The charges prescribed may—
 - (a) differ depending on whether a special or urgent function or service is performed:
 - (b) include more than 1 level of charge for the same function or service provided in different ways, or provided in or in respect of different places:
 - (c) differ for otherwise similar functions or services provided in different ways:
 - (d) differ depending on the time taken to perform the function or service required or the components of the function or service required for the particular person or class of persons.

147 Charges constitute debt due to Environmental Protection Authority

- (1) A charge or part of a charge that is not paid by the due date is a debt due to the EPA.
- (2) The EPA may recover the debt in any court of competent jurisdiction.
- (3) If a charge is payable to the EPA, the EPA need not perform any action to which the charge relates until the charge has been paid in full.

*Service of documents***148 Service of documents**

- (1) If a notice or other document is to be served on a person under this Act or regulations, it may be served by—
 - (a) delivering it personally to the person (other than a Minister of the Crown); or
 - (b) delivering it at the usual or last known place of residence or business of the person; or
 - (c) sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person; or
 - (d) posting it to the post office box address that the person has specified as an address for service; or
 - (e) leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service; or
 - (f) sending it to the fax number that the person has specified as an address for service; or
 - (g) sending it to the email address that the person has specified as an address for service.
- (2) However, subsection (1) does not apply in relation to proceedings before a court.
- (3) A Minister of the Crown may be served by service on the chief executive of the appropriate department of State.
- (4) A body corporate or an unincorporated body may be served by service on an officer, or at the registered office, of the body.
- (5) A partnership may be served by service on any of the partners or at the registered office of the partnership.

- (6) Subsection (1) applies to service under subsections (3) to (5).
- (7) Despite subsection (1), if a notice or other document is to be served on a Crown organisation for the purpose of this Act, it may be served—
 - (a) by delivering it at the organisation’s head office or principal place of business; or
 - (b) by sending it to the fax number or email address that the organisation has specified for its head office or principal place of business; or
 - (c) by a method agreed between the organisation and the person serving the notice or document.
- (8) If a notice or document is sent by post under subsection (1)(c) or (d), it is presumed to be received by the person at the time at which the notice or document would have been delivered in the ordinary course of the post.

149 Service on master or owner of ship

- (1) If the master or owner of a ship is a defendant in a prosecution for an offence against section 132(1)(a), service on the defendant of a summons or other document is achieved for the purposes of the Summary Proceedings Act 1957 if the summons or other document is—
 - (a) delivered personally to the agent of the ship on behalf of the defendant or is brought to the notice of the agent if the agent refuses to accept it on behalf of the defendant; or
 - (b) sent to the agent of the ship by registered letter addressed to that agent on behalf of the defendant at the agent’s last known or usual place of residence or business; or
 - (c) served in accordance with section 24 of the Summary Proceedings Act 1957 if a District Court Judge, Justice, Community Magistrate, or Registrar directs that the document or summons must be served in accordance with that section.
- (2) Subsection (1) applies despite any other enactment.
- (3) If a summons or document is sent by post under subsection (1)(b), it is presumed to be received by the agent at the time

at which the notice or document would have been delivered in the ordinary course of the post.

Incorporation by reference

150 Incorporation by reference of written material in regulations

- (1) The following written material may be incorporated by reference in regulations made under section 27 or 30:
 - (a) standards, requirements, or recommended practices of international or national organisations;
 - (b) standards, requirements, or recommended practices of any country or jurisdiction;
 - (c) any other written material that, in the opinion of the Minister, is impractical or too large to include in, or print as part of, the regulations.
- (2) Material may be incorporated by reference in regulations—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the regulations.
- (3) Material incorporated by reference in regulations has legal effect as part of the regulations.

151 Effect of amendments to, or replacement of, material incorporated by reference in regulations

An amendment to, or replacement of, material incorporated by reference in regulations has no legal effect as part of the regulations unless it is specifically incorporated by reference by a later regulation.

152 Proof of material incorporated by reference

- (1) A copy of material incorporated by reference in regulations, including any amendment to, or replacement of, the material, must be—
 - (a) certified as a correct copy of the material by the chief executive; and
 - (b) retained by the chief executive.

- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the regulations.

153 Effect of expiry of material incorporated by reference

Material incorporated by reference in regulations that expires or that is revoked or that ceases to have effect does not cease to have legal effect as part of the regulations unless the regulation is amended or replaced by a later regulation.

154 Access to material incorporated by reference

- (1) This section applies to—
- (a) material incorporated by reference in regulations:
 - (b) any amendment to, or replacement of, the material that is incorporated in the regulations or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
 - (c) if the material referred to in paragraph (a) or (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- (2) The chief executive must—
- (a) make the material available for inspection during working hours free of charge at the offices of the department and at any other place that the chief executive considers appropriate; and
 - (b) make copies of the material available for purchase at a reasonable price at the offices of the department; and
 - (c) make copies of the material available free of charge on an Internet site maintained by or on behalf of the department, unless doing so would infringe copyright; and
 - (d) give notice in the *Gazette* stating that—
 - (i) the material is incorporated in the regulations and the date on which the regulations commence; and
 - (ii) the material is available for inspection during working hours free of charge at the offices of the department and identifying any other places at which it may be inspected; and

- (iii) copies of the material can be purchased at the offices of the department and identify any other places at which they may be purchased; and
 - (iv) if copies of the material are made available under paragraph (c), that the material is available on the Internet, free of charge, and stating the Internet site address.
- (3) The chief executive—
 - (a) may make copies of the material available in any other way that he or she considers appropriate in the circumstances; and
 - (b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the material is available in other ways and giving details of where or how it can be accessed or obtained.
- (4) The chief executive may comply with subsection (2)(c) (if applicable) by providing a hypertext link from an Internet site maintained by or on behalf of the department to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else.
- (5) A failure to comply with this section does not invalidate regulations that incorporate material by reference.
- (6) For the purposes of subsection (2)(c), the chief executive may not rely on section 66 of the Copyright Act 1994 as authority to make the incorporated material available on an Internet site.

155 Application of Standards Act 1988 not affected

Sections 150 to 154 do not affect the application of sections 22 to 25 of the Standards Act 1988.

156 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference.

157 Application of Regulations (Disallowance) Act 1989

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is to be incorporated by reference

in regulations made under this Act to be presented to the House of Representatives.

- (2) The Regulations (Disallowance) Act 1989, apart from the modification of section 4 of the Act made by subsection (1), applies to regulations that incorporate material by reference.

Protection of sensitive information

158 Protection of sensitive information

- (1) The Environmental Protection Authority may, on its own initiative or on the application of any party to any proceedings or class of proceedings, give a direction described in subsection (3) where it is satisfied that the order is necessary—
- (a) to avoid causing serious offence to tikanga Māori or to avoid disclosing the location of wāhi tapu; or
 - (b) to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information.
- (2) Despite subsection (1), the EPA may not give a direction described in subsection (3) if, in the circumstances of the particular case, the public interest in making the information available outweighs the importance of avoiding such offence, disclosure, or prejudice.
- (3) The EPA may give a direction for the purpose of subsection (1)—
- (a) requiring the whole or part of any hearing or class of hearing at which the information is likely to be referred to be held with the public excluded;
 - (b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to an application.
- (4) A direction given under subsection (3)(b) in relation to—
- (a) any matter described in subsection (1)(a) may be expressed to have effect from the commencement of any proceedings to which it relates and for an indefinite period or until such date as the EPA considers appropriate in the circumstances:

- (b) any matter described in subsection (1)(b) may be expressed to have effect from the commencement of any proceedings to which it relates but will cease to have any effect at the conclusion of those proceedings.
- (5) On the date that a direction prohibiting or restricting the publication or communication of information is given under subsection (3)(b), the provisions of the Official Information Act 1982 cease to apply to the information while the direction remains in effect.
- (6) Any party to any proceedings or class of proceedings before the EPA may apply to the Environment Court for an order under section 279(3)(a) of the Resource Management Act 1991 cancelling or varying any direction given by the EPA.
- (7) Where, on the application of any party to any proceedings or class of proceedings, the EPA has refused to give a direction described in subsection (3), that party may apply to the Environment Court for an order under section 279(3)(b) of the Resource Management Act 1991.
- (8) In this section, **information** includes any document or evidence.

Waivers and extension of time limits

159 Power of waiver and extension of time limits

- (1) The Environmental Protection Authority may, in any particular case,—
 - (a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; or
 - (b) waive a failure to comply with a requirement under this Act or regulations for the time or method of service of documents.
- (2) If a person is required to provide information under this Act or regulations and the information is inaccurate or omitted, or a procedural requirement is not complied with, the EPA may—
 - (a) waive compliance with the requirement; or
 - (b) direct that the omission or inaccuracy be rectified on such terms as the EPA thinks fit.

160 Requirements for waivers and extensions

- (1) The Environmental Protection Authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with section 159 unless it has taken into account—
 - (a) the interests of any person who, in the EPA's opinion, may be directly affected by the extension or waiver; and
 - (b) the interests of the community in being able to achieve an adequate assessment of the potential effects of a proposal.
- (2) A time period may be extended under section 159 for—
 - (a) a time not exceeding twice the maximum time period specified in this Act; or
 - (b) a time exceeding twice the maximum time period specified in this Act if the applicant requests or agrees.
- (3) The EPA must ensure that every person who, in his or her opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver.

Subpart 2—Transitional provisions*Existing activities***161 Existing petroleum activities that become discretionary**

- (1) This section applies to an existing activity involved in prospecting, exploring, or mining for petroleum if—
 - (a) the activity requires a marine consent as a result of this Act coming into force; and
 - (b) the prospecting, exploration, or mining for petroleum is authorised by a permit granted under section 25 of the Crown Minerals Act 1991 before this Act comes into force or authorised by an existing privilege preserved under section 107 of that Act; and
 - (c) the activity was lawfully established before this Act comes into force.
- (2) However, this section does not apply to an existing activity to which section 162 applies.
- (3) The holder of the permit described in subsection (1)(b) must—
 - (a) prepare an impact assessment for the activity; and

- (b) provide the impact assessment to the EPA no later than 2 months after this Act comes into force.
- (4) Section 41 applies to the impact assessment as if it were an application for a marine consent.
- (5) If the holder of the permit described in subsection (1)(b) complies with subsection (3), the activity may continue without a marine consent after the date on which this Act comes into force only—
 - (a) until the close of the later of—
 - (i) the date that is 6 months after that date; or
 - (ii) 1 May 2013; but
 - (b) if the person undertaking the activity applied for a marine consent within the period described in paragraph (a), until the application—
 - (i) is decided under section 62 and any appeals are determined; or
 - (ii) is returned as incomplete by the EPA under section 41 and any objections or appeals are determined.
- (6) If the application for a marine consent described in subsection (5)(b) was returned by the EPA under section 41, subsection (5) applies to any new application that replaces the returned application.
- (7) Subsection (5) overrides section 20.

162 Existing petroleum mining activities involving structures or pipelines

- (1) This section applies to an existing activity that requires a marine consent as a result of this Act coming into force if the activity—
 - (a) involves an existing structure or an existing submarine pipeline; and
 - (b) is associated with mining for petroleum authorised by a petroleum mining permit granted under section 25 of the Crown Minerals Act 1991 before the date on which this Act comes into force or authorised by an existing privilege preserved under section 107 of that Act.

- (2) However, despite subsection (1), this section does not apply to any of the activities described in subsection (3) unless the Environmental Protection Authority provides a ruling to the effect that the adverse effects on the environment or existing interests of an activity are likely to be minor or less than minor.
- (3) The activities referred to in subsection (2) are—
 - (a) any activity that is part of an activity described in subsection (1), such as placing a structure or drilling a well, that had not commenced before this Act comes into force; or
 - (b) any change in the character, intensity, or scale of the activity described in subsection (1) made on or after the date on which this Act comes into force; or
 - (c) the alteration, extension, removal, or demolition of an existing structure or existing submarine pipeline associated with the activity described in subsection (1).
- (4) The activity to which this section applies may continue without a marine consent for the term of the permit or privilege as it was on the day before this Act comes into force.
- (5) Subsection (4) overrides section 20.

163 Other existing activities that become discretionary

- (1) This section applies to an activity that requires a marine consent as a result of this Act coming into force if—
 - (a) the activity was lawfully established before the Act came into force; and
 - (b) the effects of the activity on the environment and existing interests are of the same or similar character, intensity, and scale as the effects that existed before the Act came into force.
- (2) However, this section does not apply to an activity to which section 161 or 162 applies.
- (3) The activity may continue without a marine consent after the date on which this Act comes into force only—
 - (a) until the close of the later of—
 - (i) the date that is 6 months after the date on which this Act comes into force; or
 - (ii) 1 May 2013; but

- (b) if the person undertaking the activity applies for a marine consent within the period described in paragraph (a), until the application—
 - (i) is decided under section 62 and any appeals are determined; or
 - (ii) is returned as incomplete under section 41 and any objections or appeals are determined.
- (4) If the application for a marine consent described in subsection (3)(b) was returned by the EPA under section 41, subsection (3) applies to any new application that replaces the returned application.
- (5) Subsection (3) overrides section 20.

164 Existing activities that become prohibited

- (1) This section applies to an activity that—
 - (a) becomes a prohibited activity as a result of this Act coming into force; and
 - (b) was lawfully established before the Act comes into force.
- (2) The activity may continue for a prescribed period.
- (3) Subsection (2) overrides sections 20 and 37(3).

*Mineral prospecting and exploration under
Continental Shelf Act 1964*

165 Mineral prospecting and exploration may commence and continue

- (1) This section applies to an activity that requires a marine consent as a result of this Act coming into force if the activity is associated with prospecting or exploration for minerals authorised by a licence granted under section 5 of the Continental Shelf Act 1964 before the date on which this Act comes into force.
- (2) If the activity has not commenced, the activity may commence and continue without a marine consent—
 - (a) in accordance with the licence; and
 - (b) for the term of the licence (including any extension of the term granted before this Act comes into force).

- (3) If the activity has commenced, the activity may continue without a marine consent—
 - (a) in accordance with the licence; and
 - (b) for the term of the licence (including any extension of the term granted before this Act comes into force).
- (4) This section overrides section 20.

Planned petroleum activities

166 Planned petroleum activities that become discretionary

- (1) This section applies to a planned petroleum activity if the activity requires a marine consent as a result of this Act coming into force.
- (2) The activity may commence without a marine consent after the Act comes into force.
- (3) However, before the activity may commence, the person intending to undertake the activity must—
 - (a) prepare an impact assessment for the activity; and
 - (b) provide the impact assessment to the EPA.
- (4) Section 41 applies to the impact assessment as if it were an application for a marine consent.
- (5) If the person intending to undertake the activity complies with subsection (3), the activity may continue without a marine consent after the date on which this Act comes into force—
 - (a) until the close of the later of—
 - (i) the date that is 12 months after that date; or
 - (ii) 1 May 2014; but
 - (b) if the person undertaking the activity applies for a marine consent within the period described in paragraph (a), until the application—
 - (i) is decided under section 62 and any appeals are determined; or
 - (ii) is returned as incomplete by the EPA under section 41 and any objections or appeals are determined.
- (6) If the application for a marine consent described in subsection (5)(b) was returned by the EPA under section 41, subsection (5) applies to any new application that replaces the returned application.

- (7) Subsections (2) and (5) override section 20.
- (8) In this section, **planned petroleum activity** means an activity involved with the exploration, prospecting, or mining for petroleum if,—
 - (a) before the Act comes into force, the exploration, prospecting, or mining for petroleum with which the activity is involved is authorised by a permit that was granted under section 25 of the Crown Minerals Act 1991 or authorised by an existing privilege preserved under section 107 of that Act; and
 - (b) the activity had not commenced before the Act comes into force.

Unauthorised activities

167 Unauthorised activities must stop

- (1) This section applies to an activity once the activity is no longer authorised by this subpart to continue, unless the activity is a permitted activity or authorised by a marine consent.
- (2) The person undertaking the activity must—
 - (a) stop the activity; and
 - (b) comply with any instructions of the Environmental Protection Authority that relate to the stopping of the activity.

Subpart 3—Amendments to other Acts

Consequential amendments to Biosecurity Act 1993

168 Biosecurity Act 1993 amended

Sections 169 and 170 amend the Biosecurity Act 1993.

169 Relationship with other enactments

- (1) In section 7(2)(a), replace “(6) and section 7A” with “(6), and sections 7A to 7D”.
- (2) In section 7(2), replace “or the Resource Management Act 1991” with “the Resource Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012”.

170 Section 7A replaced (Relationship with Resource Management Act 1991)

Replace section 7A with:

“7A Relationship with Resource Management Act 1991

- “(1) The responsible Minister may exempt an action from the provisions of Part 3 of the Resource Management Act 1991 if the action is taken in accordance with Part 6 of this Act in an attempt to eradicate an organism and if—
- “(a) the action would be in breach of Part 3 of the Resource Management Act 1991; and
 - “(b) the responsible Minister is satisfied that it is likely that—
 - “(i) the organism is not established in New Zealand, the organism is not known to be established in New Zealand, or the organism is established in New Zealand but is restricted to certain parts of New Zealand; and
 - “(ii) the organism has the potential to cause 1 or more of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in New Zealand, or if it becomes established throughout New Zealand; and
 - “(iii) it is in the public interest that action be taken immediately in an attempt to eradicate the organism.
- “(2) The exemption of an action under subsection (1) may last for up to 20 working days.
- “(3) Before making a decision under subsection (1), the responsible Minister—
- “(a) must consult the relevant consent authority (to the extent that is possible in the circumstances); and
 - “(b) may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication attempt.
- “(4) If an exemption is granted under subsection (1) or continued by regulations made under section 7D, Part 3 of the Resource Management Act 1991 does not apply to the action while the exemption continues.

- “(5) After the exemption ends,—
- “(a) the provisions of the Resource Management Act 1991 apply to the action and its adverse effects to the same extent as those provisions would have applied but for the exemption; and
 - “(b) the responsible Minister must remedy or mitigate the adverse effects to which the provisions of the Resource Management Act 1991 would have applied if not for the exemption.
- “(6) For the purposes of this section, **consent authority** has the same meaning as in section 2(1) of the Resource Management Act 1991.

“7B Relationship with Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

- “(1) The responsible Minister may exempt an action from the provisions of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 if the action is taken in an attempt to eradicate or manage an organism under this Act and if—
- “(a) the action would be in breach of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
 - “(b) the responsible Minister is satisfied that it is likely that—
 - “(i) the organism is not established in the exclusive economic zone, the organism is not known to be established in the exclusive economic zone, or the organism is established in the exclusive economic zone but is restricted to certain parts of the exclusive economic zone; and
 - “(ii) the organism has the potential to cause 1 or more of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in the exclusive economic zone, or if it becomes established throughout the exclusive economic zone, or if it spreads to New Zealand; and

- “(iii) it is in the public interest that action be taken immediately in an attempt to eradicate or manage the organism.
 - “(2) The exemption of an action under subsection (1) may last for up to 20 working days.
 - “(3) Before making a decision under subsection (1), the responsible Minister—
 - “(a) must consult the Authority (to the extent that is possible in the circumstances); and
 - “(b) may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication or management attempt.
 - “(4) If an exemption is granted under subsection (1) or continued by regulations made under section 7D, Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 does not apply to the action while the exemption continues.
 - “(5) After the exemption ends,—
 - “(a) the provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 apply to the action and its adverse effects to the same extent as those provisions would have applied but for the exemption; and
 - “(b) the responsible Minister must remedy or mitigate the adverse effects to which the provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 would have applied if not for the exemption.
- “**7C Public notice of decision to exempt action**
- “(1) After making a decision under section 7A or 7B, the responsible Minister must give public notice of the Minister’s decision in such a manner as the Minister thinks fit.
 - “(2) The public notice must specify—
 - “(a) the organism to be eradicated or managed; and
 - “(b) the principal actions that may be taken in the attempt to eradicate or manage the organism; and
 - “(c) the areas affected by the action.

“(3) A failure to comply with the provisions of this section or section 7A(3) or 7B(3) does not affect the validity of any exemption given under section 7A or 7B.

“7D Regulations may continue exemption

“(1) The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, make regulations—

“(a) continuing the exemption under section 7A of an action from Part 3 of the Resource Management Act 1991:

“(b) continuing the exemption under section 7B of an action from Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

“(2) The responsible Minister must not make a recommendation for the purposes of subsection (1) unless he or she considers that it is necessary to continue the action to attempt to eradicate or manage the organism beyond the duration of the exemption.

“(3) Regulations made under this section come into force on the date of notification in the *Gazette*, or at the time specified in the regulations, whichever is the later.

“(4) The regulations expire on the day that is 2 years after the date on which the regulations come into force unless they are revoked earlier.”

Amendment to Continental Shelf Act 1964

171 Amendment to Continental Shelf Act 1964

(1) This section amends the Continental Shelf Act 1964.

(2) Section 8 is amended by repealing subsection (1)(a), (b), (f), (g), (i), and (j).

Amendments to Crown Organisations (Criminal Liability) Act 2002

172 Amendments to Crown Organisations (Criminal Liability) Act 2002

(1) This section amends the Crown Organisations (Criminal Liability) Act 2002.

(2) Section 6(1) is amended by adding the following paragraph:

- “(d) an offence against the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012”.
- (3) Section 7(a) is amended by inserting “the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012,” after “the Building Act 2004,”.

Amendment to Environment Act 1986

173 Amendment to Environment Act 1986

- (1) This section amends the Environment Act 1986.
- (2) The Schedule is amended by inserting the following item in its appropriate alphabetical order:
“Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012”.

Amendment to Environmental Protection Authority Act 2011

174 Amendment to Environmental Protection Authority Act 2011

- (1) This section amends the Environmental Protection Authority Act 2011.
- (2) The definition of **environmental Act** in section 5 is amended by inserting the following paragraph after paragraph (a):
“(ab) the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012:”.

Amendment to Fisheries Act 1996

175 Amendment to Fisheries Act 1996

- (1) This section amends the Fisheries Act 1996.
- (2) Section 11(2) is amended by inserting the following paragraph after paragraph (c):
“(ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and”.

Amendments to Resource Management Act 1991

176 Amendments to Resource Management Act 1991

- (1) This section amends the Resource Management Act 1991.
- (2) Section 61(2) is amended by adding “; and” and also by adding the following paragraph after paragraph (b):
 - “(c) the extent to which the regional policy statement needs to be consistent with regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and”.
- (3) Section 66(2) is amended by adding “; and” and also by adding the following paragraph after paragraph (d):
 - “(e) to the extent to which the regional plan needs to be consistent with regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and”.

Amendment to Search and Surveillance Act 2012

177 Amendment to Search and Surveillance Act 2012

- (1) This section amends the Search and Surveillance Act 2012.
- (2) In the Schedule, after the item relating to the Electricity Industry Act 2010, insert:

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	141(1) and (2)	Enforcement officer may enter and inspect a place, vehicle, vessel, or structure to determine whether Act, regulations, marine consent, abatement notice, or enforcement order are being complied with	All (except subparts 2 and 8 and sections 118 and 119)
--	----------------	--	--

Legislative history

24 August 2011	Introduction (Bill 321–1)
13 September 2011	First reading and referral to Local Government and Environment Committee
15 May 2012	Reported from Local Government and Environment Committee (Bill 321–2)
18 July 2012	Second reading
16, 21 August 2012	Committee of the whole House
22 August 2012	Reported from committee of the whole House (Bill 321–3)
28 August 2012	Third reading
3 September 2012	Royal assent

This Act is administered by the Ministry for the Environment.
