

Marine Reserves Bill

Government Bill

Explanatory note

General policy statement

Overview

Introduction

Protecting marine biodiversity

The Bill helps to implement the New Zealand Biodiversity Strategy (NZBS), which itself was developed in part to fulfil New Zealand's commitments made under the International Convention on Biological Diversity. One of the priority actions in the NZBS is to review the Marine Reserves Act 1971 to better provide for the protection of marine biodiversity. This Bill is the result of that review.

The focus of the Bill is at the level of protecting marine communities and ecosystems. The establishment and management of marine reserves will be the main mechanism for protecting those communities and ecosystems that are outstanding, rare, distinctive, or important. It is intended that, nationwide, marine reserves will also ultimately protect examples of all the more typical types of marine ecosystem. To effectively protect biodiversity, it is as important to securely protect sites representative of typical communities and ecosystems as it is to protect those that are rare or distinctive. However, other means will also be used to protect typical sites, and to help achieve conservation goals and an effective network.

Summary of key features of the Bill

Public enjoyment of marine reserves

The Bill retains the fundamental principle that people are free to enter and enjoy protected areas, but, as for national parks and other

protected areas, this freedom is subject to ensuring that the marine communities and natural values are not harmed.

Principles of the Treaty

The way in which the Bill provides for the establishment and management of marine reserves is consistent with the Crown's obligations to Maori under the principles of the Treaty of Waitangi and recognises statutory obligations to Maori under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Conservation Act 1987.

Sound decision-making

The Bill deals with processes for establishing marine reserves in some detail. The current application and decision-making processes have proved cumbersome and lengthy. The aim is to provide a well-structured and efficient process that provides—

- appropriate public notification of reserve proposals and opportunities for participation:
- certainty to all parties about what is expected of them:
- clarity about how the process will be managed, for example, by including time frames at each stage of the process:
- meaningful opportunities for Maori, public, and stakeholder participation:
- clear guidance for decision-makers.

Involving the public in management

The Bill establishes opportunities for tangata whenua, local communities, and interested persons to be involved in the ongoing management of marine reserves. This recognises that local support and involvement can be important to the success of a marine reserve and its protection.

Marine reserves in the exclusive economic zone

The Bill allows marine reserves to be established anywhere between the mean high-water spring and the 200-mile outer limit of the exclusive economic zone. The Marine Reserves Act 1971 only allows them to be set up within the 12-mile limit.

Under the United Nations Convention on the Law of the Sea (UNCLOS), New Zealand is entitled to take measures to protect the marine environment within its exclusive economic zone. The establishment and enforcement of marine reserves will be consistent with New Zealand's rights and obligations under UNCLOS.

No fishing in marine reserves

The Bill makes it clear that marine reserves are no-fishing areas.

Enforcement

The Bill, by providing for the appointment of enforcement officers, who may be fisheries, customs, naval, or police officers, as well as departmental staff, facilitates the inter-agency approach to enforcement that is envisaged in the Government's maritime patrol review. Appointment of members of the public as honorary enforcement officers is also provided for.

Offences that can directly affect the integrity of a marine reserve have been classified as strict liability offences. Given the importance of marine reserves, this is considered to be appropriate.

The Bill introduces 2 new approaches for dealing with offending. An infringement fee system is established for all offences, except that of commercial take. This means that an infringement notice will be able to be issued for actions that are less serious. A sentencing option of community service may provide an opportunity to match the sentence more closely to offenders' circumstances.

Clause by clause analysis

Clause 1 gives the Bill its Title.

Clause 2 provides for the commencement of the Bill on the day after the date that it receives the Royal assent.

Part 1

Purposes, principles, application, and interpretation

Clause 3 defines various terms and expressions used in the Bill.

Clause 4 provides that the Act binds the Crown but does not apply to certain activities of the New Zealand Defence Force.

Clause 5 applies the Act to marine reserves in the internal waters, territorial sea, exclusive economic zone, or international straits of New Zealand. However, the Bill does not restrict innocent passage

or transit passage or freedom of navigation in those areas, apart from certain specified restrictions.

Clause 6 describes the relationship of the Bill with other enactments.

Purpose of Act

Clause 7 states the purpose of the Act, which is to conserve indigenous marine biodiversity by preserving and protecting marine communities in marine reserves.

Principles

Clause 8 requires persons performing functions or duties to take account of the principles specified in *clauses 9 and 10*.

Clauses 9 and 10 specify those principles.

Treaty of Waitangi

Clause 11 requires the Act to give effect to the principles of the Treaty of Waitangi.

Part 2

Use of reserves

Permitted activities

Clause 12 permits in marine reserves recreational or educational activities that are not carried out for gain or reward or that are not restricted by other sections. Most restricted activities may be authorised by a concession, although certain activities, such as those specified in *clause 12(1), (3), and (4)*, do not require a concession.

Restricted activities

Clause 13 prohibits taking marine life from a marine reserve with limited exceptions. The clause lists a number of other activities that may not be undertaken without a concession.

Clause 14 adds a number of restricted activities that apply in the territorial sea or internal waters.

Clause 15 adds additional restrictions for activities in marine reserves in the exclusive economic zone.

Clause 16 addresses the relationship between the clauses that restrict or permit activities.

Clause 17 allows the manager to impose short-term prohibitions or restrictions on activities in a marine reserve if the manager believes that the prohibition or restriction is necessary to promote the purpose of the Bill.

Concessions

Clause 18 authorises the Minister of Conservation to grant concessions for certain activities in a marine reserve.

Part 3

Management of marine reserves

Subpart 1—Managers and advisory bodies

Managers of reserves

Clauses 19 to 21 provide for the appointment of managers of marine reserves. The Minister may appoint a management body and, in default of an appointment by the Minister, the marine reserve must be managed by the Director-General.

Clauses 22 and 23 allocate functions and powers to management bodies.

Advisory bodies

Clauses 24 to 26 outline the process for the appointment of advisory bodies for marine reserves and specifies their functions. Advisory bodies may be appointed if the marine reserve is managed by the Director-General. An advisory body may be a reserve committee consisting of persons appointed by the Minister, or may be a conservation board.

Membership of management boards and reserve committees

Clauses 27 to 29 address the membership and chairmanship of management boards and reserve committees.

Other matters

Clause 30 imposes a good faith obligation on members of management bodies or advisory bodies, and *clause 31* applies *Schedule 1* to management boards, reserve committees, and management bodies.

Subpart 2—Management of marine reserves

General

Clause 32 imposes requirements on a manager to manage a marine reserve according to the matters listed.

Clause 33 requires the Minister to mark the boundaries of marine reserves.

Clause 34 permits the Minister to approve and amend statements of general policy.

Clause 35 permits the New Zealand Conservation Authority to advise the Director-General on matters concerning the welfare of marine reserves.

Management plans

Clause 36 addresses the purpose and scope of management plans.

Clause 37 specifies who must prepare management plans, and *clause 38* applies certain sections of the Conservation Act 1987 to the preparation, review, and amendment of management plans that are developed by the Director-General or conservation boards.

Preparation of management plans by management bodies and reserve committees

Clauses 39 to 45 outline the process for notifying and consulting on management plans that are developed by management bodies and reserve committees, and specifies the Minister's role in the preparation of plans, and how and when management plans may be amended or reviewed.

Part 4

Establishment of marine reserves

Applications to establish marine reserves

Clause 46 sets out the meaning of various terms used in *Part 4*.

Proposals for establishment of marine reserves

Clause 47 allows any person to propose the establishment of a marine reserve.

Clause 48 requires consultation on a proposal.

Clauses 49 and 50 govern the contents of a proposal.

Clause 51 requires the Director-General to decide whether or not to permit a proposal to proceed as an application, and specifies how that occurs.

Procedure for applications

Clause 52 requires the Director-General to prepare a plan of the relevant marine area to which each application relates.

Clauses 53 and 54 deal with public notification of applications and the availability for inspection of plans of the marine area.

Clauses 55 to 58 stipulate the framework for making submissions, responding to submissions, and summarising submissions.

Clauses 59 and 60 provide for meetings to discuss submissions.

Clause 61 requires the Director-General to prepare a draft report and recommendations on an application.

Clause 62 caters for obtaining independent reports on the administrative process followed by the Director-General regarding applications.

Clause 63 requires consultation on an application by the Minister of Conservation with other Ministers.

Clause 64 imposes disciplines on the preparation by the Director-General of a final report to the Minister.

Decision on application

Clauses 65 to 71 address the following matters:

- the time limit for the Minister's decision (*clause 65*);
- matters to which the Minister must have regard in considering an application (*clause 66*);
- specifies the test that guides the Minister's decision (*clause 67*);
- permits the Minister to impose conditions and provides for Orders in Council declaring a marine area to be a marine reserve (*clause 69*).

Subpart 3—Review and alteration of marine reserves

Alteration of marine reserves

Clauses 72 to 75 cover alterations and reviews of areas declared to be marine reserves.

Part 5

Enforcement and penalties

Clause 76 defines terms used in *Part 5*.

Subpart 1—Enforcement officers and their powers

Appointment

Clauses 77 to 82 describe the process for the appointment of enforcement officers and the issue and scope of warrants for those officers.

Powers

Clauses 83 to 94 specify a range of powers available to enforcement officers and honorary enforcement officers who have reasonable grounds to believe that an offence has been committed. Those powers include the power to use force, power to stop and detain, power to require personal particulars, power of entry and search, power to seize and to take documents, power to issue infringement notices, and power to arrest.

Subpart 2—Seized property

Clause 95 details certain powers that may only be exercised if the relevant warrant of appointment expressly authorises that exercise.

Clauses 96 to 104 provide for the seizure of property and its forfeiture in certain circumstances, and for the possible release of seized property.

Subpart 3—Offences and penalties

Infringement offences

Clauses 105 to 108 describe infringement offences and the process for issuing infringement notices.

Offences

Clauses 109 to 111 define and categorise offences and corresponding defences.

Penalties

Clauses 112 to 115 categorise and specify the penalties that apply to the offences, and for forfeiture of property on conviction.

Subpart 4—Forfeit property

Clauses 116 to 119 address forfeiture of property to the Crown, align the Director-General’s powers over forfeit property, and empower the Court to grant relief against forfeiture in appropriate cases.

Subpart 5—Miscellaneous

Clauses 120 to 125 cover miscellaneous matters that affect offences and enforcement.

Part 6

Regulations, repeals and amendments, and transition

Clauses 126 to 139 cover regulation-making powers, repeals, revocations, consequential changes, and transitional matters.

Schedule 1 contains provisions concerning management boards, reserve committees, and management bodies.

Schedule 2 lists enactments that are repealed or revoked.

Schedule 3 lists consequential amendments.

Regulatory impact and compliance cost statement

Statement of the public policy objective

The Marine Reserves Act 1971 (**MRA**) provides the strongest combination available of long-term, secure, and comprehensive protection for marine sites. However, its current purpose is to preserve marine areas in their natural state for scientific study. This does not reflect either the marine objectives of the New Zealand Biodiversity Strategy (**NZBS**) or that people now propose and value marine reserves for the benefits that arise from protecting marine life. The MRA also gives no practical guidelines on Treaty obligations, and few guidelines on the time frames and processes for establishing and managing reserves.

Statement of the public policy objectives

A priority action in the NZBS is to protect “...10% of New Zealand’s marine environment by 2010, in view of establishing a network of representative protected areas”. Clarifying the purpose and processes in the MRA is required to help achieve this action (although it is expected that the protection of sites through other statutes would also be required to achieve it). A priority action in the NZBS is to review the MRA “to better provide for the protection of

marine biodiversity, including extending its jurisdiction to protect marine biodiversity within and beyond the 12-mile limit”.

The terms of reference that Cabinet approved for this review included the following principles:

- (a) the MRA can be used, in conjunction with other biodiversity-related statutes such as the Resource Management Act 1991 and the Fisheries Act 1996, to establish marine protected areas to protect a fully representative range of New Zealand’s marine environments and biodiversity, in line with the marine biodiversity protection objectives and targets contained in the NZBS:
- (b) the geographical areas within the jurisdictional scope of the MRA will be sufficient to enable a fully representative range of New Zealand’s marine environments and biodiversity to be protected, including the protection of any specific area:
- (c) marine reserves are one of a number of statutory marine protection and management mechanisms, and will be established in a way that is complementary to the establishment and use of other statutory marine protection and management mechanisms:
- (d) marine reserves establishment and management will be carried out in a way that is consistent with the Crown’s obligations to Maori under the principles of the Treaty of Waitangi and that recognises and reflects the statutory obligations to Maori under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and the Conservation Act 1987:
- (e) marine reserves establishment and management will preserve and facilitate rights of access and entry to reserved areas for recreational purposes provided these are non-extractive and have no undue adverse impact on marine biodiversity and marine habitats within the boundaries of the reserve:
- (f) any interested person or persons are provided with opportunities to participate in the statutory process of establishing marine reserves and in their ongoing management.

Statement of options for achieving the desired objectives

Non-regulatory measures

Legislative review cannot be achieved by non-regulatory measures.

Regulatory measures

The proposed key changes to the MRA, compared to the status quo, are summarised below.

The status quo does not achieve the objective (in the case of options 2, 3, and 10), is less efficient or effective in doing so (options 1, 8, 9, 11, 12, 14, and 15), or is not transparent (options 4, 5, 6, and 13). The recommended option 7 establishes clearer accountability and a simplified decision-making process while still achieving the objective. In the exclusive economic zone outside the 12-mile limit, none of the available legal mechanisms enables the protection of marine communities and ecosystems in a natural state.

The key issues and options that were considered in this review are listed below (in each case, (b) is the status quo, and (a) the recommended change).

Terms of reference (a) and (c): protection of biodiversity

Option 1—

- (a) purpose redefined to focus on biodiversity protection; or
- (b) areas protected in natural state for scientific study.

Option 2—

- (a) marine reserves do not allow fishing; or
- (b) Minister has discretion to allow limited non-commercial fishing.

Terms of reference (b): reserves in the exclusive economic zone (EEZ)

Option 3—

- (a) enabling marine reserves to be established in the EEZ; or
- (b) limiting marine reserves to the territorial sea.

Terms of reference (d): Treaty obligations

Option 4—

- (a) include a Treaty section; or
- (b) section 4 of the Conservation Act 1987 applies.

Option 5—

- (a) include specific provisions relating to tangata whenua; or
- (b) obligations under section 4 of the Conservation Act 1987 determine actions taken.

Option 6—

- (a) review Minister's decision-making criteria. Include provisions that reflect statutory obligations to Maori; or
- (b) retain current criteria. Consider effects on Maori through obligations under section 4 of the Conservation Act 1987.

Option 7—

- (a) repeal the concurrence role of the Minister of Fisheries, but require consultation with the Minister and have clear criteria; or
- (b) retain the Minister's concurrence role.

Terms of reference (e): rights of access and entry

Option 8—

- (a) clarify principles for access and use; or
- (b) maintain existing access and use principles.

Option 9—

- (a) set up a concession system for commercial operators; or
- (b) do not have a concession system.

Terms of reference (f): involvement of tangata whenua and public

Option 10—

- (a) allow anyone to apply for a marine reserve; or
- (b) only allow the Department of Conservation (**DOC**), Maori, and organisations with an interest in research to make applications for marine reserves.

Option 11—

- (a) provide time frames for consultation and decision-making; or
- (b) have few time frames.

Option 12—

- (a) include a process for holding meetings; or
- (b) no process specified.

Option 13

- (a) allow advisory reserve committees to be established directly under the MRA; or
- (b) committees are established through Conservation Boards.

Option 14—

- (a) allow bodies to be appointed to manage reserves; or
- (b) no provision for management bodies. DOC manages all reserves.

Option 15—

- (a) include in the principles one relating to public use and enjoyment of reserves; or
- (b) the only use recognised in the MRA is scientific study (in the purpose), and the opportunity to study, observe, and record marine life (in the principles).

Statement of the net benefit of this proposal**Benefits**

The likely benefits from the proposals for the Marine Reserves Bill include—

- providing a clear role for the MRA to contribute to NZBS objectives, and as a basis for co-ordinating its role with those of other marine management tools:
- more transparent recognition of the Crown's Treaty obligations:
- recognition of the importance of public use and enjoyment of marine reserves, and the use of marine reserves for recreation, scientific study, education, and matauranga Maori purposes, and facilitating these where appropriate and where they do not compromise the conservation of marine biodiversity:
- providing more and clearer opportunities for local involvement in ongoing marine reserve management:
- reducing duplications in processes and associated administration costs:
- improving transparency in the application process:
- reducing delays in applications and the associated public frustration and administrative costs.

Costs

Administrative costs are not imposed directly by the Bill, but depend individually and in total on the number and circumstances of new marine reserves applied for and established under the new Act.

Most of the proposed changes do not affect administrative costs. Although they may add a new step to statutory processes, this tends to make transparent and formalise what usually occurs anyway.

For example, the requirement for a mandatory independent review when DOC is the applicant and the proposed provisions in the Bill relating to tangata whenua are changes of this sort. Treaty issues are currently addressed through section 4 of the Conservation Act 1987, which requires DOC to give effect to the principles of the Treaty, at least to the extent that the provisions of the MRA are not clearly inconsistent with those principles. Reducing delays to the process by establishing timelines should also, overall, reduce the staff time that is needed for consultation and providing advice to the Minister.

Establishing committees under the MRA would not significantly change the administrative costs of committees, as they will be sought in similar circumstances, whether under the MRA or under Conservation Boards, as now. The initial additional administrative costs of establishing an administering body would be offset by reduced management-related administrative costs, as it is not proposed to transfer operating funds to the administering body. Revoking the status of a marine reserve would incur costs but is expected to be very rare.

On balance, the approximate average costs for each reserve in the territorial sea are expected to be similar to that under the current MRA. These costs include:

- \$75,000 one-off costs for the application process (notification, public consultation, independent review, and DOC staff time):
- \$90,000 one-off costs to set up a reserve (markers and signs, establishing facilities, pamphlets, initial local public awareness on reserves and their rules, baseline monitoring):
- \$75,000 annual management costs (biological monitoring, maintenance (eg, of markers), committee costs, boat running, administrative enforcement-related costs):
- \$50,000 one-off capital cost for boat purchase, and \$10,000 annual depreciation.

Application, set-up, and management costs for marine reserves in the EEZ are expected to be less than reserves within the 12-mile limit as, for example, consultation would be more targeted and boundary marking would be achieved through geographic coordinates rather than through signs and buoys. Overall, reserves in

the EEZ are not expected to increase reserve administrative costs, as only a limited number will be established each year, whether in the EEZ or territorial sea or both.

It is difficult to predict total enforcement costs. The government's maritime patrol review may aid enforcement in the territorial sea, and be a major component of enforcement of reserves in the EEZ. The maritime patrol review may also reduce overall enforcement costs for marine reserves, because the costs of any DOC contribution to the patrol would be shared amongst its marine interests, and because there will be efficiencies between different agencies' activities.

Two options are proposed in the Cabinet papers on compensation: that the Bill should be silent on, or preclude, compensation when a reserve is established. The Ministry of Fisheries considers that the proposal to remove the ability to seek compensation will increase the risk of judicial review being sought over the decision-making process, necessitating a very robust consideration of adverse effects.

The costs of setting up and managing new marine reserves will be met from additional funding allocated to DOC in the budget package to implement the NZBS. This package allocated \$11.5 million (GST inclusive) over 5 years, beginning in 2000/01, and includes funding for enforcement, biological monitoring, technical support, and a public awareness strategy.

Business compliance cost statement

Sources of compliance costs

There are 2 key sources of business compliance costs in the proposals for the Bill:

- rules excluding various activities and uses from reserves, in particular extraction; and
- the establishment of a concessions system for non-extractive commercial operators (eg, tourism operators) in order to manage their environmental effects.

The proposed rules excluding various activities maintain the approaches in the current MRA in the territorial sea. Commercial fishing is excluded from marine reserves under both the current MRA and the proposed new Act. It is proposed that prospecting, exploration, or mining in marine reserves be restricted to low impact

activities, which maintains the current interface between marine reserves and the Crown Minerals Act 1991 (section 61(1A)).

Extending the jurisdictional scope of the MRA to include the EEZ would affect different individuals within the commercial fishing and minerals sectors. However, it is likely that a limited number of reserves will be established each year, whether in the EEZ or territorial sea or both. In either case, similar sectors are affected so the proposed rules excluding various activities in a reserve would be neutral as to their business compliance costs.

The Bill will not affect shipping, as it will explicitly preserve rights of transit passage in international straits, innocent passage in the territorial sea, and freedom of navigation in the EEZ.

Parties likely to be affected

Commercial fishers, petroleum and minerals interests in the territorial sea and EEZ, and non-extractive commercial operators in the territorial sea are likely to be affected.

Estimated compliance costs of the proposal

The real administrative costs of a concession system are recovered from the operator. These include the administrative costs of processing an application (one-off, likely to be \$600 to \$1,500), annual administration costs (approximately \$350), and annual administrative costs of monitoring and enforcing standards. In addition, the concession system charges a concession fee. For other concessions administered by DOC, these fees can be 7.5% of the concessionaire's gross operating costs related to the activity in the area, or a charge per person of \$3 per half-day. However, the fees are negotiated between DOC and the operator, and depend on the market value of the opportunity granted to the concessionaire and the environmental impacts of the activity. They may be reduced or waived in situations that involve public good, core educational or non-commercial activities, or clear benefits to management.

The effects on fishers and mining interests of establishing a marine reserve will depend on the facts of each reserve. For example, possible costs to individual fishers would be different in each case, and might include costs related to identifying reserve boundaries (reducing), costs of travelling to new sites (variable), and effects on take (variable).

Longer-term implications of the compliance costs

Long-term effects on fishers will depend on whether any long-term benefits to local fishing arise from the reserve, and the overall management of that fishery in the quota management area.

Level of confidence of compliance costs estimates

The costs to operators for concessions are based on DOC's experience with concessions elsewhere. They may vary between operators.

Compliance costs for fishers and mining interests are unclear, as they can only be calculated on a case-by-case basis.

Key compliance cost issues identified in consultation

There were few submissions from non-extractive commercial operators. However, the Tourism Industry Association of NZ supported concessions and did not raise any compliance cost issues.

Commercial fishers' submissions (eg, from The Seafood Industry Council Limited (**SeaFIC**)) identified the potential compliance costs noted under the estimated compliance costs above. SeaFIC also identified compensation as a major concern of commercial fishers.

Overlapping compliance requirements

Discharging contaminants or erecting structures in a marine reserve would require a resource consent from the local authority under the Resource Management Act 1991 (unless already permitted through a plan), as well as authorisation from DOC under the MRA. Structures may also require a building consent under the Building Act 1991. The Bill does not change these requirements.

Steps taken to minimise compliance costs

For concessions, a 2-year phase-in is proposed to give time for existing operators to establish contracts. It is proposed that DOC administer all concessions (rather than committees or management bodies), to provide a consistent process and minimise costs to operators that require concessions for more than 1 type of DOC-administered area or activity.

The process of establishing reserves includes an open public consultation process. The Minister's decision-making process would prevent a reserve being established where it would have an undue

adverse effect (that is, when its benefits are balanced against adverse effects on various use rights, including, among others, commercial fishing, interests in land, and economic use and development). These processes will allow the interests of property right holders to be fully identified and considered, and provides a safeguard against applications causing unwarranted interference.

The review considered a system that would allow limited fishing in zones within a marine reserve. However, it was estimated that this had a high risk of not meeting the biodiversity conservation purpose of the MRA would cost approximately 50% more to mark, monitor, and enforce than no-take reserves, and would potentially increase the difficulty and cost of enforcing no-take reserves.

Mining, exploration, and prospecting in a reserve for minerals (including petroleum) in the territorial sea, and for petroleum in the EEZ, will be managed through the Crown Minerals Act 1991, and will not require additional authorisation under the MRA.

Consultation

The government agencies consulted on the regulatory impact and compliance cost statement include the Ministries for Economic Development, Environment, and Fisheries and the Treasury and Te Puni Kokiri.

As part of the review of the MRA, DOC published a discussion document in 2000 and held 16 hui and 16 public meetings. A total of 259 public submissions were received on the discussion document in February 2001. These came from the Maritime Safety Authority of NZ and the Historic Places Trust; Local Government NZ and 15 local authorities; the NZ Conservation Authority and 12 Conservation Boards; 21 iwi, hapu, runanga, and marae committees (through 14 submissions), and 7 other Maori organisations; 3 marine reserve committees; 51 environmental, advocacy, and other NGOs; 19 commercial and recreational fishing and aquaculture groups; and 3 research groups; there were also 127 individual submissions.

Hon Sandra Lee

Marine Reserves Bill

Government Bill

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<p>99 Decision to lay charge to be made promptly</p> <p>100 Director-General may release seized property unconditionally or under bond</p> <p>101 Failure to comply with bond</p> <p>102 Applications to Court about seized property</p> <p>103 Final release of seized property</p> <p>104 Seized property forfeited to Crown if ownership not established</p> <p style="padding-left: 2em;">Subpart 3—Offences and penalties</p> <p style="padding-left: 4em;"><i>Infringement offences</i></p> <p>105 Infringement offences</p> <p>106 Infringement notices</p> <p>107 Payment of infringement fees</p> <p>108 Forfeiture for infringement offence</p> <p style="padding-left: 4em;"><i>Offences</i></p> <p>109 Strict liability offences</p> <p>110 Defences to strict liability offences</p> <p>111 Offences requiring intent or recklessness</p> <p style="padding-left: 4em;"><i>Penalties</i></p> <p>112 Penalties</p> <p>113 Sentence of community service</p> <p>114 Offenders liable for loss or damage, and costs associated with seized property</p> <p>115 Forfeiture of property on conviction</p> <p style="padding-left: 2em;">Subpart 4—Forfeit property</p> <p>116 Interpretation</p> <p>117 Forfeit property vests in Crown</p> <p>118 Director-General's powers over forfeit property</p> <p>119 Court may grant relief to third party</p> <p style="padding-left: 2em;">Subpart 5—Miscellaneous</p> <p>120 Offences in exclusive economic zone</p>	<p>121 Enforcement against foreign vessels</p> <p>122 Time limit for laying information</p> <p>123 Application of section 78A(1) of Summary Proceedings Act 1957</p> <p>124 Protection of persons acting under authority of Act</p> <p>125 Information leading to conviction</p> <p style="text-align: center;">Part 6</p> <p style="text-align: center;">Regulations, repeals and amendments, and transition</p> <p>126 Regulations</p> <p>127 Repeals and revocations</p> <p>128 Amendments to Crown Minerals Act 1991</p> <p>129 Amendment to Continental Shelf Act 1964</p> <p>130 Consequential amendments</p> <p style="padding-left: 4em;"><i>Transition</i></p> <p>131 Interpretation</p> <p>132 Existing applications for marine reserves</p> <p>133 Seizure and forfeiture of property</p> <p>134 Mining interests</p> <p>135 Rangers</p> <p>136 Authorisations for scientific study</p> <p>137 Marine reserve committees</p> <p>138 Marine Reserves Regulations 1993</p> <p>139 Transition for commercial concessions</p> <p style="text-align: center;">Schedule 1</p> <p style="text-align: center;">Provisions relating to management boards, reserve committees, and management bodies</p> <p style="text-align: center;">Schedule 2</p> <p style="text-align: center;">Repeals and revocations</p> <p style="text-align: center;">Schedule 3</p> <p style="text-align: center;">Consequential amendments</p>
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Marine Reserves Act **2002**.

Part 1

Purpose, principles, application, and interpretation

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

In this Act, unless the context otherwise requires,—

advisory body means a reserve committee, or a conservation board, appointed as an advisory body for a marine reserve under **section 24**

concession means a concession granted under **section 18**

conservation board means a conservation board established under section 6L of the Conservation Act 1987

conservation management plan has the same meaning as in section 2(1) of the Conservation Act 1987

conservation management strategy has the same meaning as in section 2(1) of the Conservation Act 1987

consultation Ministers means—

- (a) the Minister of the Crown responsible for fisheries, for consultation about customary food gathering, commercial fishing, recreational fishing, and the deed dated 23 September 1992 referred to in paragraph (1) of the preamble to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and
- (b) the Minister of the Crown responsible for transport, for consultation about navigation and ship-based or off-shore installation-based marine environment protection requirements; and
- (c) the Minister of the Crown responsible for energy, for consultation about prospecting, exploration, and mining; and
- (d) the Minister of the Crown responsible for foreign affairs and trade, for consultation about New Zealand's international obligations as they may relate to the establishment or management of marine reserves; and
- (e) the Minister of the Crown responsible for defence, for consultation about the activities of the New Zealand Defence Force

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

deposit, with reference to litter, includes cast, place, throw, and drop

Director-General means the chief executive of the department

discharge includes any release, disposal, spilling, leaking, pumping, emitting, or emptying

dump—

- (a) means—
 - (i) the deliberate disposal from a vessel, platform, or other structure; and
 - (ii) the deliberate disposal or abandonment of vessels, platforms, or other structures; and
 - (iii) storage in the seabed; but
- (b) does not include disposal that is incidental to, or derived from, the normal operation of a vessel or offshore installation if the purpose of the operation does not include disposal, treatment, or transportation

dumping includes—

- (a) deliberate disposal into the sea; and
- (b) storage in the seabed; and
- (c) abandonment at sea

exclusive economic zone has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

firearm means anything from which a shot, bullet, missile, or other projectile can be discharged (whether or not by force of explosive); and includes a firearm as defined in section 2 of the Arms Act 1983; and **shoot** has a corresponding meaning

foreign ship means a ship that is not a New Zealand ship

foreshore means the parts of the bed, shore, or banks of the sea or a river that are covered and uncovered by the flow and ebb of the tide at mean spring tides

gain or **reward**, in relation to an activity, may be monetary or non-monetary; but does not include a reasonable charge imposed to recover the reasonable expenses for organising the activity

garbage means victual, domestic, and operational waste generated from a vessel

grade A treated sewage has the same meaning as in regulation 2(1) of the Resource Management (Marine Pollution) Regulations 1998

grade B treated sewage has the same meaning as in regulation 2(1) of the Resource Management (Marine Pollution) Regulations 1998

historic material means an object (moveable or immovable) or place that has a cultural, historical, or archaeological character, and that contributes to an understanding and appreciation of New Zealand's history and cultures

incinerate has the same meaning as incinerated at sea in section 257 of the Maritime Transport Act 1994

internal waters has the same meaning as in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

international strait means a strait used for international navigation

land, in relation to an aircraft, includes hovering and setting down and taking on goods or persons

litter includes refuse, rubbish, animal remains, glass, metal, debris, dirt, filth, rubble, stones, earth, and waste matter

local authority has the same meaning as in section 2(1) of the Local Government Act 1974

management board means a management board appointed under **section 20(1)(c)**

management body means a local authority, Minister of the Crown, management board, or other body or person appointed under **section 20** to manage that reserve

management plan for a marine reserve—

- (a) means a management plan for the reserve (including amendments) approved under the Conservation Act 1987 or **section 44** or **section 45(4)**; and
- (b) includes a conservation management plan referred to in section 8 of the Marine Reserves Act 1971

manager of a marine reserve means the Director-General or, if a management body is appointed to manage the reserve under **section 20**, the management body

marine area includes any part of—

- (a) the seabed vertically below the surface of the internal waters, the territorial sea, or the exclusive economic zone of New Zealand; and
- (b) the foreshore of the coast of New Zealand; and
- (c) water upon or vertically above that seabed or foreshore; and
- (d) the air space vertically above that seabed or foreshore to an unlimited height

marine community means a naturally occurring association of species of marine life that inhabit a common environment and interact with each other

marine life—

- (a) means a species of organism that inhabits a marine area at a time of its life; and
- (b) includes the whole or part of a specimen and the seed, spore, egg, spawn, young, fry, larvae, and offspring of a species, whether alive or dead; but
- (c) excludes human beings

marine reserve means—

- (a) a marine area constituted as a marine reserve under section 4 of the Marine Reserves Act 1971; and
- (b) a marine reserve declared by an Order in Council made under **section 71** that remains in force

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

natural features means geomorphological features and other natural physical features

natural material means any material or thing other than marine life that occurs, or is present naturally, in a marine reserve; and includes, without limitation, minerals, sand, sediment, stones, gravel, and shingle

New Zealand Conservation Authority means the Authority established under section 6A of the Conservation Act 1987

New Zealand ship has the same meaning as in section 2(1) of the Ship Registration Act 1992

normal operation of a vessel means—

- (a) ship propulsion; and

- (b) heat exchange systems, including engine cooling systems, air conditioning, refrigeration, and condensers; and
- (c) stormwater drainage from systems and scuppers, except from those areas used to store a harmful substance; and
- (d) the use of washing facilities in the accommodation areas producing greywater from showers, handbasins, baths, galleys, dishwashers, and laundries; but does not include use of any dispensary, sick bay, or other medical premises; and
- (e) the cleaning of the ship or offshore installation, except for the exterior of the hull below the load line or parts of the ship used for carrying cargo; and
- (f) the incineration of waste or other matter generated from a ship or offshore installation; and
- (g) firefighting

noxious liquid substance has the same meaning as in section 225 of the Maritime Transport Act 1994

oil has the same meaning as in section 222(1) of the Maritime Transport Act 1994; but does not include oil discharged from a 2-stroke engine that is maintained and operating in good working order

possession of a thing includes control either jointly or solely over the thing, or possession of, or control over, a premises, vehicle, vessel, article, or other place or thing where the thing is found

preserve means maintain intrinsic value, as far as practicable

protect—

- (a) means maintain in the current state as far as practicable or restore to some former state; and
- (b) includes augmentation, enhancement, and expansion necessary or desirable to achieve maintenance or restoration

reserve committee means a reserve committee appointed under **section 24(2)(a)**

seabed includes the subsoil, bedrock, and other matter under the seabed to an unlimited depth

sell includes—

- (a) barter and any form of exchange for consideration;
- (b) offer or attempt to sell:

- (c) receive for sale or have in possession for sale:
- (d) expose for sale:
- (e) send or deliver for sale:
- (f) cause or allow to be sold, offered for sale, or exposed for sale

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

statement of general policy means a statement of general policy approved by the Minister under **section 34** or under section 17B of the Conservation Act 1987

take,—

- (a) in relation to marine life, includes remove, catch, fish, or kill by any means or device (whether or not the marine life is subsequently returned alive or dead into a marine area); and
- (b) in relation to a plant, includes uproot, uplift, or transplant; and
- (c) includes an attempt to do any of the things in **paragraph (a) or paragraph (b)**

Te Ira Tangaroa means Maori traditional and contemporary knowledge relating to the life principle of the marine environment

territorial sea has the same meaning as in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

untreated sewage, for the purposes of **sections 14(b)** and **109(2)(b)**,—

- (a) means—
 - (i) drainage and other wastes from any form of toilet, urinal, or toilet scupper; and
 - (ii) drainage from wash basins, wash tubs, and scuppers located in any dispensary, sick bay, or other medical premises; and
 - (iii) drainage from spaces containing living animals; and
 - (iv) waste waters mixed with the drainage and wastes specified in **paragraph (i), paragraph (ii), or paragraph (iii)**; but
- (b) does not include grade A treated sewage or grade B treated sewage

use includes an attempt to use, and assistance given or attempted to be given in using

vessel means a ship or aircraft

working day means any day except—

- (a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) a day in the period commencing on 20 December in a year and ending on 15 January in the following year.

4 Act binds the Crown

- (1) This Act binds the Crown.
- (2) However, this Act does not apply to—
 - (a) the enforcement activities of the New Zealand Defence Force;
 - (b) the operational activities of the New Zealand Defence Force in the exclusive economic zone;
 - (c) the operational activities of the New Zealand Defence Force in the territorial sea and internal waters if the Chief of Defence Force and the Director-General are in written agreement regarding the operation of the New Zealand Defence Force in marine reserves.

5 Application of this Act

- (1) This Act applies to marine reserves that are in the foreshore, internal waters, territorial sea, exclusive economic zone, or an international strait.
- (2) However, this Act must be interpreted so that it does not restrict innocent passage through a marine reserve in the territorial sea, transit passage through a marine reserve in an international strait, or freedom of navigation in a marine reserve in the exclusive economic zone, apart from—
 - (a) the restrictions in **sections 13 to 16**; and
 - (b) any restrictions contained in designations, agreements, or arrangements reached internationally under a convention or by other means.

6 Application of other Acts

- (1) If there is an inconsistency between this Act and the Antiquities Act 1975, the Antiquities Act 1975 prevails.

- (2) The prohibitions, restrictions, and requirements imposed by or under this Act are additional to the prohibitions, restrictions, and requirements imposed by or under other enactments.

Purpose of Act

7 Purpose

The purpose of this Act is to conserve indigenous marine biodiversity in New Zealand's foreshore, internal waters, territorial sea and exclusive economic zone for current and future generations, by preserving and protecting within marine reserves—

- (a) representative examples of the full range of marine communities and ecosystems that are common or widespread; and
- (b) outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and
- (c) natural features that are part of the biological and physical processes of the marine communities and ecosystems referred to in **paragraphs (a) and (b)**, in particular those nature features that are outstanding, rare, unique, beautiful, or important.

Principles

8 Principles to be taken into account

A person performing a function or duty under this Act must take into account the principles specified in **sections 9 and 10**.

9 Principles

The principles are as follows:

- (a) a marine reserve should include the range of habitats and marine communities that distinguish the marine area in which the marine reserve is situated and be of a size, design, and condition (or potential condition) that can be reasonably expected to—
 - (i) provide effective protection for the populations, marine communities, and natural ecological processes occurring within it; and
 - (ii) reflect the known composition and ecological patterns and processes of the habitat or marine community:

- (b) the marine communities and ecosystems in a marine reserve should be maintained in, or restored to, a natural state:
- (c) historic material in a marine reserve should be protected:
- (d) recognition should be given to the importance of protecting undisturbed marine areas for scientific and educational purposes, and for research contributing to Te Ira Tangaroa, to gain a better understanding of the marine environment:
- (e) the use and enjoyment of marine reserves should be allowed, if consistent with the purpose of this Act, and appropriate provision should be made to facilitate that use and protect the quality of the experience.

10 Decision-making principles

- (1) Decisions should be based on the best available information.
- (2) Decision makers should consider the extent and nature of any uncertainty in information.
- (3) The fact that information is uncertain or incomplete does not, of itself, justify postponing or not making a decision about establishing a marine reserve.
- (4) If information is uncertain or incomplete, a decision concerning management of a marine reserve that may adversely affect a marine community should tend to protecting and preserving that community.

Treaty of Waitangi

11 Treaty of Waitangi

This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

Part 2

Use of reserves

Permitted activities

12 Permitted activities

- (1) A person may carry out in a marine reserve a recreational or educational activity that does not breach **section 13, section 14, or section 15** and that is not carried out for gain or reward.

-
- (2) A person may carry out in a marine reserve, if authorised to do so by a concession,—
 - (a) scientific research; and
 - (b) research contributing to Te Ira Tangaroa; and
 - (c) any other activity.
 - (3) A person may carry out in a marine reserve any of the following activities:
 - (a) anchoring;
 - (b) the normal operation of a ship;
 - (c) an activity necessary to save or protect human life or health, or prevent serious damage to property, or avoid an actual or likely adverse effect on the environment;
 - (d) any mining, exploration, or prospecting authorised under the Crown Minerals Act 1991.
 - (4) The manager of a marine reserve, or the Minister or Director-General, may carry out any activity in the reserve in performing or exercising a function, duty, or power under this Act or other enactments.
 - (5) **Subsections (1), (2), (3)(a), and (4)** may be overridden by—
 - (a) an Order in Council under which a marine reserve is established; or
 - (b) regulations under this Act that apply to a marine reserve; or
 - (c) a notice given under **section 17**.

Restricted activities

13 Activities restricted in all marine reserves

- (1) No person may take marine life from a marine reserve unless authorised to do so by—
 - (a) the manager of the marine reserve for management or biosecurity purposes; or
 - (b) a concession granted under **section 18** for scientific research, or for research contributing to Te Ira Tangaroa.
- (2) A person must not do any of the following things unless authorised by a concession:
 - (a) take natural material or other material from a marine reserve:

- (b) modify, damage, or destroy historic material in a marine reserve, or remove historic material from a marine reserve:
 - (c) damage, injure, interfere with, or disturb the marine life, foreshore, seabed, natural features, natural material, and other material or structures of the marine reserve:
 - (d) dump or incinerate waste or other material in a marine reserve from a vessel or aircraft:
 - (e) introduce marine life into a marine reserve:
 - (f) erect a structure in a marine reserve:
 - (g) use an explosive or discharge a firearm in or into a marine reserve:
 - (h) operate, submerge, or tow in or into a marine reserve any line, net, trap, gun, or other gear for taking marine life.
- (3) The restrictions in this section are additional to the restrictions in **sections 14 and 15**.

14 Activities restricted in marine reserves in foreshore, territorial sea and internal waters

A person must not do any of the following things in a marine reserve in the foreshore, territorial sea or internal waters unless authorised by a concession:

- (a) discharge—
 - (i) noxious liquid substances, oil, or garbage; or
 - (ii) waste from fishing:
- (b) discharge untreated sewage from a vessel or offshore installation:
- (c) discharge sewage or other waste from outfalls:
- (d) discharge ballast of any kind:
- (e) discharge a substance or an article of any kind that is—
 - (i) harmful to marine life or marine communities, or to any part of them; or
 - (ii) harmful to human health; or
 - (iii) harmful to people's use and enjoyment of the marine reserve:
- (f) land or take off an aircraft except to establish, construct, operate, maintain, repair, or replace a maritime navigational aid:

- (g) deposit litter in a marine reserve except in a place or receptacle provided for that purpose.

15 Activity restricted in marine reserves in the exclusive economic zone

A person must not discharge noxious liquid substances, oil, sewage, or garbage in a marine reserve in the exclusive economic zone contrary to section 226 of the Maritime Transport Act 1994 or any higher standard recognised by the International Maritime Organisation applicable to the marine reserve.

16 Relationship between restricted and permitted activities

(1) Sections 13(2) and 14—

- (a) are overridden by **section 12(2) to (4)**; and
- (b) may be overridden by an Order in Council that establishes a reserve.

(2) No person may carry out an activity in a marine reserve unless it is—

- (a) an activity referred to in, or authorised by, **section 12(1), (3), or (4), section 13(1)(a), or section 14(g)**; or
- (b) an activity authorised by a concession.

17 Manager of marine reserve may prohibit or restrict activities

(1) The manager of a marine reserve may, with the consent of the Minister, prohibit or restrict in the marine reserve 1 or more of the activities referred to in **section 12(1), (2), or (3)(a)** if the manager considers that is necessary to promote the purpose specified in **section 7**.

(2) A prohibition or restriction under **subsection (1)** does not take effect before it is published on at least 2 consecutive Saturdays in 1 or more daily newspapers circulating in the locality or region nearest to the marine reserve.

(3) The manager of a marine reserve may, by a notice published or displayed in a manner that the manager considers appropriate, prohibit or restrict in the reserve 1 or more of the activities referred to in **section 12(1), (2), or (3)(a)** if the manager considers the urgent issue of the notice is necessary to prevent—

- (a) a significant adverse effect on a marine community, ecosystem, or natural feature in the marine reserve; or
- (b) human injury or loss of life.

- (4) A manager of a marine reserve who prohibits or restricts activities in the reserve by notice under **subsection (3)** must, to the extent that is and by means that are practicable in the circumstances, give notice of the prohibition or restriction to the persons whom the manager believes will be adversely affected.
- (5) A prohibition or restriction imposed by a notice under **subsection (3)** must not be for longer than 30 working days unless the Minister consents to a longer period.
- (6) A prohibition or restriction imposed by a notice under **subsection (1) or subsection (3)** must not, in any circumstance, be for longer than 2 years.
- (7) As soon as practicable after consenting to a prohibition or restriction under **subsection (1)**, the Minister must advise every other Minister of the Crown whose responsibilities may be affected of the prohibition or restriction.

Concessions

18 Minister may grant concessions

- (1) The Minister may grant a concession for any activity in a marine reserve except an activity referred to in **subsection (3)** or **subsection (4)**. A concession may be a lease, licence, permit, or easement.
- (2) A concession is required in a marine reserve—
 - (a) for scientific research; and
 - (b) for research contributing to Te Ira Tangaroa; and
 - (c) for a recreational activity, or other activity, undertaken for gain or reward; and
 - (d) for an activity referred to in **sections 13(2) and 14**.
- (3) A concession is not required in a marine reserve for an activity referred to in **section 12(1), (3), and (4)**.
- (4) The Minister must not grant a concession in a marine reserve for—
 - (a) the commercial, recreational, or customary take of marine life; or
 - (b) an activity that is prohibited or restricted by—
 - (i) the Order in Council under which the marine reserve is established; or
 - (ii) regulations made under this Act that apply to the marine reserve; or

- (iii) a notice given by the manager of the marine reserve under **section 17**; or
 - (iv) a statement of general policy or conservation management strategy that applies to the marine reserve; or
 - (v) a management plan for the marine reserve.
- (5) Part IIIB of the Conservation Act 1987 (except sections 17O and 17ZF(1)) applies, with all necessary modifications, to a concession under this Act as if—
- (a) the concession were a concession under the Conservation Act 1987; and
 - (b) every reference in those sections to a conservation area were a reference to a marine reserve; and
 - (c) the reference in section 17Y(1)(a) of the Conservation Act 1987 to paying rents, concession fees, and royalties to the Minister were, for a concession in a marine reserve for which a management body has been appointed, a reference to paying those rents, concession fees, and royalties to the management body.
- (6) It is a condition of every concession that the concessionaire must comply with the prohibitions or restrictions imposed under **section 17(1) or (3)**, unless the manager specifies otherwise.

Part 3

Management of marine reserves

Subpart 1—Managers and advisory bodies

Managers of reserves

19 Director-General manages unless management body appointed

A marine reserve must be managed by the Director-General unless the Minister appoints a management body for the reserve under **section 20**.

20 Appointment of management bodies

- (1) The Minister may, by notice in the *Gazette* and on the terms and conditions that the Minister thinks fit, appoint one of the following as a management body to manage a marine reserve:
- (a) a local authority; or

- (b) another Minister of the Crown; or
 - (c) a management board consisting of persons that the Minister thinks are fit for that purpose; or
 - (d) any other body or person.
- (2) In deciding whether to appoint a management body for a marine reserve, and the type of management body, the Minister must consider, among other things,—
- (a) the nature of the marine reserve; and
 - (b) potential threats to the marine reserve; and
 - (c) the likely nature of the management required for the marine reserve; and
 - (d) the appropriateness of the proposed management body for the appointment; and
 - (e) any relevant matters raised in, or arising from, the submissions, reports, and meetings that formed part of the application process for the marine reserve or for the review of the marine reserve.
- (3) The Minister may make an appointment under **subsection (1)** only if the Minister is satisfied that—
- (a) the proposed management body has the capacity, skill, knowledge, and financial and other resources to perform its duties; and
 - (b) the appointment would better enable the purpose of this Act to be achieved in relation to the marine reserve.

21 Revocation of appointment

The Minister may revoke an appointment under **section 20** by notice in the *Gazette*.

22 Functions and powers of management bodies

- (1) The functions of every management body are—
- (a) to develop a draft management plan for every marine reserve for which it is appointed; and
 - (b) to manage marine reserves according to this Act, having regard to the means at its disposal; and
 - (c) to authorise the taking of marine life from a marine reserve for management or biosecurity purposes under **section 13(1)(a)**; and
 - (d) to report to the Minister on its activities and operations for each year ended 30 June.

- (2) A management body has the powers that are reasonably necessary or expedient to enable it to carry out its functions.
- (3) A local authority appointed as a management body is authorised to spend and apply money in managing marine reserves according to this Act and any other enactment.
- (4) The Director-General may provide advice, secretarial or administrative services, or technical and related assistance or services to a management body to assist it to perform its functions.

23 Borrowing

- (1) A management body must not borrow money without the prior written consent of the Minister of Finance.
- (2) The Minister of Finance may specify circumstances in which consent under **subsection (1)** is not required.

Advisory bodies

24 Appointment of advisory body for marine reserve

- (1) This section applies to a marine reserve managed by the Director-General.
- (2) The Minister may, by notice in the *Gazette*, appoint as an advisory body (on the terms and conditions that are specified in the notice)—
 - (a) a reserve committee, comprising persons that the Minister thinks are fit for that role; or
 - (b) a conservation board.
- (3) In deciding whether to appoint an advisory body under **subsection (2)**, the Minister must consider—
 - (a) whether there is a significant community of interest in the marine reserve; and
 - (b) whether the marine reserve has particular significance for iwi or hapu who are tangata whenua, or the community, or a high public profile; and
 - (c) whether there are ongoing issues important to the integrity of the marine reserve that require community involvement for those issues to be successfully managed; and
 - (d) any relevant matters raised in, or arising from, the submissions, reports, and meetings that formed part of the

application process for the marine reserve or for the review of the marine reserve; and

- (e) whether—
 - (i) a direct relationship with the Crown through appointment of a reserve committee under **sub-section (2)(a)** is necessary; or
 - (ii) there is a need for an integrated approach between the management of the marine reserve and land near that marine reserve that could be best achieved by appointing a conservation board; and
- (f) any other relevant matter.

25 Revocation of appointment

The Minister may revoke an appointment under **section 24** by notice in the *Gazette*.

26 Functions and powers of advisory bodies

- (1) The functions of an advisory body for a marine reserve are—
 - (a) to advise the Director-General and the Minister about the marine reserve; and
 - (b) to represent the interests of the marine reserve in any public forum and at any hearing; and
 - (c) if required to do so by **section 37(2)**, to prepare a draft management plan for the marine reserve according to **subpart 2**; and
 - (d) any other functions that are conferred on it under this or any other enactment or by the notice of appointment.
- (2) An advisory body has the powers that are reasonably necessary or expedient to enable it to carry out its functions.
- (3) An advisory body that is a conservation board appointed under **section 24(2)(b)** may appoint a committee of members and other suitable persons to undertake the function of advisory body; in doing so, a conservation board must have regard to the matters specified in **section 27(1) and (3)**.
- (4) The Director-General may provide advice, secretarial or administrative services, or technical and related assistance or services to an advisory body to assist it to carry out its functions.

*Membership of management boards and reserve committees***27 Appointment of members**

- (1) A management board or a reserve committee must have no fewer than 5 and no more than 9 members, who must include—
 - (a) members of iwi or hapu who are tangata whenua; and
 - (b) members of the local community; and
 - (c) other persons or representatives of organisations who, in the Minister’s opinion, have a particular interest in the marine reserve.
- (2) A reserve committee must include a member of the conservation board established for the area nearest to the marine reserve.
- (3) In appointing members of a management board or reserve committee, the Minister—
 - (a) may seek recommendations from persons or organisations that the Minister considers are appropriate; and
 - (b) must endeavour to ensure fair representation of the range of interests relating to the marine reserve; and
 - (c) must consider the desirability of the members collectively having knowledge of, and experience in, marine science, conservation, recreation and tourism, management, Te Ira Tangaroa, and other relevant subjects.

28 Appointment of chair and deputy chair

- (1) The Minister may, by written notice, appoint one of the members as chairperson of the management board or reserve committee for the term of his or her appointment as a member, or for some other period, as the Minister thinks fit.
- (2) The Minister may, by written notice, appoint one of the members as deputy chairperson of the management board or reserve committee for the term of his or her appointment as a member, or for some other period, as the Minister thinks fit.
- (3) The Minister may, by written notice, remove a chairperson or deputy chairperson from that office (whether or not the term of appointment has expired) and appoint a replacement chairperson or deputy chairperson.

29 Additions to and removal of members

The Minister may, by notice in the *Gazette*,—

- (a) appoint additional members to a management board or reserve committee as the Minister thinks fit (and **section 27** applies to the additional appointments); or
- (b) reduce the number of members of a management board or reserve committee by revoking the appointment of 1 or more members.

*Other matters***30 Members to pursue purpose and apply principles**

Every member of a management body or advisory body must, in exercising powers or performing duties under this Act, act in good faith with regard to their functions and the purpose and principles of this Act.

31 Further provisions in Schedule 1

- (1) **Part 1 of Schedule 1** applies to a management board and a reserve committee and its members.
- (2) **Part 2 of Schedule 1** applies to a management body.

Subpart 2—Management of marine reserves

*General***32 Management of marine reserves**

The manager of a marine reserve must manage the marine reserve according to—

- (a) the purpose, principles, and other provisions of this Act; and
- (b) any conditions in the Order in Council under which the marine reserve is established; and
- (c) any regulations made under this Act that apply to the marine reserve; and
- (d) any statement of general policy approved under **section 34** or under the Conservation Act 1987; and
- (e) any approved management plan for the marine reserve; and
- (f) any terms and conditions of appointment of a management body appointed for the marine reserve; and
- (g) any relevant conservation management strategy.

33 Boundaries

- (1) The Minister must cause the boundaries of a marine reserve to be defined by its geographic co-ordinates.
- (2) The Minister must consult the Minister of Transport and the Minister for Land Information before establishing the system of geographic co-ordinates to be used under **subsection (1)**.
- (3) A manager of a marine reserve should indicate the boundary of the reserve visually if the manager believes that to be practicable. The indication may be by beacon, light, buoy, mark, sign, or other means believed by the manager to be appropriate.
- (4) The manager must consult the Minister of Transport before indicating a boundary under **subsection (3)**.

34 Statement of general policy

- (1) The Minister may—
 - (a) approve statements of general policy for implementing this Act; and
 - (b) amend a statement of general policy to reflect changing circumstances or increased knowledge.
- (2) Sections 17B(2) to (4), 17C, and 17N of the Conservation Act 1987 apply, with any necessary modifications, to statements of general policy, except that—
 - (a) the Director-General must consult the consultation Ministers in addition to the consultation required by section 17B(3)(a) of that Act; and
 - (b) as soon as practicable after a draft policy is prepared under section 17B(3) of that Act, the Director-General must send a copy of it to each consultation Minister.

35 Promotion of welfare by New Zealand Conservation Authority

The New Zealand Conservation Authority may advise the Director-General on any matter concerning the welfare of marine reserves that it considers necessary.

*Management plans***36 Management plans**

- (1) The purpose of a management plan is to—

- (a) implement a relevant conservation management strategy; and
 - (b) establish detailed objectives and policies for the integrated management of a marine reserve.
- (2) A management plan for a marine reserve—
- (a) must be consistent with the purpose and principles of this Act; and
 - (b) may specify the kinds of activity that are prohibited or restricted in the marine reserve.
- (3) A person who prepares a management plan must have regard to—
- (a) any relevant conservation management plan; and
 - (b) any relevant concessions in force.
- (4) A management plan must not be inconsistent with—
- (a) this Act or regulations made under it; or
 - (b) a relevant statement of general policy approved under **section 34**; or
 - (c) a relevant statement of general policy approved under the Conservation Act 1987 or any of the Acts listed in section 17C of that Act; or
 - (d) a relevant conservation management strategy.

37 Who must prepare management plans

- (1) A management body that is appointed the manager of a marine reserve must prepare a management plan for the marine reserve within 3 years of its appointment.
- (2) An advisory body for a marine reserve or, if there is no advisory body, the Director-General must prepare a management plan for the marine reserve if preparation of a management plan is required by—
- (a) a conservation management strategy; or
 - (b) the Minister, after consultation with the Director-General and any advisory body for the marine reserve.

38 Preparation of management plans by conservation board or Director-General

Sections 17G, 17H, and 17I of the Conservation Act 1987, with all necessary modifications, apply to the preparation, review, and amendment of a management plan by a conservation board or the Director-General as if the management plan

were a conservation management plan under the Conservation Act 1987.

Preparation of management plans by management bodies and reserve committees

39 Application and interpretation of certain sections

- (1) **Sections 40 to 44** apply to the preparation of a draft management plan by a management body or reserve committee.
- (2) In **sections 41 to 45**, **plan preparer** means the management body or reserve committee that is responsible for preparing a draft management plan.

40 Procedure for preparation and notification of management plans

- (1) A management body and, if required by **section 37(2)**, a reserve committee must prepare a draft management plan for the marine reserve.
- (2) A draft management plan must—
 - (a) be prepared in consultation with the conservation boards and local authorities affected by it, the consultation Ministers, iwi or hapu who are tangata whenua, and other persons or organisations that the plan preparer considers it practicable and appropriate to consult; and
 - (b) be publicly notified by publishing a notice that complies with **section 41**; and
 - (c) be notified to—
 - (i) the persons specified in **paragraph (a)**;
 - (ii) any other person that the plan preparer considers it practicable and appropriate to notify.
- (3) Public notification under **subsection (2)(b)** is achieved by publishing a notice—
 - (a) in a daily newspaper in each of Auckland, Wellington, Christchurch, and Dunedin; or
 - (b) if the management body or reserve committee is satisfied that the draft management plan is of local or regional interest only, in a newspaper circulating in that locality or region.

41 Form of notice

Every notice under **section 40(2)(b) or (c)** must state—

- (a) that the draft management plan is available for inspection during normal office hours at specified places; and
- (b) that interested persons and organisations may lodge submissions on the draft management plan with the plan preparer no later than a date specified in the notice that is not less than 60 working days after the date of publication of the notice; and
- (c) the address of the plan preparer for the lodging of submissions; and
- (d) that a submission must specify whether or not the submitter wishes to be heard on the submission.

42 Submissions and consultation

- (1) A person or organisation may make a written submission to the plan preparer on a draft management plan at the address, and no later than the date for the closing of submissions, specified in the notice.
- (2) From the date of public notification of a draft management plan until the date specified for the closing of submissions in the notice, the draft management plan must be made available by the plan preparer for public inspection at the places and times specified in the notice.
- (3) The plan preparer must give every person or organisation who asks to be heard on their submission a reasonable opportunity of appearing before a meeting of the plan preparer or its representatives.
- (4) The plan preparer or its representatives may hear oral submissions from a person or organisation consulted on the draft management plan, whether or not the person or organisation made a written submission.

43 Summary of submissions and draft plan to be given to Minister

- (1) A plan preparer must prepare a summary of the views expressed in the submissions received on the draft management plan.
- (2) After considering the submissions received on the draft management plan, the plan preparer may revise the draft plan and

must send it to the Minister with the summary prepared under **subsection (1)**.

- (3) The plan preparer must comply with **subsection (2)** before—
 - (a) the expiration of 8 months after the date of public notice given under **section 40(2)(b)**; or
 - (b) a later date that may be fixed for that purpose by the Minister.

44 Approval of draft plan by Minister

- (1) The Minister may approve a draft management plan or request the plan preparer to revise it.
- (2) If the Minister requests a plan preparer to revise a draft management plan,—
 - (a) unless **paragraph (b)** applies, **sections 40 to 43** apply, with any necessary modifications, to the revision as if the revision were the preparation of a new draft management plan; and
 - (b) if the plan preparer considers that the revision will not materially affect the objectives or policies expressed in the draft management plan or the public interest in the area concerned, the plan preparer may send the revision to the Minister without complying with **sections 40 to 43** and the Minister may approve the revision or request the plan preparer to further revise it.
- (3) The Minister must not approve a draft management plan without first consulting the New Zealand Conservation Authority about the plan.

45 Review of, or amendments to, management plans

- (1) A plan preparer may, at any time, review or amend all or a part of its management plan.
- (2) A management plan—
 - (a) must be reviewed entirely or in part if so required by the Minister:
 - (b) must be reviewed entirely by the plan preparer not later than 10 years after the date of its approval (or a later date that the Minister determines, after consultation with the plan preparer).
- (3) Unless **subsection (4)** applies, **sections 40 to 44** apply, with any necessary modifications, to the review or amendment of a

management plan as if the review or amendment were the preparation of a new draft management plan.

- (4) If the plan preparer considers that a proposed amendment to a management plan will not materially affect the objectives or policies expressed in the plan or the public interest in the area concerned, the plan preparer may send the proposed amendment to the Minister without complying with **sections 40 to 44** and the Minister may approve the amendment or request the plan preparer to revise it.

Part 4

Establishment of marine reserves

Applications to establish marine reserves

46 Interpretation

In this Part, unless the context otherwise requires,—

applicant means—

- (a) the person who makes a proposal that is authorised to proceed as an application; or
- (b) the Director-General, if the Director-General prepares a proposal

application means a proposal that is authorised to proceed as an application under **section 51**

interested person, in relation to a proposal, means a person or group likely to have a significant interest in the proposal; and includes the representatives of that person or group

proposal means a proposal to establish a marine area as a marine reserve

proposer means a person who prepares and submits a proposal under **section 47(2)**

response to submissions means a response to submissions prepared by the applicant under **section 56**

summary of submissions means a summary of views expressed in submissions prepared by the Director-General under **section 57**.

Proposals for establishment of marine reserves

47 Preparation of proposal

- (1) The Director-General may prepare a proposal.

- (2) A person other than the Director-General may prepare a proposal and submit it to the Director-General.

48 Consultation and consideration during preparation of proposal

In preparing a proposal under **section 47**, the Director-General or the proposer, as the case may be, must,—

- (a) if practicable, consult—
- (i) iwi or hapu who are tangata whenua of the marine area concerned; and
 - (ii) iwi or hapu who have customary access to the marine area concerned; and
 - (iii) interested persons; and
- (b) keep a record of that consultation; and
- (c) consider ways of avoiding or mitigating adverse effects on existing uses of the marine area concerned if those ways do not compromise the purpose of this Act and are consistent with its principles.

49 Contents of proposal

- (1) A proposal must—
- (a) describe the location and boundaries of the marine area proposed as a marine reserve; and
 - (b) state how the proposed marine reserve will meet the purpose and principles of this Act; and
 - (c) contain the names and addresses of those who were consulted under **section 48(a)**, and summarise the matters raised by them; and
 - (d) contain a statement of the extent (if any) to which the matters raised or considered during consultation under **section 48** have been addressed in the proposal.
- (2) A proposal must not relate to a marine area—
- (a) for which a lease or licence under the Marine Farming Act 1971 is in force; or
 - (b) that is included in a taiapure-local fishery or mataitai reserve declared under the Fisheries Act 1996.

50 Further information may be required

If the Director-General considers that further information is necessary to enable him or her to decide whether to permit a proposal to proceed under **section 51**, the Director-General

may, by written notice to the proposer given within 20 working days after receiving the proposal under **section 47(2)**, require the proposer to provide him or her with the further information.

51 Permission for proposals to proceed as applications

- (1) The Director-General must, within 20 working days after receiving a proposal under **section 47(2)** or, if further information has been sought under **section 50**, within 20 working days after receiving the further information, decide whether to permit the proposal to proceed as an application.
- (2) The Director-General must permit a proposal to proceed as an application if—
 - (a) the proposal satisfies **section 49**, appears to meet the purpose of this Act, and appears to be consistent with the principles of this Act; and
 - (b) consultation under **section 48(a)** has occurred.
- (3) If the Director-General permits a proposal to proceed as an application, the Director-General must notify the proposer of that decision.
- (4) If the Director-General does not permit a proposal to proceed as an application, the Director-General must—
 - (a) notify the proposer that the proposal is not permitted to proceed as an application and of the reasons for that decision; and
 - (b) advise those who are identified in the proposal under **section 49(1)(c)** of that decision.
- (5) A proposal prepared by the Director-General is permitted to proceed as an application.

Procedure for applications

52 Plan of marine area

- (1) The Director-General must, for every proposal that is permitted to proceed as an application, prepare a plan of the marine area to which the application relates.
- (2) The plan must—
 - (a) be on a suitable scale; and
 - (b) show the boundaries and extent of the proposed marine reserve; and
 - (c) show all tidal waters clearly.

53 Public notification of application

- (1) The Director-General must give public notice of an application at least once—
 - (a) in a daily newspaper published in each of Auckland, Wellington, Christchurch, and Dunedin; or
 - (b) if the Director-General is satisfied that the application is of local or regional interest only, in a newspaper circulating in that region or locality.
- (2) A notice of application under **subsection (1)** must—
 - (a) describe the application, including the location (as it is commonly known) of the proposed marine reserve; and
 - (b) state that written submissions on the application may be made to the Director-General by any person; and
 - (c) state the closing date for the receipt of submissions by the Director-General under **section 55**; being the 60th working day after the date of first publication of the notice of application under **subsection (1)**; and
 - (d) state the place where a copy of the application, and the plan prepared under **section 52**, may be obtained or inspected; and
 - (e) state the address for service of submissions and state that 2 copies of every submission must be served; and
 - (f) advise submitters of the requirements for submissions, as set out in **section 55(2)**.
- (3) The Director-General must, as soon as practicable after the date of first publication of the notice of application under **subsection (1)**, provide a copy of the notice to the following persons:
 - (a) each consultation Minister;
 - (b) iwi or hapu who are tangata whenua of, or who have customary access to, the marine area concerned;
 - (c) any local authority exercising powers over the area in or adjoining the proposed marine reserve;
 - (d) every person who is an owner or occupier of land or a structure that adjoins the proposed marine reserve and every person who holds a coastal permit within the proposed marine reserve;
 - (e) any other interested person whom the Director-General considers should be notified.
- (4) The Director-General may give whatever other public notice of the application that the Director-General thinks desirable.

- (5) For the purpose of **subsection (3)(d)**,—
- (a) the Director-General is not required to take more than reasonable steps to identify adjoining owners, occupiers, or coastal permit holders; and
 - (b) land is to be treated as adjoining a proposed marine reserve—
 - (i) even if it is separated from the proposed reserve by the foreshore or by a road; or
 - (ii) if the land is within 100 metres of the proposed reserve, even if it is separated from it by any other kind of reserve or a marginal strip within the meaning of the Conservation Act 1987.

54 Plan and application to be available for inspection

The Director-General must ensure that, during the period from the date of first publication of a notice of application under **section 53(1)** to the date by which submissions must be received by the Director-General, the application, and the plan of the marine area prepared by the Director-General under **section 52**, is available for inspection free of charge during ordinary office hours at the conservancy office of the Department nearest to the proposed marine reserve and at any other place specified in the notice of application.

Compare: 1971 No 15 s 5(2)

55 Submissions on application

- (1) Any person may make a submission to the Director-General about an application.
- (2) A submission must—
 - (a) be in writing; and
 - (b) specify the aspects of the application that the submission supports and the aspects it opposes; and
 - (c) specify the reasons for the support or opposition identified; and
 - (d) refer to any information that is relevant to the application and the Minister's decision on the application that has not been referred to or included in the application; and
 - (e) state whether or not the person making the submission wishes to receive notice of meetings convened in relation to the application.

- (3) A person who makes a submission must serve 2 copies of it on the Director-General on or before the closing date for receipt of submissions.
- (4) If the Director-General is not the applicant, the Director-General must, as soon as is practicable, serve on the applicant a copy of every submission received by the Director-General.

Compare: 1993 No 95 s 62

56 Response to submissions

The applicant may, within 40 working days after the closing date for receipt of submissions, prepare and, if the applicant is not the Director-General, submit to the Director-General a document responding to some or all of the matters raised in submissions.

57 Summary of submissions

The Director-General must, within 40 working days of the closing date for receipt of submissions, prepare a summary of the submissions.

58 Submitters to be sent response to, and summary of, submissions

The Director-General must, as soon as practicable, make available to every person who made a submission on the application, by whatever means the Director-General considers appropriate, a copy of the summary of submissions and of any response to submissions.

59 Meetings

- (1) The Director-General may convene a meeting or meetings of those persons who have requested in their submissions to receive notice of meetings relating to the application, to discuss key issues that appear from the submissions and to endeavour to resolve areas of difference.
- (2) The Director-General must give not less than 10 working days written notice of each meeting under **subsection (1)** to the applicant and every submitter who has asked to receive notice of those meetings.
- (3) A notice must not be given under **subsection (2)** before the date by which, in the Director-General's opinion, recipients of the

notice would have had access to the summary of submissions and any response to submissions under **section 58**.

- (4) The Director-General may hold any other meetings in relation to a proposal or application that the Director-General thinks desirable.

60 Procedure and record of meetings

- (1) The Director-General, or the Director-General's representative, must chair a meeting convened under **section 59**.
- (2) The Director-General must keep a record of the proceedings at every meeting and must make the record available for public inspection.

61 Director-General to prepare draft report

The Director-General must, within 60 working days after the date by which the summary of submissions must be prepared,—

- (a) prepare a draft report and recommendations on the application, having regard to the matters referred to in **sections 66 to 69**; and
- (b) provide the draft report to the Minister, together with copies of the application, the summary of submissions, the submissions, and any response to the submissions.

62 Independent report

- (1) Within 40 working days of the receipt of the draft report prepared by the Director-General under **section 61**, the Minister must (if the Director-General is the applicant), or may (in other cases), obtain an independent report on the administrative process followed by the Director-General regarding the application.
- (2) The independent report must—
 - (a) report on and evaluate that process; and
 - (b) assess whether the draft report of the Director-General under **section 61** represents a fair and balanced assessment of the application, all submissions received, the applicant's response, and any other relevant matters.
- (3) The Minister must be satisfied that a person selected to prepare an independent report under this section is a fit and

proper person to do so, having regard to the person's qualifications, experience, character and reputation, and ability to maintain an appropriate degree of impartiality and independence.

- (4) An independent report may not comment on the appropriateness of a recommendation made by the Director-General in the draft report unless failure to comply with the Act or poor process appears to have had a significant bearing on the recommendation.

63 Consultation with Ministers

- (1) As soon as practicable after receiving the documents referred to in **section 61(b)**, the Minister must provide copies of the documents to each consultation Minister and must consult with them about the application.
- (2) Consultation Ministers must respond to consultation by the Minister under **subsection (1)** within 65 working days of receiving the documents (if the Minister has sought an independent report) or within 35 days of receiving the documents (in other cases).

64 Final report to Minister

The Director-General must, after having regard to any views received from the consultation Ministers under **section 63**, provide the Minister with a final report—

- (a) within 60 working days of the receipt by the Minister of the draft report; or
- (b) if an independent report has been sought by the Minister under **section 62**, within 60 working days of the date of receipt of that report.

Decision on application

65 Time limit for Minister's decision

The Minister must decide an application, and state the reasons for the decision, within 60 working days of receiving the final report of the Director-General under **section 64**.

66 Matters Minister must consider

The Minister must have regard to the following matters in considering an application:

- (a) the submissions received:
- (b) any response to submissions:
- (c) the matters raised in any meetings convened under **section 59**:
- (d) any independent report obtained under **section 62**:
- (e) the consultation carried out with consultation Ministers under **section 63**:
- (f) the final report of the Director-General under **section 64**:
- (g) relevant provisions of any management plan prepared under any other enactment:
- (h) the matters referred to in **section 67(2)**:
- (i) any other relevant matters.

67 Minister's decision

- (1) The Minister must decide whether—
 - (a) to accept an application and recommend to the Governor-General the making of an Order in Council under **section 71**, with or without conditions under **section 69**; or
 - (b) to decline the application.
- (2) The Minister may recommend the making of an Order in Council under **section 71** only if the Minister is satisfied that the marine reserve proposed by the application as it may be amended under **section 68**, with any conditions that may be imposed under **section 69**,—
 - (a) meets the purpose and is consistent with the principles of this Act; and
 - (b) is in the public interest; and
 - (c) will have no undue adverse effect on any of the following:
 - (i) the relationship of iwi or hapu who are tangata whenua or who have customary access, and their culture and traditions, with the marine area concerned:
 - (ii) the ability of iwi or hapu who are tangata whenua, or who have customary access, to undertake customary food gathering to the extent authorised by any enactment:
 - (iii) commercial and recreational fishing:
 - (iv) recreational use:
 - (v) economic use and development:

- (vi) any estate or interest in land in or adjoining the proposed marine reserve:
 - (vii) navigation rights:
 - (viii) education and research:
 - (ix) the use of the marine area by the New Zealand Defence Force:
 - (x) other matters considered relevant by the Minister.
- (3) An adverse effect is not undue under **subsection (2)(c)** if the Minister is satisfied that the benefit to the public interest in establishing the marine reserve outweighs the adverse effect.
- (4) In considering the public interest under **subsection (3)**, the Minister must have regard to—
- (a) the benefit of preserving and protecting marine communities and ecosystems to conserve indigenous marine biodiversity; and
 - (b) any benefits that may arise directly from the establishment of the marine reserve that the Minister considers relevant.

68 Minister may amend application

The Minister may amend the application before making a decision under **section 67(1)**—

- (a) to avoid or mitigate any adverse effect of a kind referred to in **section 67(2)(c)**; or
- (b) to enhance the prospect that the proposed marine reserve satisfies the purpose and is consistent with the principles of this Act.

69 Conditions

The Minister may include, in a recommendation made to the Governor-General under **section 67**,—

- (a) conditions that the Minister considers necessary or desirable to enhance the prospect that the marine reserve will meet the purpose in **section 7** and be consistent with the principles in **section 9**, including conditions about access to, and use of, the marine reserve; and
- (b) conditions relating to the appointment of a management body or reserve committee for the marine reserve; and
- (c) a condition requiring that a review of the marine reserve must be carried out no later than 25 years following the date on which the Order in Council establishing the

marine reserve comes into force, to assess whether the marine reserve continues to meet the purpose of this Act.

70 Notification of Minister’s decision

The Director-General must notify the applicant of the Minister’s decision under **section 67** and the reasons for the decision.

71 Declaration of marine reserve

The Governor-General may, by Order in Council made on the recommendation of the Minister under **section 67(1)(a)**, declare a marine area to be a marine reserve on the conditions stated in the order.

Compare: 1971 No 15 s 4(1); 1996 No 88 ss 175, 176

Subpart 3—Review and alteration of marine reserves

Alteration of marine reserves

72 Alteration

- (1) The Minister may recommend to the Governor-General that an Order in Council be made amending the boundary of a marine reserve, or amending or adding to the conditions in the Order in Council establishing the marine reserve, if the Minister considers that—
 - (a) amending the boundaries, or amending or adding to the conditions, is necessary or desirable to better pursue the purpose of this Act; and
 - (b) the marine reserve, if amended as proposed, will continue to meet the requirements in **section 67(2)(a) and (b)**; and
 - (c) the proposed amendment is minor or technical and will not materially increase an adverse effect of a kind referred to in **section 67(2)(c)**.
- (2) The Minister must consult the consultation Ministers before making a recommendation under **subsection (1)**.
- (3) The Governor-General may, on the recommendation of the Minister under **subsection (1)**, make an Order in Council implementing the recommendation.

*Reviews of marine reserves***73 Commencement of review**

- (1) The Director-General must review a marine reserve according to this subpart if—
 - (a) the Order in Council under which the marine reserve is established requires a review; or
 - (b) the Minister considers for any reason that a marine reserve may no longer meet the purpose of this Act; or
 - (c) the Minister considers that a proposed amendment to the boundaries of the marine reserve, or to any of the conditions specified in the Order in Council, do not satisfy the criteria in **section 72(1)**.
- (2) A review may relate to 1 or more marine reserves.

74 Conduct of review

- (1) **Sections 53 to 69** apply, with the modifications specified in **subsection (2)** and all other necessary modifications, to a review under this subpart as if every reference in those sections to—
 - (a) an application were a reference to a review; and
 - (b) the proposed marine reserve were a reference to the marine reserve under review; and
 - (c) a plan prepared under **section 52** were a reference to the existing plan of the marine reserve.
- (2) **Sections 53 to 69** are modified as follows in their application to a review:
 - (a) instead of the matters referred to in **section 53(2)(a)**, the public notice of the review must state the name of the marine reserve being reviewed and the reasons for the review; and
 - (b) a submitter need serve only 1 copy of a submission on the Director-General under **section 55(3)**, and **section 53(2)(e)** is to be read accordingly; and
 - (c) the Director-General is not required to serve a copy of the submissions on an applicant under **section 55(4)**, and **section 56** does not apply.

75 Alterations to, or revocation of, marine reserves on review

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister following a review,—

- (a) revoke the Order in Council under which the marine reserve is established; or
 - (b) amend the Order in Council under which the marine reserve is established to alter the boundaries of the marine reserve or the conditions of that Order in Council (including by revoking or adding to those conditions).
- (2) The Minister may recommend revoking an Order in Council that establishes a marine reserve only if the Minister is satisfied that the marine reserve no longer meets the purpose of this Act.

Part 5

Enforcement and penalties

76 Interpretation

In this Part, unless the context requires otherwise,—

article includes—

- (a) a bag, case, container, bulk cargo container, freezer, fridge, package, parcel, article of clothing, or other thing capable of holding or transporting marine life or natural material; and
- (b) any ammunition, appliance, device, engine, equipment, explosive, firearm, fishing gear, good, implement, instrument, material, net, or trap

document includes—

- (a) a document or record in any form, whether signed or initialled or otherwise authenticated by its maker or not; and
- (b) writing on any material; and
- (c) information recorded, transmitted, or stored by tape-recorder, computer, or other device, and material subsequently derived from information so recorded, transmitted, or stored; and
- (d) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached by any means; and
- (e) a book, map, plan, graph, or drawing; and
- (f) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

enforcement officer means an enforcement officer appointed under **section 77(1)** or a person specified in **section 77(2)**

honorary enforcement officer means an honorary enforcement officer appointed under **section 78**

infringement fee for an infringement offence means the amount fixed by regulations made under **section 126** as the infringement fee for the offence

infringement offence means—

- (a) an offence against this Act, except an offence under **section 109(1)(a)**; and
- (b) an offence that is declared, by regulations made under this Act, to be an infringement offence

offence means an offence against this Act or any regulations made under this Act

premises means land or a building, except a private dwelling or marae or building associated with a marae

vehicle includes a conveyance used or designed to be used on land, whether or not it is also capable of being used on or over water; and includes an animal that may be used as a conveyance.

Subpart 1—Enforcement officers and their powers

Appointment

77 Appointment of enforcement officers

- (1) The Director-General may appoint as an enforcement officer an officer of the Department who is suitably qualified and trained.
- (2) The following persons are also enforcement officers:
 - (a) every member of the police;
 - (b) every officer of the New Zealand Naval Forces of the rank of midshipman or above and every officer in command of an aircraft of the New Zealand Defence Force;
 - (c) every customs officer within the meaning of section 2(1) of the Customs and Excise Act 1996;
 - (d) every fishery officer within the meaning of section 2(1) of the Fisheries Act 1983 or section 2(1) of the Fisheries Act 1996.

Compare: 1987 No 65 s 59

78 Appointment of honorary enforcement officers

- (1) The Director-General may appoint as an honorary enforcement officer for a marine reserve a person who is suitably qualified and trained.
- (2) An honorary enforcement officer—
 - (a) must be appointed for a term not exceeding 3 years and may be reappointed; and
 - (b) may be removed from office by the Director-General if the Director-General considers for any reason that the officer is no longer a fit and proper person to be an honorary enforcement officer; and
 - (c) may, at any time, resign from office by notifying the Director-General.
- (3) The Director-General may reimburse an honorary enforcement officer, from money appropriated by Parliament for the purpose, for actual and reasonable expenses incurred while performing his or her duties under this Act if the Director-General—
 - (a) has authorised that officer to incur expenses up to a specified amount; and
 - (b) has subsequently approved those expenses.
- (4) An honorary enforcement officer is not employed in the Government service for the purposes of the Government Superannuation Fund Act 1956 or the State services for the purposes of the State Sector Act 1988 only because the person is an honorary enforcement officer.

Compare: 1971 No 15 s 17

79 Issue and scope of warrants for enforcement officers

- (1) The Director-General must issue to an enforcement officer appointed under **section 77(1)** a warrant authorising the officer to exercise powers under **sections 86 to 88**, and specifying which of the powers in **sections 89 and 91 to 94** the officer may exercise.
- (2) A warrant issued under **subsection (1)** may state the marine reserve or marine reserves in relation to which the officer may exercise his or her powers.
- (3) The powers of an enforcement officer specified in **section 77(2)** are stated in **section 85(3)**.

80 Issue and scope of warrants for honorary enforcement officers

The Director-General must issue to an honorary enforcement officer a warrant—

- (a) authorising the officer to exercise powers under **sections 86 to 88**; and
- (b) specifying which of the powers in **sections 89 and 91 to 94** the officer may exercise; and
- (c) stating the marine reserve or marine reserves in relation to which those powers may be exercised.

81 Surrender of warrant

An enforcement officer or honorary enforcement officer who possesses a warrant issued under **section 79 or section 80** must surrender that warrant to the Director-General on the termination of his or her appointment.

82 Combined warrant

A warrant issued under this Act may be combined with any other warrant that the Director-General may issue under any other enactment.

*Powers***83 Exercise of powers**

- (1) An enforcement officer or honorary enforcement officer may exercise his or her powers under this Act only if—
 - (a) the officer has reasonable grounds to believe that an offence will be, is being, or has been committed; and
 - (b) the officer has, unless it would be impracticable to do so,—
 - (i) produced the officer's warrant issued under **section 79 or section 80**; or
 - (ii) if the officer is an enforcement officer specified in **section 77(2)**, produced evidence that he or she holds an office specified in that section.
- (2) The production by a person of a warrant of appointment as an enforcement officer or honorary enforcement officer, or of evidence that the person holds an office specified in **section 77(2)**, is sufficient evidence that the person is an enforcement officer or honorary enforcement officer, as the case may be, under this Act.

- (3) An enforcement officer may exercise a power conferred on him or her by this Act anywhere in New Zealand unless the relevant warrant restricts the exercise of a power.
- (4) An honorary enforcement officer may exercise a power that he or she is authorised to exercise by a warrant under **section 80**—
 - (a) in the marine reserve or marine reserves specified in the warrant; and
 - (b) anywhere else in New Zealand, but only to investigate an offence that the officer reasonably believes will be, is being, or has been committed in the marine reserve or marine reserves.
- (5) An enforcement officer or honorary enforcement officer exercising a power under this Act, except the power under **section 93**, may call on a person in the vicinity for assistance, and a person called upon is authorised to render assistance.
- (6) In **subsections (3) and (4)**, references to New Zealand include New Zealand's foreshores, internal waters, territorial sea and exclusive economic zone.

84 Use of force

The following persons in the following circumstances may use force that is reasonable and necessary (and are justified in doing so):

- (a) an enforcement officer who exercises a power under this Act, except a power under **sections 87, 92, and 93**; and
- (b) an honorary enforcement officer or other person who, at the request of an enforcement officer and in good faith, assists the enforcement officer in the exercise of a power referred to in **paragraph (a)**.

85 Authority to exercise powers

- (1) An enforcement officer appointed under **section 77(1)** and an honorary enforcement officer may exercise—
 - (a) the power to intervene to prevent or stop offending in **section 86**; and
 - (b) the power to require personal particulars in **section 87**; and
 - (c) the power to stop persons and other things in **section 88**; and

- (d) those of the following powers that he or she is expressly authorised to exercise by his or her warrant under **section 79 or section 80**:
 - (i) the power of entry and search in **section 89**;
 - (ii) the power of seizure in **section 91**;
 - (iii) the power to take and copy documents in **section 92**;
 - (iv) the power to issue infringement notices in **section 93**.
- (2) An enforcement officer appointed under **section 77(1)** may exercise the power of arrest in **section 94** only if he or she is expressly authorised to do so by his or her warrant under **section 79**.
- (3) An enforcement officer specified in **section 77(2)** may exercise all the powers in **sections 86 to 89 and 91 to 94**.

86 Power to interfere to prevent or stop offending

An enforcement officer or honorary enforcement officer may—

- (a) summarily interfere to prevent an offence; and
- (b) require a person whom he or she believes on reasonable grounds to have committed or to be committing or to be about to commit an offence to stop doing an act.

87 Power to require personal particulars

An enforcement officer or honorary enforcement officer may require a person whom he or she believes on reasonable grounds to have committed or to be committing or to be about to commit an offence to give his or her full name, residential address, and date of birth, and to produce evidence of that name, address, and date of birth.

88 Power to stop

In exercising a power under this Act, an enforcement officer or honorary enforcement officer may stop, and keep stopped,—

- (a) a vessel, vehicle, or person; and
- (b) an article in transit; and
- (c) a document or communication in transmission.

89 Power of entry and search

- (1) An enforcement officer or honorary enforcement officer who is so authorised under **section 85** may exercise a power under **subsection (2)** if he or she believes on reasonable grounds that 1 or more of the following items may be concealed or located or held in any premises, vehicle, vessel, or article:
 - (a) marine life or natural material taken, or an article or thing used or intended to be used, in breach of this Act or regulations made under it:
 - (b) an article, document, or thing that will be evidence of the commission of an offence against this Act or regulations made under it.
- (2) The officer may—
 - (a) enter any premises, or board any vehicle or vessel; and
 - (b) search and examine the premises, vehicle, or vessel; and
 - (c) open or examine an article or thing; and
 - (d) examine a document or thing.
- (3) An enforcement officer or honorary enforcement officer who is so authorised under **section 85** may detain any vehicle, vessel, article, document, marine life, or other thing for a period that is reasonably necessary to enable the officer to undertake a search or examination under this section.

Compare: 1996 No 88 s 199(2)

90 Notice of entry and search

- (1) An enforcement officer who has exercised the power of entry and search under **section 89** must, before departing from the place searched, leave in a prominent position at that place a written notice stating,—
 - (a) if the search is carried out when the owner or occupier is not present,—
 - (i) the date and time of the search; and
 - (ii) the name of the person in charge of the search; and
 - (b) if anything is removed from the place being searched, an inventory of the things removed from the place during the search.
- (2) If it is not practicable to prepare an inventory before departing, or if the owner or occupier of the place being searched consents, the enforcement officer—

- (a) may, instead of leaving an inventory, leave a notice stating that an inventory will be given within 7 days of the search; and
 - (b) must, within 7 days of the search, give the inventory to the owner or occupier of the place searched.
- (3) Every inventory required under this section must state—
- (a) which things were removed in the search; and
 - (b) from where those things were removed; and
 - (c) where those things are now held.
- (4) Despite **subsection (3)**, an inventory—
- (a) need not refer to a thing that is returned to the owner or occupier of the place searched before the inventory is given:
 - (b) may refer to groups of things removed, rather than to each thing.

91 Power of seizure

- (1) An enforcement officer or honorary enforcement officer who is so authorised under **section 85** may seize any of the following things:
- (a) marine life that he or she believes on reasonable grounds is being or has been taken, transported, bought, or sold in breach of this Act or regulations made under it:
 - (b) marine life found in the possession of a person in breach of this Act or regulations made under it:
 - (c) marine life with which the marine life referred to in **paragraphs (a) and (b)** is intermixed:
 - (d) natural material that he or she believes on reasonable grounds has been taken from a marine reserve:
 - (e) a vessel or vehicle that he or she believes on reasonable grounds is being or has been used or is intended to be used to commit an offence:
 - (d) an article or other thing that he or she believes on reasonable grounds is being or has been used or is intended to be used to commit an offence:
 - (e) an article, document, or thing that he or she believes on reasonable grounds is evidence of the commission of an offence.

- (2) **Subpart 2 of this Part** applies to any thing seized under this section.

Compare: 1971 No 15 s 18A(1)

92 Power to take and copy documents

An enforcement officer or honorary enforcement officer who is so authorised under **section 85** may—

- (a) copy a document, and for this purpose may take possession of and remove a document from the place where it is kept for a time that is reasonable in the circumstances; and
- (b) if necessary, require a person to reproduce or assist in reproducing in usable form a document recorded or stored in a computer or other device or system.

Compare: 1996 No 27 s 206

93 Power to issue infringement notices

- (1) An enforcement officer or honorary enforcement officer who is so authorised under **section 85** may, if the officer believes on reasonable grounds that a person has committed an infringement offence, issue an infringement notice to that person.
- (2) **Subpart 3 of this Part** applies to infringement notices.

94 Power of arrest

- (1) An enforcement officer who is so authorised under **section 85** may arrest a person without warrant—
 - (a) if the person fails or refuses to stop doing an act that the officer has required that person to stop doing under **section 86**; or
 - (b) if—
 - (i) the officer believes on reasonable grounds that a detail supplied under **section 87** is false or misleading; and
 - (ii) the person fails or refuses, without reasonable excuse, to comply with a request by the officer that is reasonable in the circumstances, to produce evidence of those details; or
 - (c) if the officer believes on reasonable grounds that the person has committed an offence against **section 109(1)(a)** or **section 111(1)(b) to (f)**; or

- (d) if the officer believes on reasonable grounds that the person is committing or has committed an offence in a marine reserve and considers that there is a real risk that the person may not be able to be served with proceedings under this Act, or may not appear to answer proceedings.
- (2) If an enforcement officer arrests a person under this section, the officer must, unless the person is sooner released, at the first reasonable opportunity deliver the arrested person into the custody of a member of the police.
- (3) If a person delivered into custody under **subsection (2)** is released by a member of the police on bail under section 21 of the Bail Act 2000 or without bail under section 19A of the Summary Proceedings Act 1957, the duty to lay and file an information must be carried out by an enforcement officer and not a member of the police.

Compare: 1996 No 27 s 174(3), (4)

Subpart 2—Seized property

95 Meaning of seized property

In this subpart, **seized property** means any article, document, marine life, vehicle, vessel, or other thing seized by an enforcement officer or honorary enforcement officer under this Act.

96 Advice by Director-General

The Director-General must make reasonable efforts to advise—

- (a) the persons referred to in **section 100(1)** of the right to apply for the release of seized property under **section 100**; and
- (b) the persons referred to in **section 102(3)** of an application made or to be made under **section 102**.

97 Disposal of seized marine life

Marine life seized by an enforcement officer or honorary enforcement officer under this Act must,—

- (a) if alive and likely to survive, be returned to a marine area; or

- (b) if survival is unlikely or the marine life is dead, may be—
 - (i) retained pending the outcome of proceedings under this Act; or
 - (ii) disposed of in a manner and for a price (if any) that the Director-General may determine.

Compare: 1971 No 15 s 18A(2)

98 Custody of seized property

- (1) This section applies to seized property and proceeds from seized property sold under this Act except—
 - (a) property released under **section 100**; and
 - (b) property forfeited to the Crown under **section 104**; and
 - (c) property or proceeds forfeited to the Crown under **section 108**.
- (2) Seized property and proceeds from seized property must be held in the custody of the Crown until—
 - (a) any infringement fee due for the offence for which the property was seized has been paid in full; or
 - (b) a decision is made not to lay an information or charge for the alleged offence for which the property was seized; or
 - (c) if an information or charge is laid for the alleged offence for which the property was seized, the completion of the proceedings; or
 - (d) an earlier time than the times referred to in **paragraphs (a) to (c)** that the Court may direct under **section 102**.

Compare: 1971 No 15 s 18C

99 Decision to lay charge to be made promptly

The decision whether or not to lay an information or charge for an alleged offence for which property is seized under this Act must be made as soon as reasonably practicable after the property is seized.

Compare: 1971 No 15 s 18A(3)

100 Director-General may release seized property unconditionally or under bond

- (1) The following persons may apply to the Director-General for the release of seized property:
 - (a) the person from whom the property was seized:

- (b) the owner or person entitled to possession of the seized property:
 - (c) a person with a legal or equitable interest in the seized property.
- (2) The Director-General may, at his or her discretion, release seized property to a person who is entitled to apply under **subsection (1)** before the completion of proceedings for the alleged offence for which the property was seized.
- (3) A release of property under **subsection (2)** may be—
- (a) unconditional; or
 - (b) under bond for a sum, with sureties, and on conditions acceptable to the Director-General.

Compare: 1971 No 15 s 18B(1)

101 Failure to comply with bond

- (1) If a person to whom property is released under **section 100** fails to comply with a bond or with a condition specified by the Director-General,—
- (a) the property may be resealed at the direction of the Director-General; and
 - (b) **section 98** then applies to the property as if it had been seized under **section 91**; and
 - (c) the Director-General may apply to the District Court for an order for estreat of the bond.
- (2) If the Director-General applies for an order for estreat of the bond, the Registrar of the District Court must fix a time and place for the hearing of the application, and must, not less than 7 days before the time fixed, serve on every person bound by the bond a notice of the time and place so fixed.
- (3) If, on the hearing of an application for estreat of the bond, it is proved to the satisfaction of the Court that a condition of the bond has not been complied with, the Court may make an order to estreat the bond to the amount it thinks fit to any person bound by the bond on whom notice is proved to have been served under **subsection (2)**.
- (4) A penalty payable under **subsection (3)** is recoverable as if it were a fine.

Compare: 1971 No 15 s 18B(2)

102 Applications to Court about seized property

- (1) The Director-General may apply to the Court for an order that seized property be disposed of (by sale or otherwise) in the manner the Court may direct if, in the opinion of the Director-General,—
 - (a) seized property other than marine life is perishable or likely to deteriorate; or
 - (b) the cost of storage or holding of seized property significantly outweighs its value; and
 - (c) the Director-General and any person referred to in **section 100(1)** have failed to come to an arrangement for the release of the seized property under **section 100**.
- (2) The proceeds of sale of seized property sold under **subsection (1)** must be treated as being substituted for the item sold, and this subpart (as is applicable) extends and applies to those proceeds.
- (3) The following persons may apply to the Court for the release of property seized under **section 91** or the proceeds from the sale of seized property sold under **section 97(b)(ii)** or **subsection (1)**:
 - (a) the person from whom the property was seized;
 - (b) the owner or person entitled to possession of the seized property;
 - (c) a person with a legal or equitable interest in the seized property.
- (4) The Court may release seized property or the proceeds of sale of seized property to a person referred to in **subsection (3)** if an information or charge is laid for an alleged offence for which the property was seized and the seized property or proceeds of sale remain in the custody of the Crown.
- (5) A Court may require sureties and impose conditions on a release under **subsection (4)**.

Compare: 1996 No 27 s 230; 1971 No 15 s 18D(2)

103 Final release of seized property

Seized property or proceeds of sale of seized property under **section 102** in the custody of the Crown must be released immediately by the Crown and returned to the owner or to a person entitled to possession—

- (a) if a decision is made not to lay, or to withdraw or dismiss, an information or charge for which the property was seized; or
- (b) on the acquittal of all persons charged with an offence for which forfeiture of the property or proceeds is or may be a consequence of conviction.

Compare: 1971 No 15 s 18D(1)

104 Seized property forfeited to Crown if ownership not established

- (1) If the ownership of seized property is not established at the time of seizure or within 90 days after the date of seizure, the property is forfeited to the Crown and may be disposed of as the Director-General determines.
- (2) If there is a dispute about the ownership of seized property, the Director-General may apply to the District Court for directions as to the holding and disposal of the property and the Court may give directions accordingly.

Compare: 1971 No 15 s 18E

Subpart 3—Offences and penalties

Infringement offences

105 Infringement offences

- (1) If a person is alleged to have committed an infringement offence, the offence may be pursued—
 - (a) by laying an information under the Summary Proceedings Act 1957; or
 - (b) by serving an infringement notice under **section 106**.
- (2) Despite section 21(1)(a) of the Summary Proceedings Act 1957, leave of a District Court Judge or Registrar is not necessary if an infringement offence is pursued under **subsection (1)(a)**.

Compare: 1999 No 142 s 161

106 Infringement notices

- (1) An infringement notice may be served—
 - (a) by delivering it (or a copy of it) personally to the person who appears to have committed the infringement offence; or

- (b) by sending it (or a copy of it) by post addressed to the person at the person's last known place of residence or business.
- (2) For the purpose of the Summary Proceedings Act 1957, an infringement notice sent to a person by post under **subsection (1)(b)** is served on the person when it was posted.
- (3) An infringement notice must be in the prescribed form and must specify—
 - (a) sufficient detail to inform the defendant of the time, place, and nature of the alleged offence; and
 - (b) the amount of the relevant infringement fee; and
 - (c) where the infringement fee may be paid; and
 - (d) the time within which the infringement fee may be paid; and
 - (e) a summary of how section 21(10) of the Summary Proceedings Act 1957 applies to the alleged offence; and
 - (f) that the defendant has a right to request a hearing; and
 - (g) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
 - (h) any other particulars that are prescribed.
- (4) If an infringement notice is issued under this section, proceedings for the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case, that section applies with the necessary modifications.

Compare: 1999 No 142 s 162

107 Payment of infringement fees

All infringement fees are payable to the Director-General, and the Director-General must pay all infringement fees received into the Crown Bank Account.

Compare: 1999 No 142 s 163

108 Forfeiture for infringement offence

- (1) **Subsection (2)** applies only if an infringement notice is issued to a person for an infringement offence and any of the following occurs:
 - (a) the infringement fee is paid; or
 - (b) a copy of a reminder notice for the infringement offence is filed in a District Court under section 21(3) of the

- Summary Proceedings Act 1957 within the time specified in subsection (5) of that section; or
- (c) the informant and the defendant arrange under section 21(3A) of the Summary Proceedings Act 1957 to allow the defendant to pay the infringement fee by instalments; or
 - (d) the person is found guilty of, or admits committing, the infringement offence.
- (2) Marine life seized under **section 91** and proceeds from the sale of that marine life are forfeit to the Crown unless a court orders otherwise under **subsection (3)**.
- (3) If **subsection (1)(d)** applies, a court may for special reasons override **subsection (2)**.

Compare: 1996 No 88 s 255A

Offences

109 Strict liability offences

- (1) Every person commits an offence who,—
- (a) takes marine life from a marine reserve for commercial purposes; or
 - (b) takes marine life from a marine reserve; or
 - (c) takes natural material or other material from a marine reserve; or
 - (d) modifies, damages, destroys, or removes historic material in or from a marine reserve; or
 - (e) damages, injures, interferes with, or disturbs marine life or the foreshore, seabed, natural features, natural material, and other material or structures of a marine reserve; or
 - (f) dumps or incinerates waste or other material in a marine reserve from a vessel; or
 - (g) introduces marine life into a marine reserve; or
 - (h) erects a structure in a marine reserve; or
 - (i) uses an explosive or discharges a firearm in or into a marine reserve; or
 - (j) undertakes an activity in a marine reserve that requires a concession, without a concession, in breach of **section 18(2)**, or breaches the terms of a concession or authorisation; or
 - (k) operates, submerges, or tows in or into a marine reserve any line, net, trap, gun, or other fishing gear.

- (2) Every person commits an offence who, in a marine reserve in the territorial sea or internal waters,—
- (a) discharges noxious liquid substances, oil, garbage, or waste from fishing; or
 - (b) discharges untreated sewage from a vessel or offshore installation; or
 - (c) discharges sewage or other waste from outfalls; or
 - (d) discharges ballast of any kind; or
 - (e) discharges a substance or article of any kind that is harmful to marine life or marine communities, or any part of them, to human health, or to people's use and enjoyment of the marine reserve; or
 - (f) lands or takes off an aircraft except to establish, construct, operate, maintain, repair, or replace a maritime navigational aid; or
 - (g) takes litter from land and deposits it in a marine reserve except in a place or receptacle provided for that purpose.
- (3) However, there is no offence under **subsection (1) or subsection (2)** if the activity is authorised under **section 13(1)(a)** or by a concession.
- (4) The onus is on the defendant to prove that an activity is authorised in a way referred to in **subsection (3)**.
- (5) Every person commits an offence who, in a marine reserve in the exclusive economic zone, discharges noxious liquid substances, oil, sewage, or garbage contrary to section 226 of the Maritime Transport Act 1994 or any higher standard recognised by the International Maritime Organisation for the marine reserve.
- (6) A person must be treated as having taken marine life for commercial purposes if the person is found in possession of an amount of marine life exceeding 3 times the amateur individual catch limit (if any) prescribed for that marine life.

Compare: 1971 No 15 s 18I

110 Defences to strict liability offences

It is a defence to an offence under **section 109** if the defendant proves that—

- (a) the defendant took all reasonable steps to ensure that the offence was not committed; or

- (b) the action was taken in a situation of emergency and was consistent with the safety and welfare of a person or vessel.

111 Offences requiring intent or recklessness

- (1) Every person commits an offence against this Act who—
 - (a) possesses, makes use of, sells, or otherwise disposes of any thing unlawfully removed from a marine reserve if the person knew, or was reckless about whether, the thing came from a marine reserve; or
 - (b) fails to comply with a requirement of an enforcement officer or honorary enforcement officer under **section 86**; or
 - (c) after being required under **section 87** to give his or her name, residential address, and date of birth or to produce evidence of those particulars,—
 - (i) gives an untrue or fictitious name, address, or date of birth, or gives an evasive description of his or her place of abode; or
 - (ii) gives false evidence of his or her name, address, and date of birth; or
 - (d) after being required to stop or remain stopped under **section 88**, fails to stop and fails to remain stopped; or
 - (e) impersonates or falsely pretends to be an enforcement officer or honorary enforcement officer; or
 - (f) obstructs, threatens, or attempts to intimidate an enforcement officer or honorary enforcement officer, or uses language that is abusive or threatening that officer, or behaves in a manner threatening that officer, while the officer is acting in the exercise of his or her powers or in the discharge of his or her duties under this Act; or
 - (g) gives, or agrees to give, or offers to an enforcement officer or honorary enforcement officer a gift or consideration to induce or reward an act done or to be done, or for forbearance observed or to be observed, or for favours shown or to be shown, by that officer; or
 - (h) as an enforcement officer or honorary enforcement officer, accepts or agrees to accept or solicits a gift or consideration of the kind described in **paragraph (g)**; or
 - (i) deposits litter outside a marine reserve knowing that, or being reckless as to whether, the litter may by natural means enter the reserve; or

- (j) commits a breach of this Act that is not an offence under **section 109 or paragraphs (a) to (i)**.
- (2) In prosecuting an offence under **subsection (1)**, the prosecution must prove that the defendant either intentionally or recklessly committed the offence.

Compare: 1971 No 15 s 18I

Penalties

112 Penalties

Every person who commits an offence against—

- (a) **section 109(1)(a)** (taking marine life for commercial purposes) is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$250,000, or to both:
- (b) **section 109(1)(b)** (taking marine life), **(c)** (taking natural material or other material), **(d)** (modifying or damaging historic material), **(e)** (damaging or injuring marine life or foreshore), **(f)** (dumping or incinerating waste), **(g)** (introducing marine life), **(j)** (activity without a concession), **(k)** (operates, submerges, or tows fishing gear), **(2)(a)** (discharging noxious liquids in reserve in the territorial sea), **(b)** (discharging untreated sewage in reserve in territorial sea from vessel or offshore installation), **(c)** (discharging sewage and waste from outfall in reserve in territorial sea), **(d)** (discharging ballast in reserve in territorial sea), **(e)** (discharging other harmful substances), or **(5)** (discharging noxious liquids in reserve in exclusive economic zone) is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$100,000, or to both:
- (c) **section 111(1)(a)** (possessing thing unlawfully removed from reserve), **(b)** (failure to comply), **(c)** (giving false particulars), **(d)** (failure to stop), **(e)** (impersonating an officer), **(f)** (obstructing an officer), or **(g) and (h)** (corruption) is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000, or to both:
- (d) **section 109(1)(h)** (erecting a structure), **(i)** (using explosive or firearm), **(2)(f)** (landing or taking off an aircraft), or **(g)** (litter from land deposited in reserve in territorial sea), or **section 111(1)(i)** (deposit litter outside reserve that

may enter reserve), or (j) (other breaches) is liable to a fine not exceeding \$5,000.

113 Sentence of community service

A Court may sentence a person who commits an offence against this Act to a community-based sentence and the provisions of subpart 2 of Part 2 of the Sentencing Act 2002 apply.

Compare: 1953 No 31 s 67G

114 Offenders liable for loss or damage, and costs associated with seized property

- (1) A person convicted of an offence under this Act is liable, in addition to the penalty for the offence, for loss or damage or expenses arising from, or caused by, the act constituting the offence, including—
 - (a) the full market value of any substance removed from, or the damage done to, the marine reserve or to marine life in the reserve; and
 - (b) the reasonable costs incurred by, or on behalf of, the Crown in seizing, holding, maintaining, destroying, or disposing of seized property.
- (2) In assessing an amount payable under **subsection (1)**, the Court may take into account the salaries, wages, and incidental expenses incurred in investigating the act constituting the offence or in remedying the loss or damage caused by the offence and must take into account all other relevant factors, including the value of property or proceeds of property forfeited to the Crown.
- (3) An amount payable under **subsection (1)** may be awarded by the Court in fixing a penalty and is to be recovered in the same manner as a fine.

Compare: 1971 No 15 s 18J; 1953 No 31 s 67G

115 Forfeiture of property on conviction

- (1) If a person who is charged with an offence is found guilty or pleads guilty,—
 - (a) marine life in respect of which the offence was committed (whether or not seized under **section 91**) and any proceeds from the sale of that marine life are forfeit to the Crown; and

- (b) the Court may, if it thinks fit, order that property used in committing the offence (whether or not the property was seized under **section 91**), including a vessel or vehicle, is forfeit to the Crown.
- (2) Forfeiture under this section is in addition to, and not in substitution for, any other penalty that may be imposed.
- (3) A person must not be discharged without conviction for an offence if property referred to in **subsection (1)(b)** is forfeit to the Crown under that paragraph.

Compare: 1971 No 15 s 18G, 18H(5)

Subpart 4—Forfeit property

116 Interpretation

In this subpart, unless the context otherwise requires,—

forfeit property means marine life, proceeds from the sale of marine life, or other property that is forfeited to the Crown under **section 108(2)** or **section 115**

interest means a legal or equitable interest in forfeit property that existed at the time of forfeiture.

Compare: 1971 No 15 s 18H(1)

117 Forfeit property vests in Crown

Forfeit property vests in the Crown absolutely and free of encumbrance.

118 Director-General's powers over forfeit property

- (1) Unless the Director-General receives an application under **subsection (2)**, or service or notice of an originating application under **section 119**, the Director-General may, after 35 working days after forfeiture, sell or otherwise dispose of forfeit property as the Director-General thinks fit.
- (2) A person with an interest in forfeit property before its forfeiture to the Crown (other than a person convicted of an offence out of which the forfeiture arose) may apply to the Director-General within 35 working days after forfeiture for the release of the forfeit property.
- (3) On an application under **subsection (2)**, the Director-General may order the release of the forfeit property on payment to the Crown of an amount that—

- (a) the Director-General thinks is appropriate; and
- (b) that does not exceed the amount that the Director-General estimates the forfeit property is likely to realise if sold by public auction in New Zealand.

119 Court may grant relief to third party

- (1) A person who claims to have had an interest in forfeit property before its forfeiture to the Crown may, within 35 working days after the date of the forfeiture, apply for an order under **subsection (5)**—
 - (a) to the Court that ordered the forfeiture; or
 - (b) if the forfeiture occurred under **section 108(2)**, to the District Court.
- (2) Nothing in **subsection (1)** applies to—
 - (a) a person who was involved in committing the offence in respect of which the property was forfeited; or
 - (b) a person who did not acquire the interest in good faith and who knew or had reason to believe at the time of the acquisition that the property was or would be involved in an offence for which property may be forfeited.
- (3) The application must be an originating application made to, and filed in, the office of the Court that ordered the forfeiture (or, if the forfeiture occurred under **section 108(2)**, the District Court), and a copy of the application must be served on the Director-General within 5 working days after the date on which the application is filed.
- (4) Except as modified by **subsection (3)**, the rules for the practice and procedure of the Court in which the application is filed apply to the application.
- (5) The Court may make 1 of the following orders if the Court is satisfied that the applicant is a person to whom **subsection (1)** applies and the applicant's claim to an interest in the property is valid:
 - (a) declare the nature, extent, and value of the applicant's interest in the property:
 - (b) either—
 - (i) direct the Crown to transfer the interest to the applicant; or
 - (ii) declare that there is payable by the Crown to the applicant an amount equal to the value of the interest as declared by the Court.

- (6) The Court may make an order under this section on the terms and conditions that the Court thinks fit.

Compare: 1991 No 120 s 18

Subpart 5—Miscellaneous

120 Offences in exclusive economic zone

An offence that is committed within the exclusive economic zone must be treated as having been committed in New Zealand.

121 Enforcement against foreign vessels

Enforcement of this Act against foreign vessels in internal waters, the territorial sea, and the exclusive economic zone must be undertaken according to the United Nations Convention on the Law of the Sea and other relevant international conventions and arrangements.

122 Time limit for laying information

Despite the Summary Proceedings Act 1957, an information for an offence may be laid at any time within 1 year from the time when the breach giving rise to the information first became known, or within 3 years of the offence being committed, whichever is earlier.

Compare: 1971 No 15 s 20; 1996 No 30 s 109(2)

123 Application of section 78A(1) of Summary Proceedings Act 1957

Despite section 78A(1) of the Summary Proceedings Act 1957, if an information is laid for an offence for which an infringement notice may be issued and the defendant is found guilty of, or pleads guilty to, the offence, the Court may convict the defendant.

124 Protection of persons acting under authority of Act

No person who does, or omits to do, an act in pursuit of a duty or power conferred on that person by this Act is under civil or criminal liability for that act or omission unless the person acts, or omits to act, in bad faith or without reasonable grounds.

Compare: 1987 No 65 s 42

125 Information leading to conviction

- (1) The Director-General may pay a person who supplies information that leads to a conviction for an offence under this Act.
- (2) A payment under **subsection (1)** must be made from money appropriated by Parliament for the purpose.

Part 6**Regulations, repeals and amendments, and transition****126 Regulations**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prohibiting or restricting persons from carrying out in marine reserves an activity referred to in **section 12(1), (2), (3)(a), and (4)**;
- (b) prescribing offences that are infringement offences under this Act or regulations made under this Act;
- (c) prescribing the form of infringement notices, and prescribing the infringement fees (not exceeding \$1,000) for infringement offences, which may be different fees for different offences;
- (d) revoking the regulations continued by **section 138(1)**;
- (e) providing for any other matters that are contemplated by, or necessary for giving full effect to, this Act and for its due administration.

127 Repeals and revocations

- (1) The Acts specified in **Part 1** of **Schedule 2** are repealed.
- (2) The regulations specified in **Part 2** of **Schedule 2** are revoked.

128 Amendments to Crown Minerals Act 1991

- (1) The Crown Minerals Act 1991 (1991 No 70) is amended by inserting, after the words “historic sites” in paragraph (j) of the definition of **minimum impact activity** in section 2(1), the words “and the laws governing marine reserves”.
- (2) Section 61(1A)(a)(ii) of the Crown Minerals Act 1991 is amended by adding the word “; or”, and also by adding the following subparagraph:
 - “(iii) activity in a marine reserve except a minimum impact activity:”.

- (3) Section 61(1A)(b)(ii) of the Crown Minerals Act 1991 is amended by adding the word “; or”, and also by adding the following subparagraph:

“(iii) activity in a marine reserve except a minimum impact activity:”.

- (4) Section 61 of the Crown Minerals Act 1991 is amended by inserting, after subsection (5), the following subsection:

“(5A) If a marine reserve is established by Order in Council under the Marine Reserves Act **2002**, the Minister and the Minister of Conservation must consider whether to recommend amending the Fourth Schedule to include the marine reserve under subsection (4) and, in that case, the consultation that has taken place under the Marine Reserves Act **2002** will satisfy subsection (5) and no further consultation under subsection (5) is required.”

129 Amendment to Continental Shelf Act 1964

- (1) Section 4(1)(c) of the Continental Shelf Act 1964 (1964 No 28) is amended by adding the words “except for land in marine reserves, in which case the Minister of Conservation is the appropriate Minister”.

- (2) Section 5 of the Continental Shelf Act 1964 is amended by inserting, after subsection (4), the following subsection:

“(4A) Despite subsection (4), the Minister must not grant a licence under this section to prospect or mine for, or carry on operations for the recovery of, minerals in a marine reserve unless the Minister of Conservation authorises the prospecting, mining, or operations under the Marine Reserves Act **2002**.”

130 Consequential amendments

- (1) The Acts specified in **Part 1** of **Schedule 3** are amended in the manner indicated in that schedule.
- (2) The regulations specified in **Part 2** of **Schedule 3** are amended in the manner indicated in that schedule.

Transition

131 Interpretation

In **sections 132 to 138**, unless the context otherwise requires,—
1971 Act means the Marine Reserves Act 1971

2002 Act means the Marine Reserves Act **2002**

application for a marine reserve means an application under section 5(1) of the 1971 Act for an Order in Council declaring a marine reserve

commencement date means the date on which this Act comes into force.

132 Existing applications for marine reserves

- (1) Despite the repeal of the 1971 Act by **section 127**, sections 4(1) and (2) and 5 of the 1971 Act continue to apply to an application for a marine reserve that has been notified under section 5(1)(b) of the 1971 Act before the commencement date, except that—
 - (a) the Minister must decide the application under section 5(9) of the 1971 Act within 1 year from the commencement date; and
 - (b) the Minister of Transport and the Minister of Fisheries must decide whether or not to concur with the Minister within 1 year from the date of the Minister's decision referred to in **paragraph (a)**.
- (2) An application for a marine reserve that has not been notified under section 5(1)(b) of the 1971 Act before the commencement date must be treated as a proposal under **section 47** of the 2002 Act, and **Part 4** of the **2002 Act** applies accordingly.

133 Seizure and forfeiture of property

Despite the repeal of the 1971 Act by **section 127**,—

- (a) sections 18B to 18E and 18G(5) of the 1971 Act continue to apply to property seized under the 1971 Act before the commencement date; and
- (b) sections 18G and 18H of the 1971 Act continue to apply to property forfeited for an offence or breach of the 1971 Act committed before the commencement date.

134 Mining interests

A mining interest that is made subject to the 1971 Act, under section 4(5) of the 1971 Act, may continue to be exercised after the commencement date only to the extent that it can be exercised under the **2002 Act** and, if it cannot be exercised under the **2002 Act**, it may not be exercised at all.

135 Rangers

- (1) A person who, immediately before the commencement date, is a ranger appointed under section 17(1) of the 1971 Act must be treated, from the commencement date until the expiry of the term for which the ranger was appointed, as an honorary enforcement officer appointed under **section 78** of the **2002** Act.
- (2) A warrant issued to a ranger under section 17(3) of the 1971 Act must be treated, from the commencement date until the expiry of the term for which the ranger was appointed, as a warrant issued under **section 80** of the **2002** Act.
- (3) A person referred to in **subsection (1)** may exercise the powers specified in **sections 89** and **91 to 93** as if those powers had been specified in the warrant.

136 Authorisations for scientific study

Despite the repeal of the 1971 Act by **section 127**, an authorisation by the Director-General under section 11 of the 1971 Act continues in force until the earlier of—

- (a) the date that is 2 years after the commencement date; or
- (b) the expiry of the authorisation.

137 Marine reserve committees

- (1) If a committee of a conservation board has, before the commencement date, been appointed under section 56 of the Conservation Act 1987 as an advisory committee, the conservation board must be regarded as having been appointed under **section 24** of the **2002** Act as an advisory body for 2 years from the commencement date.
- (2) The Minister must decide whether the advisory body deemed to be appointed under **subsection (1)** is appointed as a conservation board or a reserve committee, but, before deciding, the Minister must consult the advisory committee appointed under section 56 of the Conservation Act 1987.

138 Marine Reserves Regulations 1993

- (1) Despite **section 127(2)** and any other provision of this Act,—
 - (a) regulation 6 of the Marine Reserves Regulations 1993 continues to apply to control the speed of vessels in marine reserves; and
 - (b) regulations 11 to 15 of the Marine Reserves Regulations 1993 continue to apply to scientific study

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- approved under regulation 10 or regulation 16 of those regulations before the commencement date; and
- (c) regulations 7 and 17 of those regulations continue to apply to an area that is closed to the public under regulation 12 of those regulations (to the extent that that regulation is continued by this subsection).
- (2) An application for an approval for scientific study under regulation 10 or regulation 16 of the Marine Reserves Regulations 1993 that is received but not approved by the Director-General before the commencement date must be regarded as an application for a concession under **section 18** of the **2002 Act**.

139 Transition for commercial concessions

- (1) This section applies to persons who have been and are actively undertaking commercial activities for gain or reward, for a significant period, in a marine reserve immediately before the commencement date.
 - (2) The persons referred to in **subsection (1)**—
 - (a) must be able to demonstrate that **subsection (1)** applies; and
 - (b) must apply for a concession under this Act within 6 months of the commencement date; and
 - (c) may continue that commercial activity without a concession until a decision is made on the application under **paragraph (b)**.
 - (3) An application under **subsection (2)(b)** must be decided within 2 years of the commencement date.
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Schedule 1**Provisions relating to management boards, reserve committees, and management bodies**

Part 1

Provisions relating to management boards and reserve committees

1 Interpretation

In this schedule, unless the context otherwise requires,—

member means a member of a management board or reserve committee

spouse means the person who is married to a person, or who is living with a person (whether of the same or different sex) in a relationship in the nature of marriage, though not legally married to the person

transaction means a matter referred to in **clause 11(2)**.

*Members***2 Terms and conditions of appointment**

- (1) The term of a member's appointment (including a member appointed as chairperson) must—
 - (a) be specified on appointment; and
 - (b) not exceed 3 years.
- (2) A member is eligible for reappointment, and a term of reappointment must not exceed 3 years.

3 Vacation of office

- (1) A member who is in office at the end of his or her term of appointment continues to hold office until whichever of the following first occurs:
 - (a) 6 months elapses after the end of the term;
 - (b) the member is reappointed;
 - (c) the member's successor is appointed;
 - (d) the member is informed in writing by the Minister that he or she is discharged from office;
 - (e) the member resigns from office by notifying the Minister in writing and sending a copy of the notification to the management board or reserve committee, as the case may be.

Part 1—*continued*

- (2) The Minister may remove a member from office for any reason that the Minister considers justifies removal.
- (3) A member vacates office if the member dies, resigns, or is removed from office.
- (4) If a vacancy arises under **subclause (2) or subclause (3)**, the Minister may, at his or her discretion, appoint a person for the residue of the term for which his or her predecessor was appointed.
- (5) If a member of a management board or reserve committee is appointed by virtue of another office, he or she vacates his or her appointment on ceasing to hold that other office and is replaced by his or her successor to that other office without further appointment.

*Meeting of members***4 Meetings**

- (1) A management board or reserve committee must hold its first meeting not later than 2 months after the date of the notice in the *Gazette* appointing the management board or reserve committee.
- (2) An annual meeting of the management board or reserve committee must be held in every year.
- (3) Other meetings of the management board or reserve committee may be held at times and places that the management board, reserve committee, or its chairperson appoints.
- (4) At every meeting of a management board or reserve committee the quorum is half of the members if the number of members is even, and a majority of the members if the number of members is odd.
- (5) No business may be transacted at a meeting of a management board or reserve committee unless at least a quorum of members is present throughout the meeting.

5 Notice of meetings

- (1) The chairperson or any 2 members may call a meeting of the management board or reserve committee at any time by giving each member in New Zealand a written notice stating—
 - (a) the time and place of the meeting; and

Part 1—*continued*

- (b) the business to be transacted at it.
- (2) The members must be given—
 - (a) at least 7 days' notice of the meeting; or
 - (b) such shorter period of notice to which all members entitled to be notified agree.
- (3) The notice must be either given to a member or sent (by post, facsimile, email, or other electronic means) to the member's last known address in New Zealand.
- (4) Unless all members of the management board or reserve committee agree, only the business stated in the notice may be transacted at the meeting.

6 Chairperson must preside

- (1) The chairperson must preside at each meeting of the management board or reserve committee at which he or she is present, but in his or her absence from a meeting the members present must elect a member to act as chairperson at that meeting.
- (2) The members must elect one of their number as chairperson for a meeting of a management board or a reserve committee or for an annual meeting if a chairperson has not been appointed by the Minister under **section 28**.
- (3) A chairperson elected under **subsection (2)** remains chairperson while that person is a member of the management board or reserve committee until a successor is appointed.

7 Voting

- (1) Every question before a management board or reserve committee must be decided by a majority of the votes of members present and voting on the question.
- (2) The presiding member has a deliberative vote and, if there are more than 2 members voting and there is an equality of votes, also has a casting vote.

8 Resolution assented to by all members

- (1) A resolution in writing signed or assented to by letter, facsimile message, or electronic message by all members is as valid and effective as if it had been passed at a meeting of the management board or reserve committee duly called and constituted.

Part 1—*continued*

- (2) A resolution may consist of several documents in similar form each signed or appearing to have been signed by 1 or more members.

9 Methods of holding meetings

A meeting of a management board or reserve committee may be held either—

- (a) by members who constitute a quorum meeting at the place, date, and time appointed for the meeting; or
- (b) by other means that are readily available to all members (including audio, audio and visual, and electronic communication) by which the members participating and constituting a quorum communicate simultaneously throughout the meeting.

Procedure

10 Procedure generally

A management board or reserve committee may regulate its own procedure in matters not covered by this Act.

Interested members

11 Obligation to disclose interest

- (1) A member who (otherwise than as a member) is interested, directly or indirectly, in a transaction must, as soon as practicable after the member knows the relevant facts, disclose the nature of the interest to the chairperson or, if the chairperson is similarly interested, to the other members of the board or committee, or to the Minister.
- (2) Transactions are—
 - (a) the performance of functions or exercise of powers by a management board or reserve committee:
 - (b) an arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the management board or reserve committee.

12 Meaning of interested

A member is **interested** in a transaction if, and only if, the member—

Part 1—*continued*

- (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
- (b) has a material financial interest in another party to the transaction; or
- (c) is a director, officer, member, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction; or
- (d) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or
- (e) is otherwise directly or indirectly materially interested in the transaction.

13 Consequence of disclosure

A member who discloses an interest under **clause 11**—

- (a) must not take part in the deliberation or decision of the management board or reserve committee concerning the transaction; and
- (b) must be disregarded in forming a quorum for that part of a meeting of the management board or reserve committee during which a deliberation or decision relating to the transaction occurs or is made.

14 Effect of non-compliance

The validity of a transaction entered into by the management board or reserve committee is not affected by the fact that a member fails to comply with **clause 11**.

*Delegation***15 Subcommittees**

- (1) The management board or reserve committee may appoint, discharge, alter, constitute, or reconstitute subcommittees comprising 2 or more of their members (one of whom must be appointed as chairperson of the subcommittee) and any other persons that the management board or reserve committee considers desirable.
- (2) A subcommittee may regulate its own procedure, subject to any direction from the management board or reserve committee.

Part 1—*continued*

- (3) **Clauses 11 to 14** apply to a subcommittee with all necessary modifications.

16 Delegations

The management board or reserve committee may, by writing, either generally or specifically, delegate a function or power (other than the power of delegation) to a subcommittee established under **clause 15**.

17 Effect of delegation

Subject to any direction given or condition imposed by a management board or reserve committee, a subcommittee to which any functions or powers are delegated under **clause 16** may carry out those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on the subcommittee directly by this Act and not by delegation.

18 Presumption of acting in accordance with delegation

A subcommittee that appears to act under a delegation under **clause 16** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

19 Other matters relating to delegation

A delegation under **clause 16**—

- (a) is revocable at will, but the revocation does not take effect until it is communicated to the delegate; and
- (b) continues on its terms until it is revoked, despite a change in membership of the management board or reserve committee or subcommittee; and
- (c) does not prevent the management board or reserve committee from performing the functions or exercising the power delegated.

*Miscellaneous***20 Liability of members**

- (1) A member or employee of a management board or reserve committee is not personally liable in an action against him or her by the management board or reserve committee for a

Part 1—*continued*

liability of the management board or reserve committee, or for an act done or omitted to be done by the management board or reserve committee or by a delegate of the management board or reserve committee, if the member or employee acts in good faith.

- (2) In this clause, **members** or **employees** includes members or employees of any subcommittee of the management board or reserve committee.

21 Form of contracts of management boards

- (1) A contract that, if made by a private person, is not enforceable unless made in writing may be made on behalf of a management board in writing signed by a person acting under its express or implied authority.
- (2) A contract that, if made by a private person, may be made orally may be made orally on behalf of a management board by a person acting under its express or implied authority.

22 Remuneration of members of management boards

- (1) The fees payable to members of management boards must be determined by the Minister and notified to the boards.
- (2) A management board may pay to its members out of its funds fees at the rate referred to in **subsection (1)**.
- (3) A member is entitled to be reimbursed for actual and reasonable expenses incurred in performing his or her duties.

Part 2

Provisions relating to management bodies

23 Management body may control and manage more than 1 reserve

A management body may be appointed to control and manage more than 1 reserve.

24 Application of revenue from marine reserves

- (1) Money received by a management body under a concession to which section 17Y(1)(a) of the Conservation Act 1987 applies must,—

Part 2—*continued*

- (a) if a management body is appointed to manage the marine reserve, be held by the management body and applied for the purpose of this Act;
 - (b) if no management body is appointed to manage the marine reserve, be paid in accordance with the Public Finance Act 1989 into the Crown Bank Account, the Department of Conservation's Departmental Bank Account, or a Trust Bank Account, and applied, as directed by the Minister, in managing, administering, maintaining, protecting, improving, or developing marine reserves.
- (2) Despite **subclause (1)**, for a marine reserve for which a Minister of the Crown other than the Minister of Conservation is the management body, the money referred to in **subclause (1)** must be paid in accordance with the Public Finance Act 1989 into the Crown Bank Account, a Departmental Bank Account, or a Trust Bank Account, and applied in managing, administering, maintaining, protecting, improving, or developing marine reserves in accordance with this Act, or it must be paid into the Crown Bank Account and applied as directed by that first-mentioned Minister.
- (3) Money received by gift or legacy or contributed by a local authority from its general funds for a marine reserve that is not managed by a management body or a Minister of the Crown other than the Minister of Conservation must be—
- (a) paid into a Trust Bank Account established under section 67 of the Public Finance Act 1989; and
 - (b) applied, as directed by the Minister,—
 - (i) in managing, administering, maintaining, protecting, improving, or developing marine reserves; or
 - (ii) as the Minister may direct; or
 - (iii) otherwise in carrying out for that marine reserve the purpose of this Act.

25 Funds of management bodies

- (1) The funds of a management body consist of all money received by it under this Act or in any other manner for the marine reserve or reserves under its jurisdiction.

Part 2—*continued*

- (2) All that money must, within 7 days of its receipt by the management body, be paid to a bank appointed by the management body into an account to be called “The [*name of management body*] Account”.
- (3) No money may be withdrawn from the bank account except by authority of the management body, and any cheque or other withdrawal notice must be signed by the officer of the management body appointed for the purpose and countersigned by either a member or an officer of the management body authorised by the management body to do so.
- (4) Despite **subclauses (2) and (3)**, if a local authority or a Minister of the Crown other than the Minister of Conservation is a management body, the local authority or Minister may pay that money into the general bank account of the local authority or into the Crown Bank Account and that money may be withdrawn from the bank account in the manner the local authority or Minister authorises.
- (5) Money of a management body that is not immediately required for expenditure by the management body may be invested in the same manner as public money is invested by the Treasury under section 23(1) of the Public Finance Act 1989.

Compare: 1977 No 66 s 79

26 Expenditure of funds

- (1) The funds of a management body must, except as otherwise authorised or required by this Act or any other Act, be applied in managing, administering, maintaining, protecting, improving, or developing the marine reserves under its jurisdiction, and for no other purpose.
- (2) Despite anything to the contrary in this Act, the Minister may, with the written consent of a management body, direct that money received for one marine reserve be applied for a specified period for the purpose of any other reserve.

Compare: 1977 No 66 ss 80, 84, 85

Part 2—*continued***27 Annual statement to Minister**

- (1) **Section 22(1)(d)** requires a management body to report to the Minister on its activities and operations for each year ended 30 June.
- (2) A report under **subclause (1)** must be provided to the Minister within 1 month of the completion of the audit of the management body's accounts for that year, or within some other period agreed under **subclause (4)(c)**.
- (3) A report under **subclause (1)** must include, as a minimum, the following content:
 - (a) an explanation of the progress made in implementing or achieving the objectives of the relevant management plan;
 - (b) financial statements prepared in accordance with generally accepted accounting practice (as defined in the Financial Reporting Act 1993) of the management body in relation to its management of the marine reserve as at that 30 June;
 - (c) the auditor's report on the financial statements;
 - (d) any additional information that the Minister considers relevant.
- (4) The Director-General may reach an understanding or agreement with a particular management body or class of management body—
 - (a) about how the body or class will comply with the minimum requirements; and
 - (b) that requires reporting obligations greater than the minimum requirements; and
 - (c) about the time of delivery of a report.
- (5) The Public Audit Act 2001 applies to the audit of the financial statements of every management body as if the management body were a public entity as defined in section 5 of that Act.

28 Composite report by Minister

- (1) The Minister must, not later than 30 December each year, send to each member of Parliament a composite report on the performance and financial position of all management bodies for the immediately preceding year ended 30 June.
- (2) The composite report must include information on—

Part 2—*continued*

- (a) the financial position of management bodies:
 - (b) the performance of management bodies:
 - (c) the different sources of income for management bodies and the amounts from different sources:
 - (d) new, renewed, or amended concessions:
 - (e) expenditure by management bodies:
 - (f) anything else that the Minister considers relevant.
- (3) The Director-General must ensure that the reports provided to the Minister under **clause 27** are appended to the annual report of the Department of Conservation.

29 Contributions and advances by local authorities

- (1) This clause applies if—
- (a) a local authority is the management body of a marine reserve; or
 - (b) a member of a local authority is by virtue of his office a member of the management body of a marine reserve; or
 - (c) a reserve provides benefits to the inhabitants of the district of a local authority.
- (2) The local authority may apply money in its general fund or account, or make advances from that fund or account to the management body of the reserve upon terms and conditions that it thinks fit, towards the management, improvement, maintenance, and protection of that reserve or any other reserve, even though the reserve may be outside the district of the local authority, and neither the local authority nor the management body require further authority to enter into any such arrangement.
- (3) A local authority may, out of its general fund or account, contribute sums that it thinks fit toward the cost of the acquisition by the Crown of land or interest in land for the purposes of this Act, even though the land may be outside the district of the local authority.

Compare: 1977 No 88 s 89

Schedule 2
Repeals and revocations

s 127

Part 1
Repeals

Marine Reserves Act 1971 (1971 No 15)

Marine Reserves Amendment Act 1975 (1975 No 90)

Marine Reserves Amendment Act 1977 (1977 No 136)

Marine Reserves Amendment Act 1980 (1980 No 121)

Conservation Law Reform Act 1990 (1990 No 31)
Sections 48 to 63.

Part 2
Revocations

Marine Reserves Regulations 1993 (SR 1993/230)

Schedule 3 Consequential amendments

Part 1 Acts amended

Conservation Act 1987 (1987 No 65)

Omit from the definition of **conservation management plan** in section 2(1) the words “section 8 of the Marine Reserves Act 1971,”.

Omit from paragraphs (a), (b), and (c) of section 6B(1) the words “the Marine Reserves Act 1971” and substitute in each case the words “the Marine Reserves Act **2002**”.

Omit from sections 17C(1), 17D(1), and 17E(4) the words “the Marine Reserves Act 1971” and substitute in each case the words “the Marine Reserves Act **2002**”.

Add to section 17F, as subsection (2):

“(2) The Director-General must consult the consultation Ministers (as defined in **section 3** of the Marine Reserves Act **2002**) on any policies in a draft management strategy relating to marine reserves before notifying the draft strategy under subsection (1)(a), and, as soon as practicable after the draft strategy has been prepared, the Director-General must send a copy of the draft strategy to those consultation Ministers.”

Omit from section 17G(1) the words “paragraphs (a) to (j) of”.

Omit from the First Schedule the words “The Marine Reserves Act 1971”, and substitute the words “The Marine Reserves Act **2002**”.

Environment Act 1986 (1986 No 127)

Omit from the Schedule the words “The Marine Reserves Act 1971” and substitute the words “The Marine Reserves Act **2002**”.

Fisheries Act 1996 (1996 No 88)

Omit from section 89(2)(e) the words “the Marine Reserves Act 1971” and substitute the words “the Marine Reserves Act **2002**”.

Hauraki Gulf Marine Park Act 2000 (2000 No 1)

Omit from the definition of **marine reserve** in section 4 the expression “Marine Reserves Act 1971” and substitute the expression “Marine Reserves Act **2002**”.

Repeal section 11(1)(b) and substitute:

“(b) Marine Reserves Act **2002, section 34:**”.

Insert, after section 33(2)(b):

Part 1—*continued***Hauraki Gulf Marine Park Act 2000** (2000 No 1)—continued

“(ba) any marine reserve managed by a management board under the Marine Reserves Act **2002**.”

Omit from the First Schedule the expression “Marine Reserves Act 1971” and substitute the expression “Marine Reserves Act **2002**”.

Local Government Official Information and Meetings Act 1987 (1987 No 174)

Insert in Part I of the Second Schedule, in their appropriate alphabetical order:

“Management bodies, as defined in **section 3** of the Marine Reserves Act **2002**, excluding a local authority or Minister of Crown

“Reserve committees, as defined in **section 3** of the Marine Reserves Act **2002**”.

Marine Mammals Protection Act 1978 (1978 No 80)

Omit from section 22(4) the words “declared under the Marine Reserves Act 1971” and substitute the words “within the meaning of the Marine Reserves Act **2002**”.

Official Information Act 1982 (1982 No 156)

Omit from the First Schedule the words “Marine Reserve Management Committees”.

Insert in the First Schedule, in their appropriate alphabetical order:

“Management bodies, as defined in **section 3** of the Marine Reserves Act **2002**, excluding a local authority or Minister of Crown

“Reserve committees, as defined in **section 3** of the Marine Reserves Act **2002**”.

Ombudsman Act 1975 (1975 No 9)

Insert in Part II of the First Schedule, in their appropriate alphabetical order:

“Management bodies, as defined in **section 3** of the Marine Reserves Act **2002**, excluding a local authority or Minister of the Crown

“Reserve committees, as defined in **section 3** of the Marine Reserves Act **2002**”.

Part 1—*continued***Reserves Act 1977** (1977 No 66)

Omit from section 57(4) the words “constituted under the Marine Reserves Act 1971” and substitute the words “as defined in the Marine Reserves Act **2002**”.

Omit from section 59(4) the words “constituted under the Marine Reserves Act 1971” and substitute the words “as defined in the Marine Reserves Act **2002**”.

Part 2

Regulations amended

Fisheries (Kaimoana Customary Fishing) Regulations 1998

(SR 1998/434)

Omit from clause 23(1)(f) the expression “Marine Reserves Act 1971” and substitute the expression “Marine Reserves Act **2002**”.

Fisheries (South Island Customary Fishing) Regulations 1999

(SR 1999/342)

Omit from clause 20(1)(f) the expression “Marine Reserves Act 1971” and substitute the expression “Marine Reserves Act **2002**”.