

**Reprint  
as at 8 September 2018**



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

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

**Contents**

	Page
1    Title	13
2    Commencement	13

**Part 1**

**Preliminary provisions**

Subpart 1—Outline, definitions, and application

3    Outline of Act	13
4    Interpretation	16
5    Successors	25
6    Meaning of effect	25
7    Meaning of marine management regime	25
7A    Meaning of public notice	26
7B    Transitional, savings, and related provisions	27
8    Act binds the Crown	27
9    Application to ships and aircraft of New Zealand Defence Force and foreign States	28

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry for the Environment.**

Subpart 2—Purpose and principles		
10	Purpose	28
11	International obligations	29
12	Treaty of Waitangi	29
Subpart 3—Functions, duties, and powers		
<i>Functions, duties, and powers</i>		
13	Functions of Environmental Protection Authority	30
14	Restriction on ministerial direction to Environmental Protection Authority	31
15	Powers of Environmental Protection Authority	31
16	Restriction on Environmental Protection Authority’s power to delegate	31
17	Environmental Protection Authority to keep records	31
<i>Māori Advisory Committee</i>		
18	Function of Māori Advisory Committee	32
<i>Power of Minister of Conservation</i>		
19	Power of Minister of Conservation to declare threatened species	32
<b>Part 2</b>		
<b>Duties, restrictions, and prohibitions</b>		
Subpart 1—Restrictions on activities other than discharges and dumping		
20	Restriction on activities other than discharges and dumping	33
Subpart 2—Restrictions and prohibitions on discharges and dumping		
<i>Discharge of harmful substances</i>		
20A	Regulation under this subpart and Maritime Transport Act 1994 of discharges	34
20B	Restriction on discharges of harmful substances from structures and submarine pipelines	35
20C	Restriction on mining discharges from ships	35
<i>Dumping of waste or other matter</i>		
20D	Regulation under this subpart and Maritime Transport Act 1994 of dumping	36
20E	Prohibition on dumping radioactive waste or other radioactive matter	36
20F	Prohibition on dumping toxic or hazardous waste	36
20G	Restriction on dumping waste or other matter	37
20H	Emergency dumping	37
20I	Prohibition on incinerating waste or other matter at sea	38

	<i>Burial at sea</i>	
20J	Burial at sea	39
	Subpart 3—Existing activities and planned petroleum activities	
21	Certain existing activities may continue	39
22	Planned petroleum activities may commence	40
23	Certain existing activities that become prohibited may continue	41
	<i>Unauthorised activities</i>	
24	Unauthorised activities must stop	42
	Subpart 4—General matters	
25	Duty of persons operating in exclusive economic zone or on continental shelf	42
26	Relationship with other legal requirements	43
	<b>Part 3</b>	
	<b>Regulations</b>	
	Subpart 1—Regulations	
	<i>[Repealed]</i>	
	<i>Regulation of certain activities and areas</i>	
27	Regulations prescribing standards, methods, or requirements	43
28	Regulations classifying areas of exclusive economic zone or continental shelf	44
29	Regulations classifying activities	45
	<i>Regulation of discharges and dumping</i>	
29A	Regulations for discharges and dumping	46
29B	Regulations for emergency dumping	47
29C	Regulations implementing international obligations	47
	<i>Non-notified activities</i>	
29D	Non-notified activities	48
	<i>Decommissioning plans</i>	
29E	Decommissioning plans	48
	<i>Regulations generally</i>	
30	Regulations	49
	<i>Provisions applying to all regulations</i>	
31	Application of regulations	49
32	Process for developing or amending regulations	50
33	Matters to be considered for regulations under section 27	50
34	Information principles	51
34A	Matters to be considered for regulations relating to discharges and dumping	52

*Types of activities*

*[Repealed]*

**Part 3A**

**Activities and consents**

Subpart 1—Activities

*Types of activity*

35	Permitted activities	53
36	Discretionary activities	53
37	Prohibited activities	53

Subpart 2—EEZ policy statements

*EEZ policy statements*

37A	Purpose and scope of EEZ policy statements	54
37B	Notification of, and consultation on, proposed EEZ policy statement	54
37C	Matters to be considered by Minister when determining whether to issue EEZ policy statement	55
37D	Revision, withdrawal, and approval of proposed EEZ policy statements	55
37E	Changes to, or review or revocation of, EEZ policy statements	55
37F	Incorporation of material by reference in EEZ policy statements	56
37G	EEZ policy statement is disallowable instrument	56

Subpart 2A—Applying for marine consents

*Application for marine consent*

*[Repealed]*

38	Application for marine consent	56
39	Impact assessment	57
40	Environmental Protection Authority must determine if application complete	58
41	Environmental Protection Authority may commission independent review of impact assessment	59
42	Environmental Protection Authority may ask applicant to complete incomplete application	59
42A	Joint processing and decision making on related applications <i>[Repealed]</i>	59
43	Environmental Protection Authority must return incomplete application	60
44	Joint processing and decision making on related applications	60

	<i>Disclosure and hearings of applications for marine consents for non-notified activities</i>	
	<i>[Repealed]</i>	
44A	Copy of consent applications for non-notified activities <i>[Repealed]</i>	61
44B	Hearings in respect of consent applications for non-notified applications <i>[Repealed]</i>	61
	<i>Public notification and hearings of applications for marine consents for publicly notifiable activities</i>	
	<i>[Repealed]</i>	
44C	Application of sections 45 to 58 <i>[Repealed]</i>	61
	Subpart 2B—Disclosure and notification	
45	Copy of application for non-notified activity	61
	<i>Submissions</i>	
	<i>[Repealed]</i>	
46	Copy of application for publicly notified activity	62
47	Making of submissions	63
48	Time limit for submissions	63
49	Advising applicants of submissions	63
	Subpart 2C—Considering applications	
	<i>Non-notified activities</i>	
50	Hearings in respect of applications for non-notified activities	63
	<i>Publicly notifiable activities other than section 20 activities</i>	
51	Hearings in respect of applications for publicly notifiable activities other than section 20 activities	64
	<i>Publicly notifiable section 20 activities</i>	
52	Minister must appoint boards of inquiry for applications for publicly notifiable section 20 activities	64
52A	Cost recovery for boards of inquiry	65
	<i>Provisions that apply to all applications</i>	
53	Obligation to deal with application promptly	65
54	Request for further information	66
55	Response to request	66
56	Marine consent authority may obtain advice or information	67
57	Meetings and mediation to resolve matters before decision	67
58	Directions before or at hearings <i>[Repealed]</i>	68

Subpart 2D—Decisions

*Decisions*

*[Repealed]*

59	Marine consent authority's consideration of application	68
60	Matters to be considered in deciding extent of adverse effects on existing interests	71
61	Information principles	71
62	Decisions on applications for marine consents	72
63	Conditions of marine consents	73
64	Adaptive management approach	74
65	Bonds	74
66	Monitoring conditions	75
67	Observers	76
68	Time limits for Environmental Protection Authority's decision	76
69	Decision of marine consent authority to be in writing	76
70	Notification of marine consent authority's decision	77

Subpart 2E—Consents

71	When marine consent commences	77
----	-------------------------------	----

*Nature of consent*

72	Consents neither real nor personal property	78
----	---	----

*Duration of marine consent*

73	Duration of marine consent	78
74	Exercise of marine consent while applying for new consent	79

*Transfer of marine consents*

75	Transfer of consents	79
----	----------------------	----

*EPA responsibility for marine consents granted by board of inquiry*

75A	Residual powers of EPA	80
-----	------------------------	----

*Review of duration and conditions of marine consent*

76	Environmental Protection Authority may review duration and conditions	80
77	Contents of notice of review	81
78	Public notice of review	81
78A	Copy of notice of review of non-notified activity	82
79	Further information, advice, submissions, and hearing	82
80	Matters to be considered in review	83
81	Decisions on review of consent conditions	83
82	Decision on review of duration of consent	84
83	Process for minor changes to consent conditions	84

*Minor corrections of marine consents*

84	Minor corrections of marine consents	84
----	--------------------------------------	----

<i>Cancellation of marine consents</i>		
85	Lapsing of consent if not exercised	85
86	Cancellation of consent if not exercised	85
87	Change or cancellation of consent conditions on application by consent holder	85
Subpart 2A—Marine discharge consents and marine dumping consents		
<i>[Repealed]</i>		
87A	Application <i>[Repealed]</i>	86
87B	Application for marine discharge consent or marine dumping consent <i>[Repealed]</i>	86
87C	Process before Environmental Protection Authority makes decision <i>[Repealed]</i>	86
87D	Environmental Protection Authority's consideration of application <i>[Repealed]</i>	87
87E	Information principles relating to discharges and dumping <i>[Repealed]</i>	87
87F	Decision on application for marine discharge consent or marine dumping consent <i>[Repealed]</i>	87
87G	Conditions and decision-making process <i>[Repealed]</i>	87
87H	Duration of marine discharge consents and marine dumping consents <i>[Repealed]</i>	87
87I	Exercise of consents, transfer, review, and minor changes <i>[Repealed]</i>	87
87J	Change or cancellation of marine dumping consent or marine discharge consent on application by consent holder <i>[Repealed]</i>	87
Subpart 3—Marine consents for cross-boundary activities		
88	Interpretation	87
89	Application of this subpart	88
<i>EPA may decide whether joint or separate applications for consent required</i>		
90	Application for consent for cross-boundary activity	89
91	Joint application for consent for cross-boundary activity	89
92	Separate applications for consents for cross-boundary activity	89
93	Environmental Protection Authority may require joint application	90
94	Joint processing must cease when application for resource consent referred to Environment Court	90
94A	Environmental Protection Authority may decide to separate joint application	91
<i>Processing of joint application</i>		
95	Application of sections 96 and 97	92
96	Environmental Protection Authority to administer process	92

97	Relevant consent authority and EPA to share information	92
98	Separate decisions on marine consent and resource consent applications	93
	<i>Nationally significant cross-boundary activities</i>	
99	Application for consent for nationally significant cross-boundary activity referred to board of inquiry	93
99A	Joint applications for section 20 activity and for nationally significant activity to be referred to board of inquiry	94
100	EPA must provide board of inquiry with necessary information	96
	Subpart 4—Decommissioning plans	
100A	Submitting decommissioning plan for acceptance	97
100B	Assessment and acceptance of decommissioning plan	97
100C	Amendment of accepted decommissioning plan	98
100D	Requirement for public consultation	98
	<b>Part 4</b>	
	<b>Objections, appeals, and enforcement</b>	
	Subpart 1—Objections to decisions of marine consent authority	
	<i>Objections</i>	
101	Right of objection to Environmental Protection Authority against certain decisions	99
102	Procedure for making or hearing objection	99
103	Decision on objection	100
104	Appeals against decisions on objections	100
	Subpart 1A—Appeals against Environmental Protection Authority decisions	
	<i>Appeal to High Court on question of law</i>	
105	Appeals on question of law	100
106	Notice of appeal	101
107	Right to appear and be heard on appeal	102
108	Parties to appeal	102
109	Representation at proceedings <i>[Repealed]</i>	102
110	Dismissal of appeal	102
111	Date of hearing	102
112	Application of High Court Rules 2016	102
	<i>Appeal to Court of Appeal</i>	
113	Appeal to Court of Appeal	103
	Subpart 1B—Appeals against decisions of boards of inquiry	
	<i>Appeal to High Court on question of law</i>	
113A	Appeals on question of law	103
113B	Notice of appeal	103



113C	Right to appear and be heard on appeal	104
113D	Parties to appeal	104
113E	Dismissal of appeal	105
113F	Date of hearing	105
113G	Application of High Court Rules 2016	105
	<i>Appeal to Supreme Court</i>	
113H	Appeal to Supreme Court	105
	Subpart 1C—Proceedings generally	
113I	Representation at proceedings	106
	Subpart 2—Enforcement	
114	Proceedings to be heard by Environment Judge	106
	<i>Enforcement order</i>	
115	Enforcement order	107
116	Application for enforcement order	108
117	Notice of application for enforcement order	108
118	Right to be heard	108
119	Decision on application for enforcement order	109
120	Interim enforcement order	109
121	Application to change or cancel interim enforcement order	109
122	Compliance with enforcement order	110
123	Change or cancellation of enforcement order	110
124	Restriction on certain applications for enforcement orders	110
	<i>Abatement notices</i>	
125	Abatement notices	111
126	Compliance with abatement notice	111
127	Form and content of abatement notice	112
128	Cancellation of abatement notice	112
129	Appeals	112
130	Restrictions on certain abatement notices	113
131	Proceedings in Environment Court	113
	<i>Offences and defences in relation to activities regulated under section 20</i>	
132	Offences in relation to activities regulated under section 20	113
133	Strict liability and defences	114
	<i>Offences and defences in relation to discharge or escape of harmful substances</i>	
134	Offences in relation to discharge of harmful substances	115
134A	Defence	115

<i>Offences and defences in relation to dumping</i>		
134B	Offences in relation to dumping of radioactive waste or other radioactive matter	116
134C	Offences in relation to dumping of toxic or hazardous waste	116
134D	Offences in relation to dumping and incineration of waste and other matter	116
134E	Defence in relation to dumping of waste or other matter	117
<i>Other offences</i>		
134F	Offence in relation to enforcement order, abatement notice, section 24, or section 167	118
134G	Other offences	118
<i>Penalties</i>		
134H	Penalties	119
134I	Additional penalties for discharge and dumping offences	119
134J	Penalties for section 134G offences	119
134K	Court orders	119
134L	Additional penalty for offence involving commercial gain	120
134M	Application of fines for discharge and dumping offences	120
135	Liability of principal for acts of agents	120
136	Commencement of offence proceedings	121
136A	Commencement of proceedings against natural person	121
137	Limitation period	122
<i>Appointment and powers of enforcement officers</i>		
138	Enforcement officers	122
139	Exercise of powers	123
140	Power to require certain information	123
141	Power of entry for inspection	123
<b>Part 5</b>		
<b>Miscellaneous, transitional provisions, and consequential amendments</b>		
Subpart 1—Miscellaneous		
<i>Protection of the Crown and others</i>		
142	Protection of the Crown and others	124
<i>Cost recovery</i>		
143	Principles of cost recovery	125
144	Methods of cost recovery	126
145	Cost recovery to relate generally to financial year	126
146	Charges to be prescribed by regulations	127
147	Charges constitute debt due to Environmental Protection Authority	128

<i>Service of documents</i>		
148	Service of documents	128
149	Service on master or owner of ship	129
<i>Incorporation by reference</i>		
150	Incorporation by reference of written material in regulations	130
151	Effect of amendments to, or replacement of, material incorporated by reference in regulations	130
152	Proof of material incorporated by reference	130
153	Effect of expiry of material incorporated by reference	130
154	Access to material incorporated by reference	130
155	Application of Standards and Accreditation Act 2015 not affected	132
156	Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference	132
157	Application of Regulations (Disallowance) Act 1989	132
<i>Protection of sensitive information</i>		
158	Protection of sensitive information	132
158A	EPA and Maritime New Zealand to share information	133
158B	EPA may provide information to other regulatory agencies for purposes of this Act	134
158BA	EPA and WorkSafe to share information	134
<i>Waivers and extension of time limits</i>		
159	Power of waiver and extension of time limits	135
160	Requirements for waivers and extensions	135
Subpart 2—Transitional provisions		
<i>Existing activities</i>		
161	Existing petroleum activities that become discretionary	136
162	Existing petroleum mining activities involving structures or pipelines	137
163	Other existing activities that become discretionary	138
164	Existing activities that become prohibited	139
<i>Transitional provisions relating to discharges and dumping</i>		
164A	Dumping permits issued under Maritime Transport Act 1994	139
164B	Provisions of discharge management plans approved under Maritime Transport Act 1994 become marine discharge consents	139
164C	Completion of certain matters pending at commencement of sections 164A and 164B	141
<i>Mineral prospecting and exploration under Continental Shelf Act 1964</i>		
165	Mineral prospecting and exploration may commence and continue	141

<i>Planned petroleum activities</i>		
166	Planned petroleum activities that become discretionary	142
<i>Unauthorised activities</i>		
167	Unauthorised activities must stop	143
<i>Transitional and savings provision relating to regulations</i>		
167A	Transitional and savings provision relating to regulations	143
Subpart 3—Amendments to other Acts		
<i>Consequential amendments to Biosecurity Act 1993</i>		
168	Biosecurity Act 1993 amended	143
169	Relationship with other enactments	144
170	Section 7A replaced (Relationship with Resource Management Act 1991)	144
7A	Relationship with Resource Management Act 1991	144
7B	Relationship with Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012	145
7C	Public notice of decision to exempt action	146
7D	Regulations may continue exemption	146
<i>Amendment to Continental Shelf Act 1964</i>		
171	Amendment to Continental Shelf Act 1964	147
<i>Amendments to Crown Organisations (Criminal Liability) Act 2002</i>		
172	Amendments to Crown Organisations (Criminal Liability) Act 2002	147
<i>Amendment to Environment Act 1986</i>		
173	Amendment to Environment Act 1986	147
<i>Amendment to Environmental Protection Authority Act 2011</i>		
174	Amendment to Environmental Protection Authority Act 2011	147
<i>Amendment to Fisheries Act 1996</i>		
175	Amendment to Fisheries Act 1996	147
<i>Amendments to Resource Management Act 1991</i>		
176	Amendments to Resource Management Act 1991	148
<i>Amendment to Search and Surveillance Act 2012</i>		
177	Amendment to Search and Surveillance Act 2012	148
<b>Schedule 1</b>		149
<b>Transitional, savings, and related provisions</b>		
<b>Schedule 2</b>		151
<b>Hearings of applications for marine consents for non-notified activities</b>		

<b>Schedule 3</b>	154
<b>EPA hearings for publicly notifiable activities other than section 20 activities</b>	
<b>Schedule 4</b>	158
<b>Boards of inquiry for publicly notifiable section 20 activities</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

**2 Commencement**

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (2) Any provision that has not earlier been brought into force comes into force on 1 July 2014.

Section 2(1): this Act brought into force, on 28 June 2013, by clause 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act Commencement Order 2013 (SR 2013/282).

**Part 1**  
**Preliminary provisions**

Subpart 1—Outline, definitions, and application

**3 Outline of Act**

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

*Part 1*

- (2) Subpart 1—
  - (a) defines terms used in the Act; and
  - (b) provides that the Act binds the Crown; and
  - (c) provides for the application of the Act to the ships and aircraft of the New Zealand Defence Force and foreign States.
- (3) Subpart 2—
  - (a) sets out the purpose of the Act; and
  - (b) provides that the Act continues or enables the implementation of New Zealand's international obligations relating to the marine environment; and

- (c) specifies how the Crown's responsibility to give effect to the principles of the Treaty of Waitangi is recognised and respected by provisions of the Act.
- (4) Subpart 3 sets out the functions, duties, and powers of the Environmental Protection Authority and the Māori Advisory Committee, and regulates—
  - (a) the Minister's power to direct the EPA in relation to certain powers, duties, or functions exercised or performed by the EPA; and
  - (b) the EPA's power to delegate its decision-making function in relation to applications for marine consents to a committee or a board of inquiry hearing a resource consent application in relation to the same cross-boundary activity.

*Part 2*

- (5) Subpart 1 sets out restrictions imposed by this Act on activities other than discharges and dumping.
- (5A) Subpart 2 sets out restrictions and prohibitions on the discharge of harmful substances and the dumping of waste and other matter.
- (5B) Subpart 3—
  - (a) sets out, in sections 21 and 23, ongoing transitional provisions for activities that are being carried out when the regulations that apply to them are amended or replaced and require a marine consent as a result; and
  - (b) provides, in section 22, for petroleum activities that, although authorised, have not commenced when new regulations come into force that change the rules for those activities and require a marine consent as a result. An activity may commence if the person planning to undertake the activity first provides an impact assessment to the EPA; and
  - (c) requires, in section 24, a person undertaking an activity to stop undertaking it once it is no longer authorised.
- (5C) Subpart 4—
  - (a) imposes, in section 25, a duty on every person to avoid, remedy, or mitigate the adverse effects of their activities on the environment and a duty to provide sufficient training, supervision, and resources to their employees (if any) to ensure compliance with the Act; and
  - (b) clarifies, in section 26, that compliance with the Act does not mean a person need not comply with other legal requirements and vice versa.

*Part 3*

- (6) Part 3 provides for the making of regulations for the purposes of this Act.

*Part 3A*

- (7) Subpart 1 provides for activities to be permitted, discretionary, or prohibited activities.

- (8) Subpart 2 provides for the Minister to make EEZ policy statements that state objectives and policies to support decision-making on applications for marine consents.
- (8A) Subparts 2A to 2D set out the processes for—
  - (a) applying for marine consents; and
  - (b) disclosure and notification of applications for marine consents and the making of submissions; and
  - (c) consideration of applications for marine consents, including the appointment of boards of inquiry for applications relating to publicly notifiable section 20 activities; and
  - (d) deciding applications for marine consents, including the matters that must be considered by the marine consent authority deciding the application.
- (8B) Subpart 2E sets out matters relating to marine consents, including their nature, when they commence, their duration, and their review, correction, and cancellation.
- (9) Subpart 3 sets out the process for applying for consent for an activity that straddles the boundary between the territorial sea and the exclusive economic zone, including a cross-boundary activity that includes a matter of national significance.
- (9A) Subpart 4 sets out the processes for acceptance of decommissioning plans and for amendment of accepted plans.

*Part 4*

- (10) Subpart 1 provides for objections to decisions of marine consent authorities.
- (10A) Subparts 1A and 1B provide for appeals to the High Court on questions of law against decisions of the EPA and of boards of inquiry.
- (10B) Subpart 1C provides for representation at proceedings before the High Court.
- (11) Subpart 2 provides for enforcement of the Act by providing for—
  - (a) the Environment Court to issue enforcement orders under section 115; and
  - (b) enforcement officers to serve abatement notices under section 125; and
  - (c) offences and penalties; and
  - (d) the appointment of enforcement officers under section 138 and their powers.

*Part 5*

- (12) Subpart 1 deals with miscellaneous matters, including—
  - (a) protection of the Crown and others from liability; and
  - (b) cost recovery; and

- (c) service of documents; and
  - (d) provision for the incorporation by reference into regulations of written material; and
  - (e) protection of sensitive information; and
  - (f) waivers and extension of time limits.
- (13) Subpart 2 sets out transitional arrangements.
- (14) Subpart 3 makes a number of amendments to other Acts, regulations, and marine protection rules.

Section 3(5): replaced, on 31 October 2015, by section 4(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 3(5A): inserted, on 31 October 2015, by section 4(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 3(5B): inserted, on 31 October 2015, by section 4(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 3(5C): inserted, on 31 October 2015, by section 4(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 3(6): replaced, on 1 June 2017, by section 209(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(7) heading: inserted, on 1 June 2017, by section 209(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(7): replaced, on 1 June 2017, by section 209(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(8): replaced, on 1 June 2017, by section 209(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(8A): replaced, on 1 June 2017, by section 209(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(8B): inserted, on 1 June 2017, by section 209(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(9A): inserted, on 1 June 2017, by section 209(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(10): replaced, on 1 June 2017, by section 209(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(10A): inserted, on 1 June 2017, by section 209(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(10B): inserted, on 1 June 2017, by section 209(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 3(11)(c): amended, on 31 October 2015, by section 4(4) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 3(14): amended, on 31 October 2015, by section 4(5) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- abatement notice** means a notice served under section 125



**accepted decommissioning plan** means a decommissioning plan accepted under section 100B

**activity**,—

- (a) in relation to the exclusive economic zone and continental shelf, means an activity described in section 20 or subpart 2 of Part 2; and
- (b) in relation to the sea above the continental shelf beyond the outer limits of the exclusive economic zone, means an activity described in subpart 2 of Part 2

**adaptive management approach** has the meaning given in section 64(2)

**applicant** means a person who makes an application for a marine consent under section 38

**chief executive** means the chief executive of the department

**consent holder** or **holder**, in relation to a consent, means the person who has been granted a consent under section 62 or to whom a consent has been transferred under section 75

**continental shelf** has the same meaning as in section 2(1) of the Continental Shelf Act 1964

**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

**customary marine title group** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

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

**discharge**—

- (a) includes any release, disposal, spilling, leaking, pumping, emitting, or emptying; but
- (b) does not include dumping

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

**disturb** includes excavate, drill, tunnel, or dredge

**dumping**—

- (a) means—
  - (i) any deliberate disposal into the sea of waste or other matter from ships, aircraft, and structures at sea; and
  - (ii) any deliberate disposal into the sea of ships, aircraft, and structures at sea; and

- (iii) any storage of waste or other matter in the seabed and the subsoil of the seabed from ships, aircraft, and structures at sea; and
  - (iv) any abandonment or toppling at site of structures at sea for the sole purpose of deliberate disposal; but
- (b) does not include—
- (i) the disposal into the sea of waste or other matter incidental to, or derived from, the normal operations of ships, aircraft, and structures at sea and their equipment, other than waste or other matter transported by or to ships, aircraft, and structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such waste or other matter on such ships, aircraft, and structures; or
  - (ii) placement of matter for a purpose other than the mere disposal of the matter, but only if the placement is not contrary to the aims of the 1996 Protocol to the London Convention; or
  - (iii) abandonment in the sea of matter (for example, cables, pipelines, and marine research devices) placed for a purpose other than the mere disposal of it; and
- (c) does not include the disposal or storage of waste or other matter directly arising from, or related to, the exploration, exploitation, and associated offshore processing of seabed mineral resources

**EEZ policy statement** means a statement issued under section 37D

**emergency dumping consent** means a marine consent granted under section 20H

**enforcement officer** means an enforcement officer appointed under section 138

**enforcement order** means an order made under section 115

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

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

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

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

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

- (a) any lawfully established existing activity, whether or not authorised by or under any Act or regulations, including rights of access, navigation, and fishing:
- (b) any activity that may be undertaken under the authority of an existing marine consent granted under section 62:
- (c) any activity that may be undertaken under the authority of an existing resource consent granted under the Resource Management Act 1991:
- (d) the settlement of a historical claim under the Treaty of Waitangi Act 1975:
- (e) the settlement of a contemporary claim under the Treaty of Waitangi as provided for in an Act, including the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992:
- (f) a protected customary right or customary marine title recognised under the Marine and Coastal Area (Takutai Moana) Act 2011

**harmful substance** means any substance specified as a harmful substance by regulations made under this Act

**impact assessment** means the impact assessment described in section 39

**incinerate at sea**—

- (a) means to deliberately dispose of waste or other matter by thermal destruction on board a ship or a structure at sea; but
- (b) does not include incinerating on board a ship or structure at sea waste or other matter that has been generated during the normal operation of a ship or a structure while at sea

**information** includes analysis

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

**London Convention** means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972)

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

**marine consent** or **consent** means—

- (a) a marine consent (including a marine discharge consent or a marine dumping consent) granted under section 62; or
- (b) an emergency dumping consent

**marine consent authority**, in relation to an application for a marine consent, means,—

- (a) in the case of a non-notified activity, the EPA:

- (b) in the case of a publicly notifiable activity that is a section 20 activity,—
  - (i) a board of inquiry appointed under section 52:
  - (ii) the EPA—
    - (A) before a board of inquiry is appointed:
    - (B) in respect of any matter that is outside the scope of the functions, powers, and duties of the board of inquiry:
- (c) in the case of a publicly notifiable activity other than a section 20 activity, the EPA

**marine discharge consent** means a marine consent granted under section 62 to discharge harmful substances

**marine dumping consent** means a marine consent granted under section 62 to dump waste or other matter

**mineral** has the meaning given in section 2(1) of the Crown Minerals Act 1991

**mining activity** means an activity carried out for, or in connection with,—

- (a) the identification of areas of the seabed likely to contain mineral deposits; or
- (b) the identification of mineral deposits; or
- (c) the taking or extraction of minerals from the sea or seabed, and associated processing of those minerals

**mining discharge**, in relation to a harmful substance, means a discharge made as an integral part of, or as a direct result of, a mining activity

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

**natural resources**,—

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

**New Zealand ship**—

- (a) means a ship that is registered under the Ship Registration Act 1992; and
- (b) includes a ship that is not registered under that Act but that is required or entitled to be registered under that Act

**New Zealand structure** means a structure that is owned by—

- (a) a New Zealand citizen; or
- (b) a person ordinarily resident in New Zealand; or
- (c) a company registered under the Companies Act 1993

**non-notified activity** means a discretionary activity that—

- (a) is described in regulations as non-notified; or
- (b) is an activity for which regulations provide that an application for a marine consent is not to be publicly notified; or
- (c) is the subject of an application to which section 38(3) applies

**notice of review** means a notice served under section 78

**offshore installation**—

- (a) includes an artificial structure used or intended to be used in or on, or anchored or attached to, the seabed for the purpose of the exploration for, or the exploitation or associated processing of, any mineral; but
- (b) does not include a ship or a pipeline

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

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

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

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

**protected customary rights group** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**public notice** has the meaning given in section 7A

**publicly notifiable activity** means a discretionary activity other than emergency dumping or a non-notified activity

**publicly notifiable application** means an application for a marine consent for a publicly notifiable activity

**radioactive waste or other radioactive matter** means any waste or other matter that contains any radioactive material within the meaning of the Radiation Safety Act 2016

**regional council**—

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

**regulations** means regulations made under this Act

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

**section 20 activity** means an activity referred to in section 20(2) or (4)

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

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

**serve** means serve in accordance with section 148 or 149, and **service** has a corresponding meaning

**ship** has the meaning given in section 2(1) of the Maritime Transport Act 1994

**standard** means a standard prescribed by regulations made under section 27

**structure**—

- (a) means any building, equipment, or device; and
- (b) includes an offshore installation, an artificial island, or a floating platform; but
- (c) does not include a submarine pipeline

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

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

**submission** means a written or an electronic submission

**submitter** means a person who makes a submission under section 47

**threatened species** includes any species that—

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

**toxic or hazardous waste** means any waste or other matter specified as toxic or hazardous waste by regulations made under this Act

**treat**, in relation to waste or other matter, means to treat so as to avoid, remedy, or mitigate the adverse effects of dumping

**wāhi tapu** has the same meaning as in section 6 of the Heritage New Zealand Pouhere Taonga Act 2014

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

**waste or other matter** means material and substances of any kind, form, or description

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and

- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
  - (c) a day in the period commencing on 20 December in any year and ending with 10 January in the following year.
- (2) The following terms have the same meanings as in section 2(1) of the Resource Management Act 1991:
- (a) **biological diversity:**
  - (b) **iwi authority:**
  - (c) **region:**
  - (d) **tikanga Māori.**

Section 4(1) **accepted decommissioning plan:** inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **activity:** replaced, on 31 October 2015, by section 5(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **applicant:** amended, on 1 June 2017, by section 210(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **customary marine title group:** inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **discharge:** inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **dumping:** replaced, on 1 June 2017, by section 210(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **EEZ policy statement:** inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **emergency dumping consent:** inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **harmful substance:** inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **incinerate at sea:** inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **London Convention:** inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **marine consent:** repealed, on 1 June 2017, by section 210(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **marine consent or consent:** inserted, on 1 June 2017, by section 210(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **marine consent authority:** inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **marine discharge consent:** inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **marine discharge consent:** amended, on 1 June 2017, by section 210(4) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **marine dumping consent**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **marine dumping consent**: amended, on 1 June 2017, by section 210(4) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **mineral**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **mining activity**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **mining discharge**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **New Zealand ship**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **New Zealand structure**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **non-notified activity**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **non-notified activity** paragraph (b): amended, on 1 June 2017, by section 210(5) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **non-notified activity** paragraph (c): inserted, on 1 June 2017, by section 210(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **offshore installation**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **permitted activity**: amended, on 1 June 2017, by section 210(7) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **prohibited activity**: amended, on 1 June 2017, by section 210(8) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **protected customary rights group**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **public notice**: replaced, on 1 June 2017, by section 210(9) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **publicly notifiable activity**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **publicly notifiable application**: inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **radioactive waste or other radioactive matter**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **radioactive waste or other radioactive matter**: amended, on 7 March 2017, by section 99 of the Radiation Safety Act 2016 (2016 No 6).

Section 4(1) **section 20 activity**: inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **ship**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **structure** paragraph (b): replaced, on 31 October 2015, by section 5(5) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).



Section 4(1) **submitter**: amended, on 1 June 2017, by section 210(10) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **toxic or hazardous waste**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **treat**: inserted, on 1 June 2017, by section 210(11) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 4(1) **wāhi tapu**: amended, on 20 May 2014, by section 107 of the Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26).

Section 4(1) **waste or other matter**: replaced, on 31 October 2015, by section 5(6) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 4(1) **working day**: inserted, on 28 February 2014, by section 5(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **5 Successors**

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

## **6 Meaning of effect**

- (1) In this Act, unless the context otherwise requires, **effect** includes—
  - (a) any positive or adverse effect; and
  - (b) any temporary or permanent effect; and
  - (c) any past, present, or future effect; and
  - (d) any cumulative effect that arises over time or in combination with other effects; and
  - (e) any potential effect of high probability; and
  - (f) any potential effect of low probability that has a high potential impact.
- (2) Subsection (1)(a) to (d) apply regardless of the scale, intensity, duration, or frequency of the effect.

## **7 Meaning of marine management regime**

- (1) In this Act, unless the context otherwise requires, **marine management regime** includes the regulations, rules, and policies made and the functions, duties, and powers conferred under an Act that applies to any 1 or more of the following:
  - (a) territorial sea:
  - (b) exclusive economic zone:
  - (c) continental shelf.

- (2) The marine management regimes referred to in this section include those established under the following Acts:
- (a) Biosecurity Act 1993:
  - (b) Continental Shelf Act 1964:
  - (c) Crown Minerals Act 1991:
  - (d) Defence Act 1990:
  - (e) Fiordland (Te Moana o Atawhenua) Marine Management Act 2005:
  - (f) Fisheries Act 1996:
  - (g) Hauraki Gulf Marine Park Act 2000:
  - (ga) Kaikōura (Te Tai o Marokura) Marine Management Act 2014:
  - (h) Marine and Coastal Area (Takutai Moana) Act 2011:
  - (i) Marine Mammals Protection Act 1978:
  - (j) Marine Reserves Act 1971:
  - (k) Maritime Transport Act 1994:
  - (l) Resource Management Act 1991:
  - (m) Submarine Cables and Pipelines Protection Act 1996:
  - (n) Wildlife Act 1953.

Section 7(2)(ga): inserted, on 8 August 2014, by section 30 of the Kaikōura (Te Tai o Marokura) Marine Management Act 2014 (2014 No 59).

#### **7A Meaning of public notice**

- (1) If this Act requires the Environmental Protection Authority to give **public notice** of something, the EPA must—
- (a) publish on its Internet site a notice that—
    - (i) includes all the information that is required to be publicly notified; and
    - (ii) is in the prescribed form (if any); and
  - (b) publish a short summary of the notice, along with details of the Internet site where the notice can be accessed, in 1 or more newspapers circulating in—
    - (i) the cities of Auckland, Wellington, Christchurch, and Dunedin; and
    - (ii) the region adjacent to the area that is the subject of the matter to which the notice relates.
- (2) The notice and the short summary of the notice must be worded in a way that is clear and concise.

Section 7A: inserted, on 1 June 2017, by section 211 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **7B Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Section 7B: inserted, on 1 June 2017, by section 211 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **8 Act binds the Crown**

- (1) This Act binds the Crown, except as provided in this section and section 9.
- (2) This Act does not apply to any work or activity of the Crown that the Minister of Defence certifies is necessary for reasons of national security.
- (3) An enforcement order may be made against an instrument of the Crown, in accordance with this Act, only if—
  - (a) the instrument of the Crown is a Crown organisation; and
  - (b) the order is made against the Crown organisation in its own name.
- (4) Subsection (3) applies despite section 17(1)(a) of the Crown Proceedings Act 1950.
- (5) An instrument of the Crown may be prosecuted for an offence against this Act only if—
  - (a) the instrument of the Crown is a Crown organisation; and
  - (b) the offence is alleged to have been committed by the Crown organisation; and
  - (c) the proceedings are commenced—
    - (i) by the EPA or an enforcement officer; and
    - (ii) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and
    - (iii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.
- (6) However, subsection (5) is subject to section 8(4) of the Crown Organisations (Criminal Liability) Act 2002 (which provides that a court may not sentence a Crown organisation to pay a fine in respect of an offence against this Act).
- (7) If a Crown organisation is not a body corporate, it is to be treated as if it were a separate legal personality for the purposes of—
  - (a) making an enforcement order against it; and
  - (b) enforcing an enforcement order in relation to it.
- (8) Except to the extent and in the manner provided for in subsections (3) to (7), the Crown may not—
  - (a) have an enforcement order made against it; or
  - (b) be prosecuted for an offence against this Act.

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

- (1) This Act does not apply to any of the following:
- (a) warships of the New Zealand Defence Force:
  - (b) warships of any other State:
  - (c) aircraft of the New Zealand Defence Force:
  - (d) aircraft of the defence forces of any other State:
  - (e) any ship owned or operated by any State other than New Zealand, if the ship is being used by the State for wholly governmental purposes:
  - (f) the master and crew of any warship, aircraft, or ship referred to in paragraphs (a) to (e):
  - (g) defence areas as defined in section 2 of the Defence Act 1990.
- (1A) However, the following provisions of this Act do apply to warships and other ships of the New Zealand Defence Force:
- (a) subparts 2 (as if those ships were New Zealand ships), 3, and 4 of Part 2:
  - (b) regulations made under sections 29A and 29C:
  - (c) subparts 2A to 2E of Part 3A, to the extent that they relate to marine dumping consents and marine discharge consents:
  - (d) sections 134 to 134M.
- (2) In this section, a ship that is being used for commercial purposes, or both commercial and governmental purposes, is not being used for wholly governmental purposes.

Section 9(1A): inserted, on 31 October 2015, by section 6 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 9(1A)(c): replaced, on 1 June 2017, by section 212 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### Subpart 2—Purpose and principles

## **10 Purpose**

- (1) The purpose of this Act is—
- (a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and
  - (b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while—
- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacity of the environment; and
  - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- (3) In order to achieve the purpose, decision-makers must—
- (a) take into account decision-making criteria specified in relation to particular decisions; and
  - (b) apply the information principles to the development of regulations under section 27, 29A, 29B, or 29E and the consideration of applications for marine consent.

Section 10(1): replaced, on 31 October 2015, by section 7 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 10(3)(b): amended, on 1 June 2017, by section 213 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **11 International obligations**

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

- (a) the United Nations Convention on the Law of the Sea 1982:
- (b) the Convention on Biological Diversity 1992:
- (c) the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL):
- (d) the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention).

Section 11(c): inserted, on 31 October 2015, by section 8 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 11(d): inserted, on 31 October 2015, by section 8 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **12 Treaty of Waitangi**

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

- (a) section 18 (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise marine consent authorities so that decisions made under this Act may be informed by a Māori perspective; and

- (b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and
- (c) sections 33 and 59, respectively, require the Minister and a marine consent authority to take into account the effects of activities on existing interests; and
- (d) section 46 requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.

Section 12(a): amended, on 1 June 2017, by section 214(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 12(c): amended, on 1 June 2017, by section 214(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 12(d): amended, on 1 June 2017, by section 214(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

### Subpart 3—Functions, duties, and powers

#### *Functions, duties, and powers*

#### **13 Functions of Environmental Protection Authority**

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

Section 13(1)(d)(i): replaced, on 1 June 2017, by section 215(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 13(1)(ea): inserted, on 1 June 2017, by section 215(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

**14 Restriction on ministerial direction to Environmental Protection Authority**

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

Section 14: amended, on 11 July 2018, by section 4 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 (2018 No 20).

**15 Powers of Environmental Protection Authority**

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

**16 Restriction on Environmental Protection Authority's power to delegate**

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

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

(2) In subsection (1), a reference to a marine consent does not include a marine discharge consent or a marine dumping consent.

Section 16(1): amended, on 31 October 2015, by section 10 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 16(2): inserted, on 1 June 2017, by section 216 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**17 Environmental Protection Authority to keep records**

(1) The Environmental Protection Authority must keep records and make available information—

- (a) that is relevant to the performance of its functions under this Act; and
- (b) in particular, to enable the public and persons undertaking or proposing to undertake activities in the exclusive economic zone or in or on the continental shelf to be better informed of their duties and of the functions, powers, and duties of the EPA and to participate effectively under this Act.

(2) In particular, the EPA must keep and make available—

- (a) copies of all material incorporated by reference into regulations; and
- (b) records of every—
  - (i) application for a marine consent;
  - (ii) decision made by the EPA on or related to an application for a consent;

- (iii) change to the conditions of a consent:
  - (iv) cancellation of a consent:
  - (v) notice of review and decision on a review:
  - (vi) transfer of a marine consent:
  - (vii) objection and decision on an objection; and
- (c) a summary of all written complaints received in the preceding 5 years (or if the Act has been in force for less than 5 years then for the period that the Act has been in force) concerning alleged breaches of the Act, regulations, or the conditions of a marine consent, and information explaining how the EPA dealt with each complaint.
- (3) In this section, **make available** means the information must be kept at the offices of the EPA and made available to members of the public on request and may be kept on an Internet site maintained by, or on behalf of, the EPA.
- (4) Section 158 overrides this section.

#### *Māori Advisory Committee*

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

The Māori Advisory Committee may provide advice as follows:

- (a) to the Environmental Protection Authority in accordance with sections 19 and 20 of the Environmental Protection Authority Act 2011:
- (b) to a marine consent authority, if its advice is sought under section 56(1)(b).

Section 18: replaced, on 1 June 2017, by section 217 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Power of Minister of Conservation*

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

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



## **Part 2**

### **Duties, restrictions, and prohibitions**

Part 2: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **Subpart 1—Restrictions on activities other than discharges and dumping**

Subpart 1 heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **20 Restriction on activities other than discharges and dumping**

- (1) No person may undertake an activity described in subsection (2) in the exclusive economic zone or in or on the continental shelf unless the activity is a permitted activity or authorised by a marine consent or section 21, 22, or 23.
- (2) The activities referred to in subsection (1) are—
  - (a) the construction, placement, alteration, extension, removal, or demolition of a structure on or under the seabed:
  - (b) the construction, placement, alteration, extension, removal, or demolition of a submarine pipeline on or under the seabed:
  - (ba) the abandonment of a submarine pipeline that is on or under the seabed:
  - (c) the placement, alteration, extension, or removal of a submarine cable on or from the seabed:
  - (d) the removal of non-living natural material from the seabed or subsoil:
  - (e) the disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on the seabed or subsoil:
  - (f) the deposit of any thing or organism in, on, or under the seabed:
  - (g) the destruction, damage, or disturbance of the seabed or subsoil in a manner that is likely to have an adverse effect on marine species or their habitat.
- (3) No person may undertake an activity described in subsection (4) in the sea of the exclusive economic zone unless the activity is a permitted activity or authorised by a marine consent or section 21, 22, or 23.
- (4) The activities referred to in subsection (3) are—
  - (a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure, part of a structure, or a ship used in connection with a structure:
  - (b) the causing of vibrations (other than vibrations caused by the propulsion of a ship) in a manner that is likely to have an adverse effect on marine life:
  - (c) the causing of an explosion.
- (5) However, this section does not apply to—

- (a) the discharge of harmful substances; or
- (b) the dumping of waste or other matter; or
- (c) lawful fishing for wild fish under the Fisheries Act 1996.

Section 20: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 20(2)(ba): inserted, on 1 June 2017, by section 218 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Subpart 2—Restrictions and prohibitions on discharges and dumping

Subpart 2 heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### *Discharge of harmful substances*

Heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **20A Regulation under this subpart and Maritime Transport Act 1994 of discharges**

- (1) This section describes how the discharge of harmful substances is regulated under this subpart and the Maritime Transport Act 1994, but it does not affect the interpretation or the application of this subpart or that Act.
- (2) In relation to the discharge of harmful substances, this subpart regulates—
  - (a) discharges into the exclusive economic zone and into or onto the seabed below it from—
    - (i) structures:
    - (ii) submarine pipelines:
    - (iii) ships, if the discharge is a mining discharge:
  - (b) discharges into or onto the continental shelf beyond the exclusive economic zone or into the sea above that part of the continental shelf from—
    - (i) New Zealand structures:
    - (ii) structures (other than New Zealand structures) involved in a mining activity:
    - (iii) submarine pipelines:
    - (iv) ships, if the discharge is a mining discharge.
- (3) The Maritime Transport Act 1994 regulates—
  - (a) the discharge of harmful substances (other than a mining discharge) from a ship into the sea or seabed of the exclusive economic zone:
  - (b) the discharge of harmful substances (other than a mining discharge) into the sea above the continental shelf beyond the exclusive economic zone

and the seabed below that sea from a New Zealand ship or from a foreign ship involved in a mining activity:

- (c) the discharge of harmful substances from a New Zealand ship into the sea beyond the continental shelf or the seabed below that sea.

Section 20A: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20B Restriction on discharges of harmful substances from structures and submarine pipelines**

- (1) No person may discharge a harmful substance from a structure or from a submarine pipeline into the sea or into or onto the seabed of the exclusive economic zone.
- (2) No person may discharge a harmful substance into or onto the continental shelf beyond the outer limits of the exclusive economic zone or into the sea above that part of the continental shelf from—
  - (a) a New Zealand structure; or
  - (b) a structure (other than a New Zealand structure) involved in a mining activity; or
  - (c) a submarine pipeline.
- (3) However, a person may discharge a harmful substance if the discharge is a permitted activity or authorised by a marine consent or section 21, 22, or 23.

Section 20B: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20C Restriction on mining discharges from ships**

- (1) No person may discharge a harmful substance (if the discharge is a mining discharge) from a ship—
  - (a) into the sea of the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or
  - (b) into or onto the continental shelf.
- (2) However, a person may discharge the harmful substance in the circumstance described in subsection (1) if the discharge is a permitted activity or authorised by a marine consent or section 21, 22, or 23.

Section 20C: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

*Dumping of waste or other matter*

Heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20D Regulation under this subpart and Maritime Transport Act 1994 of dumping**

- (1) This section describes how the dumping of waste or other matter is regulated under this subpart and the Maritime Transport Act 1994, but it does not affect the interpretation or the application of this subpart or that Act.
- (2) In relation to the exclusive economic zone and the continental shelf, this subpart—
  - (a) prohibits—
    - (i) the dumping of radioactive waste or other radioactive matter:
    - (ii) the dumping of toxic or hazardous waste:
    - (iii) the incineration of waste or other matter at sea; and
  - (b) regulates—
    - (i) the disposal of human remains other than ashes:
    - (ii) the dumping of waste or other matter (other than waste or other matter described in paragraph (a)).
- (3) The Maritime Transport Act 1994 regulates the dumping of waste or other matter into the waters beyond the continental shelf.

Section 20D: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20E Prohibition on dumping radioactive waste or other radioactive matter**

No person may dump radioactive waste or other radioactive matter—

- (a) into the sea within the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or
- (b) into or onto the continental shelf.

Section 20E: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20F Prohibition on dumping toxic or hazardous waste**

No person may dump toxic or hazardous waste—

- (a) into the sea within the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or
- (b) into or onto the continental shelf.

Section 20F: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20G Restriction on dumping waste or other matter**

- (1) This section applies to waste or other matter other than—
  - (a) radioactive waste or other radioactive matter;
  - (b) toxic or hazardous waste;
  - (c) human remains.
- (2) No person may dump waste or other matter (including ships, aircraft, or structures)—
  - (a) into the sea within the exclusive economic zone or above the continental shelf beyond the outer limits of the exclusive economic zone; or
  - (b) into or onto the continental shelf.
- (3) However, a person may dump waste or other matter (including ships, aircraft, or structures) if—
  - (a) regulations allow the dumping to be authorised by a marine consent and the dumping is authorised by a marine consent; or
  - (b) the dumping is authorised by an emergency dumping consent and complies with any regulations for emergency dumping made under section 29B; or
  - (c) the dumping is in accordance with section 248 or 249 of the Maritime Transport Act 1994.

Section 20G: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**20H Emergency dumping**

- (1) Any person may apply to the Environmental Protection Authority for an emergency dumping consent to dump waste or other matter in an emergency—
  - (a) into the waters of the exclusive economic zone;
  - (b) into waters beyond the outer limits of the exclusive economic zone but over the continental shelf.
- (2) The EPA may issue an emergency dumping consent, in accordance with this section and regulations under section 29B, if it is satisfied that—
  - (a) an emergency exists; and
  - (b) the emergency poses an unacceptable risk to human health, safety, or the marine environment; and
  - (c) the dumping of the waste or other matter is necessary to remove or reduce the risk; and
  - (d) there is no feasible alternative to the dumping of the waste or other matter.
- (3) Before the EPA grants an emergency dumping consent, it must—

- (a) consult Maritime New Zealand and the appropriate competent authority of any country that is likely to be affected by the dumping of the waste or other matter; and
  - (b) notify the International Maritime Organization that it has received an application for an emergency dumping consent.
- (4) The EPA may grant an emergency dumping consent subject to conditions.
- (5) The EPA may impose any conditions that it considers appropriate to deal with the effects of the dumping of waste or other matter on the environment or on human health or safety, including conditions that require the person issued with the consent to—
- (a) monitor, and report to the EPA on, the exercise of the permit and the effects of the dumping on the environment and human health and safety;
  - (b) keep and maintain records of the waste or other matter dumped and the location of the dumping;
  - (c) provide the EPA with any specified information that relates to the permit or its exercise.
- (6) The EPA may impose as a condition a requirement that the person granted the emergency dumping consent complies with—
- (a) any procedures for dumping recommended by the International Maritime Organization;
  - (b) any procedures for dumping specified in the consent.
- (7) Before imposing a condition under subsection (6), the EPA must consider whether the condition is feasible in the circumstances after taking into account the urgency of the situation.
- (8) The EPA must make its decision on an application for an emergency dumping consent as soon as is reasonably practicable after the EPA is satisfied that the application is complete.
- (9) The EPA must notify the International Maritime Organization of every decision it makes under subsection (8) to grant or refuse an application for an emergency dumping consent.

Section 20H: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **20I Prohibition on incinerating waste or other matter at sea**

- (1) No person may incinerate waste or other matter in the exclusive economic zone.
- (2) No person may incinerate waste or other matter on a New Zealand ship or a New Zealand structure in the sea above the continental shelf beyond the outer limits of the exclusive economic zone.

- (3) However, a person may incinerate waste or other matter on a New Zealand ship or a New Zealand structure if the waste or other matter was generated during the normal operation of the ship or structure.

Section 20I: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### *Burial at sea*

Heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **20J Burial at sea**

- (1) No person may dispose of human remains in the exclusive economic zone, or into or onto the continental shelf, unless—
- (a) the disposal complies with regulations made under this Act; and
  - (b) the Environmental Protection Authority certifies, in writing, that the proposed disposal complies with the regulations.
- (2) However, subsection (1) does not apply to human remains that are ashes resulting from the cremation of human remains.

Section 20J: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **Subpart 3—Existing activities and planned petroleum activities**

Subpart 3 heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **21 Certain existing activities may continue**

- (1) This section applies to an existing activity if—
- (a) the activity is classified as a permitted activity by regulations; and
  - (b) new regulations come into force that amend or replace the regulations described in paragraph (a) (the **new regulations**); and
  - (c) the activity is lawfully established before the new regulations come into force; and
  - (d) the effects of the activity on the environment and existing interests are of the same or similar character, intensity, and scale as the effects that existed before the coming into force of the new regulations; and
  - (e) the activity requires a marine consent as a result of the amendment or replacement of the regulations described in paragraph (a).
- (2) The activity may continue without a marine consent for a prescribed period or, if no period is prescribed for the activity, for 6 months from the date on which the new regulations come into force.
- (3) If the activity is a section 20 activity or a discharge of a harmful substance, and the person undertaking the activity applies for a marine consent within the

period described in subsection (2), the activity may continue after the period has expired until—

- (a) the application is decided under section 62 and any appeals are determined; or
  - (b) the application is returned as incomplete by the EPA under section 43 and any objections and appeals are determined.
- (4) If the application for a marine consent described in subsection (3) is returned by the EPA under section 43, subsection (3) applies to any new application that replaces the returned application.
- (5) *[Repealed]*

Section 21: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 21(3): amended, on 1 June 2017, by section 219(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 21(3)(b): amended, on 1 June 2017, by section 219(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 21(4): replaced, on 1 June 2017, by section 219(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 21(5): repealed, on 1 June 2017, by section 219(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

## 22 Planned petroleum activities may commence

- (1) This section applies to a planned petroleum activity if—
  - (a) the activity is classified as a permitted activity by regulations; and
  - (b) new regulations come into force that amend or replace the regulations described in paragraph (a) (the **new regulations**); and
  - (c) the activity requires a marine consent as a result of the amendment or replacement of the regulations described in paragraph (a).
- (2) The activity may commence without a marine consent after the new regulations come into force.
- (3) However, before the activity may commence, the person intending to undertake the activity must—
  - (a) prepare an impact assessment for the activity; and
  - (b) provide the impact assessment to the EPA.
- (4) Sections 40 to 43 apply to the impact assessment as if it were an application for a marine consent.
- (5) If the person intending to undertake the activity complies with subsection (3), the activity may continue for a prescribed period or, if no period is prescribed for the activity, for 6 months from the date on which the new regulations come into force.



- (6) If the person undertaking the activity applies for a marine consent within the period described in subsection (5), the activity may continue after the period has expired until the application—
- (a) is decided under section 62 and any appeals are determined; or
  - (b) is returned as incomplete by the EPA under section 43 and any objections and appeals are determined.
- (7) If the application for a marine consent described in subsection (6) is returned by the EPA under section 43, subsection (6) applies to any new application that replaces the returned application.
- (8) *[Repealed]*
- (9) In this section, **planned petroleum activity** means a mining activity undertaken in relation to petroleum if, before the new regulations come into force,—
- (a) the exploration, prospecting, or mining for petroleum with which the activity is involved is authorised by a permit that is granted under section 25 of the Crown Minerals Act 1991 or authorised by an existing privilege preserved under clause 12 of Schedule 1 of that Act; and
  - (b) the activity had not commenced.

Section 22: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 22(4): amended, on 1 June 2017, by section 220(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 22(6)(b): amended, on 1 June 2017, by section 220(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 22(7): replaced, on 1 June 2017, by section 220(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 22(8): repealed, on 1 June 2017, by section 220(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

### 23 Certain existing activities that become prohibited may continue

- (1) This section applies to an existing activity if—
- (a) the activity is classified as a permitted activity by regulations, or was authorised by a marine consent in accordance with the regulations; and
  - (b) new regulations come into force that amend or replace the regulations described in paragraph (a) (the **new regulations**); and
  - (c) the activity becomes a prohibited activity as a result of the amendment or replacement of the regulations described in paragraph (a); and
  - (d) the activity is lawfully established before the new regulations come into force.
- (2) The activity may continue—
- (a) for the duration of the consent, if the activity is authorised by a marine consent; or

- (b) for a period prescribed by regulations, if the activity is not authorised by a consent.

Section 23: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### *Unauthorised activities*

Heading: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **24 Unauthorised activities must stop**

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

Section 24: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **Subpart 4—General matters**

Subpart 4 heading: inserted, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

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

- (1) This section applies to every person who carries out or proposes to carry out an activity in the exclusive economic zone, in or on the seabed of the continental shelf, or in the sea above the continental shelf beyond the outer limits of the exclusive economic zone.
- (2) The person has—
- (a) a general duty to avoid, remedy, or mitigate the adverse effects of the activity on the environment; and
  - (b) a duty to provide—
    - (i) training and supervision to all of the person’s employees who are engaged in the activity in order to ensure compliance with this Act, regulations, and any marine consent; and
    - (ii) sufficient resources to the person’s employees to ensure compliance with this Act, regulations, and any marine consent, including establishing appropriate management systems.

- (3) The duties referred to in subsection (2) are not enforceable against any person, and no person is liable to any other person for a breach of a duty.
- (4) However, despite subsection (3), an enforcement order may be made or an abatement notice may be served under Part 4 to require a person to comply with subsection (2)(a) if adverse effects result or are likely to result from a breach of this Act, regulations, or a marine consent.

Section 25: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 25(4): amended, on 1 June 2017, by section 221 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **26 Relationship with other legal requirements**

To avoid doubt,—

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

Section 26: replaced, on 31 October 2015, by section 11 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **Part 3 Regulations**

Part 3 heading: replaced, on 1 June 2017, by section 222 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### Subpart 1—Regulations

*[Repealed]*

Subpart 1 heading: repealed, on 1 June 2017, by section 222 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Regulation of certain activities and areas*

Heading: amended, on 31 October 2015, by section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **27 Regulations prescribing standards, methods, or requirements**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe requirements, methods, or technical standards for—
  - (a) activities described in section 20 that are carried out in the exclusive economic zone or in or on the continental shelf;
  - (b) the effects of the activities referred to in paragraph (a), including effects that occur in the territorial sea or in the sea above and beyond the continental shelf;

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

Section 27(1): amended, on 28 February 2014, by section 13(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 27(1)(a): amended, on 31 October 2015, by section 13(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 27(1)(b): replaced, on 31 October 2015, by section 13(3) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 27(2)(d)(i): amended, on 31 October 2015, by section 13(4) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **28 Regulations classifying areas of exclusive economic zone or continental shelf**

- (1) Regulations made under section 27 or 29A may identify and provide for areas of the exclusive economic zone or the continental shelf that—
  - (a) are important or especially vulnerable because of their biophysical characteristics; or
  - (b) are important for specific uses; or
  - (c) must be managed in co-ordination with other marine management regimes; or
  - (d) are, or are likely to be, the subject of competition or conflict arising from the incompatibility of different activities; or
  - (e) are experiencing, or likely to experience, cumulative adverse environmental effects.

- (2) The regulations may close an area of the exclusive economic zone or the continental shelf to all or any activities described in section 20 or subpart 2 of Part 2.

Section 28(1): amended, on 31 October 2015, by section 14(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 28(2): amended, on 31 October 2015, by section 14(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **29 Regulations classifying activities**

- (1) Regulations made under section 27 may—
- (a) prohibit an activity; or
  - (b) allow an activity without a marine consent or describe the activity as permitted; or
  - (c) allow an activity with a marine consent or describe the activity as discretionary; or
  - (d) require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by a regulation; or
  - (e) require a person undertaking a specified permitted activity to give specified information about the activity to the Environmental Protection Authority.
- (2) If regulations provide for an activity to be a permitted activity, the regulations may specify terms and conditions that apply to the activity.
- (3) If regulations provide for an activity to be a discretionary activity, the regulations may specify—
- (a) terms and conditions that apply to the activity (including conditions described in section 63);
  - (b) the matters that must be addressed by terms and conditions imposed on the marine consent by the Environmental Protection Authority.
- (4) The regulations must not provide for an activity to be a permitted activity if, in the Minister's opinion,—
- (a) the activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and
  - (b) it is more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent.

*Regulation of discharges and dumping*

Heading: inserted, on 28 February 2014, by section 15 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**29A Regulations for discharges and dumping**

- (1) This section applies to the exclusive economic zone, continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—
  - (a) prescribe requirements, methods, or technical standards for the discharge of harmful substances, the dumping of waste or other matter, and the effects of the discharge or dumping:
  - (b) in relation to a harmful substance,—
    - (i) prohibit its discharge; or
    - (ii) allow the discharge without a marine consent or describe the discharge as permitted; or
    - (iii) allow the discharge with a marine consent or describe the discharge as discretionary:
  - (c) in relation to the dumping of specified waste or other matter (other than emergency dumping),—
    - (i) prohibit the dumping; or
    - (ii) allow the dumping with a marine consent or describe the dumping as discretionary.
- (3) However, the Minister must not recommend the making of regulations unless he or she is satisfied that the requirements of sections 32 and 34A have been met.
- (4) The regulations may—

*Harmful substances*

  - (a) prescribe a substance to be a harmful substance:
  - (b) in relation to an offshore installation, regulate—
    - (i) the removal or retention on board of a harmful substance:
    - (ii) the stowage, packaging, containment, marking, labelling, documentation, and notification of a harmful substance carried in packaged form:
    - (iii) plans for emergencies involving a harmful substance:
  - (c) prescribe requirements and procedures for the discharge of water produced from geologic formations by a mining activity:

*Waste and other matter*

- (d) prescribe waste or other matter to be toxic or hazardous waste;
  - (e) specify the matters an applicant for a marine dumping consent must include in the impact assessment for the activity, in addition to the matters required by section 39;
  - (f) specify sites at which burial at sea may be approved;
  - (g) specify criteria to be considered in deciding an application for a marine dumping consent or an application to change or cancel a condition of a marine dumping consent.
- (5) Regulations may apply to different classes of persons, ships involved in mining activities, offshore installations, or submarine pipelines.
- (6) Despite subsection (2)(b)(ii), the regulations must not provide for the discharge of a harmful substance to be a permitted activity if, in the Minister's opinion,—
- (a) the activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and
  - (b) it is more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent.
- (7) Section 27(2) applies to regulations made under subsection (2)(a).
- (8) Section 29(2) and (3) applies to the regulations made under this section.

Section 29A: inserted, on 28 February 2014, by section 15 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**29B Regulations for emergency dumping**

- (1) This section applies to the exclusive economic zone, continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe requirements, methods, or technical standards for emergency dumping of waste or other matter.

Section 29B: inserted, on 28 February 2014, by section 15 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**29C Regulations implementing international obligations**

- (1) Regulations may be made under section 29A to—
- (a) implement New Zealand's international obligations relating to the exclusive economic zone, continental shelf, or the sea above the continental shelf beyond the outer limits of the exclusive economic zone;
  - (b) enable New Zealand to become a party to an international convention, protocol, or agreement relating to the protection of the marine environment:

- (c) implement international practices and standards relating to the protection of the marine environment recommended by the International Maritime Organization.
- (2) This section does not limit section 29A.

Section 29C: inserted, on 28 February 2014, by section 15 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### *Non-notified activities*

Heading: inserted, on 28 February 2014, by section 15 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **29D Non-notified activities**

- (1) Regulations may describe any discretionary activity as non-notified or provide that an application for a marine consent for an activity is not to be publicly notified.
- (2) Regulations must only provide that a discretionary activity is to be non-notified if, in the Minister's opinion,—
  - (a) the activity has a low probability of significant adverse effects on the environment or existing interests; and
  - (b) the activity is—
    - (i) routine or exploratory in nature; or
    - (ii) an activity of brief duration; or
    - (iii) a dumping activity.

Section 29D: inserted, on 28 February 2014, by section 15 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### *Decommissioning plans*

Heading: inserted, on 1 June 2017, by section 223 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **29E Decommissioning plans**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing 1 or more of the following:
  - (a) information that must be included in a decommissioning plan under section 100A(2):
  - (b) the process for dealing with a decommissioning plan under section 100B(1)(a):
  - (c) the criteria against which a decommissioning plan must be assessed under section 100B(1)(b).
- (2) However, the Minister must not recommend the making of regulations under this section unless section 32 has been complied with.



Section 29E: inserted, on 1 June 2017, by section 223 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Regulations generally*

**30 Regulations**

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

*Provisions applying to all regulations*

**31 Application of regulations**

- (1) A regulation made under section 27 may apply to all or any part of the exclusive economic zone and the continental shelf and to any or all activities described in section 20 that are carried out in the exclusive economic zone or in or on the continental shelf.
- (2) A regulation made under section 29A may apply to—
  - (a) all or any part of the exclusive economic zone, the continental shelf, and the sea above the continental shelf beyond the outer limits of the exclusive economic zone; and
  - (b) any or all of the activities described in subpart 2 of Part 2.
- (2A) A regulation made under section 27 or 29A may apply to the effects of an activity even if the effects occur outside the area to which the regulation applies.

- (3) Different requirements or standards may apply in relation to different activities and different classes of the same activity.

Section 31(1): amended, on 31 October 2015, by section 16(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 31(2): replaced, on 31 October 2015, by section 16(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 31(2A): inserted, on 31 October 2015, by section 16(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **32 Process for developing or amending regulations**

- (1) Before making a recommendation to the Governor-General under section 27, 29A, 29E, or 30(1)(a) or (c), the Minister must comply with subsection (2).

- (2) The Minister must—

- (a) notify the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected of—

- (i) the proposed subject matter of the regulations; and  
(ii) in the case of regulations to which section 27, 29A, or 29E applies, the Minister's reasons for considering that the regulations are consistent with the purpose of the Act; and

- (b) establish a process that the Minister considers gives the public, iwi authorities, and persons whose existing interests are likely to be affected adequate time and opportunity to comment on the subject matter of the proposed regulations.

- (3) However, the Minister need not comply with subsection (2) if the Minister is recommending the making of an amendment to regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

Section 32(1): amended, on 1 June 2017, by section 224(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 32(1): amended, on 31 October 2015, by section 17(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 32(2)(a)(ii): amended, on 1 June 2017, by section 224(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 32(2)(a)(ii): amended, on 31 October 2015, by section 17(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **33 Matters to be considered for regulations under section 27**

- (1) This section and section 34 apply when the Minister is developing regulations for the purposes of section 27.

- (2) The Minister must have regard to any comments made under section 32(2).

- (3) The Minister must take into account—

- (a) any effects on the environment or existing interests of allowing an activity with or without a marine consent, including—

- (i) cumulative effects; and

- (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (b) the effects on the environment or existing interests of other activities undertaken in the exclusive economic zone or in or on the continental shelf, including—
  - (i) the effects of activities that are not regulated under this Act; and
  - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (c) the effects on human health that may arise from effects on the environment; and
- (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
- (e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
- (f) New Zealand's international obligations; and
- (g) the economic benefit to New Zealand of an activity; and
- (h) the efficient use and development of natural resources; and
- (i) the nature and effect of other marine management regimes; and
- (j) best practice in relation to an industry or activity; and
- (k) in relation to whether an activity is classified as permitted, discretionary, non-notified, or publicly notifiable, the desirability of allowing the public to be heard in relation to the activity or type of activity; and
- (l) any other relevant matter.

Section 33 heading: amended, on 28 February 2014, by section 18(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 33(3)(k): amended, on 28 February 2014, by section 18(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **34 Information principles**

- (1) When developing regulations under sections 27, 29A, and 29B, the Minister must—
  - (a) make full use of the information and other resources available to him or her; and
  - (b) base decisions on the best available information; and
  - (c) take into account any uncertainty or inadequacy in the information available.

- (2) If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary.
- (4) In this section, **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

Section 34(1): amended, on 31 October 2015, by section 19 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **34A Matters to be considered for regulations relating to discharges and dumping**

- (1) This section applies when the Minister is developing regulations for the purpose of section 29A.
- (2) The Minister must have regard to any comments made under section 32(2).
- (3) The Minister must take into account—
  - (a) the matters described in section 33(3), except paragraphs (c), (g), (h), and (j); and
  - (b) the effects of the discharge or dumping on human health if the discharge or dumping takes place; and
  - (c) in relation to the dumping of waste or other matter,—
    - (i) any alternative methods of disposal that could be used; and
    - (ii) whether there are practical opportunities to reuse, recycle, or treat the waste or other matter.

Section 34A: inserted, on 31 October 2015, by section 20 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 34A(3)(c)(ii): amended, on 1 June 2017, by section 225 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Types of activities* *[Repealed]*

Heading: repealed, on 1 June 2017, by section 226 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Part 3A

### Activities and consents

Part 3A heading: inserted, on 1 June 2017, by section 226 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### Subpart 1—Activities

Subpart 1 heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Types of activity*

Heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **35 Permitted activities**

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

Section 35: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **36 Discretionary activities**

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

Section 36: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **37 Prohibited activities**

- (1) An activity is a **prohibited activity** if it is described in regulations as a prohibited activity.
- (2) No person may apply for a marine consent for a prohibited activity.
- (3) No marine consent may be granted for a prohibited activity.
- (4) Subject to section 23, no person may undertake a prohibited activity.

Section 37: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Subpart 2—EEZ policy statements

Subpart 2 heading: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *EEZ policy statements*

Heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **37A Purpose and scope of EEZ policy statements**

- (1) The purpose of EEZ policy statements is to state objectives and policies to support decision-making on applications for marine consents in accordance with the purpose of this Act.
- (2) An EEZ policy statement may apply to all or part of the exclusive economic zone and the continental shelf.
- (3) In determining whether it is desirable to prepare an EEZ policy statement, the Minister may have regard to—
  - (a) the actual or potential effects of the use, development, or protection of natural resources;
  - (b) New Zealand's obligations under any international conventions that relate to the marine environment;
  - (c) the matters in subpart 2 of Part 1;
  - (d) any other relevant matter.

Section 37A: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **37B Notification of, and consultation on, proposed EEZ policy statement**

Before issuing an EEZ policy statement, the Minister must—

- (a) notify the public, iwi authorities, regional councils, and persons whose existing interests may be affected of—
  - (i) the proposed statement; and
  - (ii) the Minister's reasons for considering that the proposed statement will support decision-making on applications for marine consents; and
- (b) establish a process that the Minister considers gives the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected adequate time and opportunity to comment on the subject matter of the proposed statement.

Section 37B: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**37C Matters to be considered by Minister when determining whether to issue EEZ policy statement**

In determining whether to issue the EEZ policy statement, the Minister must consider—

- (a) the actual or potential effects of the use, development, or protection of natural resources; and
- (b) New Zealand's obligations under any international conventions that relate to the marine environment; and
- (c) the matters in subpart 2 of Part 1; and
- (d) any submissions received on the proposed EEZ policy statement; and
- (e) any other matter that the Minister considers relevant.

Section 37C: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**37D Revision, withdrawal, and approval of proposed EEZ policy statements**

- (1) The Minister, after considering the matters in section 37C, may make any changes, or no changes, to the proposed EEZ policy statement, as he or she thinks fit.
- (2) The Minister may withdraw all or part of a proposed EEZ policy statement at any time before the statement is approved under subsection (4).
- (3) The Minister must notify the persons mentioned in section 37B(a) of any withdrawal under subsection (2), including the reasons for the withdrawal.
- (4) The Governor-General may, by Order in Council, on the recommendation of the Minister, approve an EEZ policy statement.
- (5) The Minister must, as soon as practicable after an EEZ policy statement has been approved,—
  - (a) issue the statement by notice in the *Gazette*; and
  - (b) publicly notify the statement; and
  - (c) send a copy of the statement to the EPA; and
  - (d) provide every person who made a submission on the proposal with a copy of the approved statement.

Section 37D: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**37E Changes to, or review or revocation of, EEZ policy statements**

- (1) The Minister may review, change, or revoke an EEZ policy statement in accordance with sections 37B to 37D as if the review, change, or revocation were a proposed EEZ policy statement.

- (2) Despite subsection (1), the Minister may amend an EEZ policy statement without regard to sections 37B to 37D if the amendment is of minor effect or corrects a minor error.
- (3) When an EEZ policy statement is reviewed, the Minister must give notice of the review in the *Gazette*.
- (4) If an EEZ policy statement has been changed, the Minister must—
  - (a) issue the revised statement by notice in the *Gazette*; and
  - (b) send a copy of the revised statement to the EPA; and
  - (c) provide every person who made a submission on the proposal with a copy of the approved statement.
- (5) When an EEZ policy statement is revoked, the Minister must notify the revocation by notice in the *Gazette*.

Section 37E: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **37F Incorporation of material by reference in EEZ policy statements**

An EEZ policy statement may incorporate material by reference under sections 150 to 157.

Section 37F: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **37G EEZ policy statement is disallowable instrument**

An EEZ policy statement is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 37G: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **Subpart 2A—Applying for marine consents**

Subpart 2A heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Application for marine consent*

*[Repealed]*

Heading: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **38 Application for marine consent**

- (1) Any person may apply to the Environmental Protection Authority for a marine consent, a marine discharge consent, or a marine dumping consent to undertake a discretionary activity.
- (2) An application must—
  - (a) be made in the prescribed form; and



- (b) fully describe the proposal; and
  - (c) include an impact assessment prepared in accordance with section 39 and any requirements prescribed in regulations; and
  - (d) if the application relates to an activity referred to in section 20(2)(a), (b), or (c), include a description in general terms of how and when it is proposed that the structure, submarine pipeline, or submarine cable will be dealt with at the end of its life.
- (3) If the application relates to an activity that is to be undertaken in connection with the decommissioning of an offshore installation used in connection with petroleum production, or a structure, submarine pipeline, or submarine cable associated with such an installation,—
- (a) the application must include an accepted decommissioning plan that covers the activity; and
  - (b) the proposed carrying out of the activity must be in accordance with that plan.

Section 38: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **39 Impact assessment**

- (1) An impact assessment must—
- (a) describe the activity (or activities) for which consent is sought; and
  - (b) describe the current state of the area where it is proposed that the activity will be undertaken and the environment surrounding the area; and
  - (c) identify persons whose existing interests are likely to be adversely affected by the activity; and
  - (d) identify the effects of the activity on the environment and existing interests (including cumulative effects and effects that may occur in New Zealand or in the sea above or beyond the continental shelf beyond the outer limits of the exclusive economic zone); and
  - (e) identify the effects of the activity on the biological diversity and integrity of marine species, ecosystems, and processes; and
  - (f) identify the effects of the activity on rare and vulnerable ecosystems and habitats of threatened species; and
  - (g) describe any consultation undertaken with persons described in paragraph (c) and specify those persons who have given written approval to the activity; and
  - (h) include copies of any written approvals to the activity; and
  - (i) specify any possible alternative locations for, or methods for undertaking, the activity that may avoid, remedy, or mitigate any adverse effects; and

- (j) specify the measures that could be taken to avoid, remedy, or mitigate the adverse effects identified (including measures that the applicant intends to take).
- (2) An impact assessment must also,—
  - (a) if it relates to an application for a marine discharge consent, describe the effects of the activity on human health:
  - (b) if it relates to an application for a marine dumping consent,—
    - (i) describe the effects of the activity on human health; and
    - (ii) specify any practical opportunities to reuse, recycle, or treat the waste or other matter:
  - (c) if it relates to any other application, describe the effects on human health that may arise from the effects of the activity on the environment.
- (3) An impact assessment must contain the information required under subsections (1) and (2) in—
  - (a) such detail as corresponds to the scale and significance of the effects that the activity may have on the environment and existing interests; and
  - (b) sufficient detail to enable the Environmental Protection Authority and persons whose existing interests are or may be affected to understand the nature of the activity and its effects on the environment and existing interests.
- (4) The impact assessment complies with subsections (1)(c) to (f) and (2) if the Environmental Protection Authority is satisfied that the applicant has made a reasonable effort to identify the matters described in those provisions.
- (5) The measures that must be specified under subsection (1)(j) include any measures required by another marine management regime and any measures required by or under the Health and Safety at Work Act 2015 that may have the effect of avoiding, remedying, or mitigating the adverse effects of the activity on the environment or existing interests.

Section 39: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **40 Environmental Protection Authority must determine if application complete**

The Environmental Protection Authority must, within 20 working days after receiving an application, determine whether the application complies with section 38.

Section 40: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**41 Environmental Protection Authority may commission independent review of impact assessment**

- (1) The Environmental Protection Authority may commission an independent review of an impact assessment for the purpose of determining whether the impact assessment complies with section 39.
- (2) If the EPA intends to commission a review, it must—
  - (a) advise the applicant in writing; and
  - (b) include, with that advice, the EPA's reasons for wanting to commission a review.
- (3) The applicant may object under section 101 to a decision by the EPA to commission a review.
- (4) The EPA must, as soon as is reasonably practicable after receiving the results of a review, send a copy of the results to the applicant.

Section 41: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**42 Environmental Protection Authority may ask applicant to complete incomplete application**

- (1) If the Environmental Protection Authority considers that an application does not comply with section 38 (including because the impact assessment does not comply with section 39 or any requirements prescribed in regulations), the EPA may, in writing, request further information from an applicant to complete an application.
- (2) An applicant must, within 5 working days after receiving a request under subsection (1),—
  - (a) provide the information; or
  - (b) write to the EPA telling it that the applicant refuses to provide the information.
- (3) The EPA must continue to process an application even if the applicant—
  - (a) does not respond to the request; or
  - (b) refuses to provide the information.

Section 42: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**42A Joint processing and decision making on related applications**

*[Repealed]*

Section 42A: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**43 Environmental Protection Authority must return incomplete application**

- (1) The EPA must, within 20 working days after an incomplete application is received by the EPA,—
  - (a) return the incomplete application; and
  - (b) give the applicant a written explanation for its finding that the application is incomplete.
- (2) If, after the EPA returns an application as incomplete, the application is sent to the EPA again, the application must be treated as a new application.
- (3) The applicant may object under section 101 to a decision under subsection (1).

Section 43: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**44 Joint processing and decision making on related applications**

- (1) This section applies if—
  - (a) the Environmental Protection Authority receives more than 1 application for a marine consent in relation to the same proposal (**related applications**); and
  - (b) at least 1 of the related applications must be publicly notified under section 46(1)(b)(i); and
  - (c) the EPA considers that—
    - (i) the related applications should be heard (if more than 1 are to be heard) at the same time and place; or
    - (ii) decisions on the related applications should be made on the same date.
- (2) The EPA may extend a time period that applies to the processing of the related applications in order to ensure that—
  - (a) they are heard (if more than 1 are to be heard) at the same time and place;
  - (b) decisions on the related applications are made on the same date.
- (3) However, the EPA may not extend the time period beyond the latest date that applies to any of the related applications.
- (4) If any of the related applications is a publicly notifiable application for a section 20 activity, the EPA must delegate its functions under sections 50 to 75 in relation to any other applications to the board of inquiry to allow all of the applications to be determined together unless the applicant requests otherwise.

Section 44: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Disclosure and hearings of applications for marine consents for non-notified activities*

*[Repealed]*

Heading: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**44A Copy of consent applications for non-notified activities**

*[Repealed]*

Section 44A: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**44B Hearings in respect of consent applications for non-notified applications**

*[Repealed]*

Section 44B: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Public notification and hearings of applications for marine consents for publicly notifiable activities*

*[Repealed]*

Heading: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**44C Application of sections 45 to 58**

*[Repealed]*

Section 44C: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**Subpart 2B—Disclosure and notification**

Subpart 2B heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**45 Copy of application for non-notified activity**

If the Environmental Protection Authority is satisfied that an application for a marine consent for a non-notified activity is complete, the EPA—

- (a) must serve a copy of the application on any of the following that the EPA considers may be affected by the application:
  - (i) iwi authorities:
  - (ii) customary marine title groups:
  - (iii) protected customary rights groups:
- (b) may serve a copy of the application on the following if the EPA considers it appropriate in the circumstances:
  - (i) Ministers with responsibilities that may be affected by the activity for which consent is sought:

- (ii) Maritime New Zealand:
- (iii) other persons that the EPA considers have existing interests that may be affected by the application:
- (iv) regional councils whose regions may be affected by the application.

Section 45: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Submissions*

#### *[Repealed]*

Heading: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **46 Copy of application for publicly notified activity**

- (1) If the Environmental Protection Authority is satisfied that an application for a marine consent for a publicly notifiable activity is complete, it must,—
  - (a) if the application is for a section 20 activity, immediately notify the Minister in writing that an application has been made (to allow a board of inquiry to be appointed under section 52); and
  - (b) within 20 working days,—
    - (i) give public notice of the application; and
    - (ii) serve a copy of the notice on—
      - (A) every other Minister with responsibilities that may be affected by the activity for which consent is sought:
      - (B) Maritime New Zealand:
      - (C) iwi authorities that the EPA considers may be affected by the application:
      - (D) customary marine title groups that the EPA considers may be affected by the application:
      - (E) protected customary rights groups that the EPA considers may be affected by the application:
      - (F) other persons that the EPA considers have existing interests that may be affected by the application:
      - (G) regional councils whose regions may be affected by the application.
- (2) The notice under subsection (1)(b)(i) must—
  - (a) be in the prescribed form; and
  - (b) give a summary of the application for consent; and
  - (c) specify where the application is available for inspection.

Section 46: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **47 Making of submissions**

- (1) Any person may make a submission to the Environmental Protection Authority about an application for a marine consent.
- (2) A submission must be in the prescribed form.
- (3) A submitter must provide a copy of the submission to the applicant as soon as is reasonably practicable after serving it on the EPA.

Section 47: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **48 Time limit for submissions**

Submissions must be made not later than 30 working days after public notification of the application under section 46.

Section 48: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **49 Advising applicants of submissions**

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

Section 49: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **Subpart 2C—Considering applications**

Subpart 2C heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Non-notified activities*

Heading: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **50 Hearings in respect of applications for non-notified activities**

- (1) The Environmental Protection Authority must conduct a hearing on an application for a marine consent for a non-notified activity if the applicant requests a hearing.
- (2) The EPA may conduct a hearing, even if the applicant does not request one, if the EPA considers it necessary or desirable.
- (3) Schedule 2 applies to hearings of applications for marine consents for non-notified activities.

Section 50: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Publicly notifiable activities other than section 20 activities*

Heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**51 Hearings in respect of applications for publicly notifiable activities other than section 20 activities**

- (1) If an application is for a publicly notifiable activity other than a section 20 activity, the Environmental Protection Authority must conduct a hearing on an application if the applicant or a submitter requests a hearing.
- (2) The EPA may conduct a hearing, even if neither the applicant nor any submitter requests one, if the EPA considers it necessary or desirable.
- (3) Schedule 3 applies to hearings under this section.

Section 51: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Publicly notifiable section 20 activities*

Heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**52 Minister must appoint boards of inquiry for applications for publicly notifiable section 20 activities**

- (1) As soon as practicable on being notified in accordance with section 46(1)(a), the Minister must appoint a board of inquiry to—
  - (a) decide an application for a section 20 activity; and
  - (b) complete the performance or exercise of the functions, duties, and powers prescribed in this Part, in relation to the application (including any appeals in relation to the matter that are filed in any court).
- (2) The Minister may, as the Minister sees fit, set terms of reference about administrative matters relating to the inquiry.
- (3) The Minister must appoint 3 to 5 suitable persons to be members of the board of inquiry.
- (4) The Minister may, if he or she considers it appropriate,—
  - (a) invite the EPA to nominate persons to be members of the board;
  - (b) appoint a member of the EPA board to be a member of the board of inquiry.
- (5) In appointing a person to the board, the Minister must consider the need for the board to have available to it from its members, knowledge, skill, and experience relating to—
  - (a) this Act; and
  - (b) the activity or type of activities that the board will be considering; and
  - (c) tikanga Māori; and



- (d) legal expertise; and
- (e) relevant technical expertise.
- (6) The Minister must appoint a chairperson.
- (7) The chairperson may (but need not) be a current, former, or retired Environment Court Judge or a retired High Court Judge.
- (8) Schedule 4 applies to boards of inquiry and applications considered by a board of inquiry.
- (9) A member of a board of inquiry is not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties, and powers of the board.

Section 52: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **52A Cost recovery for boards of inquiry**

- (1) The Minister may recover from an applicant the actual and reasonable costs incurred in relation to a board of inquiry appointed under section 52 or 99A.
- (2) The Minister must, upon request by an applicant, provide an estimate of the costs likely to be recovered under this section.
- (3) When recovering costs under this section, the Minister must have regard to the following criteria:
  - (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate:
  - (b) the extent to which any activity by the applicant reduces the costs to the Minister in carrying out any of the Minister's functions, powers, or duties.
- (4) The costs referred to in subsection (1) are a debt due to the Crown that is recoverable by the EPA on behalf of the Crown in any court of competent jurisdiction.
- (5) The Minister may, in writing, delegate to the EPA his or her functions, powers, and duties under this section.
- (6) *See* sections 143 to 147 in relation to recovery of costs incurred by the EPA.

Section 52A: inserted, on 11 July 2018, by section 5 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 (2018 No 20).

#### *Provisions that apply to all applications*

Heading: inserted, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **53 Obligation to deal with application promptly**

- (1) A marine consent authority must deal with any application for a marine consent as promptly as is reasonable in the circumstances.

- (2) If section 38(3) applies to the application (and it is not returned under section 43), the Environmental Protection Authority must decide the application no more than 9 months after it determines under section 40 that the application is complete.

Section 53: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **54 Request for further information**

- (1) A marine consent authority may request that an applicant provide further information relating to an application.
- (2) A request may be made at any reasonable time—
  - (a) before a hearing under section 50 or 51 or Schedule 4; or
  - (b) if no hearing is held, before the marine consent authority makes a decision on the application.
- (3) A request must be in writing and set out the marine consent authority's reasons for requesting further information.
- (4) The marine consent authority must, in the case of a publicly notified application, provide a copy of the information provided by the applicant to every submitter as soon as practicable after the later of—
  - (a) the date on which it receives the information; and
  - (b) the date on which the submitter makes a submission.

Section 54: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **55 Response to request**

- (1) An applicant who receives a request under section 54(1) must, within 5 working days after the date of the request,—
  - (a) provide the information; or
  - (b) write to the marine consent authority telling it that the applicant agrees to provide the information; or
  - (c) write to the marine consent authority telling it that the applicant refuses to provide the information.
- (2) After the marine consent authority receives the applicant's letter under subsection (1)(b), the marine consent authority must—
  - (a) set a reasonable time within which the applicant must provide the information; and
  - (b) write to the applicant advising the applicant of the date by which the applicant must provide the information.
- (3) The marine consent authority must consider the application under section 59 even if the applicant—

- (a) does not respond to the request; or
- (b) agrees to provide the information under subsection (1)(b) but does not do so; or
- (c) refuses to provide the information under subsection (1)(c).

Section 55: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **56 Marine consent authority may obtain advice or information**

- (1) A marine consent authority may—
  - (a) commission an independent review of an impact assessment (if no review was commissioned under section 41):
  - (b) seek advice from the Māori Advisory Committee on any matter related to the application:
  - (c) seek advice or information from any person on any aspect of—
    - (i) an application for a marine consent; or
    - (ii) the activity to which an application relates:
  - (d) commission any person to provide a report on any aspect of—
    - (i) an application for a marine consent; or
    - (ii) the activity to which an application relates.
- (2) The marine consent authority must advise an applicant in writing—
  - (a) if it intends to commission a review or report or seek advice or information; and
  - (b) of the reasons for wanting to do so.
- (3) Subsection (1) applies at any reasonable time—
  - (a) before a hearing is held; or
  - (b) if no hearing is to be held, before a decision on the application is made.
- (4) An applicant may object under section 101 to a decision to commission a review or a report, or to seek advice or information.
- (5) The marine consent authority must, as soon as is reasonably practicable after receiving any advice or report under this section, notify the applicant and every submitter that the advice or report is available at the EPA's office.

Section 56: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **57 Meetings and mediation to resolve matters before decision**

- (1) The marine consent authority may request that an applicant for a marine consent and 1 or more submitters—
  - (a) meet to discuss any matters in dispute in relation to the application for consent; or

- (b) enter mediation to resolve any matters in dispute in relation to the application for consent.
- (2) The person who conducts the meeting or mediation must report on the outcome of the meeting or mediation to—
  - (a) the marine consent authority; and
  - (b) the persons who were at the meeting or mediation.
- (3) The report must set out—
  - (a) the matters that were agreed at the meeting or mediation; and
  - (b) the matters that were not resolved.
- (4) The report must not include anything communicated or made available on a without prejudice basis at the meeting or during the mediation.

Section 57: replaced, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **58 Directions before or at hearings**

*[Repealed]*

Section 58: repealed, on 1 June 2017, by section 227 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Subpart 2D—Decisions

Subpart 2D heading: inserted, on 1 June 2017, by section 228 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Decisions*

*[Repealed]*

Heading: repealed, on 1 June 2017, by section 228 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **59 Marine consent authority's consideration of application**

- (1) This section and sections 60 and 61 apply when a marine consent authority is considering an application for a marine consent and submissions on the application.
- (2) If the application relates to a section 20 activity (other than an activity referred to in section 20(2)(ba)), a marine consent authority must take into account—
  - (a) any effects on the environment or existing interests of allowing the activity, including—
    - (i) cumulative effects; and
    - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and

- (b) the effects on the environment or existing interests of other activities undertaken in the area covered by the application or in its vicinity, including—
    - (i) the effects of activities that are not regulated under this Act; and
    - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
  - (c) the effects on human health that may arise from effects on the environment; and
  - (d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
  - (e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
  - (f) the economic benefit to New Zealand of allowing the application; and
  - (g) the efficient use and development of natural resources; and
  - (h) the nature and effect of other marine management regimes; and
  - (i) best practice in relation to an industry or activity; and
  - (j) the extent to which imposing conditions under section 63 might avoid, remedy, or mitigate the adverse effects of the activity; and
  - (k) relevant regulations (other than EEZ policy statements); and
  - (l) any other applicable law (other than EEZ policy statements); and
  - (m) any other matter the marine consent authority considers relevant and reasonably necessary to determine the application.
- (2A) If the application is for a marine discharge consent, the EPA must take into account—
- (a) the matters described in subsection (2), except paragraph (c); and
  - (b) the effects on human health of the discharge of harmful substances if consent is granted.
- (2B) If the application is for a marine dumping consent or relates to an activity referred to in section 20(2)(ba), the EPA must take into account—
- (a) the matters described in subsection (2), except paragraphs (c), (f), (g), and (i); and
  - (b) the effects on human health of the dumping of waste or other matter, or the abandonment of the pipeline, if consent is granted; and
  - (c) any alternative methods of disposal of the waste, other matter, or pipeline that could be used; and
  - (d) whether there are practical opportunities to reuse, recycle, or treat the waste, other matter, or pipeline.

- (3) The marine consent authority must have regard to—
- (aa) EEZ policy statements; and
  - (a) any submissions made and evidence given in relation to the application; and
  - (b) any advice, reports, or information sought under this Part and received in relation to the application; and
  - (c) any advice received from the Māori Advisory Committee.
- (4) When considering an application affected by section 74, the marine consent authority must also have regard to the value of the investment in the activity of the existing consent holder.
- (5) Despite subsection (3), the marine consent authority must not have regard to—
- (a) trade competition or the effects of trade competition; or
  - (b) the effects on climate change of discharging greenhouse gases into the air; or
  - (c) any effects on a person's existing interest if the person has given written approval to the proposed activity.
- (6) Subsection (5)(c) does not apply if the person has given written approval but the person withdraws the approval by giving written notice to the marine consent authority—
- (a) before the date of the hearing, if there is one; or
  - (b) if there is no hearing, before the marine consent authority decides the application.

Section 59 heading: amended, on 1 June 2017, by section 229(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(1): amended, on 1 June 2017, by section 229(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(2): amended, on 1 June 2017, by section 229(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(2)(k): amended, on 1 June 2017, by section 229(4) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(2)(l): amended, on 1 June 2017, by section 229(5) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(2)(m): amended, on 1 June 2017, by section 229(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(2A): inserted, on 1 June 2017, by section 229(7) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(2B): inserted, on 1 June 2017, by section 229(7) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(3): amended, on 1 June 2017, by section 229(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(3)(aa): inserted, on 1 June 2017, by section 229(8) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(3)(b): replaced, on 1 June 2017, by section 229(9) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(4): amended, on 1 June 2017, by section 229(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(5): amended, on 1 June 2017, by section 229(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(6): amended, on 1 June 2017, by section 229(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 59(6)(b): amended, on 1 June 2017, by section 229(6) of the Resource Legislation Amendment Act 2017 (2017 No 15).

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

In considering the effects of an activity on existing interests under section 59(2)(a), a marine consent authority must have regard to—

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

Section 60: amended, on 1 June 2017, by section 230 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **61 Information principles**

- (1) When considering an application for a marine consent, a marine consent authority must—
  - (a) make full use of its powers to request information from the applicant, obtain advice, and commission a review or a report; and
  - (b) base decisions on the best available information; and
  - (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to making a decision under this Act, the information available is uncertain or inadequate, the marine consent authority must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be refused, the marine consent authority must first consider whether taking an adaptive management approach would allow the activity to be undertaken.
- (4) Subsection (3) does not—
  - (a) apply to an application for—

- (i) a marine dumping consent; or
  - (ii) a marine discharge consent; or
  - (iii) a marine consent in relation to an activity referred to in section 20(2)(ba); or
- (b) limit section 63 or 64.
- (5) In this section, **best available information** means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

Section 61(1): amended, on 1 June 2017, by section 231(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 61(2): amended, on 1 June 2017, by section 231(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 61(3): amended, on 1 June 2017, by section 231(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 61(4): replaced, on 1 June 2017, by section 231(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

## 62 Decisions on applications for marine consents

- (1) After complying with sections 59 to 61, a marine consent authority may—
- (a) grant an application for a marine consent, in whole or in part, and issue a consent; or
  - (b) refuse the application.
- (1A) However, the marine consent authority must refuse an application for a marine dumping consent or an application relating to an activity referred to in section 20(2)(ba) if—
- (a) the marine consent authority considers that the waste, other matter, or pipeline may be reused, recycled, or treated without—
    - (i) more than minor adverse effects on human health or the environment; or
    - (ii) imposing costs on the applicant that are unreasonable in the circumstances; or
  - (b) the waste, other matter, or pipeline is identified in such a way that it is not possible to assess the potential effects of dumping or abandoning it on human health or the environment; or
  - (c) the marine consent authority considers that dumping the waste or other matter or abandoning the pipeline is not the best approach to its disposal in the circumstances.
- (2) To avoid doubt, the marine consent authority may refuse an application for a consent if it considers that it does not have adequate information to determine the application.



- (3) If the marine consent authority grants the application, it may issue the consent subject to conditions under section 63.

Section 62(1): amended, on 1 June 2017, by section 232(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 62(1A): inserted, on 1 June 2017, by section 232(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 62(2): amended, on 1 June 2017, by section 232(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 62(3): amended, on 1 June 2017, by section 232(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **63 Conditions of marine consents**

- (1) A marine consent authority may grant a marine consent on any condition that it considers appropriate to deal with adverse effects of the activity authorised by the consent on the environment or existing interests.

- (2) The conditions that the marine consent authority may impose include, but are not limited to, conditions—

(a) requiring the consent holder to—

(i) provide a bond for the performance of any 1 or more conditions of the consent:

(ii) obtain and maintain public liability insurance of a specified value:

(iii) monitor, and report on, the exercise of the consent and the effects of the activity it authorises:

(iv) appoint an observer to monitor the activity authorised by the consent and its effects on the environment:

(v) make records related to the activity authorised by the consent available for audit:

(b) that, if section 64 applies, together amount or contribute to an adaptive management approach.

- (3) However, the marine consent authority must not impose a condition on a consent if the condition would be inconsistent with this Act or any regulations.

- (4) To avoid doubt, the marine consent authority may not impose a condition to deal with an effect if the condition would conflict with a measure required in relation to the activity by another marine management regime or the Health and Safety at Work Act 2015.

Section 63(1): amended, on 1 June 2017, by section 233(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 63(2): amended, on 1 June 2017, by section 233(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 63(2)(b): amended, on 1 June 2017, by section 233(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 63(3): amended, on 1 June 2017, by section 233(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 63(4): amended, on 1 June 2017, by section 233(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 63(4): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

#### **64 Adaptive management approach**

(1AA) This section does not apply to—

- (a) a marine dumping consent; or
- (b) a marine discharge consent; or
- (c) a marine consent in relation to an activity referred to in section 20(2)(ba).

(1) A marine consent authority may incorporate an adaptive management approach into a marine consent granted for an activity.

(2) An **adaptive management approach** includes—

- (a) allowing an activity to commence on a small scale or for a short period so that its effects on the environment and existing interests can be monitored;
- (b) any other approach that allows an activity to be undertaken so that its effects can be assessed and the activity discontinued, or continued with or without amendment, on the basis of those effects.

(3) In order to incorporate an adaptive management approach into a marine consent, a marine consent authority may impose conditions under section 63 that authorise the activity to be undertaken in stages, with a requirement for regular monitoring and reporting before the next stage of the activity may be undertaken or the activity continued for the next period.

(4) A stage may relate to the duration of the consent, the area over which the consent is granted, the scale or intensity of the activity, or the nature of the activity.

Section 64(1AA): inserted, on 1 June 2017, by section 234(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 64(1): amended, on 1 June 2017, by section 234(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 64(3): amended, on 1 June 2017, by section 234(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **65 Bonds**

(1) A bond required under section 63(2)(a)(i) may be given for the performance of any 1 or more conditions of a marine consent that a marine consent authority considers appropriate and may continue after the expiry of the consent to secure the ongoing performance of conditions relating to long-term effects, including—

- (a) a condition relating to the alteration, demolition, or removal of structures:

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

Section 65(1): amended, on 1 June 2017, by section 235(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 65(2)(d): amended, on 1 June 2017, by section 235(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 65(2)(e): amended, on 1 June 2017, by section 235(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 65(2)(f): amended, on 1 June 2017, by section 235(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 65(3): amended, on 1 June 2017, by section 235(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **66 Monitoring conditions**

- (1) A condition imposed under section 63(2)(a)(iii) may require the consent holder to do 1 or more of the following:
- (a) make and record measurements:
  - (b) take and supply samples:
  - (c) carry out analyses, surveys, investigations, inspections, or other specified tests:

- (d) carry out the procedures in paragraphs (a) to (c) in a specified manner:
  - (e) provide information to the EPA or a person specified by the EPA at a specified time or times:
  - (f) provide information to the EPA or a person specified by the EPA in a specified manner:
  - (g) comply with the condition at the consent holder's expense.
- (2) This section does not limit section 63(2)(a)(iii).

### **67 Observers**

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

### **68 Time limits for Environmental Protection Authority's decision**

- (1) The Environmental Protection Authority must make its decision on an application for a marine consent for a publicly notifiable activity as soon as is reasonably practicable and,—
- (a) if a hearing is held, no later than 20 working days after the conclusion of the hearing; or
  - (b) if a hearing is not held, no later than 20 working days after the closing date for making submissions under section 48.
- (2) The EPA must make its decision on an application for a marine consent for a non-notified activity as soon as is reasonably practicable and no later than 50 working days after the date on which the EPA is satisfied that the application is complete.

Section 68(1): amended, on 28 February 2014, by section 28(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 68(1)(b): amended, on 1 June 2017, by section 236 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 68(2): inserted, on 28 February 2014, by section 28(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **69 Decision of marine consent authority to be in writing**

Every decision of a marine consent authority on an application for a marine consent must—

- (a) be in writing; and
- (b) include the reasons for the decision.

Section 69: replaced, on 1 June 2017, by section 237 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **70 Notification of marine consent authority's decision**

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

Section 70 heading: amended, on 1 June 2017, by section 238(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 70(1): amended, on 1 June 2017, by section 238(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 70(1)(a)(iv): amended, on 1 June 2017, by section 238(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 70(3): amended, on 1 June 2017, by section 238(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **Subpart 2E—Consents**

Subpart 2E heading: inserted, on 1 June 2017, by section 239 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **71 When marine consent commences**

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

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

- (1) A marine consent is neither real nor personal property.
- (2) A marine consent—
  - (a) vests in the personal representative of the holder of the consent on the death of the holder, as if the consent were personal property, and the personal representative may deal with the consent to the same extent as the holder would have been able to do; and
  - (b) vests in the Official Assignee on the bankruptcy of an individual who is the holder of a consent, as if it were personal property, and the Official Assignee may deal with the consent to the same extent as the holder would have been able to do; and
  - (c) must be treated as property for the purposes of the Protection of Personal and Property Rights Act 1988.
- (3) If the conditions of the consent are inconsistent with subsection (2), the conditions override that subsection.
- (4) The holder of a marine consent may grant a charge over the consent as if it were personal property, but the consent may be transferred only to the chargee, or by or on behalf of the chargee, to the same extent as it could be transferred by the holder.
- (5) The Personal Property Securities Act 1999 applies in relation to a marine consent as if the consent were personal property within the meaning of that Act.
- (6) Subsection (4) overrides subsection (5).

*Duration of marine consent***73 Duration of marine consent**

- (1) The duration of a marine consent (other than a marine discharge consent or a marine dumping consent) is—
  - (a) 35 years after the date of the granting of the consent; or
  - (b) a period less than 35 years that is specified in the consent.
- (1A) The duration of a marine discharge consent or a marine dumping consent is—
  - (a) the term specified in the consent, which must not be more than 35 years; or
  - (b) if no term is specified, 5 years after the date of the granting of the consent.
- (2) When determining the duration of the consent, a marine consent authority must—
  - (a) comply with sections 59 and 61; and

- (b) take into account the duration sought by the applicant; and
- (c) take into account the duration of any other legislative authorisations granted or required for the activity that is the subject of the application for consent.

Section 73(1): amended, on 1 June 2017, by section 240(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 73(1A): inserted, on 1 June 2017, by section 240(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 73(2): amended, on 1 June 2017, by section 240(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **74 Exercise of marine consent while applying for new consent**

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

Section 74(2)(d): amended, on 1 June 2017, by section 241(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 74(3)(b): amended, on 1 June 2017, by section 241(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Transfer of marine consents*

#### **75 Transfer of consents**

- (1) The holder of a marine consent—
  - (a) may transfer the whole or any part of the consent to another person; but

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

*EPA responsibility for marine consents granted by board of inquiry*

Heading: inserted, on 1 June 2017, by section 242 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**75A Residual powers of EPA**

- (1) This section applies to a marine consent that has been granted by a board of inquiry under section 62(1)(a).
- (2) The EPA has all the functions, duties, and powers in relation to the marine consent as if it had granted the consent itself.

Section 75A: inserted, on 1 June 2017, by section 242 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Review of duration and conditions of marine consent*

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

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



appropriate conditions are necessary to deal with the effects of the exercise of the consent.

- (2) The EPA must serve notice on a consent holder of its intention to review the conditions of a marine consent if required by an order made under section 133(5)(b).
- (3) A notice of review must comply with section 77.

Section 76(2): amended, on 28 February 2014, by section 29(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 76(3): inserted, on 28 February 2014, by section 29(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **77 Contents of notice of review**

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

### **78 Public notice of review**

- (1) If the Environmental Protection Authority serves a notice of review of a publicly notifiable activity on a consent holder, the EPA must also give public notice of its intention to review the conditions or duration of a marine consent.
- (2) The EPA must serve a copy of the public notice on the persons specified in section 46(1)(b)(ii) and that provision applies as if reference to an application for a marine consent were reference to a notice of review.
- (3) The public notice must—
  - (a) be in the prescribed form; and
  - (b) give a summary of the notice of review; and
  - (c) specify where the notice of review is available for inspection.
- (4) The EPA must comply with subsections (1) and (2) within—

- (a) 30 working days after the date on which the EPA serves the notice of review on the consent holder, if the consent holder is invited to propose new conditions; or
- (b) 10 working days after the date on which the EPA serves the notice of review on the consent holder, if paragraph (a) does not apply.

Section 78 heading: amended, on 28 February 2014, by section 30(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 78(1): amended, on 28 February 2014, by section 30(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 78(2): amended, on 1 June 2017, by section 243 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **78A Copy of notice of review of non-notified activity**

If the Environmental Protection Authority serves a notice of review of a non-notified activity on a consent holder, the EPA must serve a copy of the notice on the persons specified in section 45(a) as if the reference in that paragraph to an application for a marine consent were a reference to a notice of review.

Section 78A: inserted, on 28 February 2014, by section 31 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 78A: amended, on 1 June 2017, by section 244 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **79 Further information, advice, submissions, and hearing**

- (1) Sections 44 to 56 (other than sections 45, 50, 52, and 53) apply, with all necessary modifications, to a review of a marine consent for a publicly notifiable activity as if—
  - (a) the notice of review were an application for a marine consent; and
  - (b) the consent holder were the applicant for the marine consent.
- (1A) Sections 45, 50, and 54 to 56 apply, with all necessary modifications, to a review of a marine consent for a non-notified activity as if the notice of review were an application for a marine consent.
- (2) However, section 56(1)(a) does not apply to a review.

Section 79(1): amended, on 1 June 2017, by section 245(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 79(1): amended, on 28 February 2014, by section 32(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 79(1A): inserted, on 28 February 2014, by section 32(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 79(1A): amended, on 1 June 2017, by section 245(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 79(2): amended, on 1 June 2017, by section 245(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

**80 Matters to be considered in review**

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

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

**81 Decisions on review of consent conditions**

- (1) The Environmental Protection Authority may change a condition of a marine consent on a review under section 76 only if 1 or more of the circumstances specified in that section apply.
- (2) Sections 63 to 71 (which relate to conditions, decisions, notification, and commencement) and sections 105 and 113 (which relate to appeals) apply, with all necessary modifications, to a review as if—
  - (a) the review were an application for a marine consent; and
  - (b) the consent holder were an applicant for a marine consent.
- (3) The EPA may cancel a consent if the review was initiated under section 76(1)(c), (d), (e), or (2) and the activity authorised by the consent has significant adverse effects on the environment or existing interests.
- (4) If the EPA cancels a consent, the EPA may—
  - (a) set a timetable for the consent holder to cease the activity; and
  - (b) direct the consent holder to take any other action in relation to any structures used for the activity; and
  - (c) direct the consent holder to take action to avoid, remedy, or mitigate adverse effects caused by the activity.
- (5) The consent holder must comply with the timetable set by the EPA and with any other directions of the EPA.
- (6) The consent holder may object, under section 101, to a decision to change a condition of a consent or to cancel a consent.
- (7) To avoid doubt, the power to change a condition includes the power to cancel a condition or impose a new condition.

**82 Decision on review of duration of consent**

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

**83 Process for minor changes to consent conditions**

- (1) If the Environmental Protection Authority considers that a review is likely to be limited to minor changes to the conditions of a consent, it may deal with the review without notifying the review under section 78.
- (2) If the EPA deals with a review under subsection (1), section 79 does not apply to the review.
- (3) However, despite subsection (2), the EPA must allow the consent holder to make a submission and request a hearing.
- (4) As a result of a review under this section, the EPA may not—
  - (a) cancel a consent; or
  - (b) make changes to the conditions of a consent that are more than minor.
- (5) The consent holder may object, under section 101, to a decision by the EPA to change consent conditions.

*Minor corrections of marine consents*

Heading: inserted, on 1 June 2017, by section 246 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**84 Minor corrections of marine consents**

A marine consent authority may issue an amended consent to correct minor omissions, errors, or other defects in a consent within 15 working days after the granting of the consent.

Section 84: amended, on 1 June 2017, by section 247(a) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 84: amended, on 1 June 2017, by section 247(b) of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Cancellation of marine consents*

**85 Lapsing of consent if not exercised**

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

**86 Cancellation of consent if not exercised**

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

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

- (1) The holder of a marine consent may request the Environmental Protection Authority to change or cancel a condition of the consent.
- (2) Sections 38 to 71 apply, with all necessary modifications, as if—
  - (a) the request were an application for a marine consent; and

- (b) the references to a marine consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.
- (3) However, if the EPA considers that the requested change or cancellation is likely—
  - (a) to affect the existing interests of only some of the persons described in subsection (4), it may notify those persons and may, but need not, give public notice of the request under section 46; or
  - (b) to be limited to minor matters, it may deal with the request under section 83.
- (4) For the purposes of determining who is adversely affected by the change or cancellation, the EPA must consider, in particular, every person who—
  - (a) made a submission on the original application; and
  - (b) has an existing interest that may be affected by the change or cancellation.
- (5) If the EPA decides, under subsection (3)(a), not to give public notice of the request, the EPA may, but need not, give public notice of its decision under section 70.
- (6) The consent holder may object, under section 101, if the EPA refuses to change or cancel the condition as requested by the consent holder.

Section 87(3)(a): amended, on 1 June 2017, by section 248 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Subpart 2A—Marine discharge consents and marine dumping consents

*[Repealed]*

Subpart 2A: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **87A Application**

*[Repealed]*

Section 87A: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **87B Application for marine discharge consent or marine dumping consent**

*[Repealed]*

Section 87B: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **87C Process before Environmental Protection Authority makes decision**

*[Repealed]*

Section 87C: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87D Environmental Protection Authority’s consideration of application**

*[Repealed]*

Section 87D: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87E Information principles relating to discharges and dumping**

*[Repealed]*

Section 87E: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87F Decision on application for marine discharge consent or marine dumping consent**

*[Repealed]*

Section 87F: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87G Conditions and decision-making process**

*[Repealed]*

Section 87G: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87H Duration of marine discharge consents and marine dumping consents**

*[Repealed]*

Section 87H: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87I Exercise of consents, transfer, review, and minor changes**

*[Repealed]*

Section 87I: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**87J Change or cancellation of marine dumping consent or marine discharge consent on application by consent holder**

*[Repealed]*

Section 87J: repealed, on 1 June 2017, by section 249 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**Subpart 3—Marine consents for cross-boundary activities**

**88 Interpretation**

In this subpart, unless the context otherwise requires,—

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

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

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

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

**processing**, in relation to an application, means processing—

- (a) before a hearing is held; or
- (b) if no hearing is held, before a decision is made on the application

**relevant resource consent authority** means—

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

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

**resource consent authority** means a consent authority as that term is defined in section 2(1) of the Resource Management Act 1991

Section 88 **consent authority**: repealed, on 1 June 2017, by section 250(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 88 **processing**: inserted, on 1 June 2017, by section 250(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 88 **relevant consent authority**: repealed, on 1 June 2017, by section 250(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 88 **relevant resource consent authority**: inserted, on 1 June 2017, by section 250(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 88 **resource consent authority**: inserted, on 1 June 2017, by section 250(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

## 89 Application of this subpart

- (1) This subpart applies to a proposal to undertake a cross-boundary activity that cannot be carried out without—
  - (a) a resource consent for the part of the activity that is carried out in the coastal marine area; and
  - (b) a marine consent for the part of the activity that is carried out in the exclusive economic zone or in or on the continental shelf.



- (2) However, this subpart does not apply if a part of the activity to be carried out in the coastal marine area is a restricted coastal activity under section 117 of the Resource Management Act 1991.

*EPA may decide whether joint or separate applications for consent required*

**90 Application for consent for cross-boundary activity**

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

- (a) prepare a joint application for consent that complies with the requirements of—
- (i) this Act and any regulations in relation to the part of the activity that relates to the exclusive economic zone or the continental shelf; and
  - (ii) the Resource Management Act 1991, and any regulations, national environmental standards, or regional or district plans made under that Act, in relation to the part of the activity that relates to New Zealand; or
- (b) apply for a marine consent and a resource consent for a cross-boundary activity separately, whether concurrently or at different times.

**91 Joint application for consent for cross-boundary activity**

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

Section 91(1): replaced, on 1 June 2017, by section 251 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 91(2): repealed, on 1 June 2017, by section 251 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**92 Separate applications for consents for cross-boundary activity**

Subparts 2A to 2D apply to an application for a marine consent if a person—

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

Section 92: amended, on 1 June 2017, by section 252 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **93 Environmental Protection Authority may require joint application**

- (1) At any time before or during the processing of an application for a marine consent for a cross-boundary activity, the Environmental Protection Authority may decide (whether on a request by the applicant or on its own initiative) that the application ought to be processed and heard (if a hearing is held) with an application for resource consent for the activity.
- (1A) However, the EPA cannot make a decision under subsection (1) if the application for a marine consent has been referred to a board of inquiry.
- (2) Subsection (1) applies despite a decision by an applicant to apply separately for resource and marine consents under section 90(b) and despite section 92.
- (3) In the case described in subsection (1), the EPA may decide—
  - (a) not to continue with the processing or hearing of the application for a marine consent until the application for resource consent is lodged with it and the relevant resource consent authority; or
  - (b) to return the application for a marine consent to the applicant under section 43 as if it were incomplete.
- (4) The EPA must inform the applicant of its decision under subsection (1) as soon as practicable after making the decision.
- (5) If the EPA makes the decision in subsection (3)(a) and the applicant then lodges an application for a resource consent for the cross-boundary activity, the application for resource consent and the application for a marine consent are a new joint application for consent made on the date on which the application for a resource consent was lodged.

Section 93(1A): inserted, on 1 June 2017, by section 253(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 93(3)(a): amended, on 1 June 2017, by section 253(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 93(3)(a): amended, on 28 February 2014, by section 34(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 93(3)(b): amended, on 1 June 2017, by section 253(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 93(3)(b): amended, on 28 February 2014, by section 34(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **94 Joint processing must cease when application for resource consent referred to Environment Court**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) The EPA must cease processing a joint application for consent if—

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

Section 94 heading: replaced, on 1 June 2017, by section 254(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 94(1): repealed, on 1 June 2017, by section 254(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 94(2): repealed, on 1 June 2017, by section 254(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 94(3): repealed, on 1 June 2017, by section 254(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 94(7): amended, on 1 June 2017, by section 254(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **94A Environmental Protection Authority may decide to separate joint application**

- (1) The Environmental Protection Authority may decide that the application for a resource consent and the application for a marine consent that comprise the joint application must cease to be processed as a joint application and continue to be processed separately.
- (2) However, the EPA cannot make a decision under subsection (1) if the joint application for consent has been referred to a board of inquiry.
- (3) Subsection (1) applies only if—
  - (a) the EPA and the relevant resource consent authority agree that the applications are sufficiently unrelated that a joint process is not necessary; or
  - (b) one application must be publicly notified, but not the other; or
  - (c) a hearing is required for one application, but not the other; or
  - (d) the joint processing of the applications for resource consent and marine consent that comprise the joint application for consent is not administratively efficient.

- (4) In any case described in subsection (1),—
- (a) the relevant resource consent authority must resume processing the application for resource consent under the Resource Management Act 1991; and
  - (b) the EPA must resume processing the application for a marine consent under subpart 2A.

Section 94A: inserted, on 1 June 2017, by section 255 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Processing of joint application*

#### **95 Application of sections 96 and 97**

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

#### **96 Environmental Protection Authority to administer process**

- (1) The Environmental Protection Authority is responsible for ensuring the efficient and co-ordinated processing of a joint application for consent for a cross-boundary activity.
- (2) The EPA must, in relation to the joint application, liaise with the relevant resource consent authority to—
  - (a) prepare a request for further information under section 54 so that, where practicable, the request covers all the information needed in relation to the whole cross-boundary activity; and
  - (b) ensure that, if both applications must be publicly notified, they are notified jointly by the EPA and the relevant resource consent authority; and
  - (c) set a closing date for the making of submissions (if applicable); and
  - (d) receive submissions and provide copies of them to the relevant resource consent authority; and
  - (e) provide general administrative services.
- (3) The EPA may extend a time period that applies to the processing of the application for a marine consent in order to ensure that (where applicable)—
  - (a) the application for a marine consent is notified jointly with the application for resource consent;
  - (b) submissions on the applications close on the same date.

Section 96: replaced, on 1 June 2017, by section 256 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **97 Relevant consent authority and EPA to share information**

- (1) The Environmental Protection Authority and the relevant consent authority must provide each other with copies of all information and reports relating to the application received by them after the joint application has been made.

- (2) The EPA and the relevant consent authority must provide the information as soon as practicable after they receive the information or report.

**98 Separate decisions on marine consent and resource consent applications**

- (1) Subject to sections 99 and 99A,—
- (a) the relevant marine consent authority must decide an application for a marine consent, a marine discharge consent, or marine dumping consent that is part of a joint application for consent; and
- (b) the relevant resource consent authority must decide the application for a resource consent that is part of a joint application.
- (2) Sections 59 to 71 apply to an application for a marine consent, a marine discharge consent, or a marine dumping consent.
- (3) Sections 104 to 116 of the Resource Management Act 1991 apply to the application for a resource consent.

Section 98: replaced, on 1 June 2017, by section 257 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Nationally significant cross-boundary activities*

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

- (1) This section applies if the application for a resource consent for the part of the cross-boundary activity that is to be carried out in the coastal marine area is or is part of a proposal of national significance referred to a board of inquiry under section 142(2)(a) or 147(1)(a) of the Resource Management Act 1991.
- (2) The Environmental Protection Authority may delegate to the board of inquiry the EPA's functions in relation to an application for a marine consent that relates to the part of the activity that is to be carried out in the exclusive economic zone or in or on the continental shelf.
- (3) If the EPA delegates its functions under subsection (2), sections 50 and 51 of this Act do not apply to the application for a marine consent and, instead,—
- (a) the EPA must process the application for a marine consent together with the associated application for a resource consent; and
- (b) the provisions of the Resource Management Act 1991 specified in subsection (5) apply to the processing of the application for a marine consent as if the application were part of the associated application for a resource consent.
- (4) If subsection (3) applies,—
- (a) the EPA must, if the application must be publicly notified under section 46 of this Act,—
- (i) notify the application, if it has not already been notified; and

- (ii) receive submissions made under section 47; and
  - (b) the board of inquiry must apply sections 59 to 67 in making its decision on the application as if the board were a marine consent authority.
- (5) The provisions referred to in subsection (3)(b) are—
- (a) section 149L (which deals with the conduct of the inquiry):
  - (b) *[Repealed]*
  - (c) section 149R (which requires the board to produce a final report), but not subsections (3)(e) and (f) and (4)(b) and (c):
  - (d) section 149RA(1) and (2) (which allows the board to make minor corrections to board decisions and resource consents):
  - (da) section 149S (which allows the Minister to extend the time by which the board must report), but not subsection (4)(b):
  - (e) section 149V (which provides for appeals against decisions to be on questions of law only) as if the reference to section 149R(4)(a) to (f) were a reference to section 149R(4)(a), (d), (e), and (f).
- (6) An application for a resource consent is associated with an application for a marine consent if the applications relate to the same cross-boundary activity.

Section 99(3): replaced, on 28 February 2014, by section 37(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 99(3): amended, on 1 June 2017, by section 258(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 99(4): replaced, on 28 February 2014, by section 37(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 99(4)(a): amended, on 1 June 2017, by section 258(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 99(4)(a)(ii): amended, on 1 June 2017, by section 258(3) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 99(4)(b): amended, on 1 June 2017, by section 258(4) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 99(5)(b): repealed, on 11 July 2018, by section 6 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 (2018 No 20).

Section 99(5)(c): replaced, on 28 February 2014, by section 37(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 99(5)(d): replaced, on 28 February 2014, by section 37(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 99(5)(da): inserted, on 28 February 2014, by section 37(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 99(6): inserted, on 28 February 2014, by section 37(3) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **99A Joint applications for section 20 activity and for nationally significant activity to be referred to board of inquiry**

- (1) This section applies to a joint application for consent if—

- (a) the application for a marine consent is for a section 20 activity; and
  - (b) the application for a resource consent that is or is part of a proposal of national significance is to be referred to a board of inquiry under section 142(2)(a) or 147(1)(a) of the Resource Management Act 1991.
- (2) The responsible Ministers must, as soon as practicable after being notified in accordance with section 46(1)(a), appoint a board of inquiry to—
- (a) decide the joint application; and
  - (b) perform or exercise the functions, duties, and powers of a marine consent authority, prescribed in subparts 2C to 2E, in relation to the application (including any appeals in relation to the matter that are filed in any court).
- (3) The responsible Ministers must appoint 3 to 5 suitable persons to be members of the board of inquiry.
- (4) The Minister may, if he or she considers it appropriate, invite the EPA to nominate persons to be members of the board.
- (5) In appointing a person to the board, the responsible Ministers must consider the need for the board to have available to it, from its members,—
- (a) knowledge, skill, and experience relating to—
    - (i) this Act and the Resource Management Act 1991; and
    - (ii) the matter or type of matter that the board will be considering; and
    - (iii) tikanga Māori; and
  - (b) legal expertise; and
  - (c) technical expertise in relation to the matter or type of matter that the board will be considering.
- (6) The EPA must—
- (a) process the application for a marine consent together with the associated application for a resource consent; and
  - (b) publicly notify the application under section 46(1)(a) if the application has not already been notified; and
  - (c) receive submissions made under section 47.
- (7) Sections 50 to 52 do not apply to the application for a marine consent.
- (8) Despite subsection (7), clauses 1 to 4 and 14 of Schedule 4 do apply to the processing of the application for a marine consent.
- (9) The following provisions of the Resource Management Act 1991 apply to the processing of the application for a marine consent as if the application were part of the associated application for a resource consent:
- (a) section 149L (which deals with the conduct of the inquiry):

- (b) section 149R (which requires the board to produce a final report), but not subsections (3)(e) and (f) and (4)(b) and (c):
  - (c) section 149RA(1) and (2) (which allows the board to make minor corrections to board decisions and resource consents):
  - (d) section 149S (which allows the Minister for the Environment to extend the time by which the board must report), but not subsection (4)(b):
  - (e) section 149V (which provides for appeals against decisions to be on questions of law only) as if the reference in that section to section 149R(4)(a) to (f) were a reference to section 149R(4)(a), (d), (e), and (f).
- (10) In this section, **responsible Ministers** means—
- (a) the Minister; and
  - (b) the Minister for the time being responsible for the administration of the Resource Management Act 1991.

Section 99A: inserted, on 1 June 2017, by section 259 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **100 EPA must provide board of inquiry with necessary information**

- (1) This section applies if an application for a marine consent is to be decided by a board of inquiry.
- (2) The EPA must provide the board of inquiry with each of the following things as soon as is reasonably practicable after receiving it:
  - (a) the application for the marine consent:
  - (b) all the information received by the EPA that relates to the application or the activity:
  - (c) the submissions received by the EPA on the application.
- (3) The EPA must also prepare or commission a report on the key issues relating to the application and the activity, including—
  - (a) any relevant provisions of regulations made under this Act; and
  - (b) a statement on whether the application covers all aspects of the activity for which a marine consent is required.
- (4) The EPA must provide a copy of the report to—
  - (a) the board of inquiry; and
  - (b) the relevant consent authority; and
  - (c) the applicant; and
  - (d) every submitter.



## Subpart 4—Decommissioning plans

Subpart 4: inserted, on 1 June 2017, by section 260 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **100A Submitting decommissioning plan for acceptance**

- (1) The owner or operator of an offshore installation used in connection with petroleum production, or a structure, submarine pipeline, or submarine cable associated with such an installation, may submit a decommissioning plan to the Environmental Protection Authority for acceptance.
- (2) The decommissioning plan must—
  - (a) identify the offshore installations, structures, submarine pipelines, and submarine cables that are to be decommissioned; and
  - (b) fully describe how they are to be decommissioned; and
  - (c) if it is a revised decommissioning plan referred to in section 100C, identify the changes from the accepted decommissioning plan that it is intended to replace; and
  - (d) include any other information required by the regulations.
- (3) The regulations may elaborate on what information is required to be included in the plan under subsection (2)(a) to (c).

Section 100A: inserted, on 1 June 2017, by section 260 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **100B Assessment and acceptance of decommissioning plan**

- (1) When a decommissioning plan is submitted, the Environmental Protection Authority must—
  - (a) deal with the plan in accordance with the process prescribed by the regulations; and
  - (b) assess the plan against the criteria prescribed by the regulations.
- (2) Having assessed the plan, the EPA must,—
  - (a) if it is satisfied that the plan meets those criteria, accept the plan as the accepted decommissioning plan for the installations, structures, pipelines, and cables to which it relates; or
  - (b) otherwise, refuse to accept the plan.
- (3) To avoid doubt, the EPA may refuse to accept a plan if it considers that it does not have adequate information to determine whether it meets the criteria.
- (4) The EPA must give to the owner or operator—
  - (a) written notice of its decision under subsection (2); and
  - (b) if it refuses to accept the plan, written reasons for that decision.

Section 100B: inserted, on 1 June 2017, by section 260 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**100C Amendment of accepted decommissioning plan**

- (1) If the owner or operator of an offshore installation, structure, submarine pipeline, or submarine cable wishes to amend the accepted decommissioning plan (the **current plan**), it may submit a revised decommissioning plan to the Environmental Protection Authority under section 100A.
- (2) If the EPA accepts the revised plan under section 100B(2)(a),—
  - (a) the current plan ceases to be the accepted decommissioning plan; and
  - (b) the revised plan becomes the accepted decommissioning plan in its place.

Section 100C: inserted, on 1 June 2017, by section 260 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**100D Requirement for public consultation**

- (1) Regulations made for the purposes of section 100B must provide for public consultation in relation to a decommissioning plan that has been submitted for acceptance.
- (2) However, in relation to a revised decommissioning plan referred to in section 100C, the regulations may provide for either or both of the following:
  - (a) that public consultation is required only in relation to the changes from the current plan (as defined in section 100C) to the revised plan:
  - (b) that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan.
- (3) Regulations are to be regarded as **providing for public consultation** in relation to a plan if the regulations—
  - (a) require the EPA to publicly notify the plan; and
  - (b) allow any person who wishes to make a submission about the plan a reasonable opportunity to do so; and
  - (c) require the owner or operator of the offshore installation, structure, submarine pipeline, or submarine cable to consider each submission and either—
    - (i) amend the plan in response to the submission; or
    - (ii) explain to the EPA why it does not propose to amend the plan in response to the submission.

Section 100D: inserted, on 1 June 2017, by section 260 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Part 4

### Objections, appeals, and enforcement

#### Subpart 1—Objections to decisions of marine consent authority

Subpart 1 heading: replaced, on 1 June 2017, by section 261 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Objections*

#### **101 Right of objection to Environmental Protection Authority against certain decisions**

- (1) An applicant for a marine consent may object to a decision of a marine consent authority—
  - (a) under section 40 that an application is incomplete; or
  - (b) under section 41 to commission a review; or
  - (c) under section 56 to commission a review or seek advice.
- (2) A submitter whose submission or part of whose submission is struck out may object to the decision of a marine consent authority to strike out the submission or part of the submission.
- (3) A consent holder may object to a decision of the EPA to—
  - (a) change a condition of a consent or cancel a consent under section 81;
  - (b) shorten or refuse to extend the duration of a consent under section 82;
  - (c) make a minor change to a condition under section 83;
  - (d) refuse to extend the period after which a consent lapses under section 85;
  - (e) cancel a consent under section 86;
  - (f) refuse to change or cancel a condition as requested by the consent holder under section 87.

Section 101(1): replaced, on 1 June 2017, by section 262(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 101(2): amended, on 1 June 2017, by section 262(2)(a) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 101(2): amended, on 1 June 2017, by section 262(2)(b) of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **102 Procedure for making or hearing objection**

- (1) An objection made under section 101 must be made in writing to a marine consent authority not later than 15 working days after the decision is notified to the person affected by the decision.
- (2) The notice of objection must set out the reasons for the objection.
- (3) The marine consent authority must—
  - (a) give the person who made the objection an opportunity to be heard; and

- (b) consider and decide the objection within 20 working days after receipt of the notice of objection.

Section 102(1): amended, on 1 June 2017, by section 263(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 102(3): amended, on 1 June 2017, by section 263(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **103 Decision on objection**

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

Section 103(1): amended, on 1 June 2017, by section 264(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 103(2): amended, on 1 June 2017, by section 264(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 103(2)(b): amended, on 1 June 2017, by section 264(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **104 Appeals against decisions on objections**

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

#### **Subpart 1A—Appeals against Environmental Protection Authority decisions**

Subpart 1A heading: inserted, on 1 June 2017, by section 265 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *Appeal to High Court on question of law*

### **105 Appeals on question of law**

- (1) The applicant for a consent or any submitter on an application for a consent may appeal to the High Court against the whole or a part of a decision of the Environmental Protection Authority to—
  - (a) grant an application for a consent; or
  - (b) refuse an application; or
  - (c) impose any conditions on a consent.

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

Section 105(1)(b): amended, on 1 June 2017, by section 266 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 105(2)(c): amended, on 28 February 2014, by section 38 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

## **106 Notice of appeal**

- (1) An appellant must file a notice of appeal with the Registrar of the High Court in Wellington within 15 working days after the date on which the appellant is notified of the decision of the Environmental Protection Authority.
- (2) The appellant must also serve a copy of the notice of the appeal on the EPA within the time limit specified in subsection (1).
- (3) The notice of appeal must specify—
  - (a) the decision or part of the decision appealed against; and
  - (b) the error of law alleged by the appellant; and
  - (c) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and
  - (d) the relief sought.
- (4) The appellant must serve a copy of the notice of appeal on—
  - (a) the applicant or consent holder, if the appellant is not the applicant or consent holder; and
  - (b) any submitter on the application for consent, or a change of the consent conditions, or a review of consent conditions.
- (5) The appellant must comply with subsection (4) no later than 5 working days after the appeal is filed.
- (6) The EPA must send a copy of the whole of the decision appealed against to the Registrar of the High Court as soon as is reasonably practicable after receiving the notice of appeal.

**107 Right to appear and be heard on appeal**

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

**108 Parties to appeal**

The parties to an appeal before the High Court are—

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

**109 Representation at proceedings**

*[Repealed]*

Section 109: repealed, on 1 June 2017, by section 267 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**110 Dismissal of appeal**

The High Court may dismiss an appeal if—

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

**111 Date of hearing**

- (1) An appeal is ready for hearing when the appellant notifies the Registrar of the High Court that the notice of appeal has been served on all parties to the proceedings.
- (2) The Registrar must arrange a hearing date as soon as practicable after being notified that the notice of appeal has been served on all parties to the proceedings.

**112 Application of High Court Rules 2016**

The High Court Rules 2016 apply if a procedural matter is not provided for by sections 105 to 111.

Section 112 heading: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 112: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

### *Appeal to Court of Appeal*

#### **113 Appeal to Court of Appeal**

Subpart 8 of Part 6 of the Criminal Procedure Act 2011 applies to a decision of the High Court on an appeal filed under section 105 of this Act as if the decision had been made under section 300 of the Criminal Procedure Act 2011.

Section 113: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

#### **Subpart 1B—Appeals against decisions of boards of inquiry**

Subpart 1B: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Appeal to High Court on question of law*

Heading: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **113A Appeals on question of law**

- (1) The applicant for a consent or any submitter on an application for a consent may appeal to the High Court against the whole or a part of a decision of a board of inquiry to—
  - (a) grant an application for a consent; or
  - (b) refuse an application; or
  - (c) impose any conditions on a consent.
- (2) An appeal lodged under this section may be only on a question of law.
- (3) This section is in addition to the rights provided for in section 101.

Section 113A: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **113B Notice of appeal**

- (1) An appellant must file a notice of appeal with the Registrar of the High Court in Wellington within 15 working days after the date on which the appellant is notified of the decision of a board of inquiry.
- (2) The appellant must also serve a copy of the notice of the appeal on the board of inquiry and the EPA within the time limit specified in subsection (1).
- (3) The notice of appeal must specify—
  - (a) the decision or part of the decision appealed against; and
  - (b) the error of law alleged by the appellant; and

- (c) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and
  - (d) the relief sought.
- (4) The appellant must serve a copy of the notice of appeal on—
- (a) the applicant or consent holder, if the appellant is not the applicant or consent holder; and
  - (b) any submitter on the application for consent, or a change of the consent conditions, or a review of consent conditions.
- (5) The appellant must comply with subsection (4) no later than 5 working days after the appeal is filed.
- (6) The board of inquiry must send a copy of the whole of the decision appealed against to the Registrar of the High Court as soon as is reasonably practicable after receiving the notice of appeal.

Section 113B: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **113C Right to appear and be heard on appeal**

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

Section 113C: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **113D Parties to appeal**

The parties to an appeal before the High Court are—

- (a) the appellant; and
- (b) the board of inquiry whose decision is being appealed; and
- (c) the Environmental Protection Authority; and
- (d) a person who gives notice of intention to appear under section 113C; and
- (e) a person who becomes a party to an appeal under section 113I.

Section 113D: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).



### **113E Dismissal of appeal**

The High Court may dismiss an appeal if—

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

Section 113E: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **113F Date of hearing**

- (1) An appeal is ready for hearing when the appellant notifies the Registrar of the High Court that the notice of appeal has been served on all parties to the proceedings.
- (2) The Registrar must arrange a hearing date as soon as practicable after being notified that the notice of appeal has been served on all parties to the proceedings.

Section 113F: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **113G Application of High Court Rules 2016**

The High Court Rules 2016 apply if a procedural matter is not provided for by sections 113A to 113F.

Section 113G: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Appeal to Supreme Court*

Heading: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### **113H Appeal to Supreme Court**

- (1) Any party to an appeal under section 113D may apply to the Supreme Court for leave to appeal a decision of the High Court under this subpart, but only on a question of law.
- (2) The Supreme Court may—
  - (a) grant leave; or
  - (b) deny leave; or
  - (c) remit the appeal to the Court of Appeal.
- (3) No appeal may be made from any appeal determined by the Court of Appeal under subsection (2)(c).
- (4) An application for leave for the purposes of subsection (1) must be filed no later than 10 working days after the determination of the High Court.

Section 113H: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### Subpart 1C—Proceedings generally

Subpart 1C: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **113I Representation at proceedings**

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

Section 113I: inserted, on 1 June 2017, by section 268 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### Subpart 2—Enforcement

#### **114 Proceedings to be heard by Environment Judge**

- (1) All proceedings in relation to enforcement orders must be heard by an Environment Judge sitting alone or by the Environment Court.
- (2) Proceedings relating to an interim enforcement order must be heard by—

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

*Enforcement order*

**115 Enforcement order**

- (1) In this Part, **enforcement order** means an order made by the Environment Court or an Environment Judge (or by another Judge in accordance with section 114) that does 1 or more of the following:
- (a) requires a person to stop doing something, or prohibits the person from starting to do something that, in the opinion of the court, breaches or is likely to breach this Act, any regulations, or a marine consent:
  - (b) requires a person to do something that, in the opinion of the court, is necessary to—
    - (i) ensure that the person complies with this Act, any regulations, or a marine consent; or
    - (ii) avoid, remedy, or mitigate any actual or likely adverse effects on the environment or existing interests that result from any breach of this Act, regulations, or a marine consent by the person:
  - (c) requires a person to pay money to or reimburse any other person for any actual and reasonable costs and expenses which that other person has incurred or is likely to incur in taking reasonable measures to avoid, remedy, or mitigate any adverse effect on the environment or existing interests, where the person against whom the order is sought fails to comply with—
    - (i) an order under any other paragraph of this subsection; or
    - (ii) regulations or a marine consent; or
    - (iii) any of that person's other obligations under this Act:
  - (d) changes or cancels a consent if—
    - (i) the court is of the opinion that the information provided to the Environmental Protection Authority by the applicant contained inaccuracies relevant to the enforcement order sought that materially influenced the decision to grant the consent; and
    - (ii) the effects of the exercise of the consent are such that more appropriate conditions are needed or the consent should be cancelled.

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

#### **116 Application for enforcement order**

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

#### **117 Notice of application for enforcement order**

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

#### **118 Right to be heard**

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

- (a) hear the applicant for the enforcement order; and
- (b) hear the person against whom the order is sought, if the person wishes to be heard.

**119 Decision on application for enforcement order**

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

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

**120 Interim enforcement order**

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

**121 Application to change or cancel interim enforcement order**

- (1) This section applies to a person—
  - (a) against whom an interim enforcement order has been made; and
  - (b) who was not heard by the Judge who made the order before the order was made.
- (2) The person may apply, as soon as practicable after service of the order, to an Environment Judge or a District Court Judge to change or cancel the order.

- (3) The Environment Judge or the District Court Judge may confirm, change, or cancel the interim enforcement order after hearing from the person, the applicant, and any other person the Judge thinks fit.
- (4) An interim enforcement order stays in force until an application for an enforcement order under section 115 is determined, or until cancelled by an Environment Judge or a District Court Judge under subsection (3), or cancelled by the Environment Court under section 123.

#### **122 Compliance with enforcement order**

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

#### **123 Change or cancellation of enforcement order**

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

#### **124 Restriction on certain applications for enforcement orders**

- (1) No person may apply to the Environment Court for an enforcement order of a kind specified in any of section 115(1)(a) to (c) in respect of anything done or to be done—
  - (a) by or on behalf of the Director of Maritime New Zealand under section 248 or 249 of the Maritime Transport Act 1994; or
  - (b) by or on behalf of any person in accordance with any instructions issued under either of those sections of that Act; or
  - (c) by or on behalf of any on-scene commander under section 305 or 311 of that Act or in accordance with a direction given under section 310 of that Act; or

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

#### *Abatement notices*

### **125 Abatement notices**

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

### **126 Compliance with abatement notice**

Any person on whom an abatement notice is served must—

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

**127 Form and content of abatement notice**

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

- (a) the name of the person to whom it is addressed; and
- (b) the reasons for the notice; and
- (c) the action required to be taken or discontinued or not undertaken; and
- (d) the reasonable period within which the action must be taken or discontinued, having regard to the circumstances giving rise to the abatement notice; and
- (e) the consequences of not complying with the notice; and
- (f) the rights of appeal under section 129.

**128 Cancellation of abatement notice**

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

**129 Appeals**

- (1) A person served with an abatement notice may appeal to the Environment Court against the whole or any part of the notice.
- (2) Notice of an appeal must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the appeal and the relief sought; and
  - (c) state any matters required by regulations; and
  - (d) be lodged with the Environment Court and served on the EPA within 15 working days after service of the abatement notice on the person who lodged the appeal.



- (3) Part 11 of the Resource Management Act 1991 applies as if the appeal were lodged under Part 12 of that Act.

**130 Restrictions on certain abatement notices**

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

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

**131 Proceedings in Environment Court**

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

*Offences and defences in relation to activities regulated under section 20*

Heading: replaced, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**132 Offences in relation to activities regulated under section 20**

- (1) This section applies if an activity described in section 20(2) or (4) is carried out in breach of section 20(1) or (3) (as applicable).
- (2) The following persons commit an offence:
  - (a) if the activity involves a structure, the owner of the structure:
  - (b) if the activity involves a ship, the master and owner of the ship:
  - (c) if the activity involves a submarine pipeline, the owner of the pipeline:
  - (d) if the activity involves a submarine cable, the owner of the cable:
  - (e) if the activity is one described in section 20(2)(d) to (g), the person who carried out the activity:
  - (f) if the activity is one described in section 20(4)(b) or (c), the person who carried out the activity.
- (3) In this section and sections 134 and 134B to 134D, **owner**,—
  - (a) in relation to a ship, includes—
    - (i) a person who is the legal or equitable owner, or both, of the ship; and

- (ii) a person in possession of the ship; and
  - (iii) a charterer, a manager, or an operator of the ship, or any other person (other than a pilot) responsible for the navigation or management of the ship:
- (b) in relation to an offshore installation, includes—
- (i) the person having a right, privilege, or licence to explore for or exploit minerals in connection with which the installation is being, has been, or is to be used; and
  - (ii) the manager, lessee, licensee, or operator of the installation; and
  - (iii) any agent or employee of the owner, manager, lessee, licensee, or operator of the installation, or the person in charge of any operations connected with the installation:
- (c) in relation to a structure other than an offshore installation, includes any manager, lessee, licensee, or operator of the structure, or the person in charge of the structure:
- (d) in relation to a submarine pipeline or submarine cable, includes any manager, lessee, licensee, or operator of the pipeline or cable.

Section 132: replaced, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### 133 Strict liability and defences

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

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

Section 133: replaced, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### *Offences and defences in relation to discharge or escape of harmful substances*

Heading: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134 Offences in relation to discharge of harmful substances**

- (1) This section applies if a harmful substance is discharged into the sea or onto or into the seabed in breach of 1 or more of sections 20B and 20C.
- (2) The following persons commit an offence:
  - (a) if the discharge is from an offshore installation, the owner of the offshore installation:
  - (b) if the discharge is from a submarine pipeline, the owner of the pipeline:
  - (c) if the discharge is from a ship, the master and the owner of the ship:
  - (d) if the discharge is as a result of mining activity, the person in charge of and the person carrying on the mining activity:
  - (e) if the discharge is of a kind referred to in paragraph (a), (b), or (c), and results from intentional damage caused by a person not referred to in that paragraph, the person who committed the damage.

Section 134: replaced, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134A Defence**

It is a defence to proceedings for an offence against section 134 if the defendant proves that—

- (a) the harmful substance was discharged for the purpose of securing the safety of a ship or offshore installation or for the purpose of saving life, and the discharge was a reasonable step to take to effect that purpose; or
- (b) the harmful substance escaped as a consequence of damage to the ship or its equipment, to an offshore installation or its equipment, to a pipeline, or to any apparatus (other than a ship) used in connection with any mining activity and—

- (i) the damage occurred without the negligence or deliberate act of the defendant; and
- (ii) as soon as practicable after the damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or, if any escape could not be prevented, to minimise the escape.

Section 134A: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### *Offences and defences in relation to dumping*

Heading: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134B Offences in relation to dumping of radioactive waste or other radioactive matter**

The following persons each commit an offence if radioactive waste or other radioactive matter is dumped in breach of section 20E:

- (a) the master and the owner of a ship, if the dumping is from the ship:
- (b) the person in possession of, and the owner of, an aircraft, if the dumping is from the aircraft:
- (c) the owner of an offshore installation, if the dumping is from the offshore installation.

Section 134B: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134C Offences in relation to dumping of toxic or hazardous waste**

The following persons each commit an offence if toxic or hazardous waste is dumped in breach of section 20F:

- (a) the master and the owner of a ship, if the dumping is from the ship:
- (b) the person in possession of, and the owner of, an aircraft, if the dumping is from the aircraft:
- (c) the owner of an offshore installation, if the dumping is from the offshore installation.

Section 134C: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134D Offences in relation to dumping and incineration of waste and other matter**

- (1) The master and the owner of a ship each commits an offence if—
  - (a) waste or other matter is dumped from the ship in breach of section 20G;  
or
  - (b) the ship is dumped in breach of section 20G.

- (2) The person in possession of, and the owner of, an aircraft each commits an offence if—
  - (a) waste or other matter is dumped from the aircraft in breach of section 20G; or
  - (b) the aircraft is dumped in breach of section 20G.
- (3) The owner of an offshore installation commits an offence if—
  - (a) waste or other matter is dumped from the offshore installation in breach of section 20G; or
  - (b) the offshore installation is dumped in breach of section 20G.
- (4) The following persons each commit an offence if waste or other matter is incinerated at sea in breach of section 20I:
  - (a) the owner and master of a ship, if the incineration occurs on the ship; or
  - (b) the owner of a structure, if the incineration occurs on the structure.
- (5) The following persons each commit an offence if human remains are disposed of in breach of section 20J:
  - (a) the owner and master of a ship, if the remains are disposed of from the ship;
  - (b) the person in possession of, and the owner of, an aircraft, if the remains are disposed of from the aircraft;
  - (c) the owner of a structure, if the remains are disposed of from the structure.

Section 134D: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134E Defence in relation to dumping of waste or other matter**

In a prosecution for an offence against section 134D, it is a defence if the defendant proves that the act or omission that is alleged to constitute the offence—

- (a) was necessary—
  - (i) to save or prevent danger to human health or safety, or the marine environment; or
  - (ii) to avert a serious threat to the ship, aircraft, or offshore installation; or
  - (iii) in the case of force majeure caused by stress of weather, to secure the safety of the ship, aircraft, or offshore installation; and
- (b) was a reasonable step to take in all the circumstances; and
- (c) was likely to result in less damage than would otherwise have occurred; and

- (d) was taken or omitted in such a way that the likelihood of damage to human or marine life was minimised.

Section 134E: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### *Other offences*

Heading: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134F Offence in relation to enforcement order, abatement notice, section 24, or section 167**

A person commits an offence against this Act who breaches, or permits a breach of, any of the following:

- (a) an enforcement order or an abatement notice:
- (b) section 24 or 167 (which require a person to comply with the EPA's instructions when stopping an activity).

Section 134F: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134G Other offences**

- (1) A person commits an offence against this Act who breaches, or permits a breach of, any of the following:
  - (a) a requirement under section 35(3) to notify the Environmental Protection Authority of a permitted activity to be undertaken:
  - (b) a requirement to provide certain information to an enforcement officer under section 140:
  - (c) a direction given by the EPA under section 158 in relation to the protection of sensitive information:
  - (d) an order (other than an enforcement order) made by the Environment Court or the High Court.
- (2) A person commits an offence against this Act who—
  - (a) wilfully obstructs, hinders, resists, or deceives any person in the execution of a power conferred on that person by or under this Act; or
  - (b) contravenes or permits a contravention of a summons or order to give evidence issued or made under a provision of the Commissions of Inquiry Act 1908 as applied by clause 4 of Schedule 2, clause 5 of Schedule 3, or clause 9 of Schedule 4.

Section 134G: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 134G(2)(b): amended, on 1 June 2017, by section 269 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Penalties*

Heading: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134H Penalties**

- (1) A person who commits an offence against this Act (other than against section 134G) is liable on conviction,—
  - (a) in the case of a natural person, to a fine not exceeding \$300,000;
  - (b) in the case of a person other than a natural person, to a fine not exceeding \$10 million.
- (2) The person is also liable on conviction, if the offence is a continuing one, to a fine not exceeding \$10,000 for every day or part of a day during which the offence continues.
- (3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act is a continuing offence.

Section 134H: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134I Additional penalties for discharge and dumping offences**

A person who commits an offence against section 134, 134B, 134C, or 134D is also liable on conviction to pay such amounts as the court may assess in respect of the costs incurred in respect of or associated with—

- (a) removing, containing, rendering harmless, or dispersing any harmful substance to which the offence relates; and
- (b) removing or dispersing any waste or other matter to which the offence relates.

Section 134I: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134J Penalties for section 134G offences**

- (1) A person who commits an offence against section 134G(1) is liable on conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues.
- (2) A person who commits an offence against section 134G(2) is liable on conviction to a fine not exceeding \$1,500.

Section 134J: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **134K Court orders**

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may, instead of or in addition to imposing a fine, make 1 or more of the following orders:

- (a) an order specified in section 115:
- (b) an order requiring the Environmental Protection Authority to serve notice, under section 76(2), of the review of a marine consent held by the person, but only if the offence involves an act or omission that breaches the consent.

Section 134K: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **134L Additional penalty for offence involving commercial gain**

- (1) A court may order a person convicted of an offence against this Act to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing commercial gain.
- (2) The penalty imposed under subsection (1) is in addition to any other penalty the court may impose under this Act.
- (3) The court must assess the value of any gain for the purpose of subsection (1).
- (4) The amount of the additional penalty imposed under subsection (1) is recoverable in the same manner as a fine.

Section 134L: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **134M Application of fines for discharge and dumping offences**

- (1) A court that convicts a person for an offence against section 134, 134B, 134C, or 134D may order that the whole or part of the fine, or other monetary penalty, imposed on the person under this Act be paid to another person specified by the court.
- (2) The specified person must apply the money towards meeting the costs of either or both—
  - (a) removing, containing, rendering harmless, or dispersing the harmful substance or waste or other matter:
  - (b) repairing the damage resulting from the discharge of the harmful substance or dumping of waste or matter.

Section 134M: inserted, on 31 October 2015, by section 39 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### **135 Liability of principal for acts of agents**

- (1) The consequence specified in subsection (2) applies if a person (the **agent**) commits an offence against this Act while—
  - (a) acting as an agent (including a contractor) or employee of another person (the **principal**); or
  - (b) in charge of a ship owned by another person (the **principal**).



- (2) The principal is liable in the same manner and to the same extent as if the principal had personally committed the offence.
- (3) The liability of the principal is without prejudice to the liability of the agent.
- (4) Despite subsection (2), if proceedings are brought in reliance on that subsection, it is a defence if the defendant proves,—
  - (a) in the case of a natural person (including a partner in a firm), that—
    - (i) he or she did not know, nor could reasonably be expected to have known, that the offence was to be or was being committed; or
    - (ii) he or she took all reasonable steps to prevent the commission of the offence; or
  - (b) in the case of a person other than a natural person, that—
    - (i) neither the directors (if any) nor any person involved in the management of the defendant knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or
    - (ii) the defendant took all reasonable steps to prevent the commission of the offence; and
  - (c) the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
- (5) If a person other than a natural person is convicted of an offence against this Act, a director (if any), or a person involved in the management of, the defendant is guilty of the same offence if it is proved that—
  - (a) the act or omission that constituted the offence took place with his or her authority, permission, or consent; and
  - (b) he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

### **136 Commencement of offence proceedings**

Only an enforcement officer may file a charging document in respect of an offence against this Act.

Section 136: amended, on 31 October 2015, by section 40 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 136: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### **136A Commencement of proceedings against natural person**

- (1) Criminal proceedings may not be commenced against a natural person in relation to an offence under this Act unless—
  - (a) the natural person is—
    - (i) a New Zealand citizen; or

- (ii) a person who is ordinarily resident in New Zealand; or
  - (b) in the case of any other person, the Attorney-General consents to the commencement of the proceedings and certifies that it is expedient to do so.
- (2) However, before the Attorney-General's consent has been obtained,—
- (a) a person described in subsection (1)(b) may be arrested or a warrant for the person's arrest may be issued and executed; and
  - (b) the person may be remanded in custody or on bail.
- (3) This section overrides any other enactment that is inconsistent with this section.

Section 136A: inserted, on 31 October 2015, by section 41 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### 137 Limitation period

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 12 months after the date on which the breach giving rise to the offence first became known, or should have become known, to the enforcement officer.
- (2) The period of 12 months does not run while the person charged (being a natural person) is beyond the outer limits of the territorial sea.
- (3) *[Repealed]*

Section 137(1): amended, on 1 June 2017, by section 270 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 137(1): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 137(2): amended, on 1 June 2017, by section 270 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 137(3): repealed, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### *Appointment and powers of enforcement officers*

### 138 Enforcement officers

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

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

### **139 Exercise of powers**

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

### **140 Power to require certain information**

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

### **141 Power of entry for inspection**

- (1) An enforcement officer may at all reasonable times, for the purpose specified in subsection (3), enter and inspect—
  - (a) a place, vehicle, vessel, or structure in New Zealand or the exclusive economic zone, except a dwellinghouse or marae; and
  - (b) a structure located on the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
  - (c) a vessel in the waters above the continental shelf that is beyond the exclusive economic zone.
- (2) The power to enter and inspect allows the person to—

- (a) inspect any item found in a place, vehicle, vessel, or structure entered in accordance with subsection (1):
  - (b) take a sample of any substance:
  - (c) seize anything that may be lawfully seized:
  - (d) conduct examinations, tests, inquiries, and demonstrations:
  - (e) require the production of, and copy, any document or part of a document.
- (3) The purpose for which the power to enter and inspect may be exercised is to determine whether the following are being complied with:
- (a) this Act, any regulations, or a marine consent:
  - (b) an abatement notice:
  - (c) an enforcement order.
- (4) The power to enter and inspect may only be exercised in relation to a place, vehicle, vessel, or structure described in subsection (1) if the enforcement officer is expressly authorised in writing by the Environmental Protection Authority to enter that place, vehicle, vessel, or structure.
- (5) Before an enforcement officer exercises a power to board and inspect a foreign vessel under subsection (1)(c), the officer must send a copy of the authority described in subsection (4) to the Secretary of Foreign Affairs.
- (6) The provisions of Part 4 (except subparts 2 and 8, and sections 118 and 119) of the Search and Surveillance Act 2012 apply in respect of the powers conferred by this section.
- (7) In this section,—

**enter**, in relation to a vessel, means board

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

Section 141(2): replaced, on 1 June 2017, by section 271 of the Resource Legislation Amendment Act 2017 (2017 No 15).

## Part 5

### Miscellaneous, transitional provisions, and consequential amendments

#### Subpart 1—Miscellaneous

##### *Protection of the Crown and others*

#### 142 Protection of the Crown and others

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

- (a) the Crown:
- (b) the chief executive of the Environmental Protection Authority:
- (c) the Environmental Protection Authority:
- (d) an enforcement officer:
- (e) a board of inquiry appointed under section 52, 99, or 99A.

Section 142(e): inserted, on 1 June 2017, by section 272 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### *Cost recovery*

#### **143 Principles of cost recovery**

- (1) The Environmental Protection Authority must take all reasonable steps to recover so much of the direct and indirect costs incurred in performing its functions and providing services under this Act as are not provided for by money appropriated by Parliament for the purpose.
- (2) The functions and services include (but are not limited to) those performed in relation to—
  - (a) assisting a person in the preparation of an application for a marine consent, whether or not the application is made:
  - (b) receiving, processing, and deciding applications for marine consents:
  - (c) receiving impact assessments provided under section 22, 161, or 166:
  - (d) administering, monitoring, and supervising marine consents:
  - (e) certifying that an activity complies with regulations:
  - (f) advising a person proposing to undertake a permitted activity:
  - (g) processing information that regulations require a person undertaking a permitted activity to provide, and monitoring a permitted activity if the monitoring is required by regulations:
  - (h) reviewing the conditions or duration of a marine consent.
- (3) In determining the most appropriate method of cost recovery under section 144, and its level, in any particular case, the Minister must have regard, as far as is reasonably practicable, to the following criteria:
  - (a) equity, in that funding for a particular function or service or a particular class of function or service should generally, and to the extent practicable, be recovered from—
    - (i) the person, or class of persons, who benefits from the performance of the function or service and at a level proportional to the person's or class of persons' benefit from the function or service; or
    - (ii) the person, or class of persons, whose action or inaction gives rise to the exercise of the function at a level proportional to the per-

son's or class of persons' contribution to the cost of performing the function:

- (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:
  - (c) justification, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the performance of the relevant function or service:
  - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to a function or service for the recovery period in which the function or service is performed.
- (4) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based on usage, and, without limiting the way in which charges may be set, a charge may be set at a level or in a way that—
- (a) is determined by calculations that involve an averaging of costs or potential costs:
  - (b) takes into account costs or potential costs of functions or services that do not directly benefit the person who pays the charge, but which are an indirect or potential cost arising from the performance of the function or service in question to a class of persons.

Section 143(2): amended, on 1 June 2017, by section 273 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 143(2)(c): amended, on 31 October 2015, by section 42 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **144 Methods of cost recovery**

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

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

#### **145 Cost recovery to relate generally to financial year**

- (1) Any regulations that prescribe a charge that applies in any financial year—

- (a) must have been made before the start of the financial year; but
  - (b) apply in that year and all subsequent years until revoked or replaced, except as the regulations may otherwise provide.
- (2) Subsection (1) does not prevent the alteration or setting during any financial year of a charge payable in that year, if either—
- (a) the charge is reduced, removed, or restated without substantive alteration; or
  - (b) in the case of an increase or a new charge,—
    - (i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the increase or the new charge; and
    - (ii) the Minister is satisfied that those persons, or their representatives, agree or do not substantially disagree with the increase or the new charge.
- (3) Despite subsection (1), regulations may prescribe a charge during the financial year in which this Act commences, and subsection (2)(b)(ii) does not apply.
- (4) Subsection (1) does not prevent the amendment of any regulation prescribing a charge if any substantive alteration effected by the amendment is for the purpose of correcting an error.
- (5) In any financial year, recovery may be made of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

#### **146 Charges to be prescribed by regulations**

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

**147 Charges constitute debt due to Environmental Protection Authority**

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

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

- (1) If a notice or other document is to be served on a person for the purposes of this Act,—
  - (a) it must, if the person has specified an electronic address as an address for service for the matter to which the document relates, be served by sending it to the electronic address; and
  - (b) it may, if paragraph (a) does not apply, be served by any of the following methods:
    - (i) delivering it personally to the person, except if the person is a Minister of the Crown:
    - (ii) delivering it at the usual or last known place of residence or business of the person:
    - (iii) sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person:
    - (iv) sending it to the usual or last known electronic address of the person:
    - (v) posting it to the post office box address that the person has specified as an address for service:
    - (vi) leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service:
    - (vii) sending it to the fax number that the person has specified as an address for service.
- (2) However, subsection (1) does not apply in relation to proceedings before a court.
- (3) A Minister of the Crown may be served by service on the chief executive of the appropriate department of State.
- (4) A body corporate or an unincorporated body may be served by service on an officer, or at the registered office, of the body.
- (5) A partnership may be served by service on any of the partners or at the registered office of the partnership.



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

Section 148(1): replaced, on 1 June 2017, by section 274 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **149 Service on master or owner of ship**

- (1) If the master or owner of a ship is a defendant in a prosecution for an offence against section 132(1)(a), service on the defendant of a summons or other document is achieved for the purposes of the Criminal Procedure Act 2011 if the summons or other document is—
  - (a) delivered personally to the agent of the ship on behalf of the defendant or is brought to the notice of the agent if the agent refuses to accept it on behalf of the defendant; or
  - (b) sent to the agent of the ship by registered letter addressed to that agent on behalf of the defendant at the agent’s last known or usual place of residence or business; or
  - (c) served in accordance with rules made under the Criminal Procedure Act 2011 if a District Court Judge, Justice, Community Magistrate, or Registrar directs that the document or summons must be served in accordance with those rules.
- (2) Subsection (1) applies despite any other enactment.
- (3) If a summons or document is sent by post under subsection (1)(b), it is presumed to be received by the agent at the time at which the notice or document would have been delivered in the ordinary course of the post.

Section 149(1): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 149(1)(c): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

*Incorporation by reference***150 Incorporation by reference of written material in regulations**

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

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

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

**152 Proof of material incorporated by reference**

- (1) A copy of material incorporated by reference in regulations, including any amendment to, or replacement of, the material, must be—
  - (a) certified as a correct copy of the material by the chief executive; and
  - (b) retained by the chief executive.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the regulations.

**153 Effect of expiry of material incorporated by reference**

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

**154 Access to material incorporated by reference**

- (1) This section applies to—
  - (a) material incorporated by reference in regulations:

- (b) any amendment to, or replacement of, the material that is incorporated in the regulations or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
  - (c) if the material referred to in paragraph (a) or (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- (2) The chief executive must—
  - (a) make the material available for inspection during working hours free of charge at the offices of the department and at any other place that the chief executive considers appropriate; and
  - (b) make copies of the material available for purchase at a reasonable price at the offices of the department; and
  - (c) make copies of the material available free of charge on an Internet site maintained by or on behalf of the department, unless doing so would infringe copyright; and
  - (d) give notice in the *Gazette* stating that—
    - (i) the material is incorporated in the regulations and the date on which the regulations commence; and
    - (ii) the material is available for inspection during working hours free of charge at the offices of the department and identifying any other places at which it may be inspected; and
    - (iii) copies of the material can be purchased at the offices of the department and identify any other places at which they may be purchased; and
    - (iv) if copies of the material are made available under paragraph (c), that the material is available on the Internet, free of charge, and stating the Internet site address.
- (3) The chief executive—
  - (a) may make copies of the material available in any other way that he or she considers appropriate in the circumstances; and
  - (b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the material is available in other ways and giving details of where or how it can be accessed or obtained.
- (4) The chief executive may comply with subsection (2)(c) (if applicable) by providing a hypertext link from an Internet site maintained by or on behalf of the department to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else.
- (5) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

- (6) For the purposes of subsection (2)(c), the chief executive may not rely on section 66 of the Copyright Act 1994 as authority to make the incorporated material available on an Internet site.

**155 Application of Standards and Accreditation Act 2015 not affected**

Sections 150 to 154 do not affect the application of sections 29 to 32 of the Standards and Accreditation Act 2015.

Section 155 heading: amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Section 155: amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

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

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

**157 Application of Regulations (Disallowance) Act 1989**

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is to be incorporated by reference in regulations made under this Act to be presented to the House of Representatives.
- (2) The Regulations (Disallowance) Act 1989, apart from the modification of section 4 of the Act made by subsection (1), applies to regulations that incorporate material by reference.

*Protection of sensitive information*

**158 Protection of sensitive information**

- (1) The Environmental Protection Authority may, on its own initiative or on the application of any party to any proceedings or class of proceedings, give a direction described in subsection (3) where it is satisfied that the order is necessary—
- (a) to avoid causing serious offence to tikanga Māori or to avoid disclosing the location of wāhi tapu; or
- (b) to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information.
- (2) Despite subsection (1), the EPA may not give a direction described in subsection (3) if, in the circumstances of the particular case, the public interest in making the information available outweighs the importance of avoiding such offence, disclosure, or prejudice.
- (3) The EPA may give a direction for the purpose of subsection (1)—

- (a) requiring the whole or part of any hearing or class of hearing at which the information is likely to be referred to be held with the public excluded:
  - (b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to an application.
- (4) A direction given under subsection (3)(b) in relation to—
  - (a) any matter described in subsection (1)(a) may be expressed to have effect from the commencement of any proceedings to which it relates and for an indefinite period or until such date as the EPA considers appropriate in the circumstances:
  - (b) any matter described in subsection (1)(b) may be expressed to have effect from the commencement of any proceedings to which it relates but will cease to have any effect at the conclusion of those proceedings.
- (5) On the date that a direction prohibiting or restricting the publication or communication of information is given under subsection (3)(b), the provisions of the Official Information Act 1982 cease to apply to the information while the direction remains in effect.
- (6) Any party to any proceedings or class of proceedings before the EPA may apply to the Environment Court for an order under section 279(3)(a) of the Resource Management Act 1991 cancelling or varying any direction given by the EPA.
- (7) Where, on the application of any party to any proceedings or class of proceedings, the EPA has refused to give a direction described in subsection (3), that party may apply to the Environment Court for an order under section 279(3)(b) of the Resource Management Act 1991.
- (8) In this section, **information** includes any document or evidence.

#### **158A EPA and Maritime New Zealand to share information**

- (1) The Environmental Protection Authority may provide Maritime New Zealand with any information that the EPA holds and that the EPA considers may assist Maritime New Zealand in the performance of Maritime New Zealand's functions under the Maritime Transport Act 1994.
- (2) Maritime New Zealand may provide the EPA with any information that Maritime New Zealand holds and that it considers may assist the EPA in the performance of the EPA's functions under this Act.
- (3) If any information provided by the EPA under subsection (1) is the subject of a direction made under section 158, that section continues to apply to the information and Maritime New Zealand must comply with that section.

Section 158A: inserted, on 28 February 2014, by section 43 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**158B EPA may provide information to other regulatory agencies for purposes of this Act**

- (1) A regulatory agency may provide to the EPA any information or a copy of any document that the agency believes would assist the EPA in the performance or exercise of the EPA's functions, duties, or powers under this Act.
- (2) The EPA may provide to a regulatory agency any information or a copy of any document that the EPA believes would assist the agency in the performance or exercise of its functions, duties, or powers under a specified Act.
- (3) A person or an agency that receives information provided under this section must not disclose the information to any other person or organisation unless—
  - (a) the disclosure is made for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed by this Act or a specified Act on the person or agency; or
  - (b) the information is publicly available; or
  - (c) the disclosure is made with the consent of the person to whom the information relates or to whom the information is confidential; or
  - (d) the disclosure is made in connection with proceedings, or any investigation or inquiry for proceedings, for an offence against this Act or any other enactment; or
  - (e) the disclosure is required by another enactment; or
  - (f) the disclosure is required by a court of competent jurisdiction.
- (4) In this section,—  
**regulatory agency** means—
  - (a) a consent authority as that term is defined in section 2(1) of the Resource Management Act 1991;
  - (b) a department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of any specified Act

**specified Act** means any Act specified in section 7(2) other than the Crown Minerals Act 1991.

Section 158B: inserted, on 28 February 2014, by section 43 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**158BA EPA and WorkSafe to share information**

- (1) The Environmental Protection Authority may provide WorkSafe with any information that the EPA holds and that the EPA considers may assist WorkSafe in the performance of WorkSafe's functions under the WorkSafe New Zealand Act 2013.
- (2) WorkSafe may provide the EPA with any information that WorkSafe holds and that it considers may assist the EPA in the performance of the EPA's functions under this Act.

- (3) If any information provided by the EPA under subsection (1) is the subject of a direction made under section 158, that section continues to apply to the information and WorkSafe must comply with that section.

Section 158BA: inserted, on 1 June 2017, by section 275 of the Resource Legislation Amendment Act 2017 (2017 No 15).

*Waivers and extension of time limits*

**159 Power of waiver and extension of time limits**

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

**160 Requirements for waivers and extensions**

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

## Subpart 2—Transitional provisions

*Existing activities***161 Existing petroleum activities that become discretionary**

- (1) This section applies to an existing activity involved in prospecting, exploring, or mining for petroleum if—
  - (a) the activity requires a marine consent as a result of this Act coming into force; and
  - (b) the prospecting, exploration, or mining for petroleum is authorised by a permit granted under section 25 of the Crown Minerals Act 1991 before this Act comes into force or authorised by an existing privilege preserved under clause 12 of Schedule 1 of that Act; and
  - (c) the activity was lawfully established before this Act comes into force.
- (2) However, this section does not apply to an existing activity to which section 162 applies.
- (3) The holder of the permit described in subsection (1)(b) must—
  - (a) prepare an impact assessment for the activity; and
  - (b) provide the impact assessment to the EPA no later than 2 months after this Act comes into force.
- (4) Section 43 applies to the impact assessment as if it were an application for a marine consent.
- (5) If the holder of the permit described in subsection (1)(b) complies with subsection (3), the activity may continue without a marine consent after the date on which this Act comes into force only—
  - (a) until the close of the later of—
    - (i) the date that is 6 months after that date; or
    - (ii) 1 May 2013; but
  - (b) if the person undertaking the activity applied for a marine consent within the period described in paragraph (a), until the application—
    - (i) is decided under section 62 and any appeals are determined; or
    - (ii) is returned as incomplete by the EPA under section 43 and any objections or appeals are determined.
- (6) If the application for a marine consent described in subsection (5)(b) was returned by the EPA under section 43, subsection (5) applies to any new application that replaces the returned application.
- (7) Subsection (5) overrides section 20.



Section 161(1)(b): amended, on 24 May 2013, by section 65 of the Crown Minerals Amendment Act 2013 (2013 No 14).

Section 161(4): amended, on 1 June 2017, by section 276(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 161(5)(b)(ii): amended, on 1 June 2017, by section 276(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 161(6): amended, on 1 June 2017, by section 276(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

## **162 Existing petroleum mining activities involving structures or pipelines**

- (1) This section applies to an existing activity that requires a marine consent as a result of this Act coming into force if the activity—
  - (a) involves an existing structure or an existing submarine pipeline; and
  - (b) is associated with mining for petroleum authorised by a petroleum mining permit granted under section 25 of the Crown Minerals Act 1991 before the date on which this Act comes into force or authorised by an existing privilege preserved under clause 12 of Schedule 1 of that Act.
- (2) However, despite subsection (1), this section does not apply to any of the activities described in subsection (3) where the activity has adverse effects on the environment or existing interests unless the Environmental Protection Authority provides a ruling to the effect that the adverse effects are likely to be minor or less than minor.
- (3) The activities referred to in subsection (2) are—
  - (a) any activity that is part of an activity described in subsection (1), such as placing a structure or drilling a well, that had not commenced before this Act comes into force; or
  - (b) any change in the character, intensity, or scale of the activity described in subsection (1) made on or after the date on which this Act comes into force; or
  - (c) the alteration, extension, removal, or demolition of an existing structure or existing submarine pipeline associated with the activity described in subsection (1).
- (4) The activity to which this section applies may continue without a marine consent for the term of the permit or privilege as it was on the day before this Act comes into force.
- (5) Despite subsection (4), if an application for a marine consent for an activity to which this section applies is lodged with and accepted as complete by the Environmental Protection Authority no less than 9 months before the end of the term of the permit or privilege as it was on the day before this Act came into force, the activity may continue without a marine consent until the application is decided under section 62 and any appeals are determined.
- (6) Subsections (4) and (5) override section 20.

- (7) If an application for a marine consent for an activity to which this section applies was accepted as complete by the Environmental Protection Authority in 2015 before the date of commencement of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) (Transitional Provisions) Amendment Act 2015 (whether or not decided under section 62 before that date), subsection (5) is deemed also to apply in that case.

Section 162(1)(b): amended, on 24 May 2013, by section 65 of the Crown Minerals Amendment Act 2013 (2013 No 14).

Section 162(2): amended, on 1 June 2017, by section 277(a) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 162(2): amended, on 1 June 2017, by section 277(b) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 162(5): replaced, on 26 June 2015, by section 4 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) (Transitional Provisions) Amendment Act 2015 (2015 No 62).

Section 162(6): inserted, on 26 June 2015, by section 4 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) (Transitional Provisions) Amendment Act 2015 (2015 No 62).

Section 162(7): inserted, on 26 June 2015, by section 4 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) (Transitional Provisions) Amendment Act 2015 (2015 No 62).

### **163 Other existing activities that become discretionary**

- (1) This section applies to an activity that requires a marine consent as a result of this Act coming into force if—
- (a) the activity was lawfully established before the Act came into force; and
  - (b) the effects of the activity on the environment and existing interests are of the same or similar character, intensity, and scale as the effects that existed before the Act came into force.
- (2) However, this section does not apply to an activity to which section 161 or 162 applies.
- (3) The activity may continue without a marine consent after the date on which this Act comes into force only—
- (a) until the close of the later of—
    - (i) the date that is 6 months after the date on which this Act comes into force; or
    - (ii) 1 May 2013; but
  - (b) if the person undertaking the activity applies for a marine consent within the period described in paragraph (a), until the application—
    - (i) is decided under section 62 and any appeals are determined; or
    - (ii) is returned as incomplete under section 43 and any objections or appeals are determined.
- (4) If the application for a marine consent described in subsection (3)(b) was returned by the EPA under section 43, subsection (3) applies to any new application that replaces the returned application.

(5) Subsection (3) overrides section 20.

Section 163(3)(b)(ii): amended, on 1 June 2017, by section 278 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 163(4): amended, on 1 June 2017, by section 278 of the Resource Legislation Amendment Act 2017 (2017 No 15).

**164 Existing activities that become prohibited**

(1) This section applies to an activity that—

- (a) becomes a prohibited activity as a result of this Act coming into force; and
- (b) was lawfully established before the Act comes into force.

(2) The activity may continue for a prescribed period.

(3) Subsection (2) overrides sections 20 and 37(3).

*Transitional provisions relating to discharges and dumping*

Heading: inserted, on 31 October 2015, by section 44 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

**164A Dumping permits issued under Maritime Transport Act 1994**

- (1) A permit issued before the commencement of this section by the Director of Maritime New Zealand under section 262 of the Maritime Transport Act 1994 must be treated as if it were a marine dumping consent granted under this Act on the same terms and conditions as apply to the permit.
- (2) A reference in the permit to Maritime New Zealand, the Director of Maritime New Zealand, or the Director must be treated as if it were a reference to the Environmental Protection Authority.

Section 164A: inserted, on 31 October 2015, by section 44 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 164A(1): amended, on 1 June 2017, by section 279 of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 164A(2): inserted, on 8 September 2018, by section 48 of the Statutes Amendment Act 2018 (2018 No 27).

**164B Provisions of discharge management plans approved under Maritime Transport Act 1994 become marine discharge consents**

- (1) This section applies to a discharge management plan for an offshore installation approved before the commencement of this section by the Director of Maritime New Zealand in accordance with rule 200.7 of Part 200 of the Marine Protection Rules.
- (2) The provisions of the discharge management plan that specify the following matters must be treated as if they were a marine discharge consent granted under this Act for a term that is the same as the remaining duration of the discharge management plan:

- (a) harmful substances that may be discharged in accordance with the discharge management plan:
  - (b) a method for continuously measuring the oil content of production water, displacement water, or offshore processing drainage discharged from the offshore installation:
  - (c) procedures for reporting oil spills:
  - (d) environmental monitoring methods for identifying the environmental impacts of discharges:
  - (e) matters described in clause 1(2) to (6) of Schedule 1 of Part 200 of the Marine Protection Rules as if the words “in a form acceptable to the Director” were replaced with “in the prescribed form”:
  - (f) matters described in Schedule 2 of Part 200 of the Marine Protection Rules other than in clause 5(f).
- (3) Part 200 of the Marine Protection Rules does not apply to the provisions of the discharge management plan that are to be treated as a marine discharge consent under subsection (2).
- (4) Despite subsection (3), the following marine protection rules, as they were on the day before this section comes into force, must be treated as if they were conditions of the consent:
- (a) rule 200.13:
  - (b) rule 200.14(1), (2), and (5)(a), as if a reference to the Director in those provisions were a reference to the Environmental Protection Authority, and (8):
  - (c) rule 200.15:
  - (d) rule 200.16(1):
  - (e) rule 200.17, as if the reference to rule 200.19 were a reference to that rule as it was before this section comes into force:
  - (f) rule 200.18:
  - (g) rule 200.22, as if—
    - (i) the words “in a form approved by the Director” in subrule (1) were replaced with “in the prescribed form”:
    - (ii) the reference in subrule (4) to the Director were a reference to the Environmental Protection Authority:
  - (h) rule 200.23(1) and (3), as if in each case paragraph (b) were replaced with:
    - (b) the Environmental Protection Authority and the Director, if the spill occurs in the exclusive economic zone; or
    - (c) the Director, if the spill occurs beyond the exclusive economic zone,

- (i) rule 200.24 as if the reference to the Director in subrule (2)(a) included a reference to the Environmental Protection Authority;
  - (j) rule 200.25 as if the reference to the Director in subrule (2) were a reference to the Environmental Protection Authority.
- (5) The marine protection rules described in subsection (4) and treated as conditions of a marine discharge consent by that subsection may be amended, cancelled, or replaced as if they were conditions imposed under this Act.

Section 164B: inserted, on 31 October 2015, by section 44 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Section 164B(2): amended, on 1 June 2017, by section 280 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### **164C Completion of certain matters pending at commencement of sections 164A and 164B**

- (1) If a person makes an application for a permit under section 262 of the Maritime Transport Act 1994 and it has not been decided before section 164A comes into force, the application is to be continued and completed under that Act as it was before section 164A comes into force.
- (2) Section 164A applies to a permit issued after being continued and completed under subsection (1).
- (3) If a person makes an application for the approval of a discharge management plan under rule 200.5 of Part 200 of the Marine Protection Rules and that application has not been decided before section 164B comes into force, the application is to be continued and completed under the marine protection rules as they were before section 164B comes into force.
- (4) Section 164B applies to a discharge management plan approved after being continued and completed under subsection (3).

Section 164C: inserted, on 31 October 2015, by section 44 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### *Mineral prospecting and exploration under Continental Shelf Act 1964*

#### **165 Mineral prospecting and exploration may commence and continue**

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

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

*Planned petroleum activities*

**166 Planned petroleum activities that become discretionary**

- (1) This section applies to a planned petroleum activity if the activity requires a marine consent as a result of this Act coming into force.
- (2) The activity may commence without a marine consent after the Act comes into force.
- (3) However, before the activity may commence, the person intending to undertake the activity must—
  - (a) prepare an impact assessment for the activity; and
  - (b) provide the impact assessment to the EPA.
- (4) Section 43 applies to the impact assessment as if it were an application for a marine consent.
- (5) If the person intending to undertake the activity complies with subsection (3), the activity may continue without a marine consent after the date on which this Act comes into force—
  - (a) until the close of the later of—
    - (i) the date that is 12 months after that date; or
    - (ii) 1 May 2014; but
  - (b) if the person undertaking the activity applies for a marine consent within the period described in paragraph (a), until the application—
    - (i) is decided under section 62 and any appeals are determined; or
    - (ii) is returned as incomplete by the EPA under section 43 and any objections or appeals are determined.
- (6) If the application for a marine consent described in subsection (5)(b) was returned by the EPA under section 43, subsection (5) applies to any new application that replaces the returned application.
- (7) Subsections (2) and (5) override section 20.
- (8) In this section, **planned petroleum activity** means an activity involved with the exploration, prospecting, or mining for petroleum if,—
  - (a) before the Act comes into force, the exploration, prospecting, or mining for petroleum with which the activity is involved is authorised by a per-

mit that was granted under section 25 of the Crown Minerals Act 1991 or authorised by an existing privilege preserved under clause 12 of Schedule 1 of that Act; and

- (b) the activity had not commenced before the Act comes into force.

Section 166(4): amended, on 1 June 2017, by section 281(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 166(5)(b)(ii): amended, on 1 June 2017, by section 281(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 166(6): amended, on 1 June 2017, by section 281(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 166(8)(a): amended, on 24 May 2013, by section 65 of the Crown Minerals Amendment Act 2013 (2013 No 14).

### *Unauthorised activities*

#### **167 Unauthorised activities must stop**

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

### *Transitional and savings provision relating to regulations*

Heading: inserted, on 28 February 2014, by section 45 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

#### **167A Transitional and savings provision relating to regulations**

Any consultation undertaken before the commencement of this section by the Minister on proposals as to whether certain discretionary activities should be classified as non-notified activities may be taken to be consultation for the purposes of section 32(2) for the first non-notified activities regulations made after this section comes into force.

Compare: 2000 No 91 s 114

Section 167A: inserted, on 28 February 2014, by section 45 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

### Subpart 3—Amendments to other Acts

#### *Consequential amendments to Biosecurity Act 1993*

#### **168 Biosecurity Act 1993 amended**

Sections 169 and 170 amend the Biosecurity Act 1993.

**169 Relationship with other enactments**

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

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

Replace section 7A with:

**7A Relationship with Resource Management Act 1991**

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



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

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

- (1) The responsible Minister may exempt an action from the provisions of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 if the action is taken in an attempt to eradicate or manage an organism under this Act and if—
- (a) the action would be in breach of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
  - (b) the responsible Minister is satisfied that it is likely that—
    - (i) the organism is not established in the exclusive economic zone, the organism is not known to be established in the exclusive economic zone, or the organism is established in the exclusive economic zone but is restricted to certain parts of the exclusive economic zone; and
    - (ii) the organism has the potential to cause 1 or more of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in the exclusive economic zone, or if it becomes established throughout the exclusive economic zone, or if it spreads to New Zealand; and
    - (iii) it is in the public interest that action be taken immediately in an attempt to eradicate or manage the organism.
- (2) The exemption of an action under subsection (1) may last for up to 20 working days.
- (3) Before making a decision under subsection (1), the responsible Minister—
- (a) must consult the Authority (to the extent that is possible in the circumstances); and
  - (b) may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication or management attempt.
- (4) If an exemption is granted under subsection (1) or continued by regulations made under section 7D, Part 2 of the Exclusive Economic Zone and Continen-

tal Shelf (Environmental Effects) Act 2012 does not apply to the action while the exemption continues.

- (5) After the exemption ends,—
- (a) the provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 apply to the action and its adverse effects to the same extent as those provisions would have applied but for the exemption; and
  - (b) the responsible Minister must remedy or mitigate the adverse effects to which the provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 would have applied if not for the exemption.

#### **7C Public notice of decision to exempt action**

- (1) After making a decision under section 7A or 7B, the responsible Minister must give public notice of the Minister's decision in such a manner as the Minister thinks fit.
- (2) The public notice must specify—
- (a) the organism to be eradicated or managed; and
  - (b) the principal actions that may be taken in the attempt to eradicate or manage the organism; and
  - (c) the areas affected by the action.
- (3) A failure to comply with the provisions of this section or section 7A(3) or 7B(3) does not affect the validity of any exemption given under section 7A or 7B.

#### **7D Regulations may continue exemption**

- (1) The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, make regulations—
- (a) continuing the exemption under section 7A of an action from Part 3 of the Resource Management Act 1991;
  - (b) continuing the exemption under section 7B of an action from Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
- (2) The responsible Minister must not make a recommendation for the purposes of subsection (1) unless he or she considers that it is necessary to continue the action to attempt to eradicate or manage the organism beyond the duration of the exemption.
- (3) Regulations made under this section come into force on the date of notification in the *Gazette*, or at the time specified in the regulations, whichever is the later.
- (4) The regulations expire on the day that is 2 years after the date on which the regulations come into force unless they are revoked earlier.

*Amendment to Continental Shelf Act 1964*

**171 Amendment to Continental Shelf Act 1964**

- (1) This section amends the Continental Shelf Act 1964.
- (2) Section 8 is amended by repealing subsection (1)(a), (b), (f), (g), (i), and (j).

*Amendments to Crown Organisations (Criminal Liability) Act 2002*

**172 Amendments to Crown Organisations (Criminal Liability) Act 2002**

- (1) This section amends the Crown Organisations (Criminal Liability) Act 2002.
- (2) Section 6(1) is amended by adding the following paragraph:
  - (d) an offence against the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- (3) Section 7(a) is amended by inserting “the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012,” after “the Building Act 2004,”.

*Amendment to Environment Act 1986*

**173 Amendment to Environment Act 1986**

- (1) This section amends the Environment Act 1986.
- (2) The Schedule is amended by inserting the following item in its appropriate alphabetical order:

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

*Amendment to Environmental Protection Authority Act 2011*

**174 Amendment to Environmental Protection Authority Act 2011**

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

*Amendment to Fisheries Act 1996*

**175 Amendment to Fisheries Act 1996**

- (1) This section amends the Fisheries Act 1996.
- (2) Section 11(2) is amended by inserting the following paragraph after paragraph (c):

- (ca) regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and

*Amendments to Resource Management Act 1991*

**176 Amendments to Resource Management Act 1991**

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

*Amendment to Search and Surveillance Act 2012*

**177 Amendment to Search and Surveillance Act 2012**

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

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

### Transitional, savings, and related provisions

s 7B

Schedule 1: inserted, on 1 June 2017, by section 282 of the Resource Legislation Amendment Act 2017 (2017 No 15).

### Part 1

#### Provisions relating to Part 5 of Resource Legislation Amendment Act 2017

##### 1 Matters pending on commencement day

- (1) All pending consent applications and pending proceedings must be dealt with and determined as if this Act had not been amended by Part 5 of the Resource Legislation Amendment Act 2017.
- (2) All pending reviews must be continued and completed as if this Act had not been amended by Part 5 of the Resource Legislation Amendment Act 2017.
- (3) In this clause,—

**commencement day** means the day on which Part 5 of the Resource Legislation Amendment Act 2017 comes into force

**pending consent application** means an application for a marine consent that—

- (a) was made under section 38 or 87B before the commencement day; and
- (b) as at the commencement day,—
  - (i) had not been returned as incomplete under section 41(3) (or that section as applied by section 87C); and
  - (ii) had not been finally determined

**pending proceeding** means an objection, appeal, or proceeding under Part 4 of this Act that was commenced before the commencement day and as at that day had not been finally determined

**pending review** means a review under section 76 that was commenced before the commencement day and as at that day had not been completed.

##### 2 Certain provisions inserted by Resource Legislation Amendment Act 2017 do not apply until decommissioning regulations date

- (1) Section 38(3) does not apply in relation to an application made before the decommissioning regulations date.
- (2) Subpart 4 of Part 3A does not apply until the decommissioning regulations date.
- (3) In this clause, **decommissioning regulations date** means the date on which the first regulations made under section 29E come into force.

**Part 2****Provision relating to Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018**

Schedule 1 Part 2: inserted, on 11 July 2018, by section 7 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 (2018 No 20).

**3 Boards of inquiry in process before commencement of section 52A**

Section 52A does not apply to a board of inquiry appointed in respect of an application for a section 20 activity if the application—

- (a) was made before the date of commencement of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018; and
- (b) complied with section 38.

Schedule 1 clause 3: inserted, on 11 July 2018, by section 7 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 (2018 No 20).

## Schedule 2

### Hearings of applications for marine consents for non-notified activities

s 50(3)

Schedule 2: inserted, on 28 February 2014, by section 46 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85).

Schedule 2 heading: amended, on 1 June 2017, by section 283(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Schedule 2 heading: amended, on 1 June 2017, by section 283(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### 1 Hearing date and notice

- (1) If a hearing of an application for a marine consent for a non-notified activity is to be held, the Environmental Protection Authority must fix a commencement date and time and the place of the hearing.
- (2) The EPA—
  - (a) must give the applicant reasonable notice of the commencement date and time and the place of a hearing;
  - (b) may give the applicant directions as to evidence and the general conduct of the hearing.

#### 2 Hearings to be without unnecessary formality

- (1) The EPA may hold a hearing of an application for a marine consent for a non-notified activity in public or in private.
- (2) The EPA must establish a procedure for a hearing that is appropriate and fair in the circumstances.
- (3) In determining an appropriate and fair procedure for a hearing, the EPA must—
  - (a) avoid unnecessary formality; and
  - (b) recognise tikanga Māori where appropriate, and receive evidence written or spoken in Māori, and Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 applies accordingly.
- (4) The applicant may question a party or witness if the EPA gives permission.

Schedule 2 clause 2(3)(b): amended, on 30 April 2016, by section 50 of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 (2016 No 17).

#### 3 Persons who may be heard at hearings

- (1) At a hearing, the applicant may speak (either personally or through a representative) and call evidence.
- (2) The Environmental Protection Authority may proceed with a hearing even if the applicant fails to appear at the hearing if the EPA considers it fair and reasonable to do so.

**4 Provisions relating to hearings**

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

**5 Control of hearings**

The Environmental Protection Authority may exercise a power under clause 6 or 7 after considering whether the scale and significance of the hearing makes the exercise of the power appropriate.

**6 Directions to provide evidence within time limits**

- (1) The Environmental Protection Authority may direct the applicant to provide briefs of evidence to the EPA before the hearing.
- (2) The EPA must set a reasonable time within which the applicant must provide the briefs of evidence.
- (3) The applicant must provide its briefs of evidence as required by the EPA under subclauses (1) and (2).

**7 Directions before or at hearings**

- (1) Before or at the hearing, the Environmental Protection Authority may do 1 or more of the following:
  - (a) specify the order of business at the hearing, including the order in which evidence is presented:



- (b) direct that evidence be—
    - (i) recorded; or
    - (ii) taken as read; or
    - (iii) limited to matters in dispute:
  - (c) direct the applicant, when presenting evidence or his or her own submission, to present it within a time limit.
- (2) At the hearing, the EPA may seek advice or information under section 44(1) on an application or the activity to which the application relates, if the applicant agrees.
  - (3) The EPA must provide copies of the advice or information to the applicant.

## Schedule 3

### EPA hearings for publicly notifiable activities other than section 20 activities

s 51

Schedule 3: inserted, on 1 June 2017, by section 284 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### 1 Hearing date and notice

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

#### 2 Time limit for hearing

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

#### 3 Hearings to be public and without unnecessary formality

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

#### **4 Persons who may be heard at hearings**

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

#### **5 Provisions relating to hearings**

- (1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing:
  - (a) section 4 (which gives powers to maintain order):
  - (b) section 4B (which relates to evidence):
  - (c) section 4D (which gives power to summon witnesses):
  - (d) section 5 (which relates to the service of a summons):
  - (e) section 6 (which relates to the protection of witnesses):
  - (f) section 7 (which relates to allowances for witnesses).
- (2) Every summons to a witness to appear at a hearing must be in the prescribed form and be signed on behalf of the Environmental Protection Authority or by the chairperson of the committee that is to conduct the hearing.
- (3) All allowances for a witness must be paid by the party on whose behalf the witness is called.
- (4) At a hearing, the following persons must give to the EPA any information and advice that is relevant and reasonably necessary to decide the application if the EPA asks for it:
  - (a) a person who reviewed the impact assessment or provided advice under section 41 or 56:
  - (b) a person who is heard or represented at the hearing.

#### **6 Control of hearings**

The Environmental Protection Authority may exercise a power under clause 7 or 8 after considering whether the scale and significance of the hearing make the exercise of the power appropriate.

#### **7 Directions to provide evidence within time limits**

- (1) The Environmental Protection Authority may direct the applicant to provide briefs of evidence to the EPA before the hearing.

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

## **8 Directions before or at hearings**

- (1) Before or at the hearing, the Environmental Protection Authority may do 1 or more of the following:
  - (a) direct that a conference of a group of experts be held:
  - (b) direct that a conference be held with—
    - (i) any of the submitters who wish to be heard at a hearing; or
    - (ii) the applicant; or
    - (iii) in the case of a cross-boundary application, any relevant resource consent authority; or
    - (iv) any combination of such persons:
  - (c) specify the order of business at the hearing, including the order in which evidence and submissions are presented:
  - (d) direct that evidence and submissions be—
    - (i) recorded; or
    - (ii) taken as read; or
    - (iii) limited to matters in dispute:
  - (e) direct the applicant, when presenting evidence or a submission, to present it within a time limit:
  - (f) direct a submitter, when presenting evidence or a submission, to present it within a time limit.
- (2) At the hearing, the EPA may, under section 56(1), seek advice on an application or the activity to which the application relates, if the applicant agrees.
- (3) The EPA must provide copies of the advice to the applicant and submitters.
- (4) At the hearing, the EPA may direct a person presenting a submission not to present—
  - (a) the whole submission, if none of it is relevant or in dispute; or
  - (b) any part of the submission that is not relevant or not in dispute.

- (5) Before or at the hearing, the EPA may direct that a submission or a part of a submission be struck out if the EPA considers that—
  - (a) the submission, or the part, is frivolous or vexatious; or
  - (b) the submission, or the part, discloses no reasonable or relevant case; or
  - (c) it would be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.
- (6) If the EPA gives a direction under subclause (5), it must record the reasons for the direction and give a copy of the reasons to the submitter whose submission is affected by the direction.

## Schedule 4

### Boards of inquiry for publicly notifiable section 20 activities

s 52(8)

Schedule 4: inserted, on 1 June 2017, by section 284 of the Resource Legislation Amendment Act 2017 (2017 No 15).

#### *General*

#### **1 EPA must provide board with necessary information**

- (1) The EPA must provide the board of inquiry with each of the following things as soon as is reasonably practicable after the board is appointed and the things are received:
  - (a) the application;
  - (b) all the information received by the EPA that relates to the application;
  - (c) the submissions received by the EPA on the application.
- (2) The EPA must also—
  - (a) prepare or commission a report on the key issues relating to the application and the activity, including—
    - (i) any relevant provisions in regulations; and
    - (ii) a statement on whether the application covers all aspects of the activity for which a marine consent is required;
  - (b) provide a copy of the report to—
    - (i) the board of inquiry; and
    - (ii) the applicant; and
    - (iii) every submitter.

#### **2 EPA must provide support to board**

- (1) The EPA must provide all reasonable administrative and secretarial services that are necessary to enable a board of inquiry to discharge its functions and responsibilities under this Act.
- (2) The EPA may—
  - (a) make decisions regarding administrative and support matters that are incidental or ancillary to the conduct of an inquiry under this schedule; or
  - (b) allow the board of inquiry to make those decisions.
- (3) The EPA must have regard to the purposes of minimising costs and avoiding unnecessary delay when performing its functions under subclause (2)(a) or (b).

#### **3 EPA may provide board with advice**

The EPA may provide a board of inquiry with—

- (a) technical advice;
- (b) an estimate of the amount of funding required to process an application.

#### **4 How board must carry out duties**

A board of inquiry must—

- (a) carry out its duties in a timely and cost-effective manner;
- (b) conduct its inquiry in accordance with any terms of reference set by the Minister under section 52(2);
- (c) have regard to the most recent estimate provided to the board of inquiry by the EPA under clause 3(b).

### *Hearings*

#### **5 Hearings**

- (1) The board of inquiry must conduct a hearing on an application if the applicant or a submitter requests a hearing.
- (2) The board of inquiry may conduct a hearing, even if no applicant or submitter requests one, if the board considers it necessary or desirable.
- (3) The board of inquiry—
  - (a) must keep a full record of any hearings or proceedings;
  - (b) may direct that a conference of a group of experts be held;
  - (c) may direct that a conference be held with—
    - (i) any of the submitters who wish to be heard at a hearing; or
    - (ii) the applicant; or
    - (iii) in the case of a cross-boundary application, any relevant resource consent authority; or
    - (iv) any combination of the persons described in paragraphs (i) to (iii).

#### **6 Hearing date and notice**

- (1) If a hearing is to be held, the EPA must—
  - (a) fix the commencement date, time, and place of the hearing; and
  - (b) give 20 working days' notice of the commencement date, time, and place of the hearing to—
    - (i) the applicant; and
    - (ii) every submitter on the application who stated that he or she wished to be heard and who has not subsequently advised that he or she does not wish to be heard.
- (2) The board of inquiry may give directions as to evidence and the general conduct of the hearing.

**7 Hearings to be public and without unnecessary formality**

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

**8 Persons who may be heard at hearings**

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

**9 Provisions relating to hearings**

- (1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing:
  - (a) section 4 (which gives powers to maintain order):
  - (b) section 4B (which relates to evidence):
  - (c) section 4D (which gives power to summon witnesses):
  - (d) section 5 (which relates to the service of a summons):
  - (e) section 6 (which relates to the protection of witnesses):
  - (f) section 7 (which relates to allowances for witnesses).
- (2) Every summons to a witness to appear at a hearing must be in the prescribed form and be signed on behalf of the board of inquiry or by the chairperson of the committee that is to conduct the hearing.
- (3) All allowances for a witness must be paid by the party on whose behalf the witness is called.



- (4) At a hearing, the following persons must give to the board of inquiry any information and advice that is relevant and reasonably necessary to decide the application if the board of inquiry asks for it:
- (a) a person who reviewed the impact assessment or provided advice under section 41 or 56:
  - (b) a person who is heard or represented at the hearing.

**10 Control of hearings**

A board of inquiry may exercise a power under clause 11 or 12 after considering whether the scale and significance of the hearing make the exercise of the power appropriate.

**11 Directions to provide evidence within time limits**

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

**12 Directions before or at hearings**

- (1) Before or at the hearing, the board of inquiry may do 1 or more of the following:
  - (a) specify the order of business at the hearing, including the order in which evidence and submissions are presented:
  - (b) direct that evidence and submissions be—
    - (i) recorded; or
    - (ii) taken as read; or
    - (iii) limited to matters in dispute:
  - (c) direct the applicant, when presenting evidence or a submission, to present it within a time limit:
  - (d) direct a submitter, when presenting evidence or a submission, to present it within a time limit.

- (2) At the hearing, the board of inquiry may seek advice on an application or the activity to which the application relates under section 56(1), if the applicant agrees.
- (3) The board of inquiry must provide copies of the advice to the applicant and submitters.
- (4) At the hearing, the board of inquiry may direct a person presenting a submission not to present—
  - (a) the whole submission, if none of it is relevant or in dispute; or
  - (b) any part of the submission that is not relevant or not in dispute.
- (5) Before or at the hearing, the board of inquiry may direct that a submission or a part of a submission be struck out if the board considers that—
  - (a) the submission, or the part, is frivolous or vexatious; or
  - (b) the submission, or the part, discloses no reasonable or relevant case; or
  - (c) it would be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.
- (6) If the board of inquiry gives a direction under subclause (5), it must record the reasons for the direction and give a copy of the reasons to the submitter whose submission is affected by the direction.

### **13 Board to produce report**

- (1) As soon as practicable after the board of inquiry has completed its inquiry on a matter, but not later than 9 months after the relevant application was publicly notified, the board of inquiry must—
  - (a) make its decision; and
  - (b) produce a written report; and
  - (c) send its report to the EPA.
- (2) The report must—
  - (a) state the board's decision; and
  - (b) give reasons for the decision; and
  - (c) include a statement of the principal issues that were in contention; and
  - (d) include the main findings on the principal issues that were in contention.
- (3) For the purposes of subclause (1), the 9-month period excludes the period starting on 20 December in any year and ending on 10 January in the following year.

*Remuneration*

**14 Remuneration, allowances, and expenses**

- (1) The Fees and Travelling Allowances Act 1951 (the **1951 Act**) applies to a board of inquiry appointed under section 52 as if the board were a statutory board within the meaning of the 1951 Act.
- (2) The Minister may direct that a member of a board of inquiry be paid the following out of money appropriated by Parliament for the purpose:
  - (a) remuneration by way of fees, salary, or allowances under the 1951 Act; and
  - (b) travelling allowances and travelling expenses under the 1951 Act for time spent travelling in the service of the board.

## Reprints notes

### 1 *General*

This is a reprint of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Statutes Amendment Act 2018 (2018 No 27): Part 13

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2018 (2018 No 20)

Resource Legislation Amendment Act 2017 (2017 No 15): Part 5

Senior Courts Act 2016 (2016 No 48): section 183(c)

Te Ture mō Te Reo Māori 2016/Māori Language Act 2016 (2016 No 17): section 50

Radiation Safety Act 2016 (2016 No 6): section 99

Standards and Accreditation Act 2015 (2015 No 91): section 45(1)

Health and Safety at Work Act 2015 (2015 No 70): section 232

Exclusive Economic Zone and Continental Shelf (Environmental Effects) (Transitional Provisions) Amendment Act 2015 (2015 No 62)

Kaikōura (Te Tai o Marokura) Marine Management Act 2014 (2014 No 59): section 30

Heritage New Zealand Pouhere Taonga Act 2014 (2014 No 26): section 107

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (2013 No 85)

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act Commencement Order 2013 (SR 2013/282)

Crown Minerals Amendment Act 2013 (2013 No 14): section 65