Takutai Moana Act

Need a MACA refresh? Read on e te iwi..

What even is MACA?

The Marine and Coastal Area (Takutai Moana) Act 2011 provides for recognition and the exercise of customary interests of iwi, hapū and whānau in the common marine and coastal area of Aotearoa New Zealand and its offshore islands.

It was brought in to replace the Foreshore and Seabed Act 2004.

Together with Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, the 'Takutai Moana legislation' also provides for the right of all New Zealanders to access and use the common marine and coastal area. Protection extends to existing uses, like recreational fishing and navigation rights and in some cases also extends the rights of infrastructure such as ports and aquaculture.

Essentially, it creates a common space in the marine and coastal area (known as the CMCA) that cannot be owned by anyone and therefore cannot be sold.

How is it different to the Foreshore and Seabed Act 2004?

MACA creates a new property class for the marine and coastal area which is vested in no-one. The Foreshore and Seabed Act vested the foreshore and the seabed in the Crown.

MACA provides for two main types of rights: Protected Customary Rights and Customary Marine Title.

So, it is not a new thing?

No. This goes back to 1997, here in the heart of our rohe, when Rangitāne o Wairau and the seven other iwi of Te Tauihu o te Waka-a-Māui applied to the Māori Land Court for an order declaring the foreshore and seabed of the Marlborough Sounds Māori customary land.

The interim decision on a preliminary question by the Māori Land Court ruled in our favour, and when the Attorney-General appealed this, it was referred to the High Court for questions of law.

The decisions and appeals went back and forth through the courts and eventually, on June 19, 2003, the Court of Appeal held unanimously that the Māori Land Court did indeed have jurisdiction to determine whether areas of the foreshore and seabed were customary land or not – and that it could also recognise ownership. It also ruled that Māori may be able to show customary ownership of areas of te takutai moana.

What happened next?

Controversy. The decision by the Court of Appeal, known as Ngāti Apa v Attorney-General, was a landmark legal decision. The Crown swiftly responded by changing the law and introduced the Foreshore and Seabed Act 2004. This vested legal ownership of the foreshore and seabed in the Crown, and completely erased Māori customary rights.

And then what happened?

There was huge protest from Māori and the Foreshore and Seabed Act was slammed by the Waitangi Tribunal and the Human Rights Commission. The Act was abolished and replaced with the Marine and Customary (Takutai Moana) Act 2011 (MACA).

The new Act gave whānau Māori, hapū and iwi until April 3, 2017 to claim for recognition of their customary interests.

In 2020, the Waitangi Tribunal found that MACA breached Te Tiriti o Waitangi mainly because the Crown had not provided adequate time or resource for Māori to engage. A new strategy for engagement was set in 2021 by Minister for Treaty Negotations Hon Andrew Little.

Where does Rangitāne o Wairau sit in all of this as of today?

We have applied for the highest form of protection, Customary Marine Title, for the area off and including Te Pokohiwi o Kupe and the Wairau Lagoons.

We are also seeking Protected Customary Rights and activities across all coastal and marine areas within our rohe.

Why is the High Court involved?

There are two pathways available to protect our interests under the Takutai Moana Act.

1) Direct negotiation with the Minister for Treaty Settlements via the Te Arawhiti Takutai Moana Engagement Process
2) Via the High Court.

To ensure our customary interests are upheld, we are taking both paths, although our preference and hope is that we are able to conclude our negotiations without needing to utilise the full extent of the High Court pathway.

What is Customary Marine Title (CMT)?

Customary Marine Title (CMT) recognises the relationship of an iwi, hapū or whānau with a particular marine and coastal area since 1840. It is the highest form of recognition and protection of our customary rights. Free public access, fishing, and other recreational activities continue in Customary Marine Title areas, but title holders can exercise legal rights in those areas through involvement in resource management and conservation processes, customary fisheries management, protection of wāhi tapu, and the ownership of non-Crown minerals and taonga tūturu (protected items) in the title area.

What is a Protected Customary Right (PCR)?

Protected Customary Right (PCR) status is more broad and recognises our customary activities since 1840. This includes examples such as the taking of hangi stones, gathering of karengo, kopakopa for rongoā, eels and inanga (whitebait); launching of waka; bird snaring and the hunting of mutton birds; and other ceremonial activities.

Where are talks at with the Crown?

Rangitāne has attended regular meetings with representatives of Te Arawhiti, the Office for Māori Crown Relations, since December 2022. A workplan is in place which would, as we can best discern, see Rangitāne conclude our engagement with the Crown by the end of 2025 or sooner.

Where are we at with the High Court application?

The original application made by the rūnanga on behalf of the iwi was filed on April 3, 2017, to meet the statutory deadline set by the Crown.

In June this year, we filed an application with the High Court to slightly amend our original application. These amendments do not affect the substance of Rangitāne o Wairau's claim.

The key amendments relate to:

1) updating the named claimants in the case (the Trustees of Te Rūnanga a Rangitāne o Wairau on behalf of members as the mandated iwi trust); and

2) confirming the specific areas in which we are seeking to have our customary rights recognised in the Takutai Moana legislation with updated mapping.

Our preference is to liaise directly with the Crown and so this case is currently not set down to be heard to allow that process to take place in good faith.

What are the legal hurdles we are facing?

Despite the work put into our Te Tiriti o Waitangi settlement with the Crown, we must again demonstrate that our rights have not been extinguished in our rohe and that we have exclusively used and occupied the areas without substantial interruption, from 1840. The hurdle is higher to achieve Customary Marine Title.

And what about the actual definition of marine and coastal areas?

The common marine and coastal area is the area between the high tide line (the line of mean high water springs) and 12 nautical miles out to sea (the outer limits of the territorial sea) except for any freehold land, conservation areas, national parks and reserves.

It includes the air and water space above (but not the water) and the subsoil, bedrock and other matter below, as well as the beds of rivers that are part of the coastal marine area (under the Resource Management Act 1991).

So in terms of any groups needing to get resource consent and engage with iwi in that process, what is happening in the meantime while all this gets sorted out?

In most cases, anyone seeking resource consent for occupation of the marine area must, as part of the consent process, consult with all groups who have applied for customary recognition under the Takutai Moana Act. There are exceptions for areas under freehold title and for reserves, conservation areas or national parks.

It is important to note that the Takutai Moana Act sits separate to our Te Tiriti o Waitangi Settlement and any obligations on those seeking resource consents or on local authorities remain intact.

Are any other iwi involved?

Rangitāne has had preliminary and ongoing discussions with other iwi with overlapping interests and we are hopeful agreement will be reached.

Can you be more specific about the areas we are talking about?

Rangitāne's Customary Marine Title (CMT) application relates to Te Pokohiwi-o-Kupe/Wairau Bar and the Wairau Lagoon, and the adjacent sea area.

Our Protected Customary Rights (CPR) application relates to our established Area of Interest, extending north from the Whakatū Nelson area to the mouth of the Waiau-Toa (Clarence River).