

MACA Frequently Asked Questions

What is the Marine and Coastal Area (Takutai Moana) Act 2011?

The Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act) restores the right of iwi, hapu and whanau to have their customary rights recognised in specific parts of the Common Marine and Coastal Area (CMCA), through “Customary Marine Titles” (CMTs) and “Protected Customary Rights” (PCRs).

What are the mechanisms which have been introduced?

The key mechanisms are;

- Protected customary rights (PCR's) – allowing certain traditional practices to be exercised without regulatory constraint e.g. collection of hangi stones, and
- Customary Marine Title (CMT) – this is similar to, but not the same as, ownership. It comes from a common law concept which recognises property rights of indigenous people that have continued since or before acquisition of Crown sovereignty to the present day. CMT is inalienable – the land cannot be sold. It cannot be converted to freehold title. It recognises the relationship that existed, and that will continue to exist between iwi and hapū and the marine and coastal area.

Who could submit an application for PCR or CMT?

Any iwi, hapū or whanau group. The application could also be made by a legal entity or a person appointed as representative of one or more of these groups.

When the review of the Foreshore and Seabed Act 2004 was announced those negotiations already underway were placed on hold. Those groups were then invited to begin negotiations under the new regime of the MACA Act when it was enacted. Many parties negotiated a settlement outside of the courts to eliminate excessive costs or uncertainty.

Was there a deadline for submissions?

Yes, applicants could submit their application from the date of the Act coming into effect (2011) until the 3 April 2017 (six years).

How did people submit?

There were two avenues for submitting a MACA application, either to the Crown (direct engagement) or via the High Court. Applicants could (and many did) submit via both processes.

Was there certain criteria to be met?

Yes, the Act specified certain tests which needed to be met in order to qualify for both CMT and/or PCR.

To have customary marine title (CMT) recognised over an area the applicant group must prove:

- That the group hold the specified area in accordance with tikanga; and
- The group have exclusively used and occupied the specified area, without substantial interruption, either:
 - From 1840 to the present day, or
 - From the time of a customary transfer until the present day.

To have protected customary rights (PCR) recognised, the applicant group must prove:

- The group have exercised the activity in accordance with tikanga since 1840; and
- The group continue to exercise the activity today, in one way or another.

What does having CMT mean?

Essentially it means that the CMT group have a number of rights, including:

- An RMA permission right – despite a grant of resource consent the consented activity may not be commenced in the CMT area without permission of the CMT group. The decision of the CMT group to give or decline an activity is not subject to appeal or objection.
- A conservation permission right – similarly, this enables the CMT group to give or decline permission to the establishment of, for example, a reserve.
- A wāhi tapu protection right – a CMT group may seek to include recognition of wāhi tapu in the CMT order or agreement. If recognised in accordance with tikanga to protect an area prohibitions or restrictions of access may be applied.
- The right to create a planning document – the CMT group can prepare a planning document in accordance with tikanga. Once lodged the document must be taken into account when making any decision under the Local Government Act in relation to the CMT area.

What does having a PCR mean?

By having PCR recognised, a consent authority must not grant resource consent if that activity will, or likely will, have an adverse effect which is more than minor on the exercise of protected customary right, unless written approval is obtained from the PCR group. Equally, a PCR means that Local Authorities must not have rules in plans permitting activities, if that activity will, or is likely to have an adverse effect which is more than minor on a PCR.

What are the immediate obligations under the MACA Act?

There is an obligation for any resource consent applicant to notify and seek the views of an applicant for CMT, before the resource consent application is lodged. This obligation arises now i.e. as soon as the CMT application is lodged with the High Court or through direct engagement with the Crown.

Have any decisions been made on the applications?

The Minister has made his first decision on an application submitted by Ngāti Pāhauwera. This decision was made public in June this year. Ngāti Pāhauwera ratified the Minister's decision on the 7th August 2017. There are still further steps in the process prior to the CMT being given legal effect. The next steps are for Ngāti Pāhauwera and the Minister to sign the Recognition Agreement, then the Recognition Agreement is given legal effect through an Act of Parliament.

The remaining steps are anticipated to take approximately a further 10-12 months before the CMT is in full effect.