

Applicant Customary Marine Title (CMT) Guidance and Matrix

Purpose

This guidance provides general information for applicants seeking Customary Marine Title (CMT) under [the Marine and Coastal Area \(Takutai Moana\) Act 2011](#) (the **Act**) through the Crown engagement process. It describes the statutory test for recognising CMT and sets out guidance on the types of evidence that applicants may wish to provide in support of demonstrating that the statutory requirements are met.

This guidance helps applicants with the preparation of research and evidence. It is intended as guidance only and does not constitute legal advice. It does not assess any individual application and does not indicate whether any applicant group is likely to satisfy the statutory test. Addressing the matters identified in this guidance or the CMT Matrix does not mean that an applicant will satisfy the statutory test, or that the Minister will be satisfied that the test has been met. Applicants are responsible for deciding how to prepare and present their application and should seek their own independent legal or other advice (such as advice from tikanga experts or researchers) when preparing research and evidence.

Applicants may present their evidence in ways that reflect their tikanga, mātauranga, and the way their histories and relationships with the takutai moana are understood and shared within their communities. There is no single prescribed way to present evidence through the Crown engagement pathway. Applicants should consider how best to present their evidence in a way that is appropriate for their group and tikanga, while also addressing the requirements of the Act.

Please check you are using the most up-to-date version of this guidance

The most up-to-date version of this guidance is available on our website. Applicants should refer to the website to ensure they are using the current version, as the guidance may be updated from time to time to reflect relevant developments.

The test for CMT

In the Crown engagement pathway, the Minister for Treaty of Waitangi Negotiations (the Minister) is the decision-maker. The Minister may enter into an agreement recognising CMT if the applicant satisfies the Minister that the requirements in section 58 of the Act (the **test**) are met.

Applicants are responsible for providing evidence to demonstrate that all elements of the test are met.

The test has two limbs and applicant groups must satisfy both:

1. The applicant group holds the specified area in accordance with tikanga (section 58(1)(a)).
2. The applicant group has exclusively used and occupied the specified area from 1840 to the present day without substantial interruption (section 58(1)(b)); or
has received it, at any time after 1840, through a customary transfer in accordance with section 58(3).

How evidence is considered

When assessing whether the test is met, the Minister will consider the evidence provided by applicants, the Crown and third parties.

The Act places limits on when the Minister may draw inferences. An inference is a conclusion that a decision-maker draws to fill in any gaps in the evidence. Section 58(1A) states that no inference may be

drawn about a group's use and occupation unless certain evidence of a physical activity or use is provided.

Applicants should therefore consider whether their evidence demonstrates specifically where activities occurred, who undertook them and when they occurred. In doing so, applicants should pay close attention to the requirements set out on section 58(1A).

Limb One: Holding the area in accordance with tikanga

To satisfy the first limb of the test, the Act requires an applicant group to demonstrate that it holds the specified area in accordance with tikanga. Whether an area is held in accordance with tikanga will depend on the facts and circumstances of each application.

Under the Act, tikanga means "Māori customary values and practices" (section 9). Where an application raises questions of tikanga, the Crown may engage a tikanga expert to provide advice.

Limb Two: Exclusive use and occupation without substantial interruption

To satisfy the second limb of the test, the Act requires an applicant group to demonstrate that it has exclusively used and occupied the specified area from 1840 to the present day without substantial interruption, or received it, at any time after 1840, through a customary transfer in accordance with subsection 58(3).

Exclusive use and occupation since 1840

Under the Act, "exclusive use and occupation" means both the intention and the ability to control the area, to the exclusion of others, from the start to the end of the applicable period without substantial interruption. CMT may exist in areas which are used and accessed by the public alongside applicant groups.

Exclusive use and occupation must be demonstrated across the application area and throughout the applicable period. While contemporary evidence is important, applicants should also ensure they provide evidence that addresses the period from 1840 to the present day.

As above, inferences can only be based on evidence of physical activities or use related to natural and physical resources. The Act emphasises the need for evidence demonstrating how an applicant group has physically used and occupied the application area over time. Applicants should consider providing evidence of use and occupation which shows activities have manifested in a physical way.

Without substantial interruption

Section 57B sets out the meaning of 'substantial interruption'. What amounts to a "substantial interruption" is a fact-specific and contextual assessment. The Minister will consider the nature, extent, duration and cause of any interruption. Substantial interruption can be the result of single or cumulative activities. Substantial interruption may also include lawful activities by third parties or members of the applicant group (including fishing, navigation and, in some circumstances, consented activities).

Whether or not an interruption is substantial will be assessed by looking at the effect it had on exclusive use and occupation. The CMT Matrix provides examples of the types of evidence and considerations that may assist applicants in demonstrating exclusive use and occupation in practice.

Relevant considerations

In considering whether an applicant meets the test, the Minister is required to have particular regard to four considerations set out in the Act. These are:

- ownership of land adjacent to the application area;



- the exercise of non-commercial customary fishing rights;
- the existence and use of named customary fishing grounds; and
- the existence of nearby marae.

Applicants should provide evidence of these factors where possible.

Other matters

Shared exclusivity

The Act recognises that more than one applicant group may be able to demonstrate exclusive use and occupation in relation to a shared area.

Applicants who may have shared exclusivity should provide evidence explaining the nature of the relationship between the relevant groups, their intention and ability to control the area to the exclusion of others, and the tikanga that underpins those arrangements from 1840 to the present day. Shared exclusivity is also subject to the requirements of physical manifestation under s 58(1A).

Offshore areas

The statutory test applies equally to all areas of the takutai moana. This includes out to 12 nautical miles and some offshore islands. Applicants seeking recognition over offshore areas should demonstrate holding the area in accordance with tikanga and exclusive use and occupation across the full extent of the application area. Applicants should consider whether evidence shows that activities or use in offshore areas has manifested in a physical way.

CMT Matrix

The CMT Matrix lists examples of questions to consider and evidence that may be relevant to each element of the test.

The examples of evidence included in the CMT Matrix are intended as a guide only. They are not an exhaustive list of relevant evidence, nor are they a mandatory checklist. Not every type of evidence will be relevant to every application, and applicants are encouraged to provide any other information they consider supports their application.



Questions to consider	What evidence might be relevant
Limb One: Holds the area in accordance with tikanga	
- What is the customary basis for your group's relationship with the area? - What is the tikanga that governs your relationship with the application area? - How does your applicant group hold the area in accordance with that tikanga? - How are these activities practised and understood today? - Have the practices and understanding of these activities changed over time? - How is the teaching/use of these practices communicated within the group and to others? - Are there places or features within the application area that demonstrate your group's relationship with the area? - How is your relationship with the area recognised by others?	- Names of the applicant whānau, hapū, or iwi - Whakapapa connections to the area - Waiata, karakia and/or whakataukī that mention a connection with the area - Urupā or other examples of wāhi tapu and wāhi tapu areas - Mana whenua/mana moana recognised by other iwi/hapū - Past and present ownership of land adjacent to the application area - Demonstration of ahi kā - Existence of nearby marae - Intergenerational mātauranga associated with the area - Customary practices for fishing and resource harvesting - Existence and use of named customary fishing grounds - Maps/locations of customary fishing grounds - Placenames of significant landmarks - Evidence of acting as kaitiakitanga (e.g. rāhui, or other management and protection of the area) - Evidence of showing manaakitanga to others - Historical associations in the area (i.e. with other whānau, hapū or iwi) - Coastal Statutory Acknowledgments (e.g. Treaty settlement legislation or protected areas)
Limb Two: Exclusive use and occupation of the area from 1840 to the present day without substantial interruption	
- How has your applicant group demonstrated the intention to control the application area? - How has your applicant group demonstrated the ability to control the application area? - What physical activities demonstrate your group's use and occupation of the application area? - How have interactions with other groups or third parties demonstrated exclusive use and occupation? - Does your evidence demonstrate continuity throughout the relevant period? - Does evidence relate to the whole application area? - Can you identify who undertook particular activities, where they occurred, and when? - Were there any events or activities that may have interrupted exclusive use and occupation? - If interruptions occurred, what was their nature, extent, duration and cause? - Did your group continue to exercise use and occupation despite interruptions? - Is there any evidence of the involvement of the applicant group in third party use and occupation i.e. consultation. - Is there any evidence of working with other Māori with established interests in the area?	- Ownership of land adjacent to the application area - The exercise of non-commercial customary fishing rights - The existence and use of named customary fishing grounds - The existence of nearby marae - Evidence of use of the area by members of the group - Evidence of the ability to exert control of the area and exclude others - Evidence of exclusive use and occupation of offshore areas, rocks or islands - Evidence of current and historical non-commercial customary fishing in the deep sea - Evidence of a spiritual or cultural association with offshore areas that is manifested in a physical way - Evidence of kaitiakitanga and manaakitanga (including granting permissions) that is manifested in a physical way - Evidence of working with third parties and other groups (e.g. providing feedback to the local council) that is manifested in a physical way - Evidence of use and occupation despite public access, and commercial and recreational uses and structures - Hapū-led decisions on access and use of spaces and resources in the application area that is manifested in a physical way

This table provides examples of relevant types of evidence. It is not a checklist. Not all examples will be relevant to every application.

