



PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	Portfolio	Environment
Name of package	RIS material for Resource Management (Consenting and Other System Changes) Amendment Bill	Date to be published	10 December 2024

List of documents that have been proactively released		
Date	Title	Author
14-Aug-24	Regulatory Impact Statement: Extending the duration of Port Coastal Permits under section 384A	Ministry of Transport
Information redacted NO		
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Regulatory Impact Statement: Extending the Duration of Port Coastal Permits under section 384A of the Resource Management Act 1991

Coversheet

Purpose of Document	
Decision sought:	Approval to amend the Resource Management Act 1991 (RMA) to extend the duration of port coastal permits under section 384A
Advising agencies:	Ministry of Transport Ministry for the Environment Department of Conservation Office for Māori Crown Relations: Te Arawhiti
Proposing Ministers:	Minister Responsible for RMA Reform, Minister of Transport, Minister of Conservation, Minister of Māori Crown Relations: Te Arawhiti
Date finalised:	14 August 2024
Problem Definition	
<p>Port companies rely on s384A coastal permits that will expire in September 2026 and are not confident that they will have acquired alternative consents or plan provisions before that date. While the potential risks from the status quo are not certain, there is an opportunity to simply extend the existing s384A coastal permits to provide long term certainty to port companies and significantly reduce their consenting costs. This aligns with the Government’s stated outcomes.</p>	
Executive Summary	
<p>The Government is taking a phased approach to reforming the resource management system [CAB-24-MIN-0473 refers].</p> <p>The changes assessed in this Regulatory Impact Statement (RIS) form a discrete part of this approach. This RIS deals with options to extend the duration of port coastal permits granted by the Minister of Transport to port companies under section 384A (s384A) of the Resource Management Act 1991 (RMA). This is one of several targeted legislative amendments to the RMA and national direction [CAB-24-MIN-0008 refers] intended to be introduced in 2024.</p> <p>Ministers’ and Cabinet direction have shaped policy options on extending the duration of port coastal permits, which are currently set to expire on 30 September 2026. Cabinet has noted [ECO-24-MIN-0050] that the Government intends to provide certainty to port operators and users, such as by extending their s384A permits by 20 years. This direction, as well as the pace of reform, has limited the analysis of options to those considered likely to deliver this intention.</p>	

Context

Ports play an essential role in New Zealand's economy, including in the transport and freight systems, moving people and goods domestically and internationally and relieving pressure on our land transport networks. It is important that the resource management system enables them to operate productively and safely and provides for long-term certainty of investment and operations.

Coastal permits issued in 1993 give port companies the right to occupy the coastal marine area (CMA) to the extent lawfully carried out in 1991. These were provided for in the RMA so that ports could continue operations while they sought more permanent arrangement by transitioning to the RMA planning framework. These permits were issued for a period of 35 years and are set to expire on 30 September 2026.

If these coastal permits expire port companies may be subject to enforcement action by their regional council for unconsented activities or structures. They will also not be able to enforce exclusive occupation rights, which will have safety implications.

The port sector has raised concerns about its ability to transition to permanent RMA planning arrangements in the time available (ie, before 30 September 2026) due to the complexity of the planning environment and the costs that this would entail. They have raised concerns about ongoing operations if these permits expire without replacement.

This RIS assesses options to extend coastal permits, to provide port companies with more time and reduce the regulatory burden of transitioning to the RMA planning framework.

Options

The options addressed in this RIS are:

- **Status quo:** Allowing coastal permits to expire on 30 September 2026 and requiring ports to transition to the RMA planning framework before that date. To continue operations without hindrance after this date, the affected port companies would need to transition to the RMA framework.
- **Shorter extension:** Extending s384A coastal permits for 5-10 years. This would give port companies some extra time to transition and reduce uncertainty for operations and investment. It would also signal the expectation that ports shortly transition to permanent arrangements under the RMA.
- **20 years:** Extending coastal permits for 20 years. This would provide sufficient time to transition to the new resource management system that the Government has committed to delivering and for consents to be obtained under that system.
- **35 years:** Extending coastal permits for another 35 years. At that point, ports would have been effectively granted a 70-year consent for the activities that were lawful in 1991 and permitted by s384A coastal permits.

There are risks and benefits associated with each of these options which are discussed below.

Evidence

The Government has carried out targeted engagement with port companies, regional councils and mana whenua on this proposal, and particularly on the questions of length of extension and possible processes to introduce or modify conditions on these coastal permits. A wide range of feedback was received as part of this engagement, which has formed the base of evidence for assessing these options.

Recommendation

The proposal needs to balance:

- delivering on Cabinet’s commitment to provide certainty for port users and operators, and the Government’s objective to facilitate the development and efficiency of ports, and
- supporting sector and economic growth, including through avoiding unnecessary regulatory burden, with
- achieving the sustainable management and safeguarding of the coastal marine area and consistency with the Crown’s Treaty of Waitangi obligations.

Officials consider that the option that best meets the Government’s objectives without creating significant new risks is to proceed with an extension of s384A coastal permits for a period of 20 years and include a process to introduce or modify conditions to mitigate some risks associated with an extension. This option supports the Government’s stated objectives.

Limitations and Constraints on Analysis

The analysis in this RIS is limited by:

- *Cabinet decisions and coalition agreements:* The coalition agreement between the National Party and New Zealand First commits to ‘Facilitate the development and efficiency of ports and strengthen international supply networks.’ Cabinet has noted [ECO-24-MIN-0050] that the Government intends to provide certainty to port operators and users, such as by extending their s384A permits by 20 years.
- *Pace of resource management reform:* Cabinet has agreed to make this change, alongside other specific and targeted amendments to the RMA and national direction, through an Amendment Bill to the RMA, which will be introduced by the end of 2024. This timeframe necessarily limits the identification of options, level of analysis, and the collation and review of evidence.

Responsible Manager(s) (completed by relevant manager)



Jessica Ranger
Manager
Urban Development and Public Transport
Ministry of Transport
14 August 2024

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Transport Ministry for the Environment
Panel Assessment & Comment:	<p>This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Ministry of Transport Te Manatū Waka and Ministry for the Environment Manatū Mō Te Taiao. It has been given a ‘partially meets’ rating against the quality assurance criteria for the purpose of informing Cabinet decisions.</p> <p>The panel notes that the RIS sets out well the context, objectives, and options available within the limitations. However, constraints imposed by the policy development process (ie, the limited time available to undertake the analysis and the inability to conduct public consultation, other than targeted engagement with identified stakeholders) have meant that the criteria cannot be fully met. In some cases, the evidence base is missing on which to form a clear understanding of the policy problem, its causes, and the options available to address them.</p>

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The resource management system governs how people interact with the natural and built environment, with the Resource Management Act 1991 (RMA) regulating land use and the use of natural resources. This includes how the provision and operation of infrastructure interacts with the natural and built environment and the right of parties to occupy the coastal marine area (CMA).
2. For port companies, a transitional regime was established in 1993 to enable operations from 1991 to lawfully continue while regional coastal plans were being developed. These were provided for via a Minister of Transport approval under section 384A of the RMA (s384A). The RMA provides these coastal permits were to be issued for a period of 35 years to support the transition of New Zealand's 13 ports into the new resource management system. These permits expire on 30 September 2026.
3. Ports play an essential role in New Zealand's economy, including in the transport and freight systems, moving people and goods domestically and internationally and relieving pressure on our land transport networks. It is important that the resource management system enables them to operate productively and safely.
4. Ports differ from other forms of coastal infrastructure in that they are complex spaces involving multiple activities with high safety operating controls, and are owned by entities that require long term certainty for business continuity and investment. There are a limited number of places where such operations could be located.
5. The intention of s384A was that the port companies would transition into the RMA planning framework by seeking resource consent for these activities or by these activities becoming permitted by the relevant regional plan. The s384A provision was intended to enable port companies to maintain operations in the interim while they sought resource consent or while regional plans were developed.
6. Coastal permits issued under s384A give the port company the right to occupy the coastal marine area adjacent to any port related commercial undertaking which is required for any purpose associated with the operation and management of that undertaking (s384A(1)(a-b)).
7. In practice, these activities include navigation aids (such as buoys, lights, and fog signals), rights to occupations (including exclusive occupation in some instances), and some structures located within the CMA that are not consented elsewhere (such as some wharves). Each coastal permit identifies the extent of the area it covers and only covers those areas and activities as they were in 1991.
8. The s384A permits do not consent discharges to air, land or water, noise or other activities associated with port operations, including landside operations. Any port activities or infrastructure established after 1991 are also not covered by this s384A permit. These activities are consented through standard processes.
9. Most port companies have not sought or not completed the process of gaining new approvals in the CMA.¹ Some port companies have worked with their regional councils to permit some activities covered by s384A in regional plans but retain their coastal permits.

¹We note that Port Otago Ltd holds consents issued under the relevant regional plan that retain the September 2026 expiry date. As these consents are not issued under s384A, they are not proposed to be included in this proposal. All other ports retain their s384A coastal permits and so will be included.

10. During targeted engagement with port companies, we heard that uncertainty around reform of the RMA, increasing costs and regional variation in consenting were factors in the delay to seek replacement for coastal permits.
11. There is little remaining time for ports to transition their operations into the RMA framework via regional plan provisions or by obtaining replacement consents, recognising that any changes will take time to become operative. Port companies are not confident that they will have acquired alternative consents or plan provisions before September 2026. While the potential risks from the status quo are not certain, there is an opportunity to simply extend the existing s384A coastal permits to provide long term certainty to port companies and significantly reduce their consenting costs. This aligns with the Government's stated outcomes.
12. The Government intends to reform the RMA system during this term which creates uncertainty as to what is required for ports in any new regime. Port companies have sought help to remove the risk that they will not have consents or plan approvals in place by the time their current consent expire.
13. If these coastal permits expire and port companies do not have replacement approvals, they may be subject to enforcement action by their regional council for unconsented activities or structures. They would also not be able to enforce their exclusive occupation to prevent unauthorised intrusions into areas where port-related activities, such as vessel loading and unloading, mooring operations and infrastructure maintenance, takes place. This would have safety implications.

Drivers for change

14. In December 2023, the Government commenced its reform of the resource management system with the repeal of the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023.
15. Specific and targeted amendments to the RMA are being progressed at pace to improve necessary functions and activities prior to more fundamental reform of the resource management system later this term. These specific amendments provide an opportunity to progress Government priorities in the resource management space, including to provide certainty to users and operators of ports.
16. The proposals in this RIS form a part of the amendments being progressed at pace [CAB-24-MIN-0008 refers]. The changes specific to this RIS support the delivery of longer durations for s384A coastal permits, to give more certainty for operations and investment for ports until such time as a new regime is established and ports can successfully transition into that. There is additional RIS content for other targeted legislative amendments to the RMA that are being progressed on the same timeframes.
17. Ministers' and Cabinet direction on this approach have set the policy direction. The coalition agreement between the National Party and New Zealand First commits to 'Facilitate the development and efficiency of ports and strengthen international supply networks.' The Government considers that extending the duration of s384A coastal permits best meets this commitment. Cabinet has agreed that the Minister of Transport submit to Cabinet Committee for inclusion in the RMA targeted amendment Bill extensions to port coastal permits [ECO-24-MIN-0050].
18. This, as well as the pace of reform, has limited the options considered by this RIS and the evidence available.

Scope of the Resource Management Act Amendment Bill and consideration of options

19. This RIS is an analysis of the impacts of implementation options specifically for the proposal to extend port coastal permits that is included within the Resource Management Act Amendment Bill 2. The Bill seeks to make several targeted legislative amendments to the RMA, to be introduced by the end of 2024.

20. The range of options developed for consideration has been constrained by the policy direction set by Cabinet decisions and the desired pace for regulatory intervention.
21. There are other options that may address the problem, including the development of national direction to make the activities currently permitted by s384A permitted activities, or the Government directing regional authorities to change regional plans to allow activities. While there is merit in considering these options, it would be complex, require extended consideration and is unlikely to be in place before 2026 when the current s384A permits expire. For these reasons, they have not been considered here.

What is the policy problem or opportunity?

22. Port companies rely on s384A coastal permits that will expire in September 2026 and have consistently expressed that they will have difficulty acquiring alternative consents or plan provisions before that date. This is due to the increasingly complex and costly consenting environment, and the on-going prospect of resource management system reform since 2017, which has affected the willingness of ports to undertake difficult consenting processes without further clarity.
23. The Government intends to provide port companies with the certainty that they need to operate in the CMA [ECO-24-MIN-0050]. These targeted amendments provide an opportunity to deliver that intention.
24. Not having consents may mean some operations cannot be undertaken legally. This may impact the continued safe and efficient operation of the ports. Representatives of the port sector have raised these concerns with the Minister of Transport and during targeted engagement on this policy proposal.
25. Without amendment of the RMA, ports have two years, until 30 September 2026, to replace their s384A coastal permits. Some ports have started discussions with their relevant regional council about new permits, but no applications have yet been lodged.
26. The difficulty and cost of obtaining replacement consents will vary around the country. During targeted engagement, we heard that some are likely to be challenging and costly due to regional approaches to consenting and the increasingly complex consenting environment for ports that has developed since the introduction of the RMA. This includes increasing legal challenges during the consenting process, which has led to an increase in the time it takes to receive consent.
27. If a port's s384A permit expires before it has replacement arrangements in place:
 - a. The relevant regional council will have the ability to undertake enforcement action if it wishes, ranging from fines to, in extreme cases, seeking to remove unconsented structures.
 - b. The port would not be able to enforce a right to exclusive occupation. This is used to protect areas from intrusion that are not in constant use but are critical to the safe operation of the port. Harbourmasters would continue to be able to control activities within the harbour that were likely to pose risks.
28. To avoid hindering the operation of ports, the Government is proposing to extend the duration of s384A permits via an amendment to the RMA. This amendment will be one of several specific and targeted amendments due to be introduced in 2024.
29. Officials have assessed a targeted range of options which are able to be implemented before September 2026, including the status quo and variations on an extension period. Options considered have been limited to those expected to fulfil the Government's commitment to facilitate the development and efficiency of ports and strengthen international supply networks.
30. Treaty of Waitangi implications of the options have been identified throughout the analysis. As part of targeted engagement on this proposal, the Ministry of Transport informed all Māori groups with interests in the areas where ports are located, including iwi, hapū, post-settlement governance entities (PSGEs) and customary rights-holders

and applicants. They were invited to meet or provide written feedback on the proposal, and some groups took up this opportunity. Their feedback is discussed below.

What objectives are sought in relation to the policy problem?

31. The overarching policy objectives of this proposal are to:
- a. **reduce the regulatory burden** on port companies and consent authorities
 - b. **provide greater certainty** for port companies' operations and investment and for consent authorities
 - c. to **promote the sustainable management of the coastal marine area**
 - d. to **fulfil the Crown's Treaty of Waitangi obligations** and obligations under Takutai Moana legislation.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

32. This analysis uses the following criteria to evaluate the options. The criteria are weighted equally.

Table 1: Evaluation criteria

Criteria	Explanation
Reduces regulatory burden	Does the option reduce regulatory burden in terms of cost, time, and resources needed for port companies and consent authorities?
Secures the ongoing operation of port companies	Does the option maintain business confidence that port operations will continue unhindered and promote investment for the port sector?
Safeguards the coastal marine area	Does the proposal meet the purpose and principles (Part 2) of the RMA, particularly the preservation of the natural character of the coastal environment (s6(a))? Does the proposal uphold the functions of consent authorities to manage resource use and protection through resource consenting?
Consistent with the Crown’s Treaty of Waitangi obligations	Is the option consistent with Treaty settlements and specific obligations? Does the option support recognition of customary interests in the coastal marine area?

What scope will options be considered within?

- 33. This proposal intends to implement Government policy [ECO-24-MIN-0050] to give ports certainty by extending the duration of coastal permits under s384A of the RMA. Options to introduce or modify conditions on these permits is also part of consideration.
- 34. Any extension will be most effective if delivered in 2024. This will provide certainty for port companies and consenting authorities and reduce the burden and costs on port companies of attempting to replace their coastal permits before 30 September 2026. The closer to that date policy decisions are made, the more these burdens and costs will increase. The Government is making several targeted amendments to the RMA through an Amendment Bill that will be introduced in late-2024, and this proposal is able to be progressed through that Bill.
- 35. Any extension will apply only to existing coastal permits under s384A and not to other permits or consents that ports hold. This process may include a process to introduce or modify conditions on these permits, which may include a reduction in the area that they cover. It is not proposed to provide mechanisms to increase the area of the permits, or to extend the activities enabled by these permits beyond operations covered in s384A.
- 36. The policy could not be achieved with non-regulatory options, as legislative change is needed to extend coastal permits beyond the limit set in s384A of the RMA.

Targeted engagement

37. Targeted engagement has been carried out with port companies, regional councils and mana whenua on this proposal. Engagement was held over six weeks and included online and in-person information sessions and written feedback.
38. Feedback was specifically requested on two key policy questions:
 - a. The appropriate length of any extension
 - b. Options to introduce or modify conditions on the permits.
39. A variety of feedback was received as part of this targeted engagement. This feedback has influenced the options considered below. A summary of feedback is below.

Mana whenua groups

40. Mana whenua groups in general understood the need for these coastal permits and the ongoing certainty that these provide for port operations, though preferred shorter extensions over longer. A range of periods were suggested, from 4 to 15 years. Some groups also recommended a periodic process to review the permits and any conditions, especially where a longer extension was granted.
41. Mana whenua groups supported conditions being introduced on these permits and saw being involved as key in any process to set or modify conditions. These groups talked about the history of the coastal marine areas within their takiwā and the need to protect and safeguard the space for future generations. The types of conditions raised were the need for engagement and the protection of taonga including kaimoana and the natural environment.
42. Where joint decision-making arrangements already exist, it was felt these should continue to ensure mana whenua can be involved in any extension decision-making.
43. Interaction with the Marine and Coastal Area (Takutai Moana) Act 2011 was raised, and groups noted that it is important that this proposal does not disrupt the process for proving customary rights and interests.
44. In general, mana whenua groups expressed the ambition to work with ports in their takiwā. Written feedback from some mana whenua raised a concern that engagement fell short of that required by te Tiriti o Waitangi.

Port companies

45. Port companies strongly favoured an extension and expressed a clear preference for an extension in perpetuity, noting that the operations covered by s384A are relatively minor and necessary for continued safe and efficient operation of the ports. If a perpetual extension was not able to be granted, ports expressed that an additional 35 years would be appropriate.
46. The port companies felt that any extension should be automatic and not subject to the discretion of regional councils.
47. Ports also expressed that where there are other permits that they rely on set to expire, these should also be extended, to provide certainty.
48. Port companies generally questioned the need for a process to introduce conditions, noting that there had been few issues associated with these coastal permits since 1993. They further felt the process to impose conditions should be nationally consistent, and not a 'post-code lottery.'
49. Finally, the ports recommended that as part of further resource management reform a more streamlined process should be taken to ports' coastal occupation and to the obtaining of any replacement consents for activities. This feedback has been captured and will be considered at the appropriate time.

Regional councils

50. In general, regional councils questioned the need for any extension, and felt that there were avenues open to port companies to solve any issues through the RMA, though there was some regional variation in how complex that process was expected to be.
51. Councils noted that some port footprints have changed significantly, and that any condition change should be able to take that into account, in particular to remove areas the ports no longer manage. This proposal should also not circumvent existing Treaty of Waitangi settlements.
52. Councils supported the development of a process to introduce or modify conditions on the coastal permits but noted that any process should involve the recovery of costs, to not unfairly burden the ratepayer. They also noted that any process should have adequate time to undertake this to a high standard.
53. Councils supported a 20-year extension over a longer extension, and supported the proposals focus on s384A permits rather than also including other permits or consents the ports hold.

What options are being considered?

54. This analysis considers the following options in relation to the extension of time:
 - a. **Option One** (status quo) – no extension of coastal permit durations, with these expiring in September 2026
 - b. **Option Two** (shorter extension) – extend coastal permits for 5-10 years
 - c. **Option Three** (20 years) – extend coastal permits for 20 years
 - d. **Option Four** (35 years) - extend coastal permits for 35 years.
55. All options to extend the duration risks compromising system coherency and perpetuating planning practice that is no longer best practice. It also risks creating a precedent and expectation that other authorisations might be extended in an ad hoc manner through legislative change. These risks are more pronounced given a longer extension.

Option One – No extension of coastal permit durations (status quo)

56. Under this option, coastal permits would continue to expire on 30 September 2026. To continue operations without hindrance after this date, the affected port companies would need to transition to the RMA framework.
57. Under s124 of the RMA, ports will be able to continue operating while a new permit is being processed if they apply at least six months prior to their existing permit expiring (ie, if they apply before 30 March 2026).
58. The key benefits of this option include that it:
 - a. enhances coherence of the consenting regime and ensures that nationally important infrastructure is operating under the same planning framework
 - b. incentivises ports to improve resource management practice and meet new or emerging challenges such as adaptation to climate change where these are impacted by activities permitted by s384A coastal permits
 - c. does not require legislative change
 - d. better protects the rights of affected persons and may be more consistent with the Crown's Treaty obligations
 - e. allows for engagement with relevant iwi and hapū to ensure their views align with port operations and activities.

59. The key risks of this option include that:
- a. significant burden is placed on port companies and consent authorities to transition the twelve ports in a complex planning environment. This is likely to be difficult, costly and risk that coastal permits expire before applications are lodged
 - b. ports have indicated that it would not resolve current uncertainty around the continued operation of ports in the CMA which may hinder investment and business confidence
 - c. it creates a risk of relevant regional councils pursuing enforcement action against port companies if they are not able to lodge a credible application (and thus be protected by s124) before 30 March 2026. This risk is limited to the specific activities consented by s384A, which may mitigate the likelihood that regional councils will pursue enforcement action
 - d. failure to lodge an application by 30 March 2026 may lead to port companies not being able to enforce their exclusive occupation of areas surrounding port infrastructure, which is critical to the safe operation of the port.
60. This option best maintains the integrity of the resource consenting system.

Option Two – Extension for 5-10 years

61. Under this option, ports would have their s384A coastal permits extended for a short period of time, between five and ten years. This would give port companies extra time to prepare consent applications and reduce uncertainty for operations and investment. It would also clearly signal the expectation that ports transition to permanent arrangements in a reasonable timeframe and without delay.
62. The key benefits of this option include that:
- a. it provides the opportunity to ensure that port consents reflect the changes in the resource management system and practice (such as regional coastal plans) since the introduction of the RMA
 - b. a shorter extension is more consistent with the intent of the RMA and creates less of a risk of setting a precedent for other nationally significant infrastructure, which can only be consented for 35 years
 - c. it may not require a process to introduce or modify conditions, since existing practice can only be expected to continue for a short period of time
 - d. it better aligns with feedback received from mana whenua during the targeted engagement process
 - e. it would be efficient to implement, as it extends coastal permits for a set period.
63. The key risks with this proposal include that it:
- a. does not provide certainty of continued operation to ports beyond the length of the extension
 - b. may not give sufficient time to transition into a new resource management regime, which may require port companies to undertake a further transition from the RMA to the new regime
 - c. may perpetuate environmental concerns or erode port companies' social licence to operate.

Option Three – Extension for 20 years

64. The Government has indicated a preference for a 20-year extension. This would avoid any risk that port companies would need to gain RMA approvals which would then need to be transitioned into the new regime. This would provide sufficient time for transition to a new resource management system and for consents to be obtained.

65. The key benefits of this option include that it:
 - a. allows port operations to continue in the interim and postpones the need for ports to transition to a permanent solution until after reform of the RMA
 - b. strikes a balance between the ports' need for certainty and the expectation that they transition into a permanent resource management arrangement
 - c. would be efficient to implement, as it extends coastal permits for a set period.
66. The key risks with this proposal include that it:
 - a. is likely to require a process to introduce or modify conditions, to manage risks without a comprehensive consenting process. This process is likely to have associated costs and uncertainty. These are discussed in more detail below
 - b. may have risks for the Māori Crown relationship in particular areas. This can be managed to some extent through a process to introduce or modify conditions.
 - c. does not provide port companies with the certainty of continued operation they have indicated they consider necessary.

Option Four – Extension for 35 years

67. This option would extend s384A coastal permits for an additional 35 years (the maximum length of time the RMA currently allows on consents with an expiry), so they expire on 30 September 2061. At that point, ports would have been effectively granted a 70-year consent for the activities that were lawful in 1991.
68. The key benefits of this option include that it:
 - a. would be efficient to implement, as it extends coastal permits for a set period
 - b. provides greater certainty for port companies than a shorter period, which they have indicated is important for their continued operation and investment
 - c. defers the cost and burden of transitioning to the RMA planning framework by enabling current business operations to continue as they are for a longer period.
69. The key risks of this option include that it:
 - a. would almost certainly require a process to introduce and modify conditions on the permits so that they do not use a pre-1991 interpretation of good resource management practice for potentially up to 70 years
 - b. may not incentivise port companies to regularly review and improve their current practices, and may perpetuate any issues
 - c. provides ports with a more generous consenting arrangement than other nationally or regionally significant infrastructure. Currently no consent or authorisation under the RMA is issued for more than a 35-year period
 - d. sets a precedent for the extension of consents through legislative change, which could be sought by other consent holders of infrastructure that is also equally regionally or nationally significant. This may lead to a reduction of the coherency of the resource consenting system in the long run.
70. There is no current research to suggest that port companies' resource management practice in the CMA is not generally good. The s384A permits have been in place since 1993 and the Ministry of Transport is not aware that any issues with the operations of ports specifically related to those activities permitted by s384A. However, the longer that the transition to the RMA planning framework is extended, the less these risks can be examined through the consenting process.

Options to introduce or modify conditions on permits

71. The Government has consulted on developing a process to introduce or modify conditions on s384A coastal permits, to go alongside any extension. This would enable

coastal permits to be updated to modern practice and is more likely to be consistent with public expectations about the use of the coastal marine area, the safeguarding of the natural environment and with engagement with Māori, including in relation to Treaty settlement commitments and customary marine title applications.

72. Through targeted engagement, ports have indicated that to give them required confidence of continued operation that any process to introduce and modify conditions be made independent of the extension of the permits. This would ensure that all ports receive the same extension, while allowing any conditions to reflect regional variation.
73. Few s384A coastal permits have existing conditions, though most have non-binding advisory notes. Further, the footprint of some of the ports have changed since 1991, and a process to modify conditions could also update the area covered by the permit. This would limit the risks of extending occupation rights over areas no longer controlled by port companies.
74. A conditions process could be included under any of the lengths of extension (Options 2-4) discussed above but are usefully considered where a longer length of extension is preferred, to ensure that activities enabled by the longer extensions are undertaken in a way that reflects current practice.
75. There are existing mechanisms within the RMA to introduce and modify conditions on existing resource consents (ss127 and 128). However, these are unlikely to work for s384A coastal permits without modification. A bespoke process to introduce and modify conditions is more likely to provide consenting authorities and port companies with the flexibility required and ensure that any process is not overly burdensome.
76. We heard during targeted engagement with regional councils that any process to introduce or modify conditions should include a mechanism for consent authorities to recover costs from applicants, as in existing review provisions of the RMA, to maintain fairness and not burden regional councils and therefore ratepayers with additional costs. In addition, adequate time should be allowed in this process to undertake it to a high standard.
77. Given s384A coastal permits currently exist with few or no conditions and with few ongoing issues, an appropriate balance must be struck between a process which is fit-for-purpose but not overly burdensome or costly.
78. Officials therefore recommend that where a lengthier extension is granted (Options Three and Four), a bespoke process is initiated to introduce or modify conditions that:
 - a. does not require notification or a hearing, but does require engagement with key stakeholders including mana whenua
 - b. allows the consent authority to recover costs from the port company
 - c. allows adequate time to undertake this process to a high standard
 - d. is time-bound to provide ports with ongoing certainty (an example of this could be a process which may only be initiated at any time during a period of one year following when the permits would have otherwise expired in 2026)
 - e. involves a mandatory assessment which regional councils must undertake to determine whether a review of conditions is required.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – 5-10 years	Option Three – 20 years	Option Three – 35 years
Reduces regulatory burden	<p>This option does not reduce the regulatory burden on port companies or regional authorities. Port companies would need to lodge RMA consent applications before 30 September 2026.</p> <p>0</p>	<p>This option would reduce the regulatory burden on port companies by delaying the requirement to lodge consent applications, and would reduce costs for consenting authorities, as no consents or plan changes to permit port activities currently permitted by coastal permits would not need to be sought for a time.</p> <p>+</p>	<p>This option would significantly defer the regulatory burden on port companies and regional authorities by postponing indefinitely the need to transition to the RMA planning framework and providing adequate time to transition into a new resource management system.</p> <p>++</p>	<p>This option would significantly defer the regulatory burden on port companies and regional authorities by postponing indefinitely the need to transition to the RMA planning framework and providing adequate time to transition into a new resource management system.</p> <p>++</p>
Improves the operation of port companies	<p>This option may lead to uncertainty about port companies being able to exercise control over operational areas necessary for their activities, which is likely to have an impact on their business and may disincentivise investment.</p> <p>0</p>	<p>The certainty provided by the extension will support the operation of port companies. This option would also free up time and capital, and enable investment, leading to flow on benefits for the wider economy.</p> <p>+</p>	<p>The certainty provided by the extension will support the operation of port companies. This option would also free up time and capital, and enable investment, leading to flow on benefits for the wider economy.</p> <p>+</p>	<p>This option would provide the greatest certainty of the right to continue to operate in the coastal marine area for the next 35 years. This would enhance business confidence and investment for ports operating under s384A.</p> <p>++</p>
Safeguards the coastal marine area	<p>This option would safeguard the coastal marine area by ensuring that consents to occupy use current good planning practice and are regularly reassessed. This will allow those with an interest in the coastal marine area to engage through the consenting process.</p> <p>0</p>	<p>This option would not immediately ensure that consent to occupy the coastal marine area uses current practice in the coastal marine area but will indicate an expectation that this happens and mitigates this risk through more rapid transition to the RMA planning environment. There is no evidence to suggest that the activities permitted by s384A coastal permits have harmed the coastal marine area, and so this option is unlikely to result in significantly more risk than the status quo.</p> <p>0</p>	<p>This option would carry the same risks as Option Two for a longer period. This risk may be mitigated by a process to introduce or modify conditions. There is no evidence to suggest that the activities permitted by s384A coastal permits have harmed the coastal marine area, and so this option is unlikely to result in significantly more risk than the status quo.</p> <p>0</p>	<p>This option would risk that current practice is not applied to occupation of the coastal marine area for a longer period and would not signal a strong expectation that ports transition in a timely manner. This risk may be mitigated by a process to introduce or modify conditions but runs the risk that it repeats where conditions are not considered.</p> <p>-</p>
Consistent with the Crown's Treaty obligations	<p>The narrow character of s384A coastal permits limits their impact on the Crown's Treaty obligations. However, this option would allow for Māori participation in decision-making through consenting processes.</p> <p>0</p>	<p>Extending s384A coastal permits will not allow affected groups to influence consenting and may have risks for the Māori Crown relationship, but this would be mitigated by a shorter extension and any process to introduce conditions. Officials recommend that processes to introduce or modify consents include a</p>	<p>Extending s384A coastal permits will not allow affected groups to influence consenting and may have risks for the Māori Crown relationship, but this would be mitigated by a shorter extension and any process to introduce conditions. Officials</p>	<p>Extending s384A coastal permits for 35 years will not allow affected groups to influence consenting for a longer period, potentially until 2061. Any risks to the Māori Crown relationship may persist for longer. This risk may be mitigated by a process to introduce or modify conditions but may</p>

	Option One – Status Quo	Option Two – 5-10 years	Option Three – 20 years	Option Three – 35 years
		requirement to notify mana whenua for this reason. -	recommend that processes to introduce or modify consents include a requirement to notify mana whenua for this reason. -	require processes to review conditions regularly owing to the length of the extension. --
Overall assessment	0	+	++	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

79. Officials therefore conclude that the Government’s preferred option of an extension of s384A coastal permits for a period of 20 years will best meet its stated objectives without creating significant new risks and include a process to introduce or modify conditions to mitigate some risks associated with an extension. This option supports the Government’s goal to facilitate the development and efficiency of ports and strengthen international supply networks.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	There would be no additional costs to some port companies due to extending s384A coastal permits. There would be some costs associated with introducing or modifying conditions.	Low	High
Regulators	There would be no additional costs on some regional authorities due to extending s384A coastal permits. There would be some costs associated with introducing or modifying conditions.	Low	High
Wider government	Initial policy development and legislative change costs for wider government	Low	High
Total monetised costs	Not available	N/A	N/A
Non-monetised costs	<p>May erode social licence to operate as reduces community participation in consenting processes and may be perceived as overriding local planning processes.</p> <p>May be costs to the coastal marine environment, but these are difficult to estimate without additional evidence. Extension will defer remediation</p>	Low	<p>Medium: There are some regions where there is community interest in port consenting.</p> <p>Low: There is no evidence that the activities covered by s384A permits have had a negative impact previously, as they only cover the right to occupy and not any operation likely to negatively impact the CMA, which require their own resource consents.</p>

Additional benefits of the preferred option compared to taking no action			
Regulated groups	Costs will be significantly reduced for some port companies, as they will not be required to transition into a planning framework for a longer period.	High	Medium-High
Regulators	Reduced administrative burden associated with processing consenting applications or changing regional plans.	Medium	High
Wider government	N/A	N/A	N/A
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	<p>Increased certainty in port operations may improve business confidence and investment which in turn may benefit the wider economy of New Zealand.</p> <p>Extending s384A coastal permits may free money that would otherwise be used for compliance that can then be used for productive economic activity, including freight and supply chain improvements with flow on benefits to the economy.</p>	Medium	Low

Section 3: Delivering an option

How will the new arrangements be implemented?

80. It is anticipated that the amendments to the RMA, including extension of s384A coastal permits, will receive Royal Assent in 2025 and come into force shortly afterwards.
81. There will be an additional requirement on regional council to undertake a process to introduce or modify conditions on these permits. Following the completion of that process, coastal permits will then continue for the pre-determined length of time.

How will the new arrangements be monitored, evaluated, and reviewed?

82. Consent authorities will have the ability to introduce and modify conditions and thereafter will retain their usual powers to determine compliance, monitor and evaluate port companies. We are not aware of any breaches of conditions of the current s384A permits.
83. The Ministry of Transport will work with Maritime NZ to support port companies transitioning to a permanent arrangement as the pending RMA replacement regime transitions through to implementation.