

Regulatory Impact Statement

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
Amendment Bill 2015.

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry for the Environment (MfE).

It provides an analysis of options to amend the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), to ensure that existing petroleum operators in the Exclusive Economic Zone (EEZ) are able to transition fully into the EEZ Act regime without breaching section 162.

In undertaking the regulatory impact analysis MfE has identified some constraints, caveats and uncertainties concerning the analysis in this RIS. In particular the tight timeframes to progress the amendment has meant that no public consultation has been undertaken.

However, consultation on the intent of the proposed amendment has occurred with immediately affected parties, who indicated support. The lack of public consultation is mitigated by the scope of the proposed amendment which will give effect to an already established and publically understood intention of the EEZ Act.

The proposed amendment will not change the requirement for existing operators to transition into the EEZ regime, and undertake the marine consenting processes of the EEZ Act. These marine consenting processes will provide existing interests, stakeholders and the wider public with an avenue to be involved.

Glenn Wigley, Director, Environmental Systems, Environmental Systems



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Executive summary

Section 162 of the EEZ Act provides for existing petroleum operators, permitted under the Crown minerals regime, to continue their existing activities for the duration of their mining permits or privileges as they were on the day before the EEZ Act came into force.

To ensure that over time these operators transition fully into the EEZ Act regime, they must obtain a marine consent to continue operating once those permits expire. The following table outlines the permit expiry dates of the four existing operators.

Field and company	Permit/licence expiry date
Maui (STOS)	27 June 2015
Tui (AWE)	24 November 2025
Maari (OMV)	01 December 2027
Kupe (Origin)	26 June 2031

Unlike other transitional provisions in the EEZ Act, section 162 does not allow for existing activities to continue while a marine consent application is being considered, and any objections or appeals are determined.

Shell Todd Oil Services (STOS) has a gas producing field (Māui) that has a petroleum mining licence (defined as a privilege under the Crown Minerals Act 1991) due to expire on 27 June 2015.

STOS lodged a marine consent application for Māui on 15 December 2014. The Environmental Protection Authority (EPA) has assessed the application and accepted it as complete on 12 January 2015, with the application being publically notified by the EPA on 26 January 2015. Under the EEZ Act's statutory timeframe, a decision is not due until 20 July 2015.

There is a real risk that STOS will be in breach of the EEZ Act if it continues its operations at Māui past 27 June 2015 without a marine consent.

MfE considers that it was never Parliament's intention to inadvertently put operators transitioning into the EEZ regime at risk of breaching the relevant requirements of the EEZ Act. This was also backed by Cabinet on 8 December 2014, when they agreed with the progression of an amendment to the EEZ Act to resolve this issue [CAB Min (14) 39/12 refers].

It is therefore our conclusion that the required amendment to the EEZ Act should be progressed consistent with the preferred option derived from this analysis.

Status quo and problem definition

The EEZ Act came into force on 28 June 2013. Its purpose is to promote the sustainable management of the natural resources of New Zealand's EEZ and continental shelf. The EEZ Act does this by allowing the regulation of certain activities that were previously unregulated in the EEZ and continental shelf, including oil and gas prospecting and drilling, seabed mining, marine scientific research, and the laying of submarine cables. The Environmental Protection Authority (EPA) approves activities, and enforces and monitors the regime.

Although the EEZ Act is a relatively new piece of legislation and is still in a "bedding in" phase, it is important to ensure that the regulatory regime is achieving its purpose of promoting the sustainable management of the natural resources of the EEZ and continental shelf.

Section 162 of the EEZ Act provides for existing petroleum operators, permitted under the Crown minerals regime, to continue their existing activities involving structures for the duration of their mining permits or privileges as they were on the day before the EEZ Act came into force.

As set out in the table above, there are four existing operators that Section 162 of the EEZ Act applies to. These four operators are Australian Worldwide Exploration (AWE), OMV New Zealand Ltd, Origin Energy Resources, and STOS.

Unlike other transitional provisions in the EEZ Act, section 162 does not allow these operators to continue their activities while a marine consent application is being considered, and any objections or appeals are determined.

The statutory timeframe to complete a marine consent process is 140 working days (approximately six months). There is no timeframe under the EEZ Act for marine consent objections or appeals to be determined. An appeal (on questions of law) is required to be filed to the High Court in Wellington within 15 working days of an appellant being notified of the marine consent decision. The length of time for an appeal to be heard depends on the availability of the High Court, and it can take up to several years before a judgement is issued.

Under the statutory timeframes in the EEZ Act, a decision on the STOS marine consent application may not be made until 20 July 2015. However, when the fifteen working days to allow for objections is included (as required under the EEZ Act), the commencement date would be 10 August 2015. This is over a month after the STOS petroleum mining licence expires on 27 June 2015.

If STOS continues operating after 27 June 2015 without a marine consent it will be in breach of the EEZ Act. If STOS continues operating the EPA would likely take compliance measures, which could result in STOS having to cease its operations at Māui.

The ceasing of STOS's operations at Māui would have a significant impact on the New Zealand economy. STOS's operations at Māui contribute approximately 26 per cent of New

Zealand's gas supply (as of 2010).¹ STOS also contributes to the financial wellbeing of the Taranaki region by employing more than 300 personnel.²

The inflexibility of section 162 also creates a risk that the other existing petroleum operators could be inadvertently at risk of breaching the requirements of the EEZ Act. This would occur if there is a misalignment with the expiring of their permits under the Crown minerals regime, and the completion of the marine consent application process.

Given the timeframes until the other three existing operators' permits expire, MfE considers that this risk is low. MfE anticipates that these operators will work with the EPA to ensure that the required marine consent application is lodged well before the expiry of their permits.

However, due to the uncertainty about the timeframes for marine consent objections or appeals to be determined (possibly several years), some risk remains that these operators would be in breach of the requirements of the EEZ Act. As noted earlier, MfE considers that it was never Parliament's intention to inadvertently put operators transitioning into the EEZ regime at risk of breaching the EEZ Act.

Once all four existing petroleum operators have transitioned fully into the regime through the marine consent process, section 162 of the EEZ Act will no longer have any application.

Objectives

The policy objective is to ensure that all existing petroleum operators are able to transition fully into the EEZ Act regime, in a way that does not reduce public confidence in the EEZ regime.

Options and impact analysis

This section analyses the options considered to achieve the policy objective, and recommends MfE's preferred option.

Options	Benefits and opportunities	Risks and costs
1) Leave the transitional provisions under Section 162 of the EEZ Act as they are currently.	While there are no significant benefits of maintaining the status quo, this requires no resourcing commitments, which are otherwise required to progress any proposed amendment.	The status quo option does not meet the policy objective, as it creates the unintended risk that existing operators transitioning into the EEZ Act regime may be in breach of the EEZ Act while a marine consent application is being considered, and any appeals or objections are determined.

¹ <http://mauipipeline.co.nz/>

² <http://www.stos.co.nz/>

<p>2) Amend the transitional provisions under S162 of the EEZ Act to allow activities involving existing structures or submarine pipelines to continue, until the application is decided and any objections or appeals are determined.</p>	<p>This ensures that the intended policy of existing operators coming fully into the EEZ regime is implemented, without unnecessary risk to operators.</p> <p>It also provides certainty of gas supply by avoiding the unintended risk that STOS's marine consent process for its Māui operations is not completed before its current mining licence expires.</p> <p>It helps maintain public confidence in the new EEZ Act regime, as it does not revoke the need for consent, or lower the assessment threshold.</p>	<p>There is a risk that the amendment will not be completed before STOS's petroleum mining licence expires.</p>
<p>3) Amend the EEZ Act to allow activities involving existing structures or submarine pipelines to continue while the operation is authorised by a mining licence or permit, (including renewals of a mining licence or permit).</p>	<p>Provides existing operators with the option of not applying for a marine consent, which would remove this upfront cost. As STOS has already applied for a marine consent, it will not reduce this cost for them. Allows existing petroleum operators to be treated consistently with other transitional provisions in the EEZ Act.</p>	<p>Existing operators may operate indefinitely under the transitional provisions, rather than transitioning fully into the EEZ Act regime.</p> <p>This may reduce public confidence in the new EEZ Act regime.</p>

Natural gas supply is essential to New Zealand's economic wellbeing. The natural gas industry demand side is very concentrated, with 80 per cent of total gas demand consumed by approximately 30 sites. This includes petrochemicals, electricity generation, and a number of large industrial users in the export sector.³

An outage at the Māui field in 2011 resulted in a five day shutdown of operations. Following this shutdown, the Ministry of Business, Innovation and Employment calculated a gross cost to gas consumers of \$200 million over the five day duration (\$40 million per day).⁴

The potential impacts of ceasing STOS's operations on employment within the Taranaki region, and the impacts on the national supply of natural gas will be very significant for the New Zealand economy.

Any effects of STOS's operations at Māui on the environment or existing interests will be considered during the progression of their current marine consent application, consistent with the relevant provisions of the EEZ Act.

MfE recommends option two be progressed. This option provides the most certainty by avoiding the unintended risks to STOS, other operators, and gas consumers, while still ensuring that existing operators transition into the EEZ Act regime.

³ WorleyParsons Gas disruption study: Report on the potential impacts on the NZ Gas market, (2014)

⁴ WorleyParsons Gas disruption study: Report on the potential impacts on the NZ Gas market, (2014)

Consultation

Consultation on the intent of the proposed amendment with the affected parties, in particular the affected operator, has occurred. They indicated support with the intent of the proposed amendment.

Although no public consultation has been undertaken due to time constraints, this is mitigated by the scope of the proposed amendment, which will give effect to an already established and publically understood intention of the EEZ Act.

MfE will consider a suitable approach to inform local iwi and relevant stakeholders of the proposed amendment.

The following agencies were consulted on this Regulatory Impact Statement: Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry for Primary Industries; Ministry of Transport, The Treasury; Maritime New Zealand; and Environmental Protection Authority. The Department of Prime Minister and Cabinet have been informed.

No substantive issues were raised by agencies, with broad support for the intent of the proposed amendment being indicated.

Conclusions and recommendations

MfE recommends option two be progressed. MfE advocates that this option provides certainty by avoiding the unintended risk to STOS and other operators.

Any risks relating to not completing the amendment to the EEZ Act before the STOS petroleum mining licence expires can be mitigated through thorough planning processes relating to the progression and successful completion of the amendment.

Implementation plan

The preferred option will be given effect through an amendment to the EEZ Act, in the form of an amendment Bill. No implementation plan is required.

Monitoring, evaluation and review

MfE has engaged with the EPA on the proposed amendment Bill. This is to ensure that decision makers have confidence that the amendment will allow operators to continue their activities while a marine consent application is being considered, and any objections or appeals are determined. There are no plans for review of the amendment.