
Regulatory Impact Statement

Resource Legislation Amendment Bill 2015: Decommissioning of offshore installations in the EEZ

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment (MfE). It provides an analysis of options to strengthen the proposals under the Resource Legislation Amendment Bill (RLAB) with respect to decommissioning of offshore installations in the exclusive economic zone (EEZ).

The status quo and analysis in this RIS assumes that proposed amendments under the RLAB that relate to the EEZ Act, will be given Cabinet approval. In particular that:

- the EPA may require owners of offshore installations to prepare a decommissioning plan (new section 100A) and
- the EPA must delegate its decision-making functions to a Board of Inquiry for section 20 activities (new section 53).

Given the above assumption and the time constraints of the RLAB process, it has not been possible to consider a full range of alternative options. The RIS is focused on the most viable options that might deliver the policy objectives.

The costs associated with the proposed options under this RIS have not been fully assessed. It is assumed that as part of planning for decommissioning, operators would have a decommissioning plan of sorts and that any increased costs would largely result from the required engagement between the regulator and operator on the plan, with the cost being dependent on the scale of the decommissioning programme and what an operator proposes to do.



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Ministry for the Environment

This requirement also applies when considering whether to allow the transfer of a permit to another company, including sale of late life assets.

9. Under the EEZ Act, many activities associated with decommissioning such as disturbance of the seabed and the removal or dumping of structures will require marine consent(s) from the EPA to manage the effects on the environment and existing interests. Decision criteria under the EEZ Act set out the matters to be considered by the EPA when determining a marine consent application. The criteria for removing a structure are different to those for dumping a structure and no weighting is assigned to any given criteria.
10. Operators must also get an installation safety case approved by WorkSafe prior to undertaking any decommissioning activities and wells must be plugged and abandoned in accordance with requirements.

Issues identified with the existing framework for decommissioning

11. The RIS on the RLAB 2015: EEZ Amendments identified a gap in the EEZ Act in relation to decommissioning structures once they reach the end of their productive life.
12. It identified that there is no trigger in the EEZ Act (or other legislation) to require operators to engage with agencies to plan for decommissioning of offshore infrastructure. This creates uncertainty for government and the public as to how operators may approach decommissioning of their offshore infrastructure.
13. The RIS also identified that the standard marine consent process only allows for the EPA to grant or refuse an activity that has been applied for. It does not provide for an iterative dialogue between the operator and the regulator and is therefore unlikely to provide operators with guidance about the options available for decommissioning.
14. There is also a risk to the environment and existing interests if an operator does not seek consent to decommission, but instead leaves the infrastructure in place at the end of production without consent. This is an issue because the purpose of the EEZ Act is to ensure sustainable management of activities and to protect the environment from pollution.

Status quo under the RLAB with respect to decommissioning

15. The RIS on the RLAB 2015: EEZ Amendments analysed four options to address the issues with the EEZ regime with respect to decommissioning. The proposed solution was an amendment to the EEZ Act to enable the Environmental Protection Authority (EPA) to require owners of offshore installations to prepare a decommissioning plan in accordance with requirements set out in regulations. This will provide the EPA and other stakeholders with a holistic view of the decommissioning activities an operator intends to take and will reduce the risk of decommissioning not being properly accounted for.
16. It also requires owners to consult the EPA on the plan and apply for marine consent for every discretionary activity that is proposed as part of the decommissioning plan. All of the activities associated with decommissioning are

Lack of certainty that international standards and guidelines will be taken into account

24. The IMO standards and guidelines sets out matters for decision-makers to consider when determining whether installations should be removed. These include matters such as the cost, technical feasibility and risk of injury to personnel from removing an installation.
25. These matters are not expressly included as matters for consideration when determining decommissioning-related marine consent applications under the EEZ Act. This has led to concern from the oil and gas industry that decommissioning-related decisions in New Zealand will be inconsistent with decisions made in other jurisdictions where these range of matters are taken into account by decision-makers.

Abandonment of pipelines in-situ not covered by the EEZ Act

26. While a marine consent is required to place, alter or remove a submarine pipeline from the seabed in the EEZ, leaving a pipeline in place (abandonment in-situ) once it is no longer in use does not require a marine consent or any other type of permit. There is an estimated 120 km of submarine pipelines on or under the seabed in the EEZ and territorial sea. In the territorial sea, abandonment of submarine pipelines will require resource consent under the Resource Management Act 1991 (RMA) but in the EEZ an operator could, in theory, abandon a pipeline without a marine consent or any consideration of the effects on the environment and existing interests.
27. UNCLOS grants coastal States the right to take reasonable measures for the prevention, reduction and control of pollution from pipelines. States also have jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.

A life-cycle approach to the effects of an operation may not be taken

28. There is potential for the oil and gas sector to grow in the future and for more infrastructure to be placed in the marine environment. The EEZ Act does not require marine consent applications for the placement of structures or pipelines to consider or demonstrate a commitment to decommissioning as part of the life-cycle approach to operations.
29. The consequence of this is that consents may be granted for structures to be placed on or under the seabed without any consideration of whether the structure can be removed in the future or the applicant's intention with respect to decommissioning.

Objectives to assess proposals

30. The overall objective is to ensure that decommissioning of all offshore infrastructure is undertaken in a way that meets New Zealand's international obligations and the purpose of the Act.

as part of the decommissioning plan. Regulations are drafted to set out the required contents of a decommissioning plan.

35. Regulations are also drafted to require consideration of the IMO standards and guidelines when considering decommissioning-related marine consent applications. Given the expected timeframe to develop regulations (12 to 14 months), they are unlikely to be in force for any operators that want to decommission in the next 1 to 2 years.
36. In addition to the proposed amendment under the RLAB, the EEZ Act is amended to capture the abandonment of pipelines as a restricted activity requiring marine consent from the EPA and the EPA is the decision-maker on all marine consents for decommissioning related activities.

Option B

37. The proposal in the RLAB is amended to require that all owners of offshore installations must prepare and submit a decommissioning plan to the EPA in accordance with any requirements in regulations. This puts an obligation on all owners to prepare and submit a decommissioning plan at an appropriate time as opposed to the EPA having to decide when a decommissioning plan is required and by whom. Regulations are drafted to set out the required contents of a decommissioning plan.
38. This option goes further than Option A by amending the marine consent process to create a regime that is specifically adapted for dealing with decommissioning activities. This would be achieved by:
 - enabling the EPA to accept the plan and any changes to it in accordance with requirements set out in regulations,
 - requiring all decommissioning-related marine consent applications to have an accepted plan and be in general accordance with that plan. In other words an operator cannot apply for marine consents to undertake activities that are not in general accordance with what has been agreed in the plan,
 - providing for the decommissioning plan to be subject to a public consultation process administered by the EPA. The subsequent decommissioning-related marine consent applications are not subject to public consultation as these will be implementing the approach agreed to in the plan.
39. This option would involve the development of regulations around consultation requirements, timeframes for the EPA to process decommissioning plans and requirements for the EPA to accept the plan. The development of such regulations would be subject to public consultation and would take approximately 12 to 14 months.
40. In addition, as in Option A, the EEZ Act is amended to capture the abandonment of pipelines as a restricted activity requiring marine consent from the EPA and the EPA is the decision-maker on all marine consents for decommissioning related activities.

Table 1. Comparison between Options A and B.

Issue to be addressed	Option A	Option B
RLAB	<ul style="list-style-type: none"> Remains as proposed (the EPA may require owners of offshore installations to prepare a decommissioning plan) 	<ul style="list-style-type: none"> Amended to require that owners of offshore installations must submit a decommissioning plan to the EPA
Decommissioning plan	<ul style="list-style-type: none"> Regulations are drafted to set out the contents of a plan 	<ul style="list-style-type: none"> Regulations are drafted to set out the contents of a plan The plan is subject to public consultation and the EPA accepts the plan in accordance with requirements set out in regulations Regulations drafted to set out requirements for consultation on the plan, timeframes for the EPA to process the plan and requirements for the EPA to accept the plan
Marine consents	<ul style="list-style-type: none"> Remains as proposed in RLAB (marine consents are applied for every discretionary activity that is proposed in the plan) The EPA is the decision-maker on all decommissioning-related marine consent applications 	<ul style="list-style-type: none"> All marine consent applications for decommissioning activities must have an accepted plan, and be in general accordance with that plan Marine consent applications for the subsequent decommissioning-related activities are not subject to public consultation The EPA is the decision-maker on all decommissioning-related marine consent applications Any new marine consent applications must consider decommissioning
Pipelines	<ul style="list-style-type: none"> The EEZ Act is amended to require a marine consent to abandon pipelines in-situ 	<ul style="list-style-type: none"> The EEZ Act is amended to require a marine consent to abandon pipelines in-situ
International guidelines with respect to decommissioning	<ul style="list-style-type: none"> Regulations are drafted to require IMO guidelines and standards to be taken into account 	<ul style="list-style-type: none"> The EEZ Act is amended to require IMO guidelines and standards to be taken into account

Bold text highlights the main difference with Option B compared to Option A.

Impact analysis

OPTION A								
Assessment against sub-objectives	a) an agreed approach to decommissioning is always reached and consented by the decision maker, in line with the purpose of the EEZ Act	b) the regulatory framework explicitly provides for New Zealand's international obligations relating to decommissioning under relevant international conventions	c) the requirements allow for a life cycle approach to operations to be taken	d) a holistic view of decommissioning activities is taken through the decision-making process and enables a consistent approach to decision making for all elements of the work programme (e.g. notified and non-notified marine consents, marine dumping consents and marine discharge consents)	e) the regulatory process is clear and flexible (e.g. allows for change over time)	f) all infrastructure is accounted for in the legislation (e.g. both structures and pipelines)	g) consultation with existing interests, iwi and public is appropriate and fit for purpose	h) decision-making criteria takes into account all relevant matters in line with the purpose of the EEZ Act (e.g. economic feasibility for operator, overall waste stream)
Key: 0 = doesn't meet objective; 1 = partially meets objective; 2 = meets objective								
	1	2	0	1	0	2	1	1
Benefits and risks	<p>Benefits</p> <ul style="list-style-type: none"> Requirement for engagement with EPA as part of developing the plan should result in better marine consent applications and may reduce costs of later consent processes (e.g. scope of notification, submission analysis and hearings). Reduces risk that marine consent decisions are inconsistent with engagement undertaken on the decommissioning plan as the EPA is the decision-maker on all decommissioning-related marine consent applications. Reduces risks to the Government over how offshore oil and gas infrastructure will be managed at the end of field life as a plan can be requested by EPA. Operators cannot abandon pipelines without approval under the EEZ Act which ensures public confidence that the regime appropriately deals with the effects of activities in the EEZ. Having appropriate decision-making criteria with respect to decommissioning reduces the risk that decommissioning-related marine consents are refused and reduces the risk that decommissioning is not undertaken. Making regulations will provide an opportunity for public consultation on New Zealand's approach to decommissioning offshore structures and pipelines and any such regulations would be taken into account under the existing decision-criteria in the EEZ Act. <p>Disadvantages / Risks</p> <ul style="list-style-type: none"> There is no statutory requirement to obtain public input during the development of the plan or to seek public input into the different decommissioning options. With public consultation only occurring during the marine consent process, there is a risk that issues are raised late in the process and impact the decommissioning work programme. This could result in an operator defaulting on their decommissioning obligations. There is still a risk that an owner of an installation prepares a decommissioning plan but is then unable to secure the marine consents required to implement it as there is no requirement for the decommissioning plan to be accepted or taken into account in the subsequent marine consents. This also creates limited incentive for the operators to engage early on decommissioning plan and work with stakeholders / public / EPA as plan has no formal status in the later marine consent process. This creates a risk of the plan becoming an additional cost to owners with no added benefit to the later marine consent process. New operators / marine consent applicants are not required to take account of decommissioning or consider a whole of life approach in their initial applications. This creates a risk of projects being consented without any knowledge of the impacts that may arise from decommissioning (which has to occur) or certainty that decommissioning will be undertaken. This does not meet the purpose of the Act 							
Net impact	<p>Slightly better than status quo.</p> <p>There is an additional cost to operators from developing a plan and a high degree of uncertainty for operators, public and EPA about how the plan relates to the later marine consents.</p> <p>The option does not provide for public consultation to happen early in the process when there may be a better opportunity to influence the outcomes of the decommissioning approach.</p>							

Conclusions and recommendations

44. **MfE considers that implementing the further changes set out in Option B will strengthen the sustainable management purpose of the EEZ Act and give confidence to the public and the government that decommissioning is properly regulated.**
45. Given that some form of decommissioning has to occur MfE considers it is important that there is a clear process that ensures an agreed approach to decommissioning can be reached and ultimately undertaken in line with the purpose of the Act. Option B provides greater certainty of achieving this by creating a link between the plan and later marine consents. The possibility remains that marine consents for decommissioning activities are refused despite the operator having an accepted plan but this is significantly reduced in Option B compared to Option A.
46. Public consultation will be of greater value early in the process before options have been narrowed and an approach to decommissioning decided (Option B). Option B could be amended so that public consultation is not removed from the marine consent process but MfE consider that duplicating public consultation on the plan and later marine consents will increase costs to the public and the operator with no real benefit to the process.
47. Option B will encourage new marine consent applicants to take a whole of life approach to their operations and allow the EPA to fully consider the cumulative impacts of a project over its life.
48. The difference in costs between the two regulatory options proposed in this RIS is unlikely to be significant. The additional cost of assessing and approving the decommissioning plan under Option B is likely to be offset by the amendments proposed to the marine consent process, making it comparable to Option A.

Consultation

49. MfE met with the following agencies to discuss the problems identified with the status quo and the proposals in this RIS:
 - Ministry of Business, Innovation and Employment
 - WorkSafe New Zealand
 - Environmental Protection Authority
 - Maritime New Zealand
 - Inland Revenue
50. The EPA were broadly comfortable with the proposals but noted that if Option B were progressed, the EEZ Act would need to provide for a process to enable the decommissioning plan to be updated or reviewed. This would be addressed through the development of regulations around the requirements for the EPA to accept a plan.
51. Both Maritime New Zealand and WorkSafe raised the need for other marine management regimes to be consulted by the EPA in its consideration of the decommissioning plan. This would be a requirement set out in regulations if Option B is progressed.