

Proposal for Exclusive Economic Zone Environmental Effects Legislation - Cabinet decisions

Reference number:

Cab 07-C-0751

Background

1. **noted** that in December 2006 Cabinet:
 - 1.1 noted there are currently gaps and inconsistencies in the regulation of environmental effects in New Zealand's Exclusive Economic Zone (EEZ);
 - 1.2 agreed to the development of a legislative option for an improved regulatory regime for environmental effects in the EEZ; and
 - 1.3 noted that the outcomes sought from such legislation were to:
 - 1.3.1 help safeguard the integrity of oceans ecosystems;
 - 1.3.2 reduce uncertainty for industries operating in the EEZ; and
 - 1.3.3 promote sustainable development of New Zealand's ocean resources; [Cab Min (06) 47/4B]
2. **noted** that on 5 December 2007 the Cabinet Economic Development Committee invited the Minister for the Environment to report back by 31 March 2008 with final policy proposals for legislation to improve regulation of environmental effects in the EEZ [EDC Min 07 28/9];
3. **noted** that on 5 December 2007 the Cabinet Economic Development Committee also agreed that:
 - 3.1 to take appropriate account of the Treaty of Waitangi, the proposed EEZ legislation should require:
 - 3.1.1 input from, and participation with, iwi in the creation of environmental rules;
 - 3.1.2 input from, and participation with, relevant iwi on individual applications for EEZ consent; and
 - 3.1.3 decision-makers to act in a manner consistent with the provisions of Treaty settlement legislation;
 - 3.2 fishing activities would not need an EEZ consent; and
 - 3.3 policy development should address cumulative effects across different activities, including the effects of fishing (excluding quota management); [EDC min (07) 28/9]
4. **noted** that an Environmental Effects (Exclusive Economic Zone) Bill is included as Priority 4 (to be referred to Select Committee) on the 2008 legislative programme;

Scope of EEZ legislation

5. **agreed** that the legislation state that it gives effect to New Zealand's rights as a coastal state under the United Nations Convention on the Law of the Sea;
6. **agreed** that the EEZ legislation regulate all environmental effects of activities in the EEZ, with the exception of those effects already regulated under existing statutes;

7. **agreed** that the regulation of any environmental effect or activity under the EEZ legislation will not exempt that effect or activity from the provisions of any other applicable legislation;
8. **agreed** that, in addition to applying to the EEZ, the EEZ legislation shall:
 - 8.1 apply to the extended continental shelf to the extent possible under the United Nations Convention on the Law of the Sea; and
 - 8.2 specify how the legislation is to be applied to activities on the extended continental shelf;
9. **noted** that policy development for the EEZ legislation has been undertaken since 2006 on the basis that there will be no substantial changes to existing legislation managing environmental effects in the EEZ;
10. **noted** that many stakeholders have sought the inclusion of fisheries in the scope of the EEZ legislation due to concerns that the sustainability provisions available under the Fisheries Act 1996 to manage the environmental effects of fishing are not being well implemented;
11. **agreed** that concerns over management of environmental effects under fisheries legislation are most appropriately dealt with under, or by amendment to, that legislation;
12. **noted** that the proposed EEZ legislation will not fill all gaps in management of the EEZ, as there is no dedicated and comprehensive marine protection tool that can give a very high level of protection to parts of the EEZ for conservation or biodiversity purposes;

Purpose and principles

13. **agreed** that the purpose of the legislation be to provide for uses of EEZ resources, and to regulate the effects of those uses in order to protect the environment and ensure that any uses (or the effects of those uses, in the case of non-renewable resources) are environmentally sustainable (consistent with New Zealand's obligations under the United Nations Convention on the Law of the Sea);
14. **noted** that the sustainability of the use of non-renewable resources in the EEZ is the concern of the allocation regimes of the Crown Minerals Act 1991 and Continental Shelf Act 1964;
15. **agreed** that decision-makers under the EEZ legislation are to act consistently with international obligations, and to take into account the rights and duties of other states;
16. **agreed** that persons operating in the EEZ to whom the legislation applies are responsible for their actions, and have a general duty to:
 - 16.1 protect the environment from their activities; and
 - 16.2 provide sufficient resources to ensure compliance with the legislation;
17. **agreed** that the legislation is to set out the applicability of the EEZ legislation to any activities with special status in international law, such as international telecommunications cables and marine scientific research;
18. **noted** that on 5 December 2007 the Economic Development Committee agreed that the proposed EEZ legislation should require decision-makers to act in a manner consistent with the provisions of Treaty of Waitangi settlement legislation [EDC Min 07 28/9, decision 6.3];
19. 19.1 **rescinded** the decision referred to in recommendation 18; and instead 19.1 **agreed** to provisions that state that the legislation takes appropriate account of the Treaty of Waitangi by:
 - 19.1.1 stating that nothing in the EEZ legislative regime limits or otherwise affects historic or contemporary Treaty of Waitangi settlements, expressly subject to the specific other provisions set out in this paragraph;
 - 19.1.2 the inclusion of kaitiakitanga and cultural and traditional relationships in the

- 'other matters' provisions set out at recommendation 29;
- 19.1.3 requiring consideration of Treaty of Waitangi settlements when developing the policy statement and regulations;
- 19.1.4 applying a test that would prevent granting of an EEZ consent where it would have a significant adverse effect on defined Maori interests, including Treaty settlements, foreshore and seabed interests, and Maori cultural interests in the ocean;
- 19.1.5 providing for a statutory Maori advisory panel; and
- 19.1.6 providing for iwi input and participation in development of the policy statement and rules, and in the consenting process;
20. **agreed** that the provision in recommendation 19 be worded in such a way that it does not restrict the Treaty of Waitangi relationship in the EEZ to only the matters set out;
21. **agreed** that nothing in the EEZ legislative regime limits or otherwise affects the Foreshore and Seabed Act 2004, subject to the specific other provisions set out in recommendation 19;
22. **agreed** that decision-makers under the EEZ legislation must:
- 22.1 take into account the best available information;
- 22.2 consider any uncertainty or insufficiency in the information available; and
- 22.3 not defer decisions to protect the environment simply because information is unavailable or uncertain;
23. **agreed** that decision-makers under the EEZ legislation must apply a precautionary approach, meaning:
- 23.1 decision-makers should be more cautious, and favour environmental protection, where information is uncertain, unreliable, inadequate or unavailable; and
- 23.2 decision-makers also should not delay in taking measures to protect the environment when information is uncertain, unreliable, inadequate or unavailable;
24. **agreed** that:
- 24.1 in order to give effect to the precautionary approach set out in recommendation 23, decision-makers under the EEZ legislation must consider whether to use adaptive management tools;
- 24.2 the provisions to give effect to recommendation 24.1 must not hamper the ability of the Minister to decline any application for an EEZ consent;
25. **agreed** that the EEZ legislation should be based on a biophysical definition of the environment;
26. **agreed** that decision-makers under the EEZ legislation must consider the following environmental objectives, and to ensure that all decisions will contribute to or be not inconsistent with:
- 26.1 ensuring the integrity of marine ecosystems (including ecosystem complexity, structure, functioning, productivity, dynamism, natural variability and boundaries);
- 26.2 maintaining biological diversity, including the physical features and biogenic structures that support biological diversity;
- 26.3 protecting vulnerable areas or ecosystems from adverse environmental effects
- 26.4 avoiding, remedying, or mitigating the adverse effects of activities; and
- 26.5 managing the cumulative effects of all activities on the receiving environment;
27. **noted** that the term 'protecting vulnerable areas or ecosystems':
- 27.1 means that in meeting the purpose of the legislation the regulation of environmental effects must consider and appropriately address such vulnerable areas or ecosystems; and
- 27.2 does not necessarily mean that such areas or ecosystems will be shut off from use;
28. **noted** that terms such as 'ecosystem' and 'integrity of marine ecosystems' will require careful definition to avoid uncertainty;
29. **agreed** that decision-makers under the EEZ legislation have the discretion to consider the following other matters:

- 29.1 the present and future economic, social and cultural wellbeing of New Zealand;
- 29.2 the relationship of Maori and their culture and traditions with their ancestral waters, sites, waahi tapu, and other taonga;
- 29.3 kaitiakitanga;
- 29.4 the efficiency of any use of natural and physical resources;
- 29.5 existing uses, interests and values;
- 175.6 improving information and knowledge of the marine environment, including the impacts of human activity on the marine environment; and
- 29.7 effects on the health and safety of people and communities;

Governance

- 30. **agreed** that the Minister for the Environment be responsible for the legislation, with the following functions and duties:
 - 30.1 making decisions on EEZ consent applications;
 - 30.2 the preparation of policy statements and regulations under the legislation;
 - 30.3 a discretionary power to direct joint hearings under the Resource Management Act 1991 and EEZ legislation for proposals that span the boundary of the EEZ and territorial sea;
- 31. **agreed** that the Ministry for the Environment be the administering agency for the legislation, with the following functions and duties:
 - 31.1 providing policy advice on the proposed legislation, including monitoring its effectiveness and advising any amendments; and
 - 31.2 developing regulations and policy statements in consultation with other agencies for approval by the Minister for the Environment;
- 32. **agreed** that a new unit will be created in the Ministry for the Environment, headed by an 'EEZ Commissioner';
- 33. **agreed** that the position of EEZ Commissioner will be a statutory office created by the legislation;
- 34. **agreed** that the EEZ Commissioner will be appointed by the Secretary for the Environment, and will have the following functions:
 - 34.1 making recommendations to the Minister for the Environment on decisions on applications for EEZ consents;
 - 34.2 monitoring operations and compliance with the legislation;
 - 34.3 enforcement of the legislation;
 - 34.4 collecting and managing access to information on the EEZ;
 - 34.5 appointing and administering a Maori advisory panel; and
 - 34.6 promoting awareness of rights and obligations under the legislation;
- 35. **noted** that the Ministry for the Environment would continue to be able to provide general policy advice on all aspects of the EEZ legislation, including EEZ consent applications;
- 36. **noted** that the Secretary for the Environment will be responsible for ensuring that adequate resources, in line with the funding of existing Ministry for the Environment functions, are available to enable the EEZ Commissioner to deliver their functions efficiently and effectively;
- 37. **noted** that although the Secretary will not be directly responsible for the EEZ Commissioner's functions, nothing prevents the Secretary for the Environment from taking into account the performance or exercise of the EEZ Commissioner's functions and powers when monitoring and assessing their overall performance;
- 38. **noted** that the EEZ Commissioner, and any related staff, will conform to standard Ministry for the Environment processes and procedures;
- 39. **noted** that further work, including a capability review, will be undertaken on the capacity of the Ministry for the Environment to pick up this new and expanded role, and to identify what additional resources are required;

40. **agreed** to the establishment of a statutory Maori advisory panel to:
 - 40.1 advise the Ministry for the Environment during the scoping and drafting of the policy statement and regulations;
 - 40.2 advise, at the panel's discretion, the EEZ Commissioner on EEZ consent applications with significance for Maori; and
 - 40.3 advise the EEZ Commissioner on appropriate processes to seek iwi input and participation, and any other relevant matters;
41. **agreed** that members of the Maori advisory panel be appointed for their skills and expertise, not as representatives of iwi organisations;
42. **noted** that the role of the Maori advisory panel would not substitute for any input that iwi could choose to have in the development of the policy statement and regulations, and in the consenting process;

Policy Statement

43. **agreed** that the legislation provide for a policy statement that will identify high level environmental outcomes and environmental bottom lines that will assist in achieving the purpose, principles and objectives of the legislation;
44. **agreed** that the policy statement may be used to identify areas that:
 - 44.1 are important or vulnerable due to their biophysical characteristics;
 - 44.2 are important in relation to specific uses;
 - 44.3 require consistent regulation across different laws;
 - 44.4 encourage the concentration of activities through less stringent rules or standards;
 - 44.5 have potential for conflict between different activities; and
 - 44.6 face cumulative environmental pressures from different activities;
45. **agreed** that there should be broad scope for other matters that might be included in a policy statement, but the legislation should specifically allow for:
 - 45.1 policies (within the scope of the EEZ legislation) to improve the management of cumulative effects of all activities on the marine environment and other activities and interests;
 - 45.2 policies or administrative measures to achieve better alignment or coordination with other management regimes and policies in the EEZ and territorial sea;
 - 45.3 policies to apply to particular activities, particularly novel technologies;
 - 45.4 policies for applying the royalty and/or cost-recovery provisions of the legislation; and
 - 45.5 any other objectives or policies that are desirable to give effect to the purpose and principles of the legislation;
46. **agreed** that all regulations created under the legislation and all decisions on EEZ consents must have regard to the contents of a policy statement;
47. **agreed** that, in drafting the policy statement, there must be consideration of the desirability of consistency with other existing marine legislation and policy (including any relevant policy or planning documents) and relevant international law;
48. **agreed** that a policy statement:
 - 48.1 be developed within three years of the commencement of the legislation;
 - 48.2 may be amended or reviewed, but should not have a fixed review period; and
 - 48.3 may not be appealed;
49. **agreed** that the provisions for engagement with other parties (including iwi) and consultation and notification of the public that apply to the development of regulations shall also apply to the development of a policy statement;

Managing cumulative effects

50. **noted** that, as set out in recommendation 3.3, Cabinet has decided that policy development should address cumulative effects across different activities, including the effects of fishing;
51. **noted** that, since the EEZ legislation is intended to fill gaps in current regulation rather than to substantially amend existing legislation, the best policy option for managing the cumulative effects of all activities in the EEZ is provision for greater coordination across management regimes;
52. **agreed** to the following provisions to better manage the cumulative environmental effects of all activities in the EEZ:
 - 52.1 decision-makers will be required to consider the cumulative effects of all activities on the receiving environment at the policy statement, regulation and consenting level;
 - 52.2 EEZ regulations are to contain any necessary provisions to manage a situation where individual permitted activities may have minimal effects, but could collectively have a significant environmental impact;
 - 52.3 any consequential amendments required to other legislation regulating the environmental effects of activities in the EEZ to ensure that the cumulative effects of all activities can be explicitly considered when making management decisions;
53. **agreed** that, to ensure cumulative effects are considered against a consistent set of environmental outcomes and bottom lines, the EEZ legislation make provision for greater coordination between management regimes by:
 - 53.1 requiring that development of high level outcomes and bottom lines as part of the policy statement (as set out at recommendation 43) should take into account the environmental standards set under other statutes;
 - 53.2 consequential amendments to other legislation regulating the environmental effects of activities in the marine area to ensure that all legislation is able to take into account the policies and tools of other relevant legislation;
54. **noted** that relying upon greater coordination between management regimes through a policy statement, and consequential amendments, does create risks that management of environmental effects across different statutes will be inconsistent;
55. **noted** that these risks could be mitigated by development of overarching environmental standards and spatial planning that would apply to all statutes;
56. **noted** that the Ministry for the Environment agrees the merit of a single set of environmental standards and a common approach to cumulative effects management across statutes, but considers that a comprehensive standards and spatial planning approach is unsuitable for inclusion in the EEZ legislation;

EEZ Regulations

57. **agreed** that the Minister for the Environment have the power to make statutory regulations to achieve the purpose of the EEZ legislation;
58. **agreed** that, where appropriate, some operational detail not appropriate for statutory regulations may be promulgated by the Ministry for the Environment;
59. **agreed** that regulations may be made at the discretion of the Minister for the Environment over any or all parts of the EEZ and extended continental shelf;
60. **agreed** that rules in the regulations are to categorise activities into three categories based on their effects: permitted, discretionary or prohibited, based on their effects;
61. **agreed** that standards in the regulations are to set the ongoing conditions with which an activity must comply to be permitted or discretionary;
62. **agreed** that permitted activities be allowed under this legislation without an EEZ consent so long as:

- 208.1 the effects of the activity are below the threshold defined in the rule; and
208.2 the performance of the activity complies with any standards defined in the rule;
63. **agreed** that persons undertaking permitted activities will be required to notify their activities to the EEZ Commissioner, which will enable assessment of compliance with the legislation, and assessment of the cumulative effects of multiple activities;
64. **agreed** that discretionary activities require approval through an EEZ consent;
65. **agreed** that the rules define effects or activities as discretionary:
- 65.1 on the basis of the actual or potential environmental effects of an activity;
65.2 where necessary to manage the cumulative effects of activities; and
65.3 where the activity would, or is likely to, have a significant adverse effect on the other defined interests that must be considered under the significant adverse effect test in the consenting process;
66. **agreed** that activities prohibited in the regulations cannot be considered for an EEZ consent;
67. **agreed** that regulations may be made that have the effect of closing an area to the effects and activities within the scope of this legislation, if doing so is required to meet the purpose and principles of the EEZ legislation;
68. **noted** that international law creates a more permissive regime for international cables and pipelines, and marine scientific research;
69. **agreed** that the legislation provide specifically for international cables and pipelines, and marine scientific research, through specific regulations that provide controls appropriate to their status in international law;
70. **agreed** that the Minister for the Environment notify the intent to develop regulations;
71. **agreed** that the Ministry for the Environment work with key stakeholders, iwi, the Maori advisory panel, and relevant departments to develop a draft regulation, but that this not be expressly provided for in the legislation;
72. **agreed** that the Minister for the Environment publicly notify draft regulations, and directly notify all key stakeholders, iwi, the Maori advisory panel and relevant departments;
73. **agreed** that persons may make written submissions on draft regulations and be heard in support of their submission;
74. **agreed** that the Minister for the Environment consult relevant Ministers before finalising the regulation;
75. **agreed** that when preparing regulations the Minister shall have regard to any relevant marine legislation, policies and plans, and any relevant international law and best practice;

Applying for an EEZ Consent

76. **agreed** that an application for an EEZ consent must describe all aspects of the proposal, and identify effects of the proposal on the environment and other interests, through an impact assessment statement;
77. **agreed** that the legislation specify matters that must be included in the application;
78. **agreed** that the content of the impact assessment statement be scaled to the size and significance of the effects that the activity may have on the environment and other interests;
79. **agreed** that the impact assessment statement must be sufficient to enable consideration of:
- 79.1 the actual or potential effects on the environment and other defined interests;
79.2 any consultation undertaken with persons representing affected defined interests; and
79.3 any possible alternative locations or methods for undertaking the activity to help to avoid, remedy or mitigate any adverse effects;

80. **agreed** that the legislation not include a statutory requirement to consult with any particular persons, but require that the impact assessment statement adequately identify effects on other interests;

Processing the EEZ consent application

81. **agreed** that the EEZ Commissioner be able to decline applications that are deemed incomplete, or to ask for further information from the applicant;
82. **agreed** that all consent applications be publicly notified, and also directly notified to persons and government agencies that the EEZ Commissioner considers will have an interest in the application;
83. **agreed** that submissions on a consent application may be made by any person;
84. **agreed** that the EEZ Commissioner will present to the Minister for the Environment a report that:
 - 84.1 summarises the consent application;
 - 84.2 summarises submissions, any independent audit, and consultation with government agencies; and
 - 84.3 makes recommendations on what decision should be made on the application;
85. **agreed** that the Maori advisory panel receive the officials report, and be able to make recommendations direct to the Minister for the Environment;
86. **agreed** that, if submissions indicate that there may be significant adverse effect on the defined interests of other persons, the EEZ Commissioner may direct the applicant and these persons to meet, or request they enter into mediation, for the purpose of resolving the issues;

Making the decision on an EEZ consent

87. **agreed** that the applicant or any submitter may request a hearing to present their application or submission, and give evidence in support;
88. **agreed** that the EEZ Commissioner may give directions as to evidence and the general conduct of a hearing;
89. **agreed** that when making a decision on an EEZ consent application, the Minister for the Environment must apply the purpose and principles of the legislation and any relevant provisions in the policy statement or regulations;
90. **agreed** that when making a decision the Minister for the Environment should have regard to any submissions made on the consent application;
91. **agreed** that when making a decision the Minister for the Environment must consider:
 - 91.1 the actual and potential environmental effects of the proposed activity, including cumulative effects and effects that may fall outside the EEZ;
 - 91.2 proposals to avoid, remedy or mitigate any adverse effects;
 - 91.3 the nature of the area affected, including biodiversity and any special values (for example, heritage and recreational uses);
 - 91.4 any decisions relating to the area or resource that are made under any relevant other legislation or policy; and
 - 91.5 existing defined interests likely to be affected (but must not consider effects on interests of other persons who have given written approval to the proposal);
92. **agreed** that when making a decision the Minister for the Environment must not consider trade competition issues;
93. **agreed** that when making a decision, the Minister for the Environment must determine whether there will be a significant adverse effects on defined interests (assuming the applicant has not come to an arrangement with those affected);
94. **agreed** that the following matters should be considered when determining whether adverse effects on defined interests are significant:

- 94.1 any relevant principles of international law;
- 94.2 the effects of the proposed activity on the defined interest;
- 94.3 the area that the proposed activity would have in common with the defined interest;
- 94.4 the degree to which both the proposed activity and defined interests must be carried out to the exclusion of other activities; and
- 94.5 whether the defined interest can be exercised only in a particular area;
- 95. **noted** that further work will be required during the development of drafting instructions to determine how the significant adverse effects test will work in practice;
- 96. **agreed** that the Minister for the Environment must decline the application on the grounds that it has significant adverse effects on defined interests, unless the consent can be granted subject to conditions that avoid, remedy or mitigate the effects to the extent that they are no longer considered significant;
- 97. **agreed** that the legislation define those interests that must be assessed for the significant adverse effects test as:
 - 97.1 any lawful existing activity in the territorial sea or EEZ that may be affected;
 - 97.2 resource consents issued under the Resource Management Act 1991;
 - 97.3 historical and contemporary Treaty of Waitangi settlements;
 - 97.4 Foreshore and Seabed Act 2004 instruments; and
 - 97.5 Maori cultural interests in the oceans;
- 98. **agreed** that the Minister for the Environment can either approve the consent in whole or in part, and with or without conditions; or decline the consent;
- 99. agreed that the legislation will specify timeframes for all stages of the consenting process;
- 100. **agreed** that:
 - 100.1 an EEZ consent will be a use right to the holder, defined strictly by the nature and conditions of the consent, and not legal or personal property;
 - 100.2 the maximum term of an EEZ consent be 35 years;
 - 100.3 on expiry of an EEZ consent a new EEZ consent would be required to continue the activity;
 - 100.4 the duration of a consent should meet the purpose and principles of the legislation; and
 - 100.5 the duration of a consent should take into account the duration of any other legislative authorisations required for the activity;
- 101. **agreed** that consents are transferable if the conditions of the consent remain the same for the new holder and the location is unchanged;
- 102. **agreed** that the term of a consent can be reviewed and changed through the consent review process;
- 103. **agreed** that any conditions that are considered appropriate to meet the purpose and principles of the legislation may be attached to an EEZ consent;
- 104. **agreed** that the EEZ Commissioner may review a consent where adverse effects have arisen that were not anticipated at the time of the decision, or where new information is available that would have materially influenced the decision on the consent had it been available at the time;
- 105. **agreed** that the holder of a consent can apply for changes to the conditions of consent;
- 106. **agreed** that:
 - 106.1 the conditions of a consent may be modified after review;
 - 106.2 the process for reviewing and modifying shall be modelled on the existing consent processes; and
 - 106.3 there will be discretion to use a non-notified process, without the requirement for hearings, when making minor modifications to consents;
- 107. **agreed** that a consent may be cancelled in the following circumstances:
 - 107.1 the effects of the activity exceed the consent conditions and cannot be avoided or remedied;

- 107.2 no material efforts have been made to exercise the consent in five consecutive years;
- 107.3 review of the consent reveals information that, if known, would have resulted in the consent not originally being granted, and cannot be addressed through modification of consent conditions; and/or
- 107.4 repeated non-compliance with conditions of consent;

Appeals

- 108. **agreed** that the legislation create a new jurisdiction for the Environment Court to hear appeals from consent decisions under the EEZ legislation;
- 109. **agreed** that the following aspects of decisions on an EEZ consent may be appealed by the applicant or any submitter on a consent application or consent review:
 - 109.1 the decision to grant or decline a consent in whole or part;
 - 109.2 the conditions placed on a consent;
 - 109.3 any changes to the consent or consent conditions arising from review of a consent; and
 - 109.4 any decision to cancel a consent;
- 110. **agreed** that persons may appeal against enforcement orders and prosecution for offences under the EEZ legislation;
- 111. **agreed** that every appeal shall be made, heard, and determined by the Environment Court in the manner prescribed by the Resource Management Act 1991 and the regulations made under that Act, with any exceptions necessary to the hearing of EEZ consents;
- 112. **agreed** that onward appeal rights be identical to those under existing Environment Court procedure (i.e. appeal by leave to the High Court on points of law);

Monitoring, Enforcement and Offences

- 113. **agreed** that the EEZ Commissioner will monitor compliance with the legislation through:
 - 113.1 information reporting requirements for EEZ activities, including self-monitoring, that are set out in regulations and consent conditions;
 - 113.2 observer coverage, if required by regulations or a consent;
 - 113.3 inspections; and/or
 - 113.4 audit of operations, including independent evaluation;
- 114. **agreed** to the following methods for dealing with non-compliance:
 - 114.1 enforcement notices; and
 - 114.2 offence provisions;
- 115. **agreed** that the legislation contain offence provisions that set out the categories of offence and maximum penalties;
- 116. **agreed** that the maximum statutory penalties be aligned with those under the Maritime Transport Act 1994 and Resource Management Act 1991;
- 117. **noted** that officials will consider in drafting of a Bill whether ongoing daily penalties are necessary for the proposed EEZ legislation;

Cost recovery and royalties

- 118. **agreed** that the costs of the following should be recovered, in part or whole:
 - 118.1 the processing of an EEZ consent application;

- 118.2 administering, monitoring and supervising the EEZ consent once granted;
- 118.3 any other costs related to EEZ consent conditions;
- 118.4 monitoring permitted activities, where this is provided for in the relevant rule;
- and
- 118.5 enforcement actions;
- 119. **agreed** that the legislation set out a general power for cost recovery, with the detail of fees and charges determined by regulations developed in consultation with stakeholders;
- 120. **noted** that the policy statement could also contain policies or principles for the levying of cost recovery charges;
- 121. **noted** that most uses of non-renewable, non-living resources in the EEZ are already subject to royalties under the Continental Shelf Act 1964 and/or the Crown Minerals Act 1991;
- 122. **agreed** to provisions allowing the Crown to levy a royalty on extraction of any non-renewable, non-living resource in the EEZ that is not covered by royalty provisions in other legislation;
- 123. **agreed** that the EEZ legislation not include provisions for charges for use of living resources, renewable resources or occupation of space;

Consequential amendments

- 124. **agreed** that the Environment Act 1986 be amended to implement the new proposed functions of the Minister for the Environment and the Ministry for the Environment;
- 125. **agreed** that the Biosecurity Act 1993 be amended to extend its jurisdiction into the EEZ;
- 126. **noted** that I will consult with the Minister for Biosecurity during drafting of biosecurity provisions in the EEZ Bill;
- 127. **noted** that recommendation 52.3 sets out proposed consequential amendments to better align marine management statutes and manage the cumulative effects of all activities;
- 128. **noted** that recommendation 53.2 sets out proposed consequential amendments to ensure that all legislation is able to take into account the policies and tools of other relevant legislation;
- 129. **agreed** to any consequential amendments required to the Resource Management Act 1991 to give effect to the proposals for a joint hearings under the Resource Management Act and this EEZ legislation;

Commencement and transitional provisions

- 130. **agreed** that, until applicable regulations come into force, all proposed activities to which the legislation will apply are to be discretionary activities;
- 131. **agreed** that, where a proposed activity is deemed to be discretionary in the absence of an applicable regulation, the EEZ Commissioner may:
 - 131.1 on receipt of the consent application assess the actual or potential environmental effects of the activity; and
 - 131.2 if those effects are deemed to be minor, make a decision on the consent application without a public notification and submission process or reference to the decision-maker;
- 132. **agreed** that where an activity existing at the time the EEZ legislation comes into force, and to which the EEZ legislation shall apply, has been approved under other legislation:
 - 132.1 the EEZ Commissioner will consider whether the existing activity is consistent

with the EEZ legislation;

132.2 if the conditions applied to an existing activity are not consistent with the EEZ legislation, the activity shall require a 'transitional EEZ consent'; and

132.3 if the conditions applied to an existing activity are consistent with the EEZ legislation, then the EEZ legislation shall come into force for that activity from the date at which the existing approval expires;

133. **agreed** that a transitional EEZ consent will require the persons responsible for the activity to align its operations to be consistent with the EEZ legislation within five years from the issuing of the transitional consent;
134. **agreed** that there will be discretion to make a decision on a transitional EEZ consent through an administrative non-notified process, if the effects of the activity are considered minor;

Legislative Implications

135. **noted** that it is appropriate for the EEZ legislation to be binding on the Crown because its objective is to manage all unregulated environmental effects of activities, which may include activities of the Crown;
136. **agreed** that the EEZ legislation should include a provision stating that the Act will bind the Crown;
137. **noted** that the implications for government departments of the EEZ legislation binding the Crown will be that a small number of government activities may be required to apply for an EEZ consent, and pay the costs of processing and monitoring any EEZ consent;
138. **noted** that the additional cost to the Crown is unlikely to be significant;

Application to defence activities

139. **noted** that the Ministry of Defence and the New Zealand Defence Force are currently determining the potential effect of the proposed legislation on current and potential future defence-related activities in the EEZ;
140. **agreed** that the following matters should guide the legislation's coverage of defence activities:
- 140.1 the legislation should not adversely affect the ability of the New Zealand Defence Force to undertake its core functions;
- 140.2 although New Zealand has sovereign rights with regard to the resources in its EEZ, other states enjoy high seas freedoms, including navigation and overflight, within the zone; and
- 140.3 the EEZ legislation should not disadvantage the freedoms of New Zealand Defence Force platforms in relation to foreign-flagged platforms;
141. **noted** that the Minister for the Environment will consult further with the Minister of Defence during drafting of the Bill to confirm the appropriate coverage of defence activities by the EEZ legislation;

Financial implications

142. **noted** that the implementation of the EEZ legislation will require a new and expanded role for the Ministry for the Environment, and require additional funding;
143. **noted** that the Minister for the Environment intends to seek this funding through a bid for Budget 2009;

Next steps

144. **invited** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office for a Bill to implement the above paragraphs;
145. **invited** the Minister for the Environment to report to Cabinet Legislation Committee by the end of July 2008 with a Bill for approval; and
146. **noted** that I intend to table the legislation in the House before the end of August 2008;
147. **noted** that the Minister for the Environment intends to table the legislation in the House before the end of August 2008;
148. **noted** that stakeholders and iwi will be informed of the proposals before the media release and that the Minister for the Environment will consult with the Attorney-General and the Minister of Maori Affairs on the details;
149. **noted** that the Ministry for the Environment will place information on the proposals, including the Cabinet paper (with appropriate sections withheld under the Official Information Act) and FAQs, on the Ministry's website following the issue of the media release.