

Office of the Minister for the Environment

Chair

Cabinet Economic Growth and Infrastructure Committee

Release of discussion document: EEZ Environmental Effects Regulations

Proposal

1. This paper seeks Cabinet's agreement to release a discussion document (attached in Appendix 1) on proposed policy for regulations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill (the Bill).
2. The discussion document seeks public feedback on proposals to:
 - a. classify some activities in the Exclusive Economic Zone (EEZ) as permitted, subject to conditions, or to leave some activities with the default discretionary classification provided by the Bill. No activities are proposed to be prohibited.
 - b. enable the Environmental Protection Agency (EPA) to recover some costs incurred by carrying out its functions under the Bill.

Executive summary

3. Regulations will provide technical detail for how the new environmental regime, that will be established through the Bill, will apply to activities in the EEZ.
4. The discussion document seeks public feedback on the following policy proposals for regulations under the Bill:
 - a. The functions that the EPA will recover costs for and the methods for recovering those costs.
 - b. A set of assessment criteria for determining the most appropriate way for regulations to classify activities. This includes a criterion that all activities with more than minor environmental effect should require a marine consent.
 - c. Classifications for activities including:
 - i. permitted activities (subject to conditions): seismic surveying; submarine cabling; marine scientific research; prospecting for oil and gas and prospecting for seabed minerals.
 - ii. discretionary activities (requires a marine consent): oil and gas exploration drilling, development/production and

decommissioning; some seabed prospecting and all seabed exploration and mining.

- iii. prohibited activities: no activities will be prohibited at this time, but the EPA can decline a marine consent application if the environmental effects are considered unacceptable.
5. I plan to release the attached discussion document containing these policy proposals for four weeks of public consultation, beginning in May. The discussion document should be released as soon as possible because:
 - a. the proposals are of particular interest to the oil and gas industry. Several companies are making major investment decisions very soon and are waiting for a greater degree of regulatory certainty.
 - b. it will provide Parliament and the public with a fuller understanding of the detail of the proposed regulatory regime before the Bill is reported back to the House on 15 May 2012.
 6. There is likely to be mixed public reaction to this discussion document. It could be contentious due to the current public interest in offshore oil drilling. Environmental groups may see the proposals as not going far enough in terms of environmental protection. Some industry groups, however, may see the proposals as being overly restrictive for certain activities, particularly in relation to exploratory drilling for oil and gas.
 7. The proposals in the discussion document align with public announcements made by the former Minister for the Environment that all oil and gas drilling operations will require a marine consent. They are also consistent with requirements in comparable international jurisdictions.
 8. The Iwi Chairs Forum technical team provided input into the development of the discussion document. The document outlines where Iwi Chairs hold a different view from my proposals.
 9. The consultation process will include iwi engagement through a series of hui across the country. Wider stakeholders will be invited to a targeted question and answer session. The discussion document will be publicly available and all submissions will be taken in writing.

Background

10. On 22 August 2011 Cabinet approved for introduction the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill [CAB Min (11) 31/12 refers]. The Bill is currently being considered by the Local Government and Environment Committee and is scheduled to be reported back to Parliament by 15 May 2012.
11. Policy proposals for the EEZ regulations are being released before the Bill has passed through Parliament to ensure greater investor certainty. However, the Bill is subject to change through the Parliamentary process.

12. The Bill establishes an environmental consenting regime for activities in the EEZ and enables the detail to be set through regulations. The Bill requires that regulations are to be made in order for it to come into force (once it has been passed by Parliament). Regulations are required to go through a process of consultation with iwi and the public.
13. The Bill and regulations provide an opportunity to improve New Zealand's environmental system while ensuring that there are opportunities for economic development. The aims of the regulations are to ensure that processes are in place to:
 - a. assess and manage adverse environmental effects
 - b. provide greater certainty to investors and existing interests
 - c. adhere to international obligations
 - d. ensure costs are proportionate to environmental effects.
14. Regulations will set out which activities are to be:
 - a. permitted – able to be undertaken as of right after notifying the EPA and in compliance with conditions set in regulations
 - b. discretionary – able to be undertaken if a marine consent has been granted by the EPA¹
 - c. prohibited – unable to be undertaken under any circumstances.
15. Regulations can also be made to allow the EPA to recover costs, from operators, it incurs in carrying out its functions under the Bill.
16. The discussion document assesses the effects of activities that currently occur in the EEZ or are likely to in the next five years. The regulations will be designed to fill the gap of unregulated activities beyond the 12 nautical mile jurisdiction of the Resource Management Act 1991. They are not intended to duplicate existing controls that regulate the fishing industry, maritime transport, the allocation of petroleum resources and our response to oil spills.

Comment

17. I plan to release the attached discussion document containing my initial policy proposals for these regulations for four weeks of public consultation beginning in May.
18. The discussion document needs to be released as soon as possible because:
 - a. the proposals are of particular interest to the oil and gas industry. Several companies are making major investment decisions very soon and are waiting for a greater degree of regulatory certainty.

¹ Operators must apply to the EPA for a marine consent to undertake a discretionary activity. The marine consent process involves operators providing an impact assessment for the proposed activity to the EPA. The EPA must publicly notify the activity which may be subject to public hearings.

- b. it will provide Parliament and the public with a fuller understanding of the detail of the proposed regulatory regime before the Bill is reported back to the House on 15 May 2012.

Proposals

19. The discussion document seeks public feedback on policy proposals for regulations including:
 - a. a set of assessment criteria for determining the most appropriate way for regulations to classify activities. This includes a criterion that all activities with more than minor environmental effect should require a marine consent.
 - b. the following proposed classifications for activities:
 - i. Permitted activities (subject to conditions): seismic surveying; submarine cabling; marine scientific research; prospecting for oil and gas and prospecting for seabed minerals.
 - ii. Discretionary activities: oil and gas exploration drilling, development/production and decommissioning; some seabed prospecting and all seabed exploration and mining.
 - iii. Prohibited activities: no activities will be prohibited at this time. There are no activities that I am aware of that will certainly have unacceptable environmental effects. The EPA can decline a marine consent application if the environmental effects are likely to be unacceptable.
 - c. the EPA functions that will be cost-recovered and the methods for cost recovery. The proposed methods for recovering costs from operators comprise a mix of refundable deposits, hourly rates and other actual and reasonable costs.
20. The proposals for classifications align with public announcements made by the former Minister for the Environment that all oil and gas drilling operations will require a marine consent. The proposals are also consistent with requirements in comparable international jurisdictions.

Next steps

21. I plan to release the attached discussion document for four weeks consultation once it has been approved by Cabinet, and subject to any minor technical amendments approved by myself. See the Publicity section (page 6 of this paper) for details of the planned consultation.
22. Once I have considered submissions on the discussion document I propose to report back to Cabinet seeking decisions on the policy for regulations.
23. I then intend to release an exposure draft of the regulations to submitters for further comment once a draft has been prepared by the Parliamentary Counsel Office. This process will ensure the wording of final regulations is robust.

Risks

24. There is likely to be mixed public reaction to this discussion document. It could be contentious due to the current public interest in offshore oil drilling. Environmental groups may see the proposals as not going far enough in terms of environmental protection. Some industry groups, however, may see the proposals as being overly restrictive for certain activities, particularly in relation to oil and gas exploration drilling.
25. I expect this range of reactions. The proposals for regulations have been made within the Bill's purpose to achieve a balance between the protection of the environment and economic development (with a general duty for adverse effects to be avoided, remedied or mitigated). Officials are preparing key messages to address any potentially contentious issues. The discussion document will also provide an opportunity for public concerns to be considered through the submission process.

Consultation

26. The development of the discussion document has included a process to seek input from the Iwi Chairs Forum oil and gas technical team. In August 2011 the Minister for the Environment agreed to establish a parallel engagement process with the Taranaki Iwi Chairs, on behalf of the Iwi Chairs Forum, for the EEZ Bill and regulations. The Minister signed a Relationship Charter with Ngapuri Nui, Te Runanga o Ngati Ruanui to formalise this relationship. The proposals presented in the discussion document reflect iwi input and make it clear where Iwi Chairs hold a different view.
27. The following agencies have been consulted on the discussion document as it is currently worded and are broadly comfortable with its contents: Ministry of Economic Development (including New Zealand Petroleum and Minerals), Ministry of Agriculture and Forestry, Environmental Protection Authority, the Treasury, Department of Conservation, Ministry of Transport, Maritime New Zealand, Te Puni Kōkiri, Department of Labour, Land Information New Zealand, and the Ministry of Science and Innovation. The Department of Prime Minister and Cabinet have been informed about the proposals.
28. The Officials Economic Growth and Infrastructure Committee have been consulted on this paper.
29. Some information about activities described in the discussion document was gathered from operators and representatives within the oil and gas, seabed mining, cabling, and marine science industries.

Regulatory impact analysis

30. The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed "Managing our oceans: A discussion document on the regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill" and associated supporting

material and consider that the information and analysis meets the quality assurance criteria, and that the document will facilitate effective and efficient consultation. A regulatory impact statement will be prepared once final options for regulations are put to Cabinet for consideration.

Publicity

31. I plan to publicly announce and release the discussion document in May 2012. I am seeking feedback on the proposals through written and online submissions.
32. The discussion document will be available on the Ministry for the Environment's website. Copies will also be sent to relevant industry groups, environmental organisations, iwi authorities and local authorities as well as being available at the Ministry for the Environment.
33. I am committed to ensuring that wider iwi and hapu have adequate opportunities to comment on the proposals contained in the discussion document. Officials will hold hui, focusing on regions where there is a high level of interest and iwi are engaged in EEZ issues. The hui will be held jointly with the EPA.
34. Wider stakeholders will be invited to a targeted question and answer session.
35. Other related public consultation processes have either been running recently, or are likely to be running at the same time that this discussion document is planned for release. These include:
 - a. the Ministry of Economic Development's review of the Crown Minerals Act 1991. Public consultation closes on Friday 20 April 2012.
 - b. Maritime New Zealand's review of its Oil Pollution Levy. Consultation closes on Friday 4 May 2012.
 - c. the Department of Labour's review of the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations. Public consultation closes on Monday 4 June 2012.
36. The release of the discussion document is likely to attract media attention in light of heightened public interest in relation to the environmental effects of deep sea drilling, including the environmental effects of oil spills. The media statement for the release of the discussion document will explicitly highlight that all oil and gas drilling activities are to go through a consent process, which includes public notification.
37. Given the cross-cutting nature of the activities presented in the discussion document, Ministry for the Environment officials intend to share relevant questions and answers with key departments (eg, Ministry of Economic Development and Department of Labour), so that departments deliver consistent responses to media queries.
38. I propose to release this paper and associated Cabinet decisions following public announcements and subject to consideration of any information that would be withheld if the information had been requested under the Official Information Act 1982.

Recommendations

The Minister for the Environment recommends that the Committee:

1. **Note** regulations are required to give effect to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill once passed in Parliament
2. **Note** the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill is currently before the Local Government and Environment Select Committee
3. **Note** the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill requires public consultation on proposed regulations
4. **Note** regulations will classify some activities as permitted and that activities classified as discretionary will require a consent from the Environmental Protection Authority
5. **Note** the discussion document contains policy proposals for:
 - a) the criteria used to decide on the classification of activities
 - b) some activities to be classified as permitted and potential conditions for these activities
 - c) methods for cost recovery for some of the Environmental Protection Agency's functions under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill.
7. **Note** the Minister for the Environment intends to release the discussion document in May and that this will be accompanied by a media statement
8. **Note** that the discussion document needs to be released as soon as possible to ensure stakeholders and Parliament are informed of the proposals in time to assist them in making decisions
9. **Note** that Minister for the Environment intends to release this paper and associated Cabinet decisions, subject to consideration of any information that would be withheld if the information had been requested under the Official Information Act 1982
10. **Note** that consultation is planned to last for four weeks
11. **Agree** to the public release of the EEZ Environmental Effects Regulations discussion document subject to minor and technical editorial changes approved by the Minister for the Environment.



Hon Amy Adams
Minister for the Environment

26/06/12