

Subject: Submission on the Exclusive Economic Zone and Continental Shelf
(Environmental Effects) Bill

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Meeting Date: 7 December 2011

Report to ENVIRONMENT & POLICY Committee for decision

SUMMARY

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill ("the Bill") proposes establishing a new regulatory regime for the Exclusive Economic Zone and Continental Shelf ("the EEZ") to manage the environmental effects of activities in the EEZ. The Bill proposes the Minister for the Environment will have powers to create regulations and set activity classes for activities in the EEZ (including mineral and petroleum exploration and mining) and that a marine consenting system would be established under the Environmental Protection Authority. The Minister has not indicated the content or scope of any proposed regulations but has committed to their development by end of 2012.

Council officers have assessed the Bill and have made a draft Council submission to the Minister for the Environment. The key points raised in the submission are around ensuring the purpose of the Bill is appropriate and that regional councils and communities are appropriately engaged during development of regulations and in consenting processes.

Councillor Caddie has also written a report on this matter. It is suggested that both reports be dealt with simultaneously.

RECOMMENDATIONS

That the Committee

1. receives the report
2. adopts the attached submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill for immediate despatch to the Minister for the Environment

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Keywords: EEZ Bill, environmental effects, coastal management, submission, outer territorial limits

1. BACKGROUND

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill ("the Bill") sets up an environmental management regime for New Zealand's Exclusive Economic Zone and continental shelf ("the EEZ"). Activities covered by the Bill include seabed mining, aspects of petroleum activities, energy generation, carbon capture and storage and marine farming.

The Bill gives effect to New Zealand's obligations under the United Nations Convention on the Law of the Sea to manage and protect the natural resources of the EEZ. The EEZ is the area of the sea, seabed and subsoil from 12 to 200 nautical miles offshore over which New Zealand has jurisdiction. The continental shelf is the seabed and subsoil of New Zealand's submerged landmass from the territorial limits of New Zealand and in some places extending beyond the EEZ. New Zealand has exclusive sovereign rights for the purpose of exploring the continental shelf and managing, conserving and exploiting its natural resources.

If enacted, the Bill would be fully in place by July 2013. However central government is committed to having a full set of regulations in place earlier, by the end of 2012. The Bill does not interfere with existing statutes with regulatory powers within the EEZ such as the Maritime Transport Act 1994 or the Fisheries Act 1996.

The Bill is not related to the granting of any permits or rights in the EEZ. The focus is on managing the environmental effects of proposed activities while balancing decisions with economic benefits and existing interests.

See <http://www.legislation.govt.nz/bill/government/2011/0321/latest/versions.aspx> for full text of the Bill.

The Bill was preceded by a discussion paper in 2007 *Regulating Environment Effects in New Zealand's Exclusive Economic Zone 2007* which outlined the key issues and options for EEZ management. Council's submission on the discussion paper focused on:

- Ensuring cross-jurisdictional Integration of regulations across sectors and statutes. The jurisdictional boundaries distinguishing the coastal marine area from the EEZ are artificial boundaries through which environmental effects will flow. Council supported filling the gaps in environmental management legislation provided it was done in a way that is consistent across all statutes that apply to the marine environment and in a way that avoids duplication of processes for applicants and administrators.
- Ensuring appropriate consultation throughout any consenting processes. Any legislation should require engagement as a minimum with councils and tangata whenua as organisations with a direct role in environmental management.
- Considering resource requirements of any proposal so that implementation is feasible and affordable for communities, particularly if there is an expectation from central government that regional councils pick up the role of policy development and consents administration for the EEZ.
- Adopting a precautionary approach given the dearth of knowledge about our offshore marine environment, which means there is potential for decisions to be made in an information vacuum. The burden of proof in ascertaining the scale and nature of environmental effects of an activity should fall on the party proposing the activity.
- Providing for any potential loss of access by others to collectively-owned marine resources and space through an occupation charging regime.

- Establishing a regime that is effects-based to ensure the primary focus of managing environmental effects is effective and future-proofed for new activities that may arise as technology changes.

2. DISCUSSION

The Bill includes a series of regulations governing activities in the EEZ and their effects and a marine consenting regime for activities within the EEZ. The Bill requires decision-makers to take a precautionary approach in the case of uncertain or inadequate information to favour environmental protection. The proposed regime is not the same as the Resource Management Act ("RMA") regime. It has a different purpose: *"to achieve a balance between protection of the environment and economic development of natural resources in the EEZ"*.

In making decisions under the Bill, the principal considerations are:

- managing environmental effects;
- economic well-being of New Zealand;
- efficient use and development of natural resources;
- effects of activities on existing interests;
- effects on human health arising from adverse environmental effects;
- the nature and effect of other marine management regimes;
- protection of biodiversity and integrity of marine species, ecosystems and processes;
- protection of rare and vulnerable ecosystems and habitats of threatened species.

EEZ Regulations

The Minister for the Environment would set the regulatory structure for the EEZ by developing a series of regulations. The regulations would have the power to:

- set technical standards, methods or requirements for activities in the EEZ including the effects of activities in the EEZ and the territorial sea and assessing the state of the environment of the EEZ;
- include qualitative or quantitative standards, methods, processes, technology and transitional provisions;
- cover the whole EEZ or classify specific areas of the EEZ; and
- set activity classes for activities – permitted, discretionary, prohibited (default settings where no regulation applies is discretionary).

The Minister would be required to notify the public, iwi authorities and those with existing interests about the subject matter of regulations and the reasons for the regulations. The Minister would be responsible for establishing a process that gives the public, iwi authorities and those with affected existing interests the opportunity to comment on the regulation content. The Minister can amend regulations without consultation if the amendment would have no more than minor effect or to correct errors and make minor technical changes.

The Bill also proposes an amendment to the RMA that changes section 61(2) and 66(2) related to the Regional Policy Statements and Regional Plans. The requirement would be that when preparing or changing an RPS or Regional Plan, Council must have regard to *"the extent to which the RPS needs to be consistent with regulations made under the EEZ Bill"*.

Marine Consenting

The Environmental Protection Authority (“EPA”) would be responsible for decisions on any marine consents required under the regulations. Decisions on applications would include consideration of the application and submissions, the purpose and principles of the legislation, any relevant regulations, the effects of the activity, any information the EPA has received in relation to the application and industry best practice in relation to the activity.

A marine consent would be required if a regulation labels an activity as discretionary and if there are no specific regulations relating to an activity (in which case the activity defaults to being a discretionary activity). Consents can be granted for a period of up to 35 years.

Marine consent applications must include an assessment of the environmental effects of the activity and the effects on existing interests. The assessment must correspond with the scale and significance of the effects and is at the discretion of the EPA.

All marine consents are to be publicly notified with notice served on other relevant Ministers, Maritime New Zealand, affected tangata whenua (iwi authorities, customary marine title groups, protected customary rights groups), affected existing interests and regional councils.

Anyone would be able to make a submission within 20 working days. The EPA may request pre-decision mediation to resolve matters. The EPA is not obliged to hold a hearing unless requested by the applicant or a submitter. Marine consents will be decided by the EPA. The applicant or any submitter may appeal to the High Court on points of law only.

The EPA is responsible for monitoring and enforcement of marine consents and activities within the EEZ and has powers to apply for enforcement orders through Environment judges.

The Bill covers marine consents for cross-boundary issues. It proposes that where an activity crosses jurisdictional boundary between the coastal marine area/territorial sea and the EEZ, any applications (for marine consent and resource consent) can either be considered jointly or separately by the consenting authorities (regional councils and the EPA).

Existing activities

The Bill protects existing activities provided the effects remain the same. It also outlines specific activities that cannot take place unless a regulation identifies them as permitted or a marine consent is granted on a case-by-case basis.

If an activity was legally established and a new regulation requires that activity have a marine consent, the activity can continue without a marine consent for six months provided a consent is applied for within that six months, the activity can continue until the application is decided or appeals determined. Where a regulation is introduced that prohibits an activity, the activity must cease within a defined time period.

Transitional Provisions

Until the EEZ Bill comes into force, voluntary interim measures have been established to manage the risks of some activities within the EEZ.

The interim measures ask industry to prepare an environmental impact assessment and provide it to the EPA for review on a voluntary basis. The process is intended to foreshadow what will be required when the Bill comes into force.

Related Proposals

The Minister of Labour is establishing a High Hazards Unit with four inspectors specifically for the petroleum industry. The Minister of Transport is reviewing the liability insurance requirements for the industry and is looking to raise it above the current level of NZ \$30m.

Key points in submission

Officers have prepared a draft submission to the Local Government and Environment Select Committee for consideration (appendix 1). The submission raised the following key points:

1. Support for the establishment of an environmental management regime for the EEZ;
2. Support for regulations that consider the environmental effects of activities beyond the EEZ;
3. Support for public notification of all marine consents;
4. Concern at the proposed intent of the Bill to trade off the environmental effects of proposed activities, which largely manifest locally, with the national economic benefits, which often are not realised locally;
5. Concern at how environmental effects across jurisdictions will be managed;
6. Request that regional councils are listed as a specific party for consultation during regulation development; and
7. Request for a minor technical change to facilitate appropriate public notification.

The Local Government New Zealand submission is also attached for your information (appendix 2).

Given the interest locally of iwi and communities in the potential for exploration or mining in and adjacent to the Gisborne District, it is important to ensure appropriate engagement. There would be opportunities for iwi and local communities to comment on any regulations developed and any applications for marine consents. At this stage, there is no word from the Minister to clarify the content or scope of any regulations that might be developed.

3. SIGNIFICANCE

This matter does not have a high degree of significance according to Council's Significance Policy.

4. LEVELS OF SERVICE

If enacted, there may be a minor impact on levels of service depending on local applications that GDC would consider submitting on. The EPA would bear the workload associated with assessing consents in the EEZ and any comments sought from Council to ensure integration between the jurisdictions would be minimal.

5. FINANCIAL

If enacted, would have limited financial impact for Council. The EPA is funded by central government.

6. APPENDICES

Appendix 1: Draft GDC Officers' Submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

Appendix 2: Local Government New Zealand Submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

APPENDIX 1: Draft GDC Officers' Submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

7 December 2011

Submission on Exclusive Economic Zone Bill
Ministry for the Environment
PO Box 10362
WELLINGTON 6143

To whom it may concern

Submission on Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill

1. The Gisborne District Council ("the Council") makes this submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill in recognition of its:
 - statutory responsibilities under the Local Government Act 2002 (LGA) and the Resource Management Act 1991 (RMA); and
 - role in local governance as a unitary authority and advocate for over 45,000 residents/ ratepayers within the Gisborne District.
2. Council supports the submission of Local Government New Zealand and wishes to emphasise the following key points.

General points

3. Council supports the government's objective in this initiative and recognises the importance of an effective and efficient framework for managing the environmental effects of activities in the exclusive economic zone, particularly where they have flow-on effects for local communities.
4. Council's concern is that decisions made on EEZ regulations and marine consents are based on trade offs between the environmental effects of proposed activities, that largely manifest locally, and the national economic benefits, that often are not realised locally. For this reason Council supports the following key aspects of the Bill:
 - EEZ regulations can apply to effects of an activity that extend beyond the EEZ including into the territorial sea/coastal marine area; and
 - all applications for marine permits are publicly notified.

Jurisdictional overlap

5. The purpose of the EEZ Bill differs from the purpose of the Resource Management Act. Where an application spans both the jurisdiction of the regional council and the EPA, the provisions for joint applications may be helpful. However, Council is concerned at provisions allowing decisions to be made on marine consents or EEZ regulations that allow activities with national economic benefits that outweigh any adverse environmental effects.

Council seeks central government assurance that any adverse environmental effects from EEZ activities that spill-over into the coastal marine area/territorial sea do not become the responsibility of regional councils to monitor and manage and that they are dealt with appropriately to ensure local communities are not impacted.

Consultation during regulation development

6. Council requests that regional councils are specifically named as a party to be consulted during the preparation of regulations because:
 - regional councils have jurisdictional responsibility for managing the coastal marine area adjacent to the EEZ and, given the high probability of environmental effects being experienced across jurisdictional boundaries, councils must be in a position to fulfil their statutory responsibilities under the Resource Management Act for the sustainable management of the coastal environment;
 - regional councils will be required to have regard to matters on regulations when developing regional policy statements and regional plans; and
 - regional councils hold key information about existing activities that could contribute to assessing cumulative effects.

7. We suggest the following amendment to 32(2)(a) and (b):

“the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected ...” .

Minor technical changes and corrections

8. The definition of *public notice* in 4(1) only requires notification in the three major newspapers. This is too narrow and should be extended as follows:

“published in a daily newspaper in the nearest main centre”

We thank the Local Government and Environment Select Committee for considering our submission. We do not wish to be heard on our submission.

Yours faithfully

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APPENDIX 2: Local Government New Zealand Submission on the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill