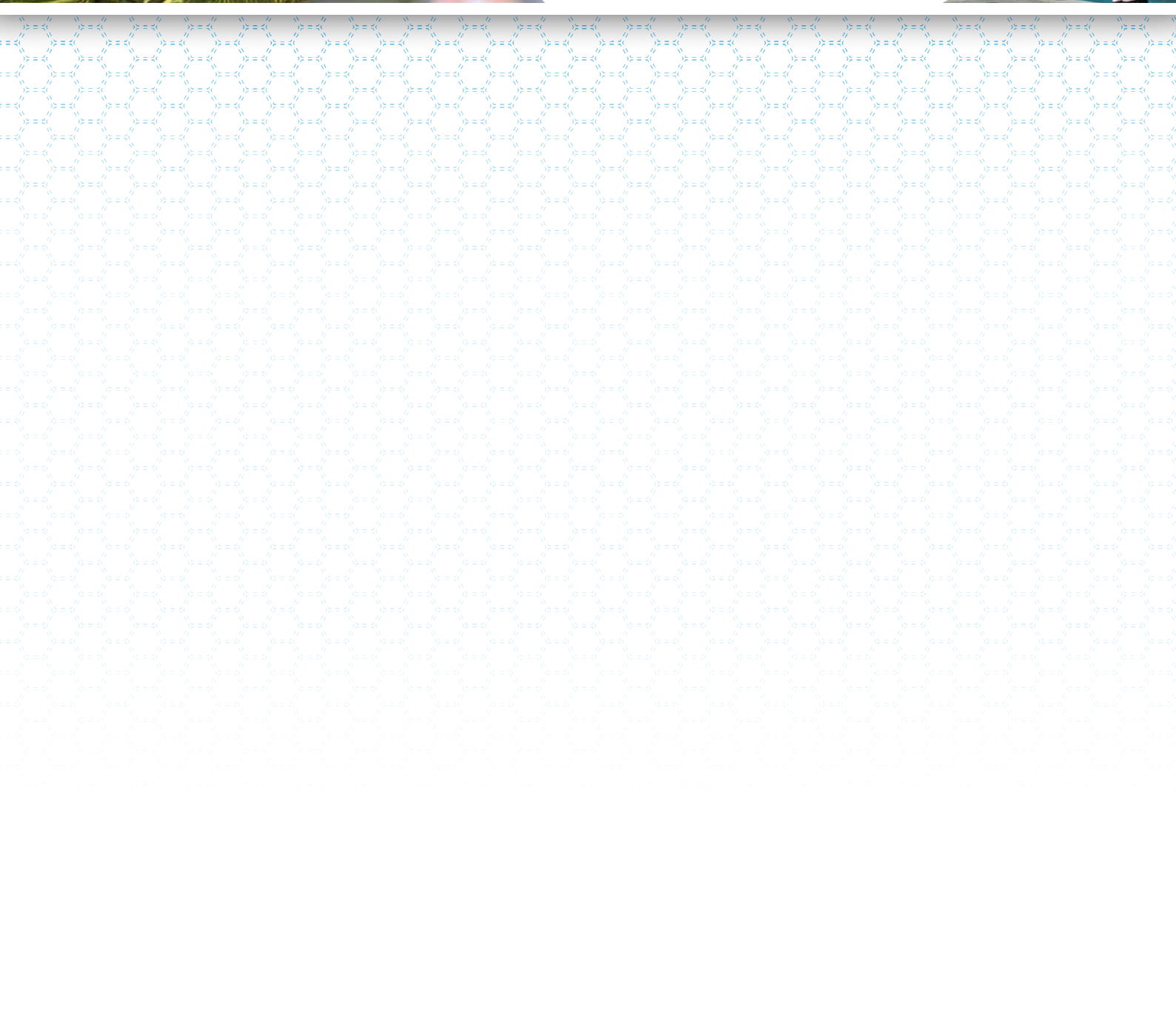


Local Government
New Zealand
te pūtahi matakōkiri



Submission to the Ministry for the Environment

**In the matter of
Managing our Oceans: A discussion on the
regulations proposed under the Exclusive Economic
Zone and Continental Shelf
(Environment Effects Bill)**

June 2012

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Introduction

1. *Local Government New Zealand* thanks the Ministry for the Environment for the opportunity to make this submission in relation to the Discussion Document *Managing our Oceans*.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions.

3. *Local Government New Zealand* prepared this submission following:
 - an analysis of the discussion document
 - analysis of all feedback from councils.
4. This final submission was endorsed under delegated authority by:
 - Lawrence Yule, President, National Council
 - Fran Wilde, Chair, Regional Sector Group, National Council.
5. *Local Government New Zealand* requests the opportunity to review the draft regulations before they are finalised.

Local Government New Zealand policy principles

6. In developing a view on the provisions in this discussion document we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*. We would like the Ministry for the Environment to take these into account when reading this submission.
 - **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
 - **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
 - **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.

- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.
- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

Comments

REGULATORY FRAMEWORK

7. *Local Government New Zealand* supports a regulatory framework for the Exclusive Economic Zone (EEZ) - certainty is important. However, any regulatory framework needs to ensure the different regulatory frameworks applying to the EEZ are aligned and do not duplicate or conflict. For example the regulatory role of the Department of Labour, the regulations being developed under the EEZ Bill and the standards that may be applied by regional councils. Oil and gas drilling is an example where Regional Councils, Department of Labour and the Environmental Protection Agency are all managing well completion standards to protect the environment (regional council's/EPA) and human health and safety (Department of Labour). Alignment by way of a set of national drilling/completion standards may be beneficial for regulators and operators and in our view, should be explored.
8. The overall framework needs to ensure there are no cross-boundary issues with respect to different management regimes. For instance, control of activities under EEZ legislation should satisfactorily address potential effects within the Territorial Sea that are controlled under the RMA. We note the potential for similar activities to be treated differently on either side of the boundary.
9. We suggest that the proposed classification of activities in the EEZ Bill may set the bar too high for prohibited activities to be comfortably consistent with application of the Resource Management Act (RMA). Resource Management Act prohibited activity status is sparingly but effectively used in spatial and strategic planning, to protect identified areas of high value, or to avoid uncontrolled access to identified areas before the information on the implications of development is available or adequately considered. We suggest that consideration should be given now to identifying areas within the EEZ and Continental Shelf of high sensitivity, or for staged consideration and a regulatory regime be developed that appropriately applies all three of the available activity classifications. We note that most regional coastal plans have identified areas of special significance/character where rules are more restrictive.

10. We are concerned that the proposed regulatory approach may not adequately meet its objective of 'effectively managing adverse environmental effects' or adequately satisfy New Zealand's obligations to 'protect and preserve the marine environment' and may be inconsistent with the RMA or allow cross-boundary effects within this often highly connected environment. Building on point 9. above, we are concerned that the proposed activity classification may depend on existing knowledge of likely effects or that expected to be obtained from future monitoring. We understand that the difficulties of obtaining comprehensive and robust monitoring and investigation information generally increase as you move offshore and into deeper waters. Proposed permitted activity classification requires adequate existing certainty that any associated adverse effects are likely to be minor and that monitoring (particularly of cumulative effects) would provide sufficiently timely detection. If this proved not to be so, then allowance for appropriate intervention to avoid significant irreversible adverse effects should be made. Proposed discretionary activity classification allows for the robustness of existing knowledge of effects to be tested through the application process, but may rely too heavily on the anticipated effectiveness of adaptive management monitoring to provide for timely detection of unacceptable adverse effects. Therefore we suggest that the proposed activity classifications be reconsidered to ensure that they do not unrealistically rely on current certainty of likely adverse effects or on the future ability for the timely and reliable detection of impacts so that intervention can be required to avoid unacceptable adverse effects.
12. Self monitoring imparts environmental risk. It should be supported by comprehensive EPA audits and/or independent observers.

COST RECOVERY

13. Provision should be made for cost recovery for enforcement of conditions, monitoring, reporting and provision of information associated with activities in the EEZ. These administrative requirements are only necessary because people wish to carry out activities for their own gain. Such provisions are creating the need and it is appropriate that they meet the costs of their activity. Privately generated costs should not be socialised across the taxpayer base.
14. *Local Government New Zealand* has long made submissions that charges should be able to be made for the occupation of coastal space. This matter should be addressed within the EEZ and also for the territorial sea.

PROCESS

15. The regulations should contain a process for confirming permitted activity status and that permitted activity conditions will be able to be met, similar to a Certificate of compliance under the RMA. This would need to be mandatory and we agree with the submission of Tasman District Council that this is necessary due to the logistical difficulties of checking on activities beneath the water surface and in the expanse of the EEZ.

16. Where the potential effects of an activity cross the jurisdictional boundary, the regulations should require notification to the affected regional council. The regional council needs to be able to be involved in the formal consenting process as an affected party. It is inadequate to only require notification to the EPA and iwi (P58).

ENFORCEMENT TOOLS

17. The regulations should provide the EPA with the same enforcement tools available under the RMA, not just enforcement orders. Such orders are cumbersome to obtain and often inappropriate. In some cases an infringement notice or an abatement notice will be appropriate.

THRESHOLDS FOR ACTIVITY STATUS

18. *Local Government New Zealand* considers that where cumulative effects are unknown then the threshold should be conservative. Permitted activity status should only be used when effects (including cumulative adverse effects) are known to be minor or less than minor. Cumulative effects can be irreversible. Where there is doubt the activity status should be discretionary.
19. Many of the proposed Permitted Activities require engagement with iwi or the Department of Conservation, who then may be required to provide their "consent" for the activity (eg seismic surveying, p35). If this approach is adopted, this would amount to third party approval and potentially issues with activities occurring as Permitted Activities if consent is withheld by these parties. Any such conditions would need to be carefully addressed to avoid this possibility and it is unclear what happens if the third party withholds consent.

Conclusion

20. *Local Government New Zealand* supports the intent of a regulatory framework for the EEZ but considers that more consideration will need to be given to the detail of the regulations.
21. *Local Government New Zealand* thanks Ministry for the Environment for the opportunity to comment on this discussion document.



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