

11 March 2016

New MPA Act
Ministry for the Environment
PO Box 10362
Wellington 6143

mpaconsultation@mfe.govt.nz

PEPANZ Submission: A New Marine Protected Areas Act: Consultation Document

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of *A New Marine Protected Areas Act: Consultation Document* ("the consultation document"), which was released by the Ministry for the Environment in January 2016. PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

This submission is in two main parts:

- Part 1 – Overarching comments
- Part 2 – Responses to questions in the consultation document

Summary

- Reform in this area is supported as the regulatory framework for marine protection is old and not well integrated with other regulatory frameworks.
- Continuing to improve the scientific understanding of New Zealand's marine areas, and the species and ecosystems within them, is required to inform the establishment of marine protected areas and achieve the objectives being sought.
- A clear and science based strategy for implementing the revised marine protection framework needs to be developed.
- Further engagement with stakeholders should occur on refining the details of the policy proposals and developing an implementation strategy.

Part 1 – Overarching comments

Introduction

PEPANZ welcomes the opportunity to provide a submission on these proposed reforms to New Zealand's regulatory framework for marine protected areas. PEPANZ has in the past participated in and supported previous marine protection proposals in various parts of the country, such as the West Coast of the South Island and the Subantarctic Islands.

A representative network of marine protected areas can play an important role in biodiversity conservation. We recognise the current regulatory framework for marine protection is old, not well integrated with other regulatory frameworks, and not configured to facilitate the establishment of a representative network of marine protected areas (“MPA”). Reform in this area is therefore warranted. It is surprising however that the consultation document contains no references to the Marine Protected Areas Strategy (2005) nor any explicit discussion of experience with the application of it.

The offshore petroleum industry is already subject to extensive regulation under various regulatory regimes. The potential environmental effects of any activity in any location are subject to scrutiny and oversight under either the *Resource Management Act 1991* or the *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012*. With prospecting and exploration activities in the marine environment, the effects are generally minor, localised and temporary. During the development and production phase the effects are generally localised and minor, albeit over longer timeframes. Internationally it is common for the industry’s activities to take place around MPAs, or if appropriate, within them.

The proposals in the consultation document

There is merit in many of the proposals outlined in the consultation document that seek to modernise and rationalise the existing marine protected areas framework, although some revisions and a clear strategy for implementation will be required to realise the desired objectives. The consultation document proposes new tools but gives little guidance to how, where and when they’ll be used. We are also mindful that marine protection is only one part of the wider regulatory framework for environmental management and that different approaches may be appropriate for different contexts.

The proposed introduction of some new tools (e.g. new categories of marine protection and processes) is appropriate given the current options for marine protection in New Zealand are highly limited in terms of their design. Amongst other things this has made it more difficult to put appropriate protections in place. We support updating the processes for initiating marine protected areas to align with modern regulatory norms and to ensure relevant matters are considered. We agree that environmental, economic and social impacts should all be fully considered in decisions to establish MPAs. The proposed recognition within this framework for commercial interests generally, and for the substantial investments made by permit holders under the *Crown Minerals Act 1991* in particular, is welcomed. Providing certainty is important for encouraging ongoing investment in exploring for and developing the Crown’s petroleum resources.

It is in coastal and nearshore areas where humans have the greatest connection to the marine environment, but it is also where they are exerting the greatest sustained influence on it. Experience has shown the creation of MPAs in these areas can have substantial impacts environmentally, commercially and for communities. Human activity further offshore is limited to portions of three sectors (fishing, petroleum and potentially minerals) and for the foreseeable future will likely be spatially limited to a small proportion of that area. We know that amongst New Zealand’s deeper oceans there are wide array of special wildlife and habitats. However, there is relatively little scientific knowledge of much of it, or the threats facing the individual species and

ecosystems within it, and what measures would best protect these. Given this context an initial focus on the marine protection framework for our more coastal areas appears appropriate.

Over time it is critical we find ways to improve our understanding of New Zealand's marine environments, particularly our deeper water environments offshore. Whilst good quality research into our marine environments has and continues to take place it has not been specifically orientated towards supporting the objectives sought in relation to marine protection. Activity and investment by the petroleum or mineral sectors will lead to greater understanding in specific areas through the regulatory requirements to undertake environmental impact assessments, the gathering of scientific information to inform these, and then to subsequently monitor any activities that are approved to be undertaken. However, given this research (and for similar reasons fishing related research) is inherently targeted on areas of commercial interest, broadly scoped research will also be required to build a more comprehensive understanding of New Zealand's marine environment.

In order to establish a network of representative areas it is necessary to understand what already exists, and where, the linkages between these areas and the nature of any threats to species or ecosystems within them. An approach not sufficiently underpinned with science is unlikely to realise the proposed objectives for marine protection. It also carries the risk of simply moving commercial activities from one area to another area that is less well understood (but which may be no less important).

We therefore support the comments in the consultation document regarding the importance of improving our knowledge of our marine environment but are concerned there is no analysis of the current state of play in this area or new proposals outlining how this might be achieved. There appears to be wide agreement that there should be a science-based process for establishing and managing MPAs over time, individually and as a network, but this must be supported by both the appropriate regulatory frameworks and sufficient scientific understanding. The latter will require ongoing and potentially increased investment in research.

We agree that providing for adaptability over time is important to ensuring individual MPAs and the overall network are achieving their intended purposes. Knowledge will naturally increase over time and environments, and the threats facing them, will also evolve. Responding to this effectively will likely require changes to MPAs to be made (e.g. changes in boundaries, changes to MPA rules, new MPAs etc.). Experience has also shown that a prevailing view that an MPA boundary will be fixed forever, regardless of changes in knowledge or circumstance, makes it more difficult to garner support for their establishment in the first place.

Equally current MPAs should not be precluded from review and a clear basis and process for this should be provided within the new framework. The risk of not providing this adaptability is that the resulting lack of flexibility could act counter to the wider objectives for MPAs (e.g. more valuable MPAs aren't established due to an inability to review and potentially alter existing ones) and preclude new opportunities from being explored.

Next steps

As noted above what is missing amongst the proposals is a clear strategy for progressing the establishment of a representative network of MPAs. The consultation document outlines the

involvement of three agencies in both initiating and managing different types of MPAs but does not clarify if any department would take the lead in progressing a strategic approach to MPAs or co-ordinating the scientific research required to support this. There are also no proposals to fund the required work within government.

What is required is a strategic approach that includes dedicated funding, clear research linkages, and a plan for establishing, managing and reviewing the envisaged network of MPAs. We note there is already work being done in parallel, such as under the Sustainable Seas National Science Challenge, which could inform policy development in this area. Policy statements could be an option for providing greater guidance on the identification of potential sites for protection as well as on process issues. The ongoing status of the existing *Marine Protected Areas: Policy and implementation plan* (2005) should also be clarified.

Further engagement with relevant stakeholders should be part of refining the proposals in the consultation document and developing a strategy for implementation. As well as contributing to detailed policy design this input and involvement of stakeholders should assist in facilitating constructive engagement over time on implementation. As the representative body for the petroleum exploration and production sector, PEPANZ would expect to be involved in this process.

Finally we consider there should be consultation on an exposure draft of the Bill before it is introduced to Parliament. This is particularly important given the high level nature of many of the proposals in the consultation document. There should be opportunity for stakeholders to input on key matters, such as the criteria for determining what information is needed in an MPA proposal, before the Bill is finalised for introduction.

Part 2 - Responses to questions in the consultation document

In this section we provide answers to some specific questions outlined in the consultation document.

Questions in the consultation document	PEPANZ comments
Q6. Are the four categories proposed for marine protection an appropriate way to achieve a representative and adaptable network of MPAs (objectives 1, 2, 5 and 6)?	<p>We have some specific comments in relation to:</p> <p><i>Species Specific Sanctuaries:</i></p> <ul style="list-style-type: none"> • The consultation document proposes that fisheries “resources” will be managed under the Fisheries Act 1996. It is not entirely clear whether this is meant to include managing fishing activities as well or only management of fish stocks. Presumably it is the latter as otherwise there would seem to be little regulatory purpose for these as other non-fishing activities are already potentially subject to controls under the EEZ Act to protect the environment. • There needs to be a potential time (as well as spatial) element for species-specific sanctuaries as many marine animals are

	<p>migratory. An area may only be important for a species during a certain part of the year.</p> <p><i>Seabed reserves:</i> petroleum activities should be possible within these areas, which appears to be the intent, as the impacts of relevant activities are limited to small and discrete areas and so don't conflict with purpose of the protection, and any effects on the benthic environment would be considered and subject to control under relevant environmental legislation.</p>
<p>Q9. Does the approach take account of the way the oil, gas and minerals sector operates? Why/why not?</p>	<p>We note the consultation document "recognises the significant and ongoing investment made by permit holders undertaking petroleum or mineral mining, prospecting or exploration activities in a particular area." The proposed approach outlined on page 20 of the consultation document would provide certainty to the holders of existing permits but would not be sufficient to identify potential future uses or values of an area as these might not be covered by existing permits. This perspective would need to be sought through the involvement of relevant parts of government, research institutions and the industry in an appropriate process.</p>
<p>Q13. Are the proposed MPA decision-making processes (collaborative process and board of inquiry process) the best way of achieving our objectives (2, 3, 4 and 5)? Why/why not?</p>	<p>The provision of two potential tracks to consider MPA proposals has merit and provides a useful degree of flexibility. Both approaches however have limitations in relation to achieving the aspect of objective 5 concerning future uses and values. A requirement to consider this needs to be given specific recognition as existing interests and stakeholders may not place great emphasis on this aspect (e.g. existing commercial interests will not likely be well placed to represent the potential for different industries in that area in the future). To mitigate against future uses and values being disregarded, government departments and industry representatives should be given an opportunity to participate in any processes.</p>
<p>Q23. Do you agree with the proposed arrangements for transitioning existing MPAs? If not, what are your concerns?</p>	<p>The proposed approach for transitioning existing MPAs is broadly logical, however, in order for the framework to be logically applied existing MPA's should equally be subject to review. Also, given that benthic protection areas were established solely under the <i>Fisheries Act</i>, any potential creation of these as seabed reserves should involve careful consideration of the conservation benefits and wider implications.</p>