

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

27 January 2012

Chairperson
Local Government and Environment Committee
Parliament Buildings
Wellington

To whom it may concern,

Please find attached the Sustainable Future Institute's submission on the proposed Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill. The Institute believes the quality of legislation and regulation to manage our marine resources is fundamental to New Zealand's long-term wellbeing, and therefore welcomes this opportunity to contribute to work in this area. In particular we support calls by the Parliamentary Commissioner for the Environment to strengthen the currently proposed Bill.

In this submission we outline our support for the intent of the proposed legislation but disagree with specific clauses, policy and decision-making processes and the resulting governance.

We explain our concerns in this submission and suggest more robust and stringent policy processes and measures that not only guarantee the key functions of governance and protection, but also ensure sustainable management of New Zealand's ocean territory. This policy is particularly important - for every New Zealander there is about 1.30 square kilometers of seabed and 0.06 square kilometers of land. This suggests the seabed demands far more attention than it has in the past in regard to New Zealand public policy.

We would welcome the opportunity to provide further comment and would like to register our interest in speaking on our submission to the Local Government and Environment Committee. Our contact details are provided below.

Kind regards,

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About the Sustainable Future Institute

The Sustainable Future Institute, which was founded in 2004, is a non-partisan think tank working for the public good, contributing strategic foresight through evidence-based research and policy analysis.

Experience

In preparing this submission we draw on three of the Sustainable Future Institute's projects, *Project 2058*, *Project Genetic Modification* and *Project One Integrated Report*.

Project 2058 is the Institute's flagship project. It includes a research programme that aims to explore New Zealand's long-term future with a view to putting forward a National Sustainable Development Strategy (NSDS) for New Zealand. One of the areas of interest that we have identified is the country's environmental health and management.

Project Genetic Modification closely monitors developments in genetic modification and related policy both in New Zealand and internationally, for our upcoming report *The Future of Genetic Modification in New Zealand*. Publication of this report is on hold until ERMA completes its review of the HSNO (Methodology) Order 1998, which commenced in 2002. A revision of this very important methodology has been under review for ten years - a point not to be lost when considering delegating significant powers to regulations rather than embedding them in the legislation.

Project One Integrated Report advocates the use of one integrated annual report, by both organisations and countries, as a critical mechanism for improving global governance of resources, human health and well-being. Integrated Reports encourage conversation with all stakeholders about their expectations of a company's commitments and the performance metrics that ensure sustainability in economic, environmental, social and cultural terms.

These three Projects are concerned with risk management and long-term strategic thinking for the benefit of New Zealanders. The Institute sees the effective use and management of New Zealand's resources as an integral part of our sustainable future.

Background

In 1996, New Zealand signed the Convention on the Law of the Sea which granted sovereign rights to explore and exploit resources in the EEZ, subject to the *General Obligation* that:

‘States have **the** obligation to protect and preserve the marine environment’ [bold added] (UNCLOS, Article 192, 1982).

In the years after New Zealand became party to this international convention Ministries were tasked with developing policy and drafting legislation to regulate New Zealand’s ocean territory.

In 2007, with piecemeal legislation in place and no overarching environmental management regime for New Zealand’s Exclusive Economic Zone and continental shelf, the Organisation for Economic Cooperation and Development (OECD) recommended New Zealand:

‘finalise and implement ocean policy and pursue the further expansion of marine reserves’ (OECD, 2007: 10).

In 2008, New Zealand’s ocean territory and sovereign rights and obligations were extended by the United Nations. This area of extended continental shelf seabed consisted of about 270,000 square kilometres, about six times New Zealand’s total land area. This new territory added to the existing approximately four million square kilometres of seabed in the New Zealand EEZ, and New Zealand’s right to approximately 1.7m square kilometres of extended continental shelf seabed (MFAT, 2008). New Zealand has exclusive sovereign rights for the purpose of exploring the continental shelf and managing, conserving, and exploiting its natural resources. These resources are limited to those found on or under the seabed.

In 2011, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill proposed an environmental management regime for New Zealand’s EEZ and continental shelf. The Bill provides for activities in the area of sea, seabed, and subsoil from 12 to 200 nautical miles offshore over which New Zealand has jurisdiction. It also provides for activities in the continental shelf, the seabed and subsoil of New Zealand’s submerged landmass from the territorial limits of New Zealand and in some places extending beyond the Exclusive Economic Zone (EEZ). Activities covered by the Bill include seabed mining, some aspects of petroleum activities, energy generation, carbon capture and storage, and marine farming.

Purpose

The purpose of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill is stated in clause 10 as follows:

- (1) This Act seeks to achieve a balance between the protection of the environment and economic development in relation to activities in the exclusive economic zone and on the continental shelf by—
 - (a) requiring decision-makers to take the matters in **section 12** into account in making decisions under **sections 27, 30, and 61**; and
 - (b) requiring them to take a cautious approach in decision-making if information available is uncertain or inadequate; and
 - (c) requiring the adverse effects of activities on the environment to be avoided, remedied, or mitigated.
- (2) In addition to the matters in **subsection (1)**, this Act—
 - (a) recognises that—
 - (i) some activities that are undertaken in the exclusive economic zone or on the continental shelf may have effects on the environment and on existing interests that are not addressed under other legislation; and
 - (ii) some activities are regulated under legislation in a way that incidentally avoids, remedies, or mitigates the adverse effects of those activities on the environment; and
 - (b) regulates the activities described in **paragraph (a)(i)** and their effects on the environment and existing interests.

The New Zealand government holds the rights to resources in the EEZ and continental shelf, subject to an obligation to protect and preserve the marine environment. As such the government has a responsibility to provide independent, thorough and timely information to all New Zealanders, both in their role as (i) guardian and as (ii) the representative of the public good for current and future generations of New Zealanders. Undertaking both roles places an additional onus on government to deliver high levels of transparency and accountability.

(i) Specific Concerns

The Institute has three specific concerns:

1. Change the Purpose of the Bill to reflect the General Observation in UNCLOS

(see background)

2. Ensure the purpose is broader than to 'balance' economic development against environmental protection

The focus on balancing economic development against environmental protection implies the absence of an environmental bottom line and that no cost to the environment is too great provided the economic value of the proposed activity is sufficiently high. This approach may lead to the consideration of environmental effects being balanced in favour of short-term economic benefits, and it fails to take into account who gains the benefits against who bears the risks.

Focusing on short-term economic gain in isolation of the environmental, social and cultural impacts places a large risk on New Zealand's economy and well-being. Analysts should look closely at the outcomes in terms of benefits to New Zealand in the long-term. In other words, if international companies are making the profit and there is minimal benefit for New Zealanders, this investment should not be pursued.

3. Change the wording in the Purpose from 'balance' to 'weigh' economic development against environmental protection

Clause 10(1) states:

'This Act seeks to achieve a balance between the protection of the environment and economic development in relation to activities in the exclusive economic zone and on the continental shelf'

In comparison, Clause 61(2) states that an application for marine consent may be granted

'if the activity's contribution to New Zealand's economic development **outweighs** the activity's adverse effects on the environment' [bold added].

The word weigh is more appropriate to use in legislation that assesses benefits and risks across whole systems as it limits confusion and groups' matters together with equal weighting, while providing economic and environmental limits.

4. Regulations as a tool should be minimized

As noted in the Explanatory note:

'The Bill sets up the general framework for the regulatory system, but the specific controls and standards will be set out in subsequent regulations. When regulations are developed, or consent decisions are made, decision-makers will be required to consider a number of matters relating to the purpose and principles of the legislation.'

The significance of this legislation is such that it should not be left to subsequent regulations, rather the basic principles underlying the risk management process should be embedded in the purpose and principles of the legislation.

5. Provide more clarity over the decision-making process

This leads us to the following suggestions:

(i) Consider the long-term view

We ask government to consider the long-term view. The proposed Bill favours short-term economic benefits, as these are easier to quantify, ahead of environmental considerations, risks, and long-term benefits. Future governments may want to regulate for the protection of the EEZ and continental shelf, so there is a real opportunity to make the purpose broader and more useful for future generations – both in terms of improving accountability and transparency.

(ii) Regular reporting back on activities undertaken in the EEZ and continental shelf

If government wishes to pursue regulation based solely upon economic growth there must be significant clarity concerning why the government sees this investment as worthwhile. Regular public reporting on activities undertaken in the EEZ and continental shelf should be required so that progress can be monitored and assessed by all New Zealanders.

(iii) Independence of those advocating for changes to regulations governing New Zealand's petroleum and minerals (from mineral investors)

To prevent possible conflicts of interest occurring, information collectors and information users must be different organisations. In other words there must be no vested interests, otherwise the independence of the information, and any subsequent decisions based on this information, could be called into question.

6. Provide more information to the public on the risks, costs, benefits and Information, Process and Decision Making

The Bill in its current state does not provide an adequate assessment of all associated economic, environmental, social and cultural risks, costs and benefits. We ask that a thorough analysis of the risks, costs and benefits associated with the proposed environment management regime be undertaken. Pivotal to such an assessment is the need for comprehensive engagement with a wide range of stakeholders.

Regulatory Impact Statements help ensure that the regulatory process is open and transparent; however, they do not provide a full assessment of the risks, costs and benefits associative with both the implementation and the duration of the legislation. The Regulatory Impact Statement does not identify nor discuss the implications of proposals in terms of risks, costs and benefits, and does not take into consideration the precautionary approach. Regulatory policy should always take into consideration emerging trends, possible risks and upcoming opportunities; an effective public policy is one that takes a long-term view.

We discuss each in turn:

A: Risks

Economic, environmental, social and cultural risks have been inadequately assessed and insufficiently understood to ensure a robust decision on an issue of high national importance. Limitations and controls to manage any risks for both current and future New Zealanders have not been explored. The opportunity to be an international example in best practice of ocean management and protection comes with the United Nation's confirmation of the extension of New Zealand's continental shelf. If New Zealand does not demonstrate best practice in ocean protection policy and legislation there is the potential for reputational risk to New Zealand internationally.

B: Costs

The costs of pollution and potential drops of revenue in other areas such as tourism have not been identified and valued. The cost to the integrity of New Zealand's *100% Pure* image and our ability to claim a premium on the marketing of our exported products and services have not been assessed. Long-term costs associated with seabed mining, deep sea petroleum extraction, marine farming, pollution and amenity value of the impacted environment have not been quantified.

C: Benefits

We believe the benefits have not been sufficiently identified, quantified or explored over substantial time frames in the discussion document. Potential economic profits and who they will benefit have not been adequately stated. The extent to which these profits will stay in New Zealand or be accrued to overseas investors needs to be addressed. Benefits should be assessed over longer time frames to ensure decisions are being made with future generations in mind. Non-economic benefits to our country also need to be assessed and given due weight.

D: Information, Process and Decision Making

Of high concern is the transparency of information made publicly available throughout the consultation process. Questions around conflicts of interest, independence of information providers and the quality and purpose of the information provided need to be openly addressed to ensure stakeholders are accurately informed - as well as to encourage engagement and satisfaction in the standard of consultation and resulting decisions. New Zealanders need to be informed to enable them to choose whether or not to be involved in the policy process. Further, New Zealand's policy and legislation in ocean management has the ability to inform international policy makers, scientists and governments and therefore needs to both of the highest standard and highly transparent.

Summary

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill proposes to achieve a balance between the protection of the environment and economic development. As a minimum requirement the Bill should require sustainable economic development to be considered in relation to environmental, social and other opposing economic impacts (i.e. on New Zealand's seafood industry and clean green image in international markets). Under the United Nation Convention on the Law of the Sea there is only one *General Obligation* and that is to 'protect and preserve the marine environment'.

Good governance requires good processes. Effective public policy is developed with consideration of any possible impacts across all economic, social, environmental and cultural sectors. Evidence based policy assesses all risks, costs and benefits over substantial time frames. An integrated approach is achieved through cross agency interaction, coordinated legislation and regular reporting requirements. Proficient policy and quality decisions are reached by transparent and accountable consultation processes and decision-making. New Zealanders deserve all of the above.

We welcome the opportunity to provide feedback to the Local Government and Environment Committee and will continue to follow developments relative to the proposed legislation and regulations. The Institute will continue to progress its *Project 2058* as a vehicle for furthering discussion on this topic in New Zealand.

Appendix 1: Report 12 – *StrategyNZ: Mapping our Future Workbook* (pages 37-38).

This report was prepared as a workbook for the StrategyNZ: Mapping our Future event held by the Sustainable Future Institute in March 2011.

References

Organisation for Economic Cooperation and Development (OECD) (2007). *Environmental Performance Reviews: New Zealand*, Chapter 1: Conclusions and Recommendations, 3. International Co-operation, p. 10. Retrieved January 25, 2011 from http://www.oecd.org/document/10/0,2340,en_2649_34307_37915274_1_1_1_1,00.html

Ministry of Foreign Affairs and Trade (MFAT) (2008). *UN confirms NZ's extended seabed claim*. Retrieved January 25, 2011 from <http://mfat.govt.nz/Media-and-publications/Features/990-NZ-extended-seabed-claim.php>

United Nations Convention on the Law of the Sea (UNCLOS) (1982). Part XII, *Protection and Preservation of the Marine Environment*, Section 1. General Provisions, Article 192, General obligation. Retrieved January 25, 2011 from http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm



New Zealand seabed

Undersea New Zealand image from NIWA, with EEZ lines added by the Sustainable Future Institute. Text adapted from Ministry of Foreign Affairs and Trade (2010).

**For every New Zealander there is about
1.30 square kilometres of seabed and
0.06 square kilometres of land.**

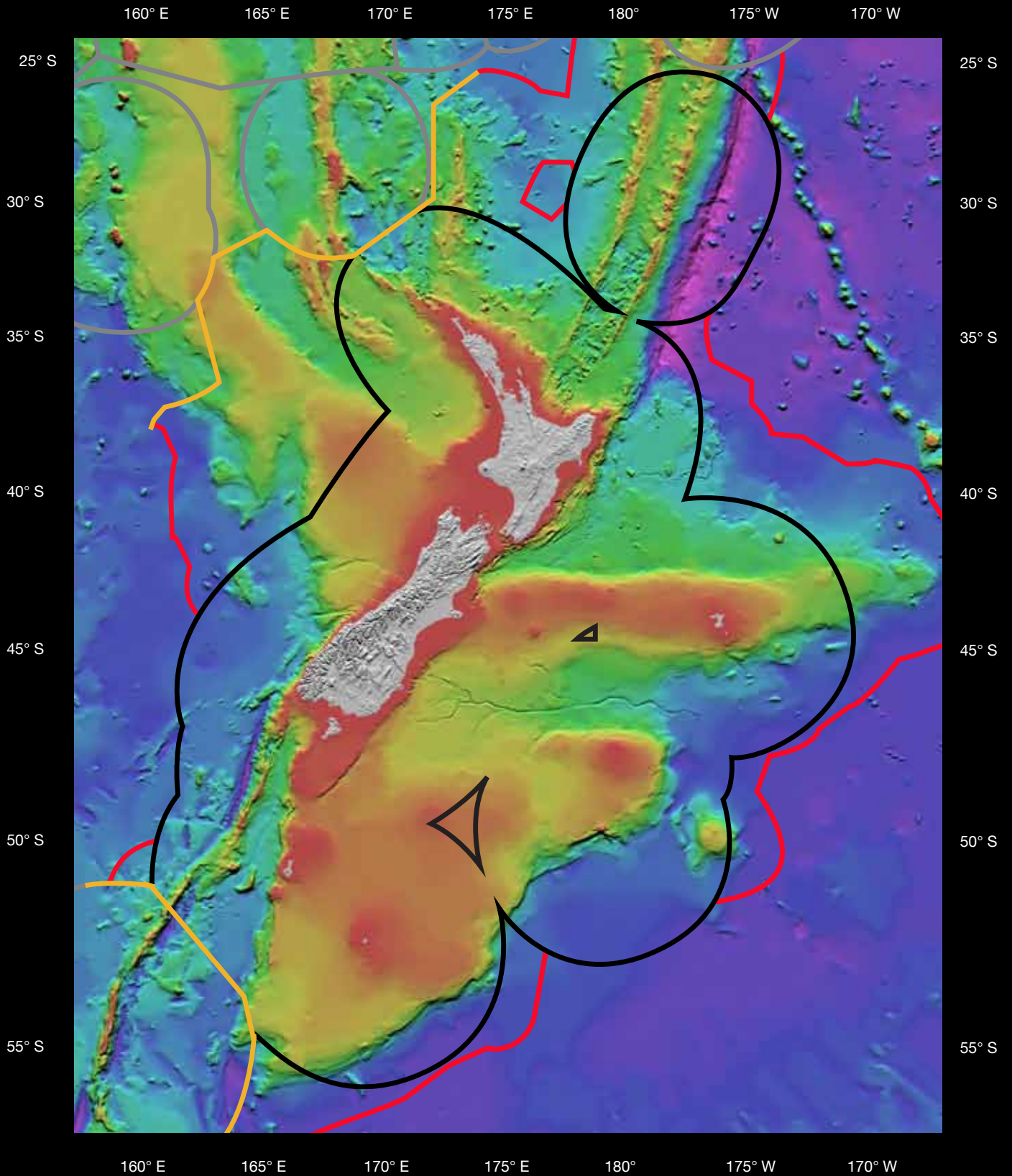
'New Zealand's right to approximately 1.7 m[illion] square kilometres of extended continental shelf seabed [was] confirmed by the United Nations Commission on the Limits of the Continental Shelf' on 12 September 2008 (MFAT, 2010). New Zealand's submission to the UN Commission was the culmination of a '10-year, \$44 m[illion] project involving technical, scientific, legal and policy input from a range of New Zealand government agencies' (MFAT, 2010), including the Ministry of Foreign Affairs and Trade (MFAT), Land Information New Zealand (LINZ), the National Institute of Water and Atmospheric Research (NIWA), and the Institute of Geological and Nuclear Sciences (GNS Science).

The black lines on the map to the right show New Zealand's Exclusive Economic Zone (EEZ), which extends out 200 nautical miles from the land. Currently the New Zealand government earns more than \$100 million per annum in royalties and other income from the EEZ. The red line indicates New Zealand's extended continental shelf, beyond the EEZ. The grey lines indicate other states' EEZs, while the yellow lines mark the 2004 New Zealand-Australia Maritime Delimitation Treaty.

The area within New Zealand's EEZ covers 4 million square kilometres, while the extended continental shelf covers another 1.7 million square kilometres, making a total of 5.7 million square kilometres of seabed. Since New Zealand's total land area is about 270,000 square kilometres, its seabed covers 21 times its total land area. Put another way, for every New Zealander there is approximately 1.3 square kilometres of seabed and 0.06 square kilometres of land, over which we all have rights and responsibilities.

Thoughts:

- How best could this resource be regulated?
- What responsibilities do we have to other communities around the world?
- To what extent, if any, should New Zealand establish a large marine reserve?
- What are the opportunities and challenges that this resource may present to New Zealand?



UNDERSEA NEW ZEALAND

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