

## Submission

### ***Draft for Consultation: Exclusive Economic Zone and Continental Shelf (Environmental Effects—Non-Notified Activities) Regulations 2013***

3 February 2014

Ministry for the Environment  
PO Box 10362  
Wellington 6143

To the Minister for the Environment,

Please find attached the McGuinness Institute's draft submission on the proposed regulations regarding the *Draft for Consultation: Exclusive Economic Zone and Continental Shelf (Environmental Effects—Non-Notified Activities) Regulations 2013*.

The Institute requests to be able to amend this draft submission with a final version to be submitted by 5pm Monday 3 February 2014.

Kind Regards,



Wendy McGuinness  
Chief Executive

PS: This submission has been emailed to [eezregulations@mfe.govt.nz](mailto:eezregulations@mfe.govt.nz) at 5.00 pm on Friday 31 January 2014.

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McGuinness Institute Submission: *Draft for Consultation: Exclusive Economic Zone and Continental Shelf (Environmental Effects – Non-Notified Activities) Regulations 2013*– 31 January 2014

## About the McGuinness Institute

The McGuinness Institute, formerly the Sustainable Future Institute, was founded in 2004. The Institute is a non-partisan, not for profit research organisation, working towards a sustainable future. It aims to contribute to public dialogue on strategic issues through evidence based research and policy analysis.

## Experience

In preparing this submission we draw on a number of recent reports, submissions and discussions:

### *Reports:*

*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.

As part of *Project 2058* we operate a sub-project called *Project One Ocean* where we focus on the importance of ocean management. Per capita, New Zealand has the largest area of continental shelf in the world and it is important that we think about policy and values that drive our management of this vast resource. The most recent component of this project was a think piece and working paper on the New Zealand King Salmon Board of Inquiry hearing; *Think Piece 16: New Zealand King Salmon was it a good decision for New Zealand?* and *Working Paper 2013/01: Notes on the New Zealand King Salmon Decision*.

Another report that explores risk management, in this case with regard to land is the sub-project *Genetic Modification*. In this report we closely monitor developments in genetic modification and related policy both in New Zealand and internationally. Our recently released report *An Overview of Genetic Modification in New Zealand: the first forty years 1973 – 2013* provides a comprehensive overview of policy development through four key eras: (1) the journey towards the 2001 Royal Commission on Genetic Modification; (2) the Royal Commission and its findings; (3) the response to the Royal Commission, and (4) the era of institutional change from 2008 – 2013.

### *Submissions:*

September 2013: *Activity classification under the EEZ Act: A discussion document on the regulation of exploratory drilling, discharges of harmful substances and dumping of waste in the Exclusive Economic Zone and Continental Shelf*

June 2012: *Regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*

February 2012: *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill – Written responses to questions from the committee*

February 2012: *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill (oral submission)*

January 2012: *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill (written submission)*

### *MfE Workshops:*

27 January 2014: Workshop on proposed EEZ Regulations

14 May 2013: EEZ Regulations Workshop

The Institute's key interest in this submission is in terms of risk management, assessment of economic and environmental effects, the precautionary approach 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.

## 1. Introduction

In October last year the McGuinness Institute made a submission to the Ministry for the Environment based on the *Activity classifications under the EEZ Act: A discussion document on the regulation of exploratory drilling, discharges of harmful substances and dumping of waste in the Exclusive Economic Zone and continental shelf*. We continue to support the points we raised in this earlier submission.

We appreciate this further opportunity to comment on the results of the October consultation – *Draft for Consultation: Exclusive Economic Zone and Continental Shelf (Environmental Effects—Non-Notified Activities) Regulations 2013* (draft regulation). Below we outline a number of additional discussion points, recommendations and a request for an across-department work programme on the consistent assessment of 'economic benefits for NZ Inc.' for your consideration.

## 2. Discussion on Fit for Purpose

Regulations should ideally be designed to be fit for purpose, putting forward a clear vision of what success looks like in terms of the goals it aims to achieve. For this reason the analytics and measures of success underlying any regulation should be transparent and up front. This enables regulations to be reviewed based on the expectations upon which it was designed. For example is this regulation designed to optimise how the number of exploratory wells drilled for petroleum can be better documented and able to be assessed for economic effects at some time in the future? The purpose underlying this regulation remains unclear – and therefore in our view what cannot be measured cannot be managed - and if we cannot manage a resource we cannot know what instruments/initiatives will improve or negatively impact on a resource.

We remain concerned that there is a lack of clarity over what the successful implementation of this regulation might look like. We question the assumptions, limitations and unintended consequences of the regulation being implemented. For this reason the Institute requested information from the Ministry for the Environment, pertaining to the number of wells that have been drilled in New Zealand's EEZ. The following information was received from MfE on Friday 31 January:

- A total of 22 exploratory wells were drilled in New Zealand's EEZ between 2000 and 2012.
- The most exploratory wells drilled in a year was 6, in both 2007 and 2010.
- Two exploratory wells were started in 2013 (Romney-1 and Matuku-1). No other exploratory wells were drilled in the EEZ last year.
- To date, 3 exploratory wells have been confirmed for 2014.

Of concern was that this data needed to come from another Ministry so late in the process, when in our view it should have been assessed when drafting this regulation – in order to make it fit for purpose. This is not an uncommon problem when preparing complex regulation for a range of

stakeholders, but it is important to understand the impact of this regulation – in particular what is the status of exploration drilling if this regulation is not made law in contrast with the impact if this regulation is made law. Only then can you retrospectively assess whether a regulation meets the expectations of those drafting the regulation. We need to work harder at being clear about the regulations we wish to enforce – providing all stakeholders with a clear understanding of how, why and what consequences a regulation is expected to deliver New Zealand citizens.

### **3. Discussion on Responsibilities under *Non-notified* decision-making verses *Notified* decision-making by Government Agencies**

We believe applications approved that are non-notified should require a higher level of public reporting than notified. Non-notified is not a reason for the public not to be kept informed – quite the contrary.

The current approach assumes that the public interest is in the drilling and production (the removal) not the exploration (drilling to locate) resources. All drilling has risks, costs and benefits even if the production never eventuates. Reporting annually on the risks, costs and benefits of exploration drilling is one way that checks and balances are put in at this early stage of potential economic activity. From a social contract perspective, the public are giving up the right to comment on a decision on the basis that the government agency will operate in the best interests of New Zealand. Without such reporting there is in effect no ability to access whether these decisions have been made in the best interest of New Zealanders. If industry is provided with a streamlined process, we would also expect industry to appreciate the need for the New Zealand government to deliver the public transparent information on the decisions a government agency makes. Hence to offer a *non-notified* process in regard to inputs into a decision demands a *non-notified* process in regard to outputs and outcomes of decisions made. Good governance requires checks and balances either in terms of inputs or outputs (and outcomes). Without good reporting on outputs and outcomes, the public are being disenfranchised.

We consider the MfE has a democratic responsibility to ensure public knowledge of drilling activity, whether it is notified or non-notified before drilling begins – it is after all the drilling of the earth's surface that creates the environmental effect – not later down the track when the economic effects come into play. Put another way, the approach being taken here is driven by an economic perspective – effects start when it starts producing rather than an environmental perspective – effects start when the drilling starts.

### **4. Discussion on our Global Rights and Responsibilities**

Globally, New Zealand's EEZ is the eighth largest by physical size and the seventh largest per capita (see Table 1), making New Zealand the only country that is in the top 10 for both of these rankings. To put this in perspective, Fiji, which has the sixth largest EEZ per capita has an EEZ of 1,282,978 km<sup>2</sup> and a population of 874,742, while the country with the ninth largest EEZ, Japan, has a EEZ of 4,479,388 km<sup>2</sup> and a population of 127,561,489. Essentially, we are a country with a small population but a very large EEZ, hence there are risks attached to our situation but also potentially significant benefits that have not yet been fully explored. Furthermore, there is likely to be significant effects

that ‘we know we don’t know’ and ‘we don’t know we don’t know’. This means we need to develop an *overarching ocean research strategy* to gain knowledge about this significant resource.

On the one hand New Zealand does not have the same resources and facilities as larger, more populous countries to manage our EEZ. However, on the other hand, this unique situation can be used to our advantage; our EEZ is comparatively a much larger resource with the potential to yield greater benefit to the population as a whole. If we are proactive about effectively managing our EEZ, it will have on-going benefits for present and future generations of New Zealanders. This places additional responsibilities on New Zealand to not only try to emulate best global practice but to be a world leader in ocean management.

In our opinion, New Zealand needs a comprehensive ocean strategy that adopts a principle-based approach (rather than a rule-based approach), based on shared values. A principle-based approach should take into consideration the following factors:

- Clarity – there is a clear definition of the problem
- Strategic thinking – strategic options to solve the problem and their impacts are a matter of public record
- Impartiality – independence exists between vested interests and policy maker
- Evidence-based policy making is sought
- Risk management approach is employed (including the precautionary approach)
- Durable public policy is sought
- Transparent public policy is sought
- Whole-system approach regarding environmental effects is required
- Monitoring, Testing and Reporting of effects is fundamental
- Assurance reporting is required
- New Zealand is the only focus (therefore benefits to non-New Zealand commercial interests are not taken into account)

We believe that the draft regulation does adequately reflect these core ideas or respond to this country’s need for a robust strategy for the management of our oceans.

In addition, we are concerned that MfE (and others) do not place enough value on this resource. There are no parameters of what successful management of this resource might look like, yet considering the New Zealand government’s application to extend our continental shelf cost in the vicinity of \$44,000,000 this would seem to undermine the significance of this investment.<sup>1</sup> This 2010 decision, under Article 76 of UNCLOS, was celebrated by many New Zealanders. However underpinning this decision was ‘trust’ – the international community trusted that New Zealand would deliver high standards of resource management.

Further as a country that promotes itself internationally as clean, green and 100% pure, we have an obligation actively pursue this ideal. However, our oceans, which are six times our land mass, are not managed as a resource in totality. We manage extraction from the resource such as fish or minerals but do not put an emphasis on managing the ecosystem and when we do legislate for the extraction

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<sup>1</sup> See <http://www.mfat.govt.nz/Treaties-and-International-Law/04-Law-of-the-Sea-and-Fisheries/NZ-Continental-Shelf-and-Maritime-Boundaries.php>

of the resource, we fail to focus on the environmental effects of the extraction (for example, see the NZPAM website<sup>2</sup>).

New Zealand should be a leader in ocean strategy built on the values and principles of the citizenry. Especially considering that we have recently been given additional rights and the ocean's integral role in New Zealand's economic, environmental and social well-being. This draft regulation showcases the significant problem MfE faces – namely the absence of a comprehensive ocean strategy for New Zealand. The consequence of this is an increased likelihood of damaging our oceans through ignorance and poor governance. It is crucial that the government develops an overarching strategy that encompasses all legislation pertaining to the management of our oceans (see Table 2).

## 5. Discussion on the Continental Shelf and Antarctica

Related to why we need to develop an *overarching ocean strategy*, this draft regulation does not cover other aspects of the ocean where exploratory drilling is potentially possible – such as the Territorial Sea, the Contiguous Zone and the Continental Shelf.

New Zealand is also going to need to think deeply about its expectations and goals for Antarctica, particularly with the Antarctic Treaty becoming an emerging political issue. How can New Zealand undertake such a discussion both within New Zealand and globally, without independent research that collects meaningful data and information in order to build New Zealand's strategic knowledge on how we might best manage this significant national resource.

## 6. Major Recommendations on Ocean Management

1. The development of an *overarching strategy for oceans* that encompasses all legislation, treaties and conventions identified to date (see Table 2) and expected in the future. Further we consider 'oceans' include all saltwater and the seabed underneath it – which means the Territorial Sea, the Contiguous Zone and the Continental Shelf should be included in an ocean strategy (see Table 1). Our reasoning is that the ocean is one large ecosystem and what happens in one aspect of the ocean will have effects in other areas - fish stock, marine mammals and pollution travel outside linear zones often typified in maps of the ocean floor.
2. Known areas of *special ecosystems* in the oceans should be designated national park status for a period of time (e.g. ten-twenty years) until more research is undertaken. Special ecosystems will need to be defined (e.g. rare marine ecosystems, pristine and unexploited examples of common marine ecosystems and areas of significant cultural value (mana moana). Determining and defining what these areas are will require a commitment to obtain useful independent research based on the shared values of New Zealanders.
3. The *overarching strategy for oceans* should include a *scientific research strategy*, focusing on the necessary scientific research and reporting that is likely to be necessary in order to make short, medium and long-term decisions for the future management of our oceans.
4. That every opportunity to undertake *mapping and research* is taken both in partnership and independent of industry, to ensure that checks and balances exist. New Zealand must cultivate an independent scientific community independent of industry.

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<sup>2</sup> See <http://www.nzpam.govt.nz/cms/minerals/legislation#royalty>

## 7. Specific Recommendations on the Draft Regulations

1. The regulation should include a *trial period* with a *review date* when the effectiveness of the regulation will be assessed.
2. The MfE should be required to *report annually* to the Minister and the public annually on the application of this regulation, outlining the number of exploration holes drilled, where and by whom they have been drilled, the quantity of material removed from site and the nature of that material.
3. The reference to ‘exploration drilling *for petroleum*’ regulation 3 is not sufficiently comprehensive - what happens in the case of other forms of drilling.
4. The definition of *production* in Regulation 3 is ambiguous and requires greater clarification. For example, the phrase ‘may be used for production’ could be interpreted to include all drilling of wells, thus all wells could be used for production. This is a key point as it defines what is and what is not covered under the regulation.

## 8. Request for Consistent Assessment of ‘Economic Value for NZ Inc.’ Across Government

An overall concern for the Institute is a lack of an overarching approach to managing economic effects, whether it is (i) allowing industry to be given a license/ a right to use water public waterways and marine areas (e.g. NZ King Salmon’s application<sup>3</sup>), (ii) allowing industry to undertake exploration drilling (as in this draft regulation) or (iii) procure<sup>4</sup> (buy) public good assets using the public funds of New Zealand citizens (e.g. the Tokelau / Bangladesh example below).

Such an economic assessment framework should enable government to achieve a consistent approach to different investment opportunities with ongoing comparison and analysis of the resulting decisions. We are particularly interested in how investments address ongoing jobs for New Zealanders. Specifically, in terms of active participants in the workforce and how we enable our industries to compete sustainably when we assess the economic benefits for New Zealand Inc.

For example, the government decision to support the salmon farming industry has focused on local employment opportunities as economic benefits. Whereas another recent decision to outsource the building of a ferry for the Tokelau territory to a Bangladesh firm, rather than a local shipbuilder, has been based on ‘best value for money’ – arguably eroding New Zealand jobs. As executive director of New Zealand Marine, Peter Busfield, stated ‘[T]he government procuring a vessel from New Zealand for the sum of NZ\$14 million would generate an additional NZ\$9 million in GDP and sustain the equivalent of 127 employees for one year.’<sup>6</sup> Our understanding is that these 127 jobs were not taken into consideration.

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<sup>3</sup> McGuinness Institute (May 2013). *Working Paper 2013/01: Notes on the New Zealand King Salmon Decision*. Retrieved February 3, 2014 from:

[http://www.mcguinnessinstitute.org/Site/Publications/Working\\_Papers.aspx](http://www.mcguinnessinstitute.org/Site/Publications/Working_Papers.aspx)

<sup>4</sup> Ministry of Business, Innovation and Employment (MBIE) (n.d.). *Government Procurement*. Retrieved February 3, 2014 from: <http://www.business.govt.nz/procurement>

<sup>6</sup> See Lynch, L. (14 January, 2014). Ferry deal angers kiwi boat builders. *New Zealand Herald*. Retrieved 3 February 3, 2014 from: [http://www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=11185569](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11185569)

Further, in the case of exploration drilling, we are unable to find how the economic benefits to New Zealand Inc. have been assessed – what is the evidence supporting that economic effects exist and how do these balance out when compared with the environmental and social effects. We appreciate these issues are difficult, but sound democratic values indicate that we must find better ways of assessing effects (including economic, environmental, social and cultural effects) across all of government, balancing these effects and then reporting our processes and decision-making in a transparent and meaningful manner. This will become increasingly important as resources are finite in resource hungry world.

While we appreciate that the investment opportunities will be of different orders of magnitude, we feel it is important to apply government principles for investment (both in terms of resource management and procurement) in a consistent manner. We advocate that there needs to be an across-department work programme that considers how best to assess economic effects for New Zealand Inc. across a range of investment purposes. Giving the right to drill into our ocean floor or provide water rights (in the case of NZ King Salmon free water rights for 35 years) are investment proposals equal to investing in infrastructure or public services – all require an assessment of the risks, costs and benefits of the proposal. What we are arguing is that every significant investment proposal should be assessed through the same lens. We would welcome the opportunity to be part of any future discussions on this issue.

## 9. Conclusion

The Institute believes that there are a number of key principles that should drive the drafting of good regulation:

- Evidence (including economic evidence that proves that it is in the public's interests),
- The application of the precautionary approach both to risks, costs and benefits (i.e. when information is lacking there is an onus to be conservative),
- Public engagement (e.g. in order to obtain all data, explore all options, understand all potential unintended consequences and gain public trust), and
- Foresight (not only looking broadly at an issue but looking forward to identify emerging issues and consider long-term impacts on future generations of New Zealanders).

This draft regulation appears rushed to meet industry requirements without exploring whether it is in the public's best interests. This is perhaps best reflected by the title of the draft regulation, which includes *environmental effects* but fails to assess the *environmental effects* of decisions made under this regulation or provides public data in order to access environmental effects in the longer term. For the above reasons we do not support this regulation in its current form.

Thank you again for inviting public comment on this important draft regulation.



**Table 1: EEZ and Continental Shelf km per Capita for Countries with an EEZ of more than 1,000,000 km<sup>2</sup>\***

Prepared by the McGuinness Institute (see sources below)<sup>1</sup>

Rank by size of EEZ + Continental Shelf	Country (ordered by size of EEZ + continental shelf from largest to smallest)	a. cTotal (EEZ + Continental Shelf km <sup>2</sup> ) (a+b)	b. EEZ Seabed (km <sup>2</sup> )	c.Continental Shelf (km <sup>2</sup> )	d. Population (as at 2012)	e. EEZ Seabed and Continental Shelf km <sup>2</sup> Per Capita (c÷d)	f. Rank (per capita)
1	United States	13,544,526	11,351,000	2,193,526	313,914,040	0.043	22
2	France	11,424,422	11,035,000	389,422	65,696,689	0.174	15
3	Russia	11,384,516	7,566,673	3,817,843	143,533,000	0.079	18
4	Australia	10,699,356	8,505,348	2,194,008	22,683,600	0.472	11
5	Russia	11,384,516	7,566,673	3,817,843	143,533,000	0.079	18
6	Indonesia	8,198,413	6,159,032	2,039,381	246,864,191	0.033	24
7	Canada	8,243,872	5,599,077	2,644,795	34,880,491	0.236	13
8	United Kingdom	7,528,477	6,805,586	722,891	63,227,526	0.119	17
9	New Zealand**	5,977,610	5,700,000	277,610	4,433,100	1.348	7
10	Japan	4,934,364	4,479,388	454,976	127,561,489	0.039	23
11	China	4,711,006	3,879,666	831,340	1,350,695,000	0.003	30
12	Brazil	4,435,518	3,660,955	774,563	198,656,019	0.022	28

<sup>1</sup> \*Exclusive Economic Zone (2014). Wikipedia. Retrieved 29 January, 2014 from: [http://en.wikipedia.org/wiki/Exclusive\\_economic\\_zone](http://en.wikipedia.org/wiki/Exclusive_economic_zone)

McGuinness Institute (2011). *Report 12 – 2058 strategy workbook: Exploring visions, foresight, strategies and their execution*. Retrieved 29 January, 2014 from: [http://www.mcguinnessinstitute.org/Site/Publications/Project\\_Reports.aspx](http://www.mcguinnessinstitute.org/Site/Publications/Project_Reports.aspx)

\*\* World Bank (2012). Population (total). Retrieved 29 January, 2014 from: <http://data.worldbank.org/indicator/SP.POP.TOTL>

<b>13</b>	<b>Chile</b>	3,934,936	3,681,989	252,947	17,464,814	0.225	<b>14</b>
<b>14</b>	<b>Mexico</b>	3,596,695	3,177,593	419,102	120,847,477	0.030	<b>26</b>
<b>15</b>	<b>Kiribati</b>	3,449,333	3,441,810	7,523	100,786	34.224	<b>2</b>
<b>16</b>	<b>Denmark</b>	3,046,895	2,551,238	495,657	5,590,478	0.545	<b>10</b>
<b>17</b>	<b>Federated States of Micronesia</b>	3,015,822	2,996,419	19,403	103,395	29.168	<b>3</b>
<b>18</b>	<b>Norway</b>	2,819,198	2,385,178	434,020	5,018,869	0.562	<b>9</b>
<b>19</b>	<b>India</b>	2,708,139	2,305,143	402,996	1,236,686,732	0.002	<b>31</b>
<b>20</b>	<b>Papua New Guinea</b>	2,593,544	2,402,288	191,256	7,167,010	0.362	<b>12</b>
<b>21</b>	<b>Argentina</b>	2,015,409	1,159,063	856,346	41,086,927	0.049	<b>21</b>
<b>22</b>	<b>Marshall Islands</b>	2,008,941	1,990,530	18,411	52,555	38.225	<b>1</b>
<b>23</b>	<b>Philippines</b>	1,863,701	1,590,780	272,921	96,706,764	0.019	<b>29</b>
<b>24</b>	<b>Portugal</b>	1,819,498	1,727,408	92,090	10,526,703	0.173	<b>16</b>
<b>25</b>	<b>South Africa</b>	1,691,875	1,535,538	156,337	51,189,307	0.033	<b>25</b>
<b>26</b>	<b>Solomon Islands</b>	1,625,759	1,589,477	36,282	549,598	2.958	<b>5</b>
<b>27</b>	<b>Seychelles</b>	1,375,622	1,336,559	39,063	87,785	15.670	<b>4</b>
<b>28</b>	<b>Fiji</b>	1,330,683	1,282,978	47,705	874,742	1.521	<b>6</b>
<b>29</b>	<b>Madagascar</b>	1,326,764	1,225,259	101,505	22,293,914	0.060	<b>20</b>
<b>30</b>	<b>Mauritius</b>	1,314,058	1,284,997	29,061	1,291,456	1.018	<b>8</b>
<b>31</b>	<b>Ecuador</b>	1,118,265	1,077,231	41,034	15,492,264	0.072	<b>19</b>
<b>32</b>	<b>Spain</b>	1,117,153	1,039,233	77,920	46,217,961	0.024	<b>27</b>

\*Of the 197 countries that have an EEZ, this table only shows the countries that have an EEZ of over 1,000,000 km<sup>2</sup>. We consider that this provides sufficient context for understanding New Zealand's EEZ in comparison to other countries.

\*\*For comparability with other countries on the table, figures for New Zealand are inclusive of all territories within the realm of New Zealand.

**Table 2: Maritime Governance Instruments: Current status and the proposed Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill**

Note: OECD (2007) Recommendation to New Zealand: ‘finalise and implement ocean policy and pursue the further expansions of marine reserves.’<sup>1</sup>

Legislation, Treaties and Conventions / Domain	New Zealand Land Territory	New Zealand Ocean Territory <sup>2</sup>				International Territorial Waters <sup>3,4</sup>
	Inland Waters	Territorial Sea	Contiguous Zone	Exclusive Economic Zone <sup>10</sup>	Non-Exclusive Economic Zone <sup>11</sup>	High Seas <sup>12</sup>
<b>Maritime Zones<sup>6</sup></b>	Area 1: Inland Waters <sup>7</sup>	Area 2: Territorial Sea <sup>8</sup>	Area 3: Contiguous Zone <sup>9</sup>	Area 4: Exclusive Economic Zone <sup>10</sup>	Area 5: Non-Exclusive Economic Zone <sup>11</sup>	Area 6: High Seas <sup>12</sup>
	Landward of the Baseline	Baseline-12 nautical miles	12-24 nautical miles	12-200 nautical miles	12-350 nautical miles	Beyond the Continental Shelf
<b>i. UN Convention on the Law of the Sea (UNCLOS)<sup>13</sup></b>				<u>Article 87</u> All nations have the freedoms of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses	<u>Article 77</u> The coastal state exercises the right of exploration and to exploit the natural resources of its continental shelf	<u>Article 118</u> Cooperation of states in the conservation and management of living resources  <u>Article 119 and 120</u> Conservation of the living resources (including Marine Mammals) of the high seas
<b>ii. Fisheries Act 1983 New Zealand Fisheries Waters<sup>14</sup></b>	Fishing Mgt	Fishing Mgt	Fishing Mgt	Fishing Mgt		
<b>iii. Resource Management Act 1991 Coastal marine area<sup>15</sup></b>	Resource Mgt	Resource Mgt				

iv.	<b>Marine Reserves Act 1971</b> <i>Potential reserve area</i> <sup>16</sup>	Resource Mgt	Resource Mgt		
v.	<b>Maritime Transport Act 1994</b> <i>New Zealand Waters</i> <sup>17</sup>	Shipping Mgt	Shipping Mgt		
vi.	<b>New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987</b> <i>Nuclear Free Zone</i> <sup>18</sup>	Nuclear Free Mgt	Nuclear Free Mgt		
vii.	<b>Proposed Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill</b>		(as per Area 4)	Natural Resources Defined: <sup>19</sup> includes seabed, subsoil, water, air, minerals, and energy, and all forms of organisms (whether native to New Zealand or introduced)	Natural Resources Defined: means the mineral and other non-living resources of the seabed and subsoil and sedentary species <sup>20</sup>
a.	<b>Description of domain</b>				
b.	<b>Key concerns within the current Bill</b>			<p>Note:</p> <ol style="list-style-type: none"> <li>Section 13 Cautious approach: should be replaced by precautionary approach.</li> <li>Section 25 and 68 Consent decisions: should describe the content of decisions in particular on what evidence and on what criteria the decision has been made. Further it must stipulate time frames, milestones and controls that are applicable.</li> <li>Section 125 Penalties: should be significantly increased. The Bill currently provides for a maximum penalty of \$300,000 per person or \$600,000 other than a natural person.</li> </ol>	

<p><b>c. Key issues not addressed within the current Bill</b></p>	<ol style="list-style-type: none"> <li>1. Ocean policy to be integrated into the Bill</li> <li>2. Sustainable development approach to be integrated into the Bill</li> <li>3. Carbon Capture to be integrated into the Bill</li> <li>4. Marine farming to be integrated into the Bill Marine Reserves Bill to be aligned and progressed with this bill</li> </ol>
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## Table 2 Footnotes

1. 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, 2012 from [http://www.oecd.org/document/10/0,2340,en\\_2649\\_34307\\_37915274\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/10/0,2340,en_2649_34307_37915274_1_1_1_1,00.html)
2. To enable this domain to be able to be defined clearly, the Institute has created the term *New Zealand Ocean Territory* to refer to all waters from the baseline to an external territorial boundary. In particular we note that *NZ Fisheries Waters* and *New Zealand Waters* have very different meanings – see other footnotes below.
3. United Nations Convention on the Law of the Sea (UNCLOS) (1982). General Obligation, Article 192: ‘States have the obligation to protect and preserve the marine environment.’
4. 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, 2012 from [http://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm)
5. Definition of *continental shelf*, in the *Continental Shelf Act 1964*, means the seabed and subsoil of those submarine areas that extend beyond the territorial limits of New Zealand, throughout the natural prolongation of the land territory of New Zealand, to the seaward-side boundaries. The *Explanatory Note* to the Bill states: *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. These resources are limited to those found on or under the seabed.* This seems to imply the EEZ is different from the continental shelf, but our research would indicate that generally they are treated internationally as the EEZ and is simply part of the continental shelf. The Bill would benefit from making this clear and in line with international practice. In the UNCLOS Article 76, the continental shelf of a coastal State comprises the submerged prolongation of the land territory of the coastal State - the seabed and subsoil of the submarine areas that extend beyond its territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles where the outer edge of the continental margin does not extend up to that distance. The continental margin consists of the seabed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof. See <http://www.lin.govt.nz/hydro/nautical-info/maritime-boundaries/definitions>
6. See <http://www.lin.govt.nz/hydro/nautical-info/maritime-boundaries/definitions>
7. Definition of *internal waters*, in the *Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977*, includes any areas of the sea that are on the landward side of the baseline of the territorial sea of New Zealand. See also endnote 5.
8. Definition of *territorial sea*, in the *RMA Act 1991*, means the territorial sea of New Zealand as defined by section 3 of the *Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977*. Section 3 states the territorial sea of New Zealand comprises those areas of the sea having, as their inner limits, the

- baseline described in sections 5 and 6 and 6A and, as their outer limits, a line measured seaward from that baseline, every point of which line is distant 12 nautical miles from the nearest point of the baseline.
9. Definition of *Contiguous Zone, Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977*, comprises those areas of the sea having, as their inner limits, the marker, and, as their outer limits, a line measured seaward from the marker, every point of which line is distant 12 nautical miles from the nearest point of the marker.
  10. Definition of the *exclusive economic zone of New Zealand*, included in the *Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977*, comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of New Zealand, having as their outer limits a line measured seaward from the baseline described in sections 5 and 6 and 6A, every point of which line is distant 200 nautical miles from the nearest point of the baseline.
  11. This would benefit from a legal definition, currently the law infers it means the part of the continental shelf that is not the EEZ.
  12. Definition of *high seas* in the *UN Convention on the High Seas 1958*, states the term “high seas” means all parts of the sea that are not included in the territorial sea or in the internal waters of a State. See [http://untreaty.un.org/ilc/texts/instruments/english/conventions/8\\_1\\_1958\\_high\\_seas.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_high_seas.pdf)
  13. On 19 July 1996, New Zealand ratified the United Nations Convention on the Law of the Sea (UNCLOS). Under UNCLOS there are a number of maritime zones defined generally by their distance from the land, but more precisely, as their distance from the Territorial Sea Baseline (TSB). See <http://www.linz.govt.nz/hydro/nautical-info/maritime-boundaries/definitions>
  14. Definition of *New Zealand fisheries waters*, in the *Fisheries Act 1983*, means—(a) all waters in the exclusive economic zone of New Zealand: (b) all waters of the territorial sea of New Zealand: (c) all internal waters of New Zealand: (d) all other fresh or estuarine waters where fish indigenous to or acclimatised in New Zealand are found.
  15. Definition of *coastal marine area*, under the *Resource Management Act 1991*, means the foreshore, seabed, and coastal water, and the air space above the water—(a) of which the seaward boundary is the outer limits of the territorial sea: (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of— (i) 1 kilometre upstream from the mouth of the river; or (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.
  16. Definition of *area*, covered under the *Marine Reserves Act 1971*, means any part of — (a) The seabed vertically below an area of the surface of — (i) The territorial sea of New Zealand; or (ii) The internal waters of New Zealand as defined by section 4 of the *Territorial Sea and Exclusive Economic Zone Act 1977*; or (b) The foreshore of the coast of New Zealand; — and includes any water at any material time upon or vertically above it.
  17. Definition of *New Zealand waters*, under the *Maritime Transport Act 1994*, means— (a) the territorial sea of New Zealand; and (b) the internal waters of New Zealand; and (c) all rivers and other inland waters of New Zealand.
  18. Definition of *Nuclear Free Zone*, under the *New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987* comprises: (a) all of the land, territory, and inland waters within the territorial limits of New Zealand; and (b) the internal waters of New Zealand; and (c) the territorial sea of New Zealand; and (d) the airspace above the areas specified in paragraphs (a) to (c).
  19. Definition of *natural resources*, in the proposed Bill, means: (a) in relation to the exclusive economic zone, includes seabed, subsoil, water, air, minerals, and energy, and all forms of organisms (whether native to New Zealand or introduced); and (b) in relation to the continental shelf, means the mineral and other non-living resources of the seabed and subsoil and sedentary species.
  20. UNCLOS Article 77 defines *sedentary species* as organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.)

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