

## Submission to the LOCAL GOVERNMENT AND ENVIRONMENT SELECT COMMITTEE on

### “KERMADEC OCEAN SANCTUARY BILL” (APRIL 2016)

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#### INTRODUCTION

1. Straterra<sup>1</sup> welcomes the opportunity to submit on the Kermadec Ocean Sanctuary Bill. As always, we do so in the interests of achieving benefits for the minerals sector, and for the New Zealand economy and society as a whole. The submission deadline of 28 April is noted.
2. In preparing this submission, Straterra has consulted with a number of organisations and individuals having an interest in, and knowledge of the geology and minerals prospectivity of the Kermadecs.
3. Straterra wishes to appear in person on our submission before the Local Government and Environment Select Committee.

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<sup>1</sup> Straterra represents NZ minerals production, exploration, research, services, and support  
<http://www.straterra.co.nz/>

## EXECUTIVE SUMMARY

### General

4. In general, Straterra supports the creation of a Kermadec Ocean Sanctuary, as a valid tool, among the tools available, for managing the environment of the Kermadec marine region.
5. Straterra notes that New Zealand's sovereign rights to economic development in its Exclusive Economic Zone (EEZ), including the Kermadecs, under Articles 56 and 193 of the UN Convention on the Law of the Sea 1982<sup>2</sup> were not considered in the Regulatory Impact Statement (RIS).
6. At issue, we consider, is the areal extent of the Sanctuary required to protect the marine environment of the Kermadecs, while meeting New Zealand's economic development and environmental management rights and obligations under UNCLOS.
7. It is noted that the RIS misrepresents New Zealand's international obligations, the minerals potential, the nature of minerals interests, the nature of the seafloor environment in areas of minerals prospectivity, and the likely or potential impacts of mining in the Kermadecs.
8. Straterra considers that protecting 50% of the Kermadecs (c.443,000 km<sup>2</sup>), as opposed to 70% of the Kermadecs, would more than adequately meet the environmental protection aspects of New Zealand's international obligations.
9. Note that society's wider interests in the Kermadecs environment are safeguarded under the EEZ and Continental Shelf (Environmental Effects) Act 2012, which provides protection from, or minimisation of adverse effects on that marine environment from minerals exploration and mining.

### Regulatory Impact Statement (RIS)

10. The RIS (refer to detail in Appendix 1) contains the following material shortcomings:
  - No mention of New Zealand's economic development obligations or rights under UNCLOS, in particular, "*the sovereign right to exploit their natural resources **pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment***" (emphasis added);
  - Incomplete and inadequate discussion of Kermadec geology, and minerals prospectivity;
  - The argument for the Kermadec Sanctuary that very little of New Zealand's oceans are protected is missing the point – at issue is what percentage of the Kermadecs should be protected when managing the Kermadecs region for economic and environmental outcomes;
  - No discussion of possible or potential mining impacts on the Kermadec environment; arguably, very small in the overall context, and with high environmental scrutiny under the EEZ Act<sup>3</sup>;

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<sup>2</sup> UNCLOS 1982 [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

- Information provided on Neptune Minerals and Nautilus Minerals is incomplete or misleading;
  - The RIS has omitted consideration of the purpose of the Crown Minerals Act 1991 (section 1A), which is to promote minerals activities “*for the benefit of New Zealand*”;
  - The inference that the economic impacts of the proposed Sanctuary on minerals interests is “*minor*” is unsubstantiated and unjustified; and
  - There is no discussion of New Zealand’s sovereign risk as a place to do business in the Kermadecs beyond the proposed Sanctuary, or anywhere within NZ’s marine jurisdiction.
11. Taken together, the RIS misrepresents the mineral prospectivity in the Kermadecs, as well as the minerals interests, and the likely economic impacts on those interests of enacting the Bill.
12. In addition, Straterra draws attention to a mismatch between the purpose of an RIS, and the Kermadecs RIS, outlined below:
- The Treasury<sup>4</sup> advises that “*an RIS provides a high-level summary of the problem being addressed, the options and their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review*”, and that the RIS is prepared to “*support the consideration of regulatory proposals*”;
  - The Cabinet Office<sup>5</sup> says: “*The RIS is a government agency document that sets out the agency’s best advice on the problem definition, objectives, identification, and analysis of the full range of practical options*”; however
  - The note prepared by the Ministry for the Environment<sup>6</sup> introducing the Kermadec RIS says: “*This regulatory impact statement provides an analysis of the impacts associated with the decision to create the Kermadec Ocean Sanctuary, rather than the rationale behind the decision.*” This is, then, a justification of a decision already made to establish the Sanctuary in a specific form, and departs from the concept of an RIS, as set out in the bullet points above.
13. On the basis of the foregoing, the Kermadec RIS adds no value to the Parliamentary process for the Bill, and should be withdrawn.

## RECOMMENDATIONS

14. Straterra recommends the Local Government and Environment Select Committee to:

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<sup>3</sup> Note that recent marine consent applications by Trans-Tasman Resources and Chatham Rock Phosphate were declined by Decision-Making Committees of the Environmental Protection Authority.

<sup>4</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris>

<sup>5</sup> <http://cabguide.cabinetoffice.govt.nz/regulatory-impact-analysis-regulatory-impact-statements>

<sup>6</sup> <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/kermadec-ocean-santuary>

- a) Note Straterra’s support, in principle, for the proposed Kermadec Ocean Sanctuary, on the basis that marine protection is a valid tool, among the tools available, for managing the marine environment;
- b) Note Straterra’s agreement with the Government that the Kermadecs area contains special marine environments;
- c) Agree to withdraw the “Regulatory Impact Statement” as deficient and misleading;
- d) Agree that the question of protecting the Kermadecs from human activities should be considered, among other things, in the context of:
  - the total area of the Kermadecs;
  - New Zealand’s obligations under Articles 56 and 193 of the UN Convention on the Law of the Sea 1982;
  - the purpose (section 1A) of the Crown Minerals Act 1991; and of
  - the nature of the geology and the marine environment in the Kermadecs, of the minerals prospectivity, and the likely or potential impacts of mining in the context of the Kermadecs;
- e) Agree to modify the boundaries of the proposed Kermadec Ocean Sanctuary to protect 50% of the Kermadecs, as enabling both the environmental protection of the Kermadecs, and economic development under Articles 56 and 193 of UNCLOS; and
- f) To give effect to the above, agree to abolish the Benthic Protection Area in the Kermadecs, on the basis that no bottom trawling has occurred, or is ever likely to occur in the region, and hence the BPA serves no purpose in terms of environmental protection.

## APPENDIX 1: REGULATORY IMPACT STATEMENT

Following are Straterra’s detailed comments on The Regulatory Impact Statement for the Kermadec Ocean Sanctuary Bill. In summary, the RIS – which, in fact, is not an RIS – is deeply flawed:

**Page 1, fourth and fifth paragraphs:** The statement - *“we would expect the current level of human use and impact to stay the same for the foreseeable future if the status quo remained”* - simply says: because mining is currently prohibited in the Kermadecs, there is no mining in the Kermadecs. This is not a statement about *“future potential economic interests”* foregone. The current prohibition on mining could be removed tomorrow if the Minister of Energy and Resources so chose, under the Crown Minerals Act 1991. This statement in the RIS is unwarranted and unjustified.

**Page 1, sixth paragraph:** NZ’s international obligation under UNCLOS 1982 places primacy on economic development of natural resources<sup>7</sup>, subject to environment-related provisos (see below).

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<sup>7</sup> The inspiration for UNCLOS was the desire by ocean States to access the resources of the EEZ and the Continental Shelf, as stated in the Preamble to this UN Convention

This is a serious error of omission, which places the entire assessment of the economic impacts of the Bill into an incorrect or false construct.

**Page 2, para 1:** The water depths of interest for minerals explorers and researchers are 150m – 1.8km, an omission from the RIS.

**Page 2, para 2:** It is important to note that the geology of the Kermadecs, in particular the undersea volcanoes, is an active geology. It is disappointing that no further mention of the geology is made.

**Page 2, para 3:** Note that this active geology both creates life and then destroys it, e.g., when a volcanic vent is active, with associated marine life, which then collapses and dies or moves on when the vent becomes inactive. Therefore, the phrase “*unspoiled nature*” needs to be considered critically and in context. This context has not been provided.

**Page 3, para 3:** A question to consider is: who is going to pay for the bulk of marine scientific research? There will be less done than previously, because of the extinction of private minerals rights and interests – interests who have spent millions of dollars in the region on geological and environmental research - a factor that ought to have been considered in the RIS.

**Page 3, para 7:** Note that the Benthic Protection Area prevents bottom trawling in an area where bottom trawling does not occur, did not occur historically, and cannot occur, for a number of reasons. So, what does the BPA actually do for the environment?

**Page 3, para 9:** The proposed Sanctuary will protect 70% of the Kermadecs. That is the relevant area comparison. That is a large percentage of the Kermadecs. How does this tally with NZ’s economic development obligations under UNCLOS, Articles 56 and 193? The RIS makes no mention of Articles 56 or 193, a serious omission.

**Page 4, paras 10-11:** It is noted that mining would have a minuscule impact on the Kermadec environment, all things considered. We have more to say on this topic below.

**Page 4, para 14:** As stated, NZ also has an international obligation to develop natural resources in the EEZ (UNCLOS, Article 56 and 193).

**Page 5, para 17 (a):** NZ’s legal duty to protect the marine environment cannot be read in isolation. In addition, section 1A of the Crown Minerals Act 1991, effective from May 2013, requires the promotion of minerals activities for the benefit of NZ. The UN Convention on Biological Diversity is subservient to UNCLOS (within the EEZ and the Continental Shelf), a further serious omission from the RIS. To be clear, NZ’s obligations under UNCLOS is to promote economic development of the oceans, subject to environmental considerations, i.e.:

- Article 56 - “*sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living*” – and;
- Article 193 - “*States have the sovereign right to exploit their natural resources **pursuant to** their environmental policies and **in accordance with** their duty to protect and preserve the marine environment*” (emphasis added).

**Page 5, para 18:** The statement that a very small amount of NZ's marine environment is protected has no relevance for a discussion on the Kermadecs. At issue is what percentage of the Kermadecs environment should be protected? This question is not posed nor is it addressed in the RIS.

**Page 10, para 57:** The reason there is no mining activity, or other minerals activities, is because of the moratorium that has been rolled over – we understand – at least partly because of the presence of the BPA, a Fisheries Act instrument, applying only to the fishing industry.

**Page 10, para 57:** The fact that Nautilus Minerals had been applying for a prospecting permit since 2007 speaks volumes. We ask: why would that company express any interest in NZ at the present time? NZ must present a high level of sovereign risk to Nautilus and, indeed, to any minerals investor because of the way companies with interests in the Kermadecs have been treated by NZ to date.

**Page 10, para 57:** Neptune Minerals was granted a prospecting licence under the Continental Shelf Act 1964, and 40% of their licence area fell within the area of the proposed Sanctuary. Neptune spent around \$30 million on developing its minerals interests. It then withdrew from the renewal of its prospecting permit. This history is a material omission from the RIS.

**Page 11, map:** This map is accurate as to the current situation, however, does not show earlier areas of interest expressed by Neptune Minerals and Nautilus Minerals. At a point in time Neptune had 40% of its licence area within the area of the proposed Sanctuary. That is relevant information that was not included in the RIS.

**Page 11, para 58:** Note that the purpose of the Crown Minerals Act was changed in 2013 with the introduction of section 1A, and it is to promote minerals activities for the benefit of New Zealand. This is a material consideration that has been omitted from the RIS.

**Page 12, para. 59:** Why would Nautilus Minerals pursue any interest in NZ, anywhere in NZ, after the way they have been treated (as they would see it)?

**Page 12, para. 62:** The idea that the economic impacts on Nautilus are “*minor*” is precisely because Nautilus have been prevented from doing anything in NZ to date. This is circular reasoning, and a meaningless statement in the context of an RIS. In addition: what does the lack of Nautilus staff based in NZ have to do with a discussion about the regulatory impacts of a Kermadecs Ocean Sanctuary?

**Page 12, para. 63:** Note that the “*high grades of copper, gold and silver*” comprise mineralisation in the context of seabed massive sulphide deposits. Minerals explorers and researchers are interested in mineralisation between 150m and 1.8km depth. Note that there is no question of anyone mining anything at a depth of 10km.

**Page 12, para. 66:** One of the reasons that “*no comprehensive study of the mineral resource*” has been done is the moratorium on minerals activities in the Kermadecs. NZ has stymied rather than encouraged research in the Kermadecs.

**Pages 12 and 13, para. 68:** Yes, there is prospectivity outside of the area of the proposed Sanctuary but why would Nautilus express any interest after the way they have been treated? This company would be expected to consider NZ as a place of high sovereign risk to do business.

**Page 13, para. 70:** The writers of the RIS say that because the Government has prevented Nautilus from carrying out any minerals activities in the Kermadecs, there is no additional cost to NZ in continuing to prevent Nautilus. This is a pointless statement.

**Page 14, para. 82:** Arguably, mining within the area of the proposed Sanctuary would not compromise any of the conservation objectives listed in (a) to (i). For instance, how would a sea-turtle be affected by a mining operation? By way of context, a seabed mine would be like two football fields of disturbance on the surface of an undersea volcano the size of Mt Ruapehu, a volcano that is also active, producing eruptions and landslides, with vents turning on and off, continually providing and removing the conditions for life around those vents. Mining in the Kermadecs would be like stirring the ocean with a teaspoon. The Kermadecs is arguably one of the most resilient places on Earth to contemplate an environmentally-responsible mining operation. The RIS is silent on these issues.

**Page 15, para. 84:** It is an error in law to quote Article 192 of UNCLOS in isolation from Articles 56 and 193, which are to do with economic development, as discussed above.

**Page 15, para. 85:** We are at a loss to understand why protecting 70% of the Kermadecs would help meet the CBD Aichi Target 11<sup>8</sup>, or any environmental protection target. This protection can have no relevance for the environment in other areas of NZ's EEZ, e.g., the ocean around the subantarctic islands.

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<sup>8</sup> UN Convention on Biological Diversity, Target 11: *“By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape.”*