

Submission to MINISTRY FOR THE ENVIRONMENT on

“A NEW MARINE PROTECTED AREAS ACT – CONSULTATION DOCUMENT” (MARCH 2016)

INTRODUCTION

1. Straterra¹ welcomes the opportunity to submit on the Ministry for the Environment consultation document² entitled “A new Marine Protected Areas Act”, released on 12 January 2016.
2. Straterra takes a principled approach to policy issues, which in this case is one of managing competing values and interests in natural resources, as is the case on land.
3. In preparing this submission, Straterra has consulted with GNS Science, NIWA, Chatham Rock Phosphate, Nautilus Minerals, Trans-Tasman Resources, and their legal, scientific, business/financial and environmental advisers. Straterra has also engaged with PEPANZ, Pew Environmental Trusts, WWF NZ, and EDS, among other interests in this debate.
4. Straterra welcomes further engagement with MfE on the issues raised in this submission.

EXECUTIVE SUMMARY

5. Straterra submits from the point of view that the Government’s approach to marine protection should be well argued, logical and rational, evidence based, consistent and coherent, and workable in practice.
6. Straterra considers that New Zealand should develop a high-quality marine protection framework as part of managing its marine jurisdiction, broadly defined, with decision-making based on science, and on an effective public process for addressing the competing values and interests in the marine environment. This consultation document fails to deliver that.
7. While the document is of merit at a theoretical level, we remain concerned as to the practical workability and usefulness of the proposed marine protection regime, for the Territorial Sea, and we remain concerned as to the approach to be taken for the Exclusive Economic Zone and Continental Shelf (EEZ + CS).
8. While New Zealand’s interests in the environment may be well served by the proposal, minerals exploration and seabed mining interests stand to be significantly adversely affected, to the extent that the new regime would deter minerals investment in the EEZ + CS, if the approach to be taken there is the same as the *ad hoc* approach to be taken to the Kermadecs³.

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

² <http://www.mfe.govt.nz/sites/default/files/media/Marine/mpa-consultation-doc.pdf>

³ The Fraser Institute reported in March 2016 that NZ rates relatively poorly for exploration, and uncertainty over the establishment of MPAs <https://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2015.pdf>

9. As well, it is unclear how New Zealand would exercise its sovereign rights to economic development in the EEZ under UNCLOS 1982 (Preamble, Articles 56 and 193), or achieve sustainable management.
10. In light of the foregoing, we agree with limiting the application of the new MPA Act to the Territorial Sea to observe how it would work in practice, and consider carefully the question of special legislation for creating MPAs in the EEZ + CS, i.e., that the principles to be applied here are based on science, principles that provide confidence for investors, and wide consultation, towards the effective management of competing values and interests.
11. Regardless, any policy framework for MPAs needs to recognise and provide for the distinctive nature of minerals (and petroleum) activities, discussed below.

RECOMMENDATIONS

12. Straterra recommends the Ministry for the Environment to:
 - a. Note Straterra’s concerns with the proposal for a new Marine Protected Areas Act;
 - b. Note Straterra’s support for restricting the scope of the new MPA Act to the Territorial Sea to observe how the new framework would work in practice;
 - c. Agree to consider carefully the approach to be taken when creating MPAs in the EEZ + CS via special legislation to incorporate robust science, principles that provide confidence for investors, and wide consultation, to effectively manage competing values and interests in the EEZ + CS; and
 - d. Regardless of the policy approach taken, agree to recognise and provide appropriately for the nature of minerals and petroleum activities when developing new policy on MPAs, as discussed below.

DISCUSSION

General

13. The concept of “sustainable management” encompasses use, development and protection for society’s economic, environmental, social and cultural wellbeing. Marine protection is part of the toolkit for enabling the “protection” part of sustainable management. Other tools are provided under other legislation, e.g., environmental approval processes under the EEZ Act, and the RMA.

The merits of the proposal for a new Marine Protected Areas Act

14. At a theoretical level, the consultation document contains much of merit:
 - Objective of a “*representative and adaptable network*” of marine protected areas (MPAs);
 - Sound objectives, including scientific, environmental, economic, social and cultural considerations, as well as existing and future uses of the marine environment;

- A “*planned and integrated*” approach to creating and reviewing MPAs;
- A diverse range of marine protection categories to meet different purposes;
- The process to be driven by information across the range of values, and engagement with the wide range of interests;
- Recognition of information gaps, and that gathering more information incurs significant costs in time and resources;
- Review process to modify the MPA network in response to new information, be it economic or environmental, social or cultural; and
- Recognition of existing minerals and petroleum interests in the Territorial Sea (although not in the EEZ) is important to reduce New Zealand’s sovereign risk to investors.

The uncertainty

15. That said, the consultation document presents the reader with uncertainty:

- It is proposed to create MPAs in the EEZ + CS via special legislation, and pursue specific recreational fishing park proposals in the Hauraki Gulf and the Marlborough Sounds, while it is argued that this exact same approach in the Territorial Sea is “*inefficient, confusing and is not working*”;
- The basis for the special legislation approach to the EEZ + CS, as opposed to a formal process as proposed for the Territorial Sea, is its “*significance*”, which raises a question as to the process to be followed for developing special legislation;
- A “*representative and adaptable network of MPAs*” is proposed; however, existing MPAs are not eligible for review;
- There is no clear connection with the New Zealand Coastal Policy Statement 2010, planning and consenting processes under the Resource Management Act 1991, or with the Marine and Coastal Areas (Takutai Moana) Act 2011;
- It is proposed to provide for extensive engagement with stakeholders and iwi/Maori; however, there was no formal engagement with the public ahead of the announcement of the Kermadec marine sanctuary, noting minerals prospectivity in this region;
- There is no recognition or mention of the marine protected areas policy⁴ developed and implemented by the Department of Conservation and the then Ministry of Fisheries in the mid-2000s, nor any discussion of New Zealand’s experience with that policy;

⁴ MPA policy 2005. <http://www.doc.govt.nz/about-us/science-publications/conservation-publications/marine-and-coastal/marine-protected-areas/marine-protected-areas-policy-and-implementation-plan/>

- There is no mention of the research undertaken by CRESA⁵, which revealed complex dynamics among stakeholders in the New Zealand marine environment, raising questions as how best to manage for collaboration⁶ in the marine environment;
- The proposal for seabed reserves lumps together bottom trawling and seabed mining, which are legislated under different legislation, having different purposes and legal tests; and
- Existing minerals interests⁷ are to be recognised within the Territorial Sea; however, it is unclear to what extent existing minerals interests, or future minerals interests, would be recognised in the EEZ + CS, as evidenced by the proposed closing out of existing minerals interests within the area of the proposed Kermadec Ocean Sanctuary⁸.

Implications for the NZ minerals sector

16. From a business perspective, the Government's proposed policy approach to MPAs – as we understand it - creates significant uncertainty and investment risk for the marine minerals industry.
17. The New Zealand minerals exploration and mining sector will not know where the next MPA will land in the EEZ + CS if an *ad hoc* approach is taken, as per the present example of the Kermadecs, in which there was little or no warning or formal consultation, and which will entail the extinguishment of existing rights and interests, with no monetary compensation for that loss.
18. On the above rationale, the Benthic Protection Areas - which are Fisheries Act 1996 instruments developed in areas where little or no bottom trawling is carried out, developed with no regard to or consultation with other interests - could be converted via special legislation into seabed reserves, in which seabed mining would be prohibited.
19. It is difficult for any responsible company board to approve an investment plan in the EEZ + CS, under circumstances where the rights of individuals could be removed with little or no consultation, and with no compensation for investments made.
20. Within the Territorial Sea, it is unknown how the new MPA process would work in practice. While the consultation document provides for changes to the MPA network in light of new information, we question the likelihood of any new MPA, or network, being reviewed once created.
21. If it is inappropriate to review existing MPAs, then there is small chance of reviewing any new MPA, other than adding to its areal extent. The new MPA "network" would be responsive to environmental concerns arising from new information, however, not to economic interests.

⁵ CRESA, 2005. Stakeholder views about the marine environment and its protection. Department of Conservation, Wellington. <http://www.doc.govt.nz/Documents/science-and-technical/sfc256.pdf>

⁶ For example, CRESA reported, in summary, that everyone wants marine reserves but not in their back yard; and commercial and recreational fishers accepted that there are human impacts on fish stocks, and blamed each other for the problem, or others than themselves.

⁷ Note that the holder of a prospecting permit may in the future apply for an exploration or a mining permit, as the extension of an existing interest; that mining is a temporary activity or use of space; and that minerals prospectivity is a minerals interest because it has been generated by investment in research.

⁸ Clause 9 (2) (b) of the Kermadec Ocean Sanctuary Bill.

22. It is an irony that most information on the marine environment more often arises from the research conducted by minerals and petroleum explorers and producers under the EEZ Act and the RMA. A discouraging effect on investment, which will occur under the new MPA regime proposed, would result in far less environmental information being obtained than would otherwise have occurred.

Proposed solutions

23. On the basis of the foregoing, we consider that a new Marine Protected Areas Act, if enacted along the lines proposed, will very likely not work as advertised or intended. Given this risk, there are several things the Government could do.

24. The proposal to restrict the scope of the new Marine Protected Areas Act to the Territorial Sea is supported because it offers an opportunity to observe how it would work in practice.

25. Separately, New Zealand could consider how best to manage competing values and interests in the EEZ + CS, via special legislation, using robust science, in consultation with the relevant interests, and on the basis of principles that would be necessary to encourage investment. These principles are analogous to those on land, around security of permit tenure, and process.

26. The above would *de facto* include an evidence-based review of the effectiveness and efficacy of the Benthic Protected Areas.

28. Any MPA policy will need to recognise and provide for the distinctive nature of minerals (and petroleum activities) in the oceans, outlined below:

- Economic mineral deposits are few and far between, are fixed by nature, and before they can be mined, they must first be found;
- Prospecting is carried out over large areas; subsequent exploration is carried out over smaller areas, and mining is carried out over small and clearly defined areas;
- Prospecting is typically non-invasive; exploration produces effects that are typically no more than minor; and seabed mining proposals are assessed under the EEZ Act 2012 marine consenting regime, with very high environmental scrutiny;
- The process of applying for a marine consent will entail scientific research as part of preparing an environmental impact assessment;
- Prospecting and exploration are a non-exclusive use of space;
- Mining is exclusive for a specific time period;
- Mining earns very high wealth off a small environmental footprint, and produces materials that are essential to modern society;

- New Zealand could be a producer of strategic minerals in the future, and our oceans resources could play a part in that⁹;
 - Mining, if it occurs, is a temporary or short-lived use of space, with natural recovery of disturbed seafloor ecosystems an integral part of environmental management;
 - Moving from prospecting to exploration to mining entails ever-increasing amounts of investment, and can only occur if there is certainty of access to space;
 - We do not know now where all of the mines of the future are going to be, and nor do we need to have that information – investment responds to the market;
 - It takes many prospects before, typically, a mineable resource is found, and takes many years for investment to move from prospecting to mining, where that is possible.
29. The implications of the foregoing are that any policy on MPAs should be attuned to the distinctive nature of minerals (and petroleum) activities, and recognise and provide for that.
30. The risk of current approaches to marine protection is one of a blunt instrument, that restricts minerals activities unnecessarily, and with no commensurate benefit for the environment.
31. Straterra considers that prospecting and exploration should be allowed in MPAs or prospective MPAs. Mining proposals in such places would face higher scrutiny, and a higher bar to meeting environmental standards, analogous with mining proposals on land in areas where matters of national importance apply, under the RMA.
32. If the mining company is able to present the evidence to decision-makers on a marine consent application that mining would not unduly compromise the values being protected in an MPA, noting the activity will be a temporary one, and in consideration of the longer term future of the MPA and the values protected there, mining should proceed. New Zealand's obligations under UNCLOS will have been met.

⁹ J.B. Napp (2015). Mining for the new climate economy, Pure Advantage.
<http://pureadvantage.org/news/2015/11/17/mining-for-the-new-climate-economy/>