

Questions and Answers

1. What is our Exclusive Economic Zone (EEZ)?

The EEZ is the area of sea, seabed and subsoil from 12 to 200 nautical miles offshore over which New Zealand has jurisdiction.

2. What is our Extended Continental Shelf (ECS)?

The ECS is the seabed and subsoil of New Zealand's submerged landmass where it extends beyond the EEZ. In that area, 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.

3. How large are New Zealand's EEZ and ECS?

New Zealand's EEZ is one of the largest in the world at more than 400 million hectares. Our extended continental shelf is approximately 170 million hectares.

4. Why do we need environmental effects legislation?

The effects of some activities fall outside of the existing regulatory framework. This creates a potential risk of harm to the environment, a reputational risk for New Zealand internationally, and a lack of certainty for industry regarding the regulations that will affect their investments.

5. What activities and effects will be covered by the legislation?

Activities covered by the legislation will include seabed mining and some aspects of petroleum exploration and extraction. The legislation will also apply to any activities, not currently regulated under existing legislation that may cause environmental effects such as the redistribution of sediment, damage to seabed or ecosystems.

6. Is there currently any regulation of petroleum and seabed mining in the EEZ?

Some existing laws apply to the EEZ. The allocation of petroleum permits for prospecting, exploration and extraction are covered by the Crown Minerals Act 1991 while licences for seabed mining are granted under the Continental Shelf Act 1964.

The management of health and safety risks and inspections of offshore petroleum structures are covered by the Health and Safety in Employment Act

1992, and marine pollution issues from ships and offshore installations such as oil spills and dumping of waste or dredged material, are covered by the Maritime Transport Act 1994. However there is currently no legislation in the EEZ that enables a full and comprehensive environmental assessment of all aspects of these activities.

7. What other regulation currently exists for activities in New Zealand's EEZ?

The Fisheries Act 1996 provides for the management of fisheries, including the environmental impacts of fishing. Other legislation applicable in the EEZ includes the Marine Mammals Protection Act 1978 and the Wildlife Act 1953. The Biosecurity Law Reform Bill currently before Parliament provides for the management of biosecurity risks in the EEZ.

8. Who will be responsible for functions under the legislation?

The Minister for the Environment will be responsible for the legislation, development of regulations and for providing policy advice on the legislation.

The Environmental Protection Authority (EPA) will make decisions on consent applications, and will be responsible for the day to day operation of the legislation, including information management, monitoring and enforcement functions.

9. What will be the purpose and principles of the legislation?

The legislation will seek to achieve a balance between protection of the environment and economic development of natural resources in the EEZ and ECS. The legislation will set out an obligation for adverse environmental effects to be avoided, remedied, or mitigated.

Principal considerations for decision-makers will include:

- the adverse effects on the environment of all activities undertaken in an area of the exclusive economic zone or the continental shelf (including cumulative effects and effects regulated by other legislation)
- the economic well-being of New Zealand
- the efficient use and development of natural resources
- the effects of activities on existing interests
- the effects on human health that may arise from adverse effects on the environment
- the nature and effect of other marine management regimes
- the protection of the biological diversity and integrity of marine species, ecosystems, and processes
- the protection of rare and vulnerable ecosystems, and the habitats of threatened species.

10. How will the legislation operate in practice?

The legislation will be an enabling Act under which a detailed set of regulations will be developed. The details of regulations will be developed through a public consultation process. These regulations will establish the details of the management system through rules and standards, and will classify activities controlled under the legislation into three categories:

- activities with no, or only minor, effects will be classed as permitted with appropriate conditions
- activities with effects over certain thresholds will be discretionary and will require consent from the Environmental Protection Authority (EPA)
- some activities could be completely prohibited.

11. How will the legislation affect seismic surveying?

The Ministry for the Environment is currently assessing how all the various activities in the EEZ, including seismic surveying, will be dealt with. The options for how activities could be dealt with will be released next year for public comment.

12. How will the consenting process work?

Consents will only be required for discretionary activities. Applicants will be required to prepare an impact assessment statement to identify the environmental effects of their proposal, and also the effects on other interests.

Applications will be publicly notified, and submissions will be invited. Hearings will be held if requested.

13. What will the EPA consider when making decisions?

The EPA will consider the purpose and principles of the legislation, the likely effects of the activity, and proposals to avoid, remedy or mitigate any adverse effects. It will also consider any matters raised in submissions or hearings.

14. How will the legislation deal with low levels of environmental information?

The decision-making framework for the legislation needs to acknowledge that there is little information about the EEZ and ECS environment and the new technologies which may be employed there. Decision-makers under the legislation will, therefore, be required to take into account the best available information, consider any uncertainty or insufficiency in the information available and exercise caution when information is uncertain or insufficient.

15. How will the new legislation interact with existing regulations?

The legislation will not override existing regulation; it will fill the gaps in the control of the EEZ and ECS. For example, the environmental effects of fishing are already regulated under the Fisheries Act 1996. Therefore, the new legislation will not regulate fishing. The legislation will ensure, however, that the EPA considers controls that have been established under other laws, and vice versa. For example, if an area has been closed to bottom trawling for fish, this will need to be taken into account when determining how to regulate seabed mining in the same space.

16. What appeal rights will the legislation provide?

There will be appeal rights on points of law to the High Court against the decision to grant or decline a consent, the conditions placed on a consent, and any decision to review or cancel a consent. There also will be appeal rights to the High Court on both the merits and points of law against enforcement orders and conviction for offences.

Full appeal rights on the merits will not be allowed as it is preferable to have one robust and timely decision rather than full appeals on the merits. This approach is consistent with the current appeal rights for decisions of Boards of Inquiry under the RMA.

17. Will the legislation have any transitional provisions?

When the legislation comes into force:

- Operators of permitted activities will be required to comply with the regulations applying to the activity
- Operators of discretionary activities (that are lawfully established) may continue for six months. If the operator intends to continue the activity beyond the six months, they must apply for consent through the standard process within the six months, and may continue until the application is decided.
- Operators of prohibited activities must stop the activity by a time prescribed in regulations.
- The existing petroleum platforms in the EEZ and prospecting licences under the Continental Shelf Act 1964 that were granted before 1 July 2011 will be exempt from the requirements of the legislation.

18. Will local government have any role under the new legislation?

Regional Councils will still be responsible for Regional Coastal Plans and consenting for activities in the territorial sea (up to 12 nautical miles offshore). Where an activity spans the boundary between the territorial sea and EEZ, the legislation will provide for a joint decision-making process between the Regional Council and EPA.

19. Why not just amend the RMA?

The Resource Management Act 1991 contains detailed planning and appeals processes. In the EEZ there is less competition for space and less effect on local communities. There also will be a relatively low number of activities regulated under this legislation in the foreseeable future. Therefore a separate and more streamlined piece of legislation is appropriate, rather than importing all of the detail of the RMA.

20. Why is the legislation being introduced in August – a month later than intended?

This is due to two reasons:

- Parliamentary Counsel Office taking longer than intended to draft the legislation
- Dialogue with iwi

21. How does the legislation provide for the Treaty relationship?

- The EPA is required to have at least one of its members with knowledge and experience in the Treaty and tikanga Maori
- The EPA Maori Advisory Committee be able to provide advice to the EPA so that decisions under the Bill can be informed by a Maori perspective
- The Minister will establish and use a process that gives iwi adequate time and opportunity to comment on proposed standards and regulations made under the Bill
- All persons performing functions and duties or exercising powers under the Bill will have regard to existing interests to the extent that they are relevant. Existing interests includes Treaty of Waitangi settlements, protected customary rights and customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011
- The EPA will notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them, those groups will then be able to submit and be heard

22. What was the outcome of the recent claim and application for urgency to the Waitangi Tribunal from Ngati Kahungunu on the EEZ legislation?

The Waitangi Tribunal ruled that the criterion for urgency had not been satisfied.

It also noted that the policy content, institutions and processes in the proposed legislation provide “realistic opportunities” for the recognition and protection of the claimants’ interests.