

Departmental Disclosure Statement

Kermadec Ocean Sanctuary Bill

The departmental disclosure statement for a Government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

26 February 2016

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Part One: General Policy Statement

The purpose of this Bill is to establish a new marine protected area in New Zealand's exclusive economic zone around the Kermadec Islands and to preserve it in its natural state.

The Kermadec Ocean Sanctuary (the Sanctuary) will comprise the waters and underlying seabed and subsoil extending from the boundary of the current Kermadec Islands Marine Reserve to the 200-nautical-mile limit of New Zealand's exclusive economic zone surrounding the Kermadec Islands.

Fishing, mining, and seismic surveying for non-scientific purposes will be prohibited in the Sanctuary. The disturbance of the Sanctuary's seabed and subsoil and the dumping of waste and other matter will be prohibited to the greatest extent consistent with international law. Passage through the Sanctuary will continue to be allowed. Activities in the Sanctuary not specifically prohibited or regulated under this Bill will continue to be regulated under their applicable regimes as if the Sanctuary were any other part of the exclusive economic zone.

The Department of Conservation will administer and manage the Sanctuary. This Bill will be incorporated into Schedule 1 of the Conservation Act 1987 and the Bill will provide for the development of a conservation management strategy for the Sanctuary, the Kermadec Islands, and the Kermadec marine reserve.

Marine scientific research will be allowed in the Sanctuary. However, research that would otherwise breach one of the Sanctuary's prohibitions will have to be approved by the Environmental Protection Authority (the EPA). The approval process will be supplemented by regulations made on the joint recommendation of the Minister of Conservation and the Minister for the Environment.

The prohibitions that apply to the Sanctuary will be reflected in existing legislation for the purposes of enforcement. The prohibitions on mining, disturbance of the sea-bed and subsoil, dumping, and undertaking certain marine scientific research without an approval will be reflected in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZCS Act) and enforced by the EPA. The prohibition on fishing in the Sanctuary will be reflected in the Fisheries Act 1996 and enforced by the Ministry for Primary Industries.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>A number of reports by the PEW Charitable Trusts have either informed, or are relevant, to the Kermadec Ocean Sanctuary Bill. These reports include:</p> <p>Kermadecs Profile: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/pewkermadecsprofile.pdf</p> <p>The Kermadecs – Science Symposium Proceedings: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/kermadec_symposium_aug_2010_proceedings.pdf</p> <p>The Kermadecs – Fact Sheet: http://www.pewtrusts.org/~media/post-launch-images/2014/kermadecs/assets/kermadec-fact-sheet.pdf?la=en</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
<p>Although the Bill does not seek to give effect to New Zealand action in relation to an international treaty, it is consistent with the following international obligations:</p> <p>The United Nations Convention on the Law of the Sea (including article 192) - this can be accessed at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf</p> <p>The Convention of Biological Diversity (specifically target 11) – the convention can be accessed at https://www.cbd.int/convention/text/ and the targets at https://www.cbd.int/sp/targets/</p> <p>The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 – the convention can be accessed at http://www.imo.org/en/OurWork/Environment/LCLP/Documents/LC1972.pdf and the protocol at http://www.imo.org/en/OurWork/Environment/LCLP/Documents/PROTOCOLAmended2006.pdf</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
<p>There was no Parliamentary examination.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The proposals were considered in the RIS <i>Establishment of a Kermadec Ocean Sanctuary</i>, authored by the Ministry for the Environment (February 2016). The RIS can be accessed at http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/kermadec-ocean-sanctuary.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIS did not meet the threshold for Treasury RIA Team assessment. Rather, the RIS was assessed by the Ministry for the Environment's RIA Panel. Their full QA statement is as follows: "The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS), prepared by the Ministry for the Environment, is attached. The RIA Panel at the Ministry for the Environment has reviewed the RIS and considers that that it partially meets the quality assurance criteria. Working within disclosed limitations, including information availability and limited consultation, the document identifies to the extent possible, the likely impacts of the Kermadec Ocean Sanctuary. The document could however, more clearly and convincingly draw conclusions from the analysis to support the recommended options. In particular, of the options for managing the Sanctuary."</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Information on the loss of economic benefits of commercial fishing in the Kermadec region was covered in the Cabinet paper Establishment of a Kermadec Ocean Sanctuary, available at http://www.mfe.govt.nz/sites/default/files/media/Marine/Kermadec%20Ocean%20Sanctuary%20Cabinet%20Paper_0.pdf.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>Due to the current low state of activity in the Kermadec region, there is little likelihood of the costs or benefits of the Kermadec Ocean Sanctuary being impacted by the level of compliance with the obligations and standards and/or the nature and level of regulator effort put into encouraging or securing compliance. Although unlikely, if the level of activity in the Kermadec region increased significantly after the introduction of the Sanctuary, the level of effective compliance and the nature and level of regulatory compliance effort would need to be reconsidered.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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During the development of the Bill we work with the Ministry of Foreign Affairs and Trade to ensure that the Bill is consistent with New Zealand's international obligations relating to:

- The United Nations Convention on the Law of the Sea (including article 192)
- The Convention of Biological Diversity (specifically target 11)
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972
- The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Due to the secrecy afforded the project before the announcement, no engagement occurred with affected Māori interests. Since then consultation has occurred with Ngāti Kuri, Te Aupōuri and Te Ohu Kaimoana. The Crown may be subject to criticism that this is insufficient to take fully informed decisions on how to actively protect Māori interests.

Some active protection of Māori interests is provided in the Bill for the iwi most directly affected through providing a role in conservation planning processes. However, there is no proposal to protect area-specific Māori commercial fishing interests awarded under the Fisheries Deed of Settlement or any customary fishing interests from the impact of the Sanctuary's creation. This lack of protection is likely to be criticised as failing to uphold Māori interests protected by the principles of the Treaty of Waitangi.

No fishing has been undertaken in the Kermadec region using the settlement quota in the past 10 years.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	
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YES

There are no implications arising from the Bill. This Bill is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The new offence provisions, which rely on existing offence provisions in other Acts, are found at:</p> <p>Section 41 of the Bill (amending the EEZCS Act by inserting a new 134EA and 134EB into that Act).</p> <p>Section 47 of the Bill (amending the Fisheries Act by inserting a new 113AB and 252(3)(hab) into that Act)</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>Yes, they were consulted on the new offence and penalty provisions and whether the Bill is consistent with the Bill of Rights Act 1990.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Ngāti Kuri and Te Aupōuri were consulted on the policy to be given effect by this Bill and on a draft of this Bill. These iwi have an association with the Kermadecs recognised in their deeds of settlement and the associated legislation.</p> <p>Both iwi have expressed their support for the Bill. To reflect concerns raised, the proposals were changed in how the Conservation Management Strategy for the Kermadec Area would be developed and in creating a separate Kermadec Conservation Board (rather than creating a subcommittee of the relevant conservation board).</p> <p>Te Ohu Kaimoana (TOKM) and representatives of the Seafood New Zealand (SNZ) were consulted on the policy to be given effect by this Bill.</p> <p>TOKM and SNZ are concerned about the impact of the Sanctuary on fishing rights allocated to iwi under the Fisheries Settlement. There has been no fishing under this quota for the past 10 years and it is yet to be allocated to iwi, but TOKM and SNZ are concerned about the impact on the potential for future development of fisheries in the Kermadec area.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
MfE has worked directly with the Department of Conservation, Environmental Protection Authority, the Ministry for Primary Industries, the Office of Treaty Settlements, Maritime New Zealand, the Ministry for Business, Innovation, and Employment, the Ministry of Justice, the Ministry of Transport, Te Puni Kōkiri, the Treasury on the development of the Bill.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
The Bill creates a new regulation making power for the Minister responsible for the Bill and the Minister for the Environment to make regulations allowing the Environmental Protection Authority to recover fees and costs incurred in the Bill's marine scientific research approval process. This is consistent with cost recovery provisions in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, which govern the same activities in the exclusive economic zone (outside of the Kermadec Ocean Sanctuary).	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
Offences created in the Bill, which are linked to the Bill under both the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Fisheries Act 1996 will be strict liability.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>This Bill creates a new regulation making powers for the Minister responsible for the Bill and the Minister for the Environment to make regulations:</p> <ul style="list-style-type: none"> a) providing for additional requirements for applications for authorisations for marine scientific research, and the matters to be specified in marine scientific research authorisations; b) specifying terms and conditions that apply to marine scientific research undertaken under an authorisation; and c) providing for any other matters contemplated by this Bill and necessary for its administration or for giving it full effect. <p>This power is to allow further detail to be provided by the Ministers to ensure the Bill can be implemented as intended.</p> <p>The Bill also creates a new regulation making power for the Minister responsible for the Bill and the Minister for the Environment to make regulations allowing the Environmental Protection Authority to recover fees and costs incurred in the Bill's marine scientific research approval process.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
<p>The Bill removes access to fisheries and that no compensation will be payable to those who interests are affected.</p>	