

**15 November 2011**

The Clerk  
Local Government and Environment Select Committee  
Parliament Buildings  
Wellington

**Submission: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill**

**Introduction**

1. The Petroleum Exploration and Production Association of New Zealand is an incorporated society, operating as a trade association, which promotes the interests of companies actively involved in petroleum exploration and production in New Zealand and services companies offering technical and other business support to the sector.
2. Most of the major E&P companies operating in New Zealand are members of the Association. The Association's mission is to promote a legislative, administrative, economic and social framework which efficiently and effectively facilitates safe, environmentally responsible and profitable oil and gas exploration, development and production.
3. The need to provide for certainty of sustainable development of our natural resources for the social and economic well being of New Zealand is never more needed than now. In particular the Association welcomes the introduction of the Bill, in particular:
  - The intended balance between economic and environmental considerations, and
  - Recognition that where genuine uncertainty exists a cautious, as opposed to a precautionary, approach is appropriate.
4. While supporting the majority of the Bill as drafted the Association believes some changes to provide for greater certainty of economic and environmental outcomes. Essentially we believe the following issues need further thought:
  - transitional provisions for existing activities
  - grandfathering provisions
  - certain requirements for public hearings
  - provision to enable consents to be approved on a non-notified basis where the effects of activities are minor.

**Part One - Preliminary Provisions**

Clause 10 - Purpose

5. We support clause 10 as a workable construct so long as the EPA is able, as intended under clause 61(2), to grant an application for a marine consent if they determine the activity's contribution to New Zealand's economic development outweighs the perceived risks of the activity's adverse effects on the environment.

*Recommendation*

*That the balance struck in the legislation between the protection of the environment and economic development be retained as the core principle of this legislation*

#### Clause 15 – Restrictions on activities in exclusive economic zone and on continental shelf

6. A structure is defined to include both those that are set on the seabed (jack-ups, platforms, etc) as well as those that are floating (semi-sub, FPSO, etc). Clause 15(2) covers all types of drilling rigs and production facilities. The one area that is missing from the definition is the element of 'time'. It could be argued that the Bill is somewhat ambiguous on whether a structure is meant to be something that is more 'permanent' (i.e. a production facility) rather than something very short term (drilling rig). In any event it would be useful to have a slightly more permissive regime for temporary structures compared to permanent.

##### *Recommendation*

*That a new sub-clause be inserted after 15(4) or in either of clauses 27 or 29 that provides for regulations to distinguish between temporary and permanent structures.*

7. Clause 15(4) is clearly meant to capture seismic activity on the basis that it creates a 'vibration'. At present the effects of seismic surveys on marine mammals is dealt with under guidelines managed by the Department of Conservation. Now that an EPA has been established there is a question of whether those guidelines should be administered by the EPA. Please note that DOC have recently completed a comprehensive consultation programme regarding legislation regarding minimising the impact of marine seismic acquisition on marine mammals.

##### *Recommendation*

*We submit that the Bill should be amended to provide that the EPA be responsible for guidance and regulations on seismic activity.*

#### Clauses 16 to 18 - Existing activities to continue

8. Clause 16 provides a grandfathering provision which is intended to be of some comfort to the owners and operators of existing offshore installations and FPSOs. However there are a number of limits to the extent of this provision.
9. In particular, the provision does not apply:
  - to petroleum prospecting or exploration activities; or
  - to any change in the activity if the change was authorised by a change to a petroleum or minerals permit or licence made on or after 1 July 2011; or
  - to the alteration, extension, removal or demolition of a structure or pipeline associated with the activity; or
  - in respect of any period during which the existing petroleum or minerals permit or licence is extended.
10. These are significant limitations on the effectiveness of the grandfathering provision which, if enacted, impose a heavy duty on those who are lawfully carrying out existing activities. It appears that any change to an existing activity, no matter how small, triggers the end of the grandfathering provision for the entire facility or activity.

##### *Recommendation*

*The Bill be amended to clarify that cancellation of grandfathering provisions is only in respect of that portion of the activity or licence that is changing and where the effects of those changes are more than minor, ie material in nature due to their intensity, scale and character.*

11. A key area of concern is that if a proposal has been reviewed by the EPA but the relevant activity has not started before the legislation commences, then it does not appear as if the transitional provisions will apply to the proposed activities as they will not be existing activities. Rather, it appears intended that an operator who has already had its proposal reviewed by the EPA under the voluntary interim regime, will still need to have its application considered under the new public hearing process if it proposes to commence drilling activity after the commencement date of the legislation.

*Recommendation*

*A proposal that has already been reviewed by the EPA should be treated as an 'existing activity' and should not require a marine consent under the new process."*

12. Another key area of concern is the relatively short duration of the grandfathering period. The process for contracting a Mobile Offshore Drilling Unit (MODU) and associated long lead items takes more than a year. Under the presently-proposed grandfathering timelines, companies planning to drill in 2013 will need to contract a MODU and order long-lead items prior to the legislation coming into effect, for an activity that will occur after the end of the grandfather period. Given the degree of uncertainty regarding approval processes and timelines, companies would be in the position of having to commit considerable funds to drilling programmes without security of knowing that an approval will be granted. Corporate governance will not allow this situation, and drilling activities will be delayed. This in turn will delay the development and subsequent payment of royalties and taxes to the Crown, and thus decrease the Net Present Value of the Crown Mineral Estate to the Crown.

*Recommendation*

*The grandfather period should be extended to cover any activities which have a contract in place prior to the legislation coming into effect.*

**Part 2 – Requirements and Consents**

Subpart 2 - Marine consents – comprehensive public process

13. It is not clear how many applications for a discretionary activity will require a public hearing process. The way in which the Bill is currently written means the default is likely to be a public hearing. To ensure that only applications containing matters of substance are able to be referred to a public hearing, we submit that the Bill contain a provision that only allows hearings to proceed where the issues raised in submissions are significant.
14. The rationale for this approach is that public notification processes do not always result in better decision-making or decisions, particularly when an application relates to highly technical or operational matters where it is necessary to have a high degree of technical knowledge or industry experience to contribute in a meaningful way to the decision making process.

*Recommendation*

*Marine consents only are notified when the effects are more than minor.*

15. The Bill imposes an obligation on the EPA to deal with applications as promptly as is reasonable in the circumstances. The EPA may stop processing a marine consent if it considers the applicant has not included sufficient information. It is the Association's view that the EPA should process the entire application and notify the applicant of all deficiencies in the application and then stop processing.

*Recommendation*

*That the Bill requires the EPA to advise an applicant of all deficiencies in their application if they propose to stop processing the application*

16. Clauses 74 to 80 of the Bill provide that the EPA may decide to review the duration and conditions of a marine consent. The Association's view is that the EPA should meet a test of reasonableness prior to deciding to review the duration and conditions of an existing consent.

*Recommendation*

*We submit that the Bill should be amended such that the EPA should meet a test of reasonableness prior to deciding to review the duration and conditions of an existing consent*

## **Part 4**

### Incorporation by reference

17. For many years one of the deficiencies of regulation making process has been the inability or reluctance to incorporate by reference standards and conventions in regulations. Instead, much time and cost is wasted in duplicating material so that it is coded word for word in the regulations.
18. In recent years a trend has begun where primary legislation provides for the inclusion by reference of specific material into regulations. The clauses in the Bill governing this in respect of the EEZ are usefully constrained and provide a reasonable framework.
19. The Association supports the Bill in this respect.

### Transitional Provisions Sub-part 2 of Part 4

20. The transitional provision for a lawfully established activity that becomes a discretionary activity is unusually harsh. The Bill provides for existing activities to continue only for a period of six months following subpart 2 of Part 3 coming into force.
21. If an activity is legitimately established prior to the Act coming into force then that discretionary activity should be permitted to continue for a reasonable period of time. Six months is not reasonable. There will be high demand for environmental services in the period leading up to the new legislation, and it will be a challenge to complete a new and thorough EIA within 6 months of commissioning. Considering the uncertainties with the approvals period, it would be more suitable to allow a transitional period of 18 months.

### *Recommendation*

*We submit that a more suitable period is 18 months.*

### **Conclusion**

22. PEPANZ appreciates the opportunity to make this submission and is able to provide further clarification if required.
23. We wish to appear in person before the Select Committee to speak to our submission.

Sincerely

John Pfahlert  
Executive Officer