

# THE NEW ZEALAND COASTAL POLICY STATEMENT AND PETROLEUM EXPLORATION

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## Abstract

The New Zealand Coastal Policy Statement is a major statement from Government as to how it expects the coastal environment of New Zealand to be managed. The Policy gives direction to Regional and District Councils for their policies, plans and decisions. The Policy also outlines the specific circumstances where the Minister of Conservation shall be the decision maker for resource consent applications.

This paper outlines the reasons for and the process behind the Development of the New Zealand Coastal Policy Statement. It identifies the current status of the policy and how it will be implemented. The paper analyses how this policy impacts on oil exploration in the coastal environment and the statutory processes involved.

## The Resource Management Act Coastal Regime

The Resource Management Act (the Act) established a new management regime for the coast which is of prime interest to the petroleum industry. Prior to the Act coastal management was characterised by multiple agencies often with overlapping and conflicting functions, inadequate resources and inappropriate administrative boundaries. This resulted in a lack of effective forward planning and a very complicated consent process whereby multiple consents were often required for a single application. The new regime simplifies coastal management and clarifies responsibility. It establishes a partnership between the Crown and regional councils.

The Resource Management Act passed functions in the coastal marine area, relating to the allocation of foreshore and seabed, to regional councils. This role was previously generally carried out by central government. Concern was expressed by some that regional councils do not have the expertise or skills to take on this new role without policy direction from central government.

It is of course important that the Crown retain an involvement in coastal management. The Crown claims ownership of the seabed and of most of the foreshore. This reflects an expectation of the public that beaches and the sea should be common property resources available to all.

It was a principle accepted during the Resource Management Law Reform process, that decisions would be taken by the level of the Government which represented the appropriate community of interest. The Crown represents the national community of interest and should therefore make decisions where matters of national significance are involved. Clearly the formulation of a New Zealand Coastal Policy Statement falls within this criterion.

The Resource Management Act therefore sets up a legal framework for the management of the coast. By means of the New Zealand Coastal Policy Statement (NZCPS) the

government sets out the policies which it thinks are appropriate for the coastal environment and should be followed and implemented by the local authorities in which day-to-day management of the coast is vested. This ensures a nationally consistent approach and identifies aspects over which the Minister will retain some direct control.

While allocation of the mineral and fossil fuel resources is not a Resource Management Act matter, the effects such activities have on the environment is controlled by plans prepared under the Act.

## The Notified Draft NZCPS

As required by the Act, the Minister of Conservation notified a draft New Zealand Coastal Policy Statement for public comment prior to October 1993. Upon notification, the Minister appointed a very well qualified and independent Board of Inquiry to make a report and recommendation on the draft policy statement.

The Board of Inquiry was chaired by Arnold Turner (a retired Planning Tribunal Judge) and included: Maui Solomon, Margaret Mutu, Denis Nugent, and Colin McNabb.

The Board called for submissions and cross submissions on the draft policy, and over 600 were received. Public hearings were held in a number of centres around the country. Representatives of the petroleum exploration industry made both written and oral submissions to the Board.

## The Recommendation of the Board of Inquiry

After consideration of the submissions the Board of Inquiry recently finished their deliberations. They presented their report and recommendation to the Minister on February 15, 1994. The Minister is currently assessing the recommendation. According to law the Minister may, but need not, change the recommendation as he sees fit. However, he

is required to demonstrate very good reason for differing from the recommendation.

When the Minister has considered the recommendation he will prepare the document for gazettal accordingly and will submit it to the Governor General in Council for approval. A time frame for gazettal of the document has not been established. However, gazettal is a matter of some urgency because the primary purpose of the NZCPS is to guide the preparation of regional coastal plans which regional councils are required to publicly notify by July 1 1994.

The recommendation is currently being printed for public distribution. The Minister will send a copy of the recommendation to each submitter and will publicly notify its availability as soon as it has been printed. It is estimated that will take a week.

Because the Minister is still considering the recommendation of the Board of Inquiry I am not in the position to discuss the content of the document. The Minister is concerned that all interested parties receive the recommendation at the same time.

### **Petroleum Industry Views on the Notified Draft NZCPS**

Petroleum exploration industry submissions to the draft NZCPS suggested that rather than include the principles as drafted in the notified NZCPS it would be desirable to restate the purpose and principles of the Act as they appear in the legislation. It was suggested that this would avoid the unnecessary paraphrasing of the Act and would avoid the need to separate the requirements for protection use and development which they consider makes a more restrictive regime than provided for in the Act. An early recommendation of the Board to the Minister reflected this request and the Minister agreed that the principles in the notified draft would be appropriately replaced with a restatement of the purpose and principles of the Act.

The definition of the coastal environment in the notified draft was of concern to the natural resource users group. This was a concern of a number of submitters. In his response to a request of the Board of Inquiry the Minister suggested that the definition could be redrafted to avoid reference to the minimum of 40 metres. Another option would be, as the natural resource users group suggested, to simply avoid defining the term in the document and wait until it is interpreted by the courts.

The petroleum exploration industry was critical that the NZCPS did not adequately recognise existing development. This concern was noted in the Minister's response to the submissions at the end of hearings. While personally I can understand this concern, and clearly the management of areas such as ports needs different standards and treatment to pristine areas, it is difficult to find justification for such a regime in the Act.

Another concern of the industry on the notified draft was that it was inappropriately prescriptive. The level of detail or prescriptiveness was raised by a number of submissions, and as such the Board of Inquiry will have considered it during the preparation of their report and recommendation.

The natural resource users group suggested that the precautionary approach was not needed in the NZCPS because it is embodied in the Act. Of major concern to the

group was the policy which provided for the termination of consents. The presiding member referred to this issue a number of times during the hearings and acknowledged that this should be reconsidered.

While the industry was concerned that the NZCPS was too protectionist other submissions criticised it for being too development orientated. It is important to note that the purpose of the Resource Management Act is not confined to use and development but includes the promotion of use, development and protection of natural and physical resources. Finding the appropriate balance for protection, use and development is the chief job of the Board of Inquiry. Obviously the recommendation they provide must reflect the priority established in the Act. It is also apparent that whatever recommendation they make will not totally satisfy any lobby group.

### **Implications of the NZCPS on Petroleum Developments**

The effect of the NZCPS on petroleum exploration developments will largely come through the translation of the policy statement into regional coastal plans.

However, one area where the NZCPS will have a direct effect on petroleum developments is Schedule 1 of the Policy Statement which lists activities which will be "restricted coastal activities". The term "restricted coastal activity" is misleading. Restricted coastal activities are not restricted. Their identification is a trigger mechanism for the consent authority to transfer from the council to the Minister. The Act provides that the Minister may specify an activity to be a restricted coastal activity in two situations:

- where the scale or type of activity is likely to have significant adverse effects on the coastal marine area, or
- where the type or scale of activity may have significant adverse effects on areas deemed by the Minister to have significant conservation value

For the consideration of a restricted coastal activity the Minister appoints a representative to the council hearing committee. The hearing committee send their report to the Minister for his decision. In making his decision on an application which is a restricted coastal activity the Minister considers the same criteria as the council. It is not the intention of the Minister to use RCAs to become the consent authority for large numbers of consents. The intention has been to keep restricted coastal activities to within 5-10% of the total coastal applications.

While it was the Minister's intention that oil production wells would be restricted coastal activities, it was not the Minister's intention to include exploration drilling as an RCA. The Minister issued a direction which listed restricted coastal activities for use during the transition. It was pointed out early on, that some of the criteria in this direction may include exploration wells. For example the specification of activities involving structures of a linear size greater than 1000 m was seen to include exploration wells. This was subsequently amended in Schedule 1 of the notified draft NZCPS which clarified that the linear length specified was horizontal rather than vertical.

Schedule 1 has been criticised by submissions for being activity based rather than effects based. The reason for specifying activities and scales of activities rather than effects was to provide certainty for potential developers.

Generally speaking an RCA application takes only five days longer than a notified coastal permit. The Act has strict time lines and the Minister has twenty working days to make his decisions. The decision on an RCA application, from receipt by the council to the decision by the Minister takes about four months. This can be greatly increased in instances where Planning Tribunal Inquiries are sought. The only additional costs of a restricted coastal activity are \$250 and the cost of the appointee.

## Regional Coastal Plans

As mentioned earlier, regional councils are currently drafting regional coastal plans for their regions. Regional coastal plans translate the requirements of the NZCPS into a regional context which reflect the community's aspirations for coastal management. The plans set the framework in which decisions will be made. The Minister will be bound by the framework.

Regional coastal plans will contain objectives, policies and methods, including rules to control activities. So they will be of interest to the petroleum industry. Some councils have already put early drafts and discussion papers out for public comment. I recommend that you use the opportunity to comment on regional coastal plans where they have the potential to affect the interests of the petroleum industry.

## What the Department wants to see in Terms of Assurances

The Act has been in force now for almost two and a half years. Although the hierarchy of planning documents established by the Act is not complete, we are beginning to see the effects of the new regime in terms of developments, such as those relating to petroleum exploration. In terms of future petroleum developments the assurances that the department wants to see can be divided into those relating to issues and those relating to process. The "issues" include the matters specified in Part II of the Act, for example "preservation of natural character" and "protection of significant habitats".

In terms of process the department wants to see good pre-application consultation, comprehensive environmental impact assessments and sufficient information to make informed decisions. Controls through conditions which are

adequate to avoid remedy or mitigate any adverse effects are also required.

The recent AMOCO application for petroleum exploration on the boundary of the Wellington and Wanganui regional councils included some very good features. In the AMOCO case most concerns regarding the application were resolved through pre application consultation. This led to the establishment of conditions which were largely acceptable to the applicant. The AMOCO example highlights the importance of iwi consultation. Although the site is 13 km offshore, the tangata whenua had interests in the application. A valiant attempt was made to consult effectively. The AMOCO application included a very comprehensive environmental impact assessment prepared by Kingett Mitchell.

In addition, the cross boundary nature of the AMOCO application site reflected the efficiencies the Act provides for. A joint hearing was held by the two councils. Wellington regional council delegated its consent function consent to Wanganui Regional Council. A joint decision was made by a joint hearing committee on behalf of both councils.

## Summary

In terms of coastal management the draft New Zealand Coastal Policy Statement does not have as much direct effect on petroleum developments as regional coastal plans will have. Regional coastal plans will set the framework for daily coastal management. Public consultation on regional coastal plans will offer the petroleum industry a unique opportunity to comment on and have input into that framework.

The concerns of the petroleum industry on the notified draft New Zealand Coastal Policy Statement were generally supported by other similar submissions. Some of the comments were specifically noted and acknowledged by the Board as needing further consideration.

The recommendation of the Board of Inquiry has been presented to the Minister and will be made publicly available as soon as it has been printed. While the Minister can change the recommendation of the Board he will have to demonstrate very good reason if he wishes to. Thus the recommendation will be a good lead as to the final form of the NZCPS.

## Author

IAN STEWART is the Manager of the Coastal Section of the Department of Conservation's Estate Protection Policy Division, a position he has held for the last two years. Prior to this he was the Advocacy Manager for the Department of Conservation's West Coast Conservancy Office where he was responsible for the Department's involvement with mining. Ian Stewart has a Doctorate in Resource Management, and work experience in international environmental policy and in university teaching.