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21 September 2018

Proposed Policy for Regulating Decommissioning under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

The Ministry for the Environment

Submitted by email to eezregulations@mfe.govt.nz

PEPANZ Submission *Proposed Policy for Regulating Decommissioning under the EEZ Act 2012*

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's ("PEPANZ") submission in respect of the Ministry for the Environment's consultation *Proposed Policy for Regulating Decommissioning*[1], (referred to hereafter as "the Discussion Document"), for which submissions close on 21 September 2018.

PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

Executive summary

- PEPANZ supports the proposed decommissioning plan framework, which is based on the case by case approach supported by a comparative assessment. We nonetheless have some important concerns about several aspects of the proposed approach.
- We consider that a clear scope or definition of decommissioning is required for the regime to be workable and to provide certainty. We support the discussion document's stated *intention* about what decommissioning plans should apply to, but the construct of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("EEZ Act") does not enable the flexibility envisaged by officials. The EEZ Act ultimately requires the EPA to ask whether any application is in connection with decommissioning (which has a broad dictionary definition) and to require a decommissioning plan if the activity is considered to be decommissioning. Conceptually, we propose that decommissioning could be defined in relation to an asset's phase of life rather than specific activities, and we would like to work with officials on developing a workable definition.

[1] http://www.mfe.govt.nz/publications/marine/proposed-policy-regulating-decommissioning-under-eez-continental-shelf-act-2012

- Greater clarity is required to differentiate the decommissioning plan from the marine consent process. We expect that the decommissioning plan should detail 'what' will be removed (i.e. the scope of removal) compared to the marine consent process that considers 'how' the decommissioning activities are undertaken.
- Comparative assessments must include the ability to separately consider health and safety as a key criterion to support removal or non-removal decisions. Safety risk may outweigh environmental outcomes in some decisions.
- Prescriptive requirements, such as minimum removal of all structures to 55m below median sea level, should be recommendations in the accompanying guidance and not specified in the regulations. Comparative assessment then becomes the mechanism through which justification for departure from the guidelines can be discussed. Similarly, recommendations regarding consultation with specific regulatory bodies should be included in guidance material rather than being specified in the regulations to enable consultation to be aligned to the decommissioning scope.

Overarching comments

PEPANZ supports the overall framework proposed for the decommissioning regulations. We support the proposed decommissioning plan being a case-by-case approach process underpinned by a comparative assessment, public consultation, and a presumption for removal of offshore installations . We nonetheless have some important concerns about several aspects of the proposal as outlined in this submission.

Specific submission points

Part 1: the definition of decommissioning

Submission Point 1: on the definition of a decommissioning-related activity

1. The Discussion Document does not propose any definition for decommissioning, saying, on page 14-15:

   The Government is not proposing to set out a list of the activities that would be done regarding the decommissioning of an offshore installation. This is because the process needs flexibility to take account of different installations and changing technologies. There are also some activities (such as the plugging and abandonment of wells) which may be desirable to progress ahead of an accepted decommissioning plan.

   However, the Government's intention is the meaning of decommissioning (in the context of section 38(3)) would capture everything that must be done to an offshore petroleum installation and its associated structures and pipelines, to take them permanently out-of-service after the installation is no longer used for petroleum production.

2. We support the thrust of the Government's stated intention, but express serious concern that no definition or scope is proposed to be included in regulations. Although the Government's stated preference for flexibility is sound at a conceptual level, we do not have confidence that this will work when applied by the regulator in practice. This is because:

   a. The Act does not provide flexibility because any decommissioning-related activity *must* have a decommissioning plan,

   b. experience has shown that the Environmental Protection Authority interprets and applies the law literally and strictly, as evinced by its application of Discharge Regulation 16[2] and rulings under section 162 of the EEZ Act.

3. In relation to our comment about the EEZ Act in point 2.a. above, we note section 38(3) of the EEZ Act states that an application for marine consent (for an activity that is to be undertaken in connection with decommissioning) must include an accepted decommissioning plan that covers the activity.[3] This policy construct means that, in receiving any application, the EPA must ask whether the application is in connection with decommissioning in

[2] Exclusive Economic Zone and Continental Shelf (Environmental Effects—Discharge and Dumping) Regulations 2015.

[3] Specifically, the section states: "*If the [marine consent] application relates to an activity that is to be undertaken in connection with the decommissioning of an offshore installation used in connection with petroleum production, or a structure, submarine pipeline, or submarine cable associated with such an installation,—*

(a) the application must include an accepted decommissioning plan that covers the activity; and

(b) the proposed carrying out of the activity must be in accordance with that plan."

order to ensure that it asks for a decommissioning plan as required. In the absence of a statutory definition of decommissioning, we understand that the EPA would have to allow the dictionary definition to prevail.

4. The Oxford English Dictionary defines 'decommission' as follows: "*To take (a ship, aeroplane, etc.) out of service; to close down (esp. a nuclear reactor)*[4]", and the Merriam-Webster Dictionary defines the term as *"to remove (something, such as a ship or a nuclear power plant) from service*.[5]" Both definitions are very broad, and although they would appropriately include withdrawing the offshore installation itself from service, they would on their face capture other activities that should not be required to be subject to a decommissioning plan in all instances. For example, the dictionary definitions would also cover plugging and abandonment ("P&A") of wells, and perhaps even the removal of topside equipment such as decks or walls, even if unrelated to cessation of production or the end of life of an installation.

5. Without clear scope or definition of decommissioning, operators will not have certainty about whether any activity that involves *taking out of service* will require a decommissioning plan. Consider situations where an operator is told by the EPA they need a decommissioning plan when the applicant wishes to:

   - plug and abandon a production well prior to cessation of production of the field,
   - remove topside equipment such as pressure vessels or an accommodation block while the field or asset is still in production, or
   - abandon anchors as per the floating production storage and offloading unit (FPSO) Whaakaropai decision in 2006 at the Maui field.

6. That type of uncertainty would undermine the very intention of the decommissioning plan, which is to provide certainty that decommissioning can take place at end of life.

7. We consider that P&A of wells or partial removal of topside equipment should be excluded from the requirement to have a decommissioning plan when this is done as part of regular field management. We also note that the *Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016* explicitly require wells to be permanently plugged and abandoned when no longer in use and this often happens well before abandonment of structures. But because P&A can be seen as "taking [wells] out of service" (as per the dictionary), the goal that "These regulations will not hinder the operators' ability to plug and abandon the well at their earliest convenience" could be compromised if P&A is not excluded through a statutory definition.

8. We recognise that devising a definition of decommissioning for the regulations is not simple, but there are significant uncertainty and risks that arise without a definition and it is essential that officials and industry can resolve this before the regime is promulgated.

9. We consider that a *possible* alternative to a definition in regulations could be to devise a statutory Policy Statement as provided under section 37A of the EEZ Act, or to classify certain activities (e.g. P&A of wells) as permitted and to exempt permitted activities from requiring a decommissioning plan.

10. Conceptually, decommissioning could be defined in relation to an asset's phase of life rather than specific activities. For example, '*Decommissioning is the process of ending offshore oil and gas operations at an offshore installation'*.

Part 2: The content of the plan and its acceptance

Submission point 2. On the information requirements in a decommissioning plan

11. We express some concern about the information required in the decommissioning plan. We consider that the decommissioning plan should be a 'high-level' document which outlines the general scope of decommissioning (i.e. what will be removed) with the details of how this will be achieved addressed through the marine consent process. Contrary to this, the proposed information to be included in a decommissioning plan assumes a very detailed level of planning e.g. methods for decommissioning, site preparation, waste management, schedule, monitoring and maintenance. This risks the subsequent marine consent process being a repetition of the decommissioning plan process with slightly different criteria. We submit that the purpose of the decommissioning plan process should be to get approval of the overall scope so that detailed planning can then be undertaken with some certainty for all parties.

[4] The Oxford English Dictionary. Second Edition. First published 1989, reprinted 2001.

[5] Accessed online, https://www.merriam-webster.com/dictionary/decommission

12. Requirements for ongoing monitoring and maintenance are out of step with residual ownership and the purpose of the decommissioning process and must be removed as requirements. Refer Part 4 of this submission below.

Submission point 3. Criteria for accepting a plan

13. We generally support the criteria for a plan, as they appear to be based on the International Maritime Organisation's 1989 Guidelines.

14. We are, however, seriously concerned that the "unacceptable risk to personnel" from decommissioning is not included in the proposals. Health and safety is a very important consideration and must be explicitly included otherwise it does not receive the appropriate weighting alongside the other criteria within IMO Guidelines. Safety is the first criteria considered in decisions on scope and methodology and will regularly drive other decisions. Explicitly excluding it, inhibits the ability to clearly demonstrate the decision process undertaken in a comparative assessment. We point out that safety is unlikely to be fully captured within cost and technical criteria, as there is not necessarily a direct correlation between safety and cost or technical criteria. Also see para 18 below.

15. We query the domestic appropriateness of the proposal that a depth of *"not less than 55* metres" of unobstructed water column must be left for any partly removed installations or structures. We understand this depth is based on the North Sea requirements which have significantly different shipping volumes and vessel sizes to New Zealand. It is unclear whether in the North Sea context the 55m relates to shipping movements or submarine navigation. It's also noted that some New Zealand installations are located in water depths of less than 55m. Setting a specific minimum depth for structural removal is a prescriptive requirement that is out of step with the intent of the regulations to provide a flexible framework for a Decommissioning Plan. We recommend that reference to a depth of -55m is provided within the supporting guidelines only, consistent with the status of the IMO guidelines.

16. It is important to note that the criteria in the Regulations should not conflict with the criteria is section 59 of the EEZ Act to ensure that the ultimate decision on the marine consent will uphold the in-principle scope of the decommissioning plan.

Submission point 4. Comparative assessment

17. We agree that a comparative assessment is an appropriate methodology to present the available options for dealing with structures to be decommissioned, and this should only be required if an operator seeks to dump or abandon an installation (as distinct from pipelines).

18. We submit that it is unrealistic to expect a comparative assessment to achieve the following outcome sought in the discussion document, namely where officials contemplate that "The best practicable environmental option will be identified by the comparative assessment and will result in the best outcome for the environment, consider the impact on cultural values and existing interests and be technically feasible (without imposing an unreasonable cost)". Incidentally, as outlined in para 14, risk to personnel should be a key aspect of this assessment.

19. The purpose of the comparative assessment should be to clearly state the different options and the relative merits of each and enable an informed decision to be made. It may not be clear what the 'best outcome for the environment' is (e.g. differing views on the value of a clean seabed versus an established ecosystem based on an artificial reef/structure), and the 'best environmental outcome' may not be aligned with existing interests, safety, and cultural values.

20. In terms of the information about costs that should be provided in the comparative assessment, we submit that high-level estimates should be considered as sufficient. This is because the publication of cost information may affect operators' commercial negotiations for high value contracts such as offshore vessels.

21. We query whether 'future interests' also needs to be considered in the comparative assessment. Where leaving structures/pipelines in place creates a future benefit that is not currently available now, such as a reef, should be an option to be considered in the comparative assessment.

Submission point 5. Regulatory proposal to link comparative assessment methodology to future guidance

22. We oppose the proposal on page 18 that methodology for comparative assessments should be "consistent with any guidance issued in support of these regulations." This is inappropriate because it commits operators to a framework that can be effectively amended by guidance incorporated by reference[6]. This reduces certainty, and is our view not aligned with new Legislation Design and Advisory Committee's best practice on legislation.

[6] "Incorporation by reference is, to a certain extent, inconsistent with these fundamental principles of good law making (particularly if it allows for amendments to the document incorporated to be automatically part of the law). Accordingly,

23. In terms of the contents of guidance material, it would be useful to include information on the anticipated approach to decommissioning of pipelines. In particular, how cross-boundary issues in relation to pipelines will be addressed and alternative considerations that may be appropriate in relation to a comparative assessment for a pipeline as opposed to a platform

Submission point 6. On the EPA process to be undertaken before deciding to notify the plan

24. In relation to the assessment that the EPA undertakes before accepting a plan on page 22, we prefer Option 2 which provides for a "limited assessment to obtain view that the Decommissioning Plan can be adequately consulted on". This option puts some onus and responsibility with the EPA on being able to progress the submission., but without requiring excessive assessment of the information provided by applicants.

25. We do not support Option 3 (which proposes acceptance "following a full assessment against the proposed criteria") because a "full assessment" would involve major work and risks duplicating the assessment that will be undertaken when the actual marine consent is eventually applied for.

Submission point 7. Standard templates for decommissioning plans

26. The proposed information to include in the decommissioning plan, as outlined on page 16 is a good structure for a decommissioning plan. However, we would only support the use of a 'template' if it is at high level based on the page 16 outline. Typically, each operator has different project processes, so a less rigid template is preferred, and only four offshore fields require decommissioning – i.e. there will not be many regular applications that necessitate consistency.

Part 3: Comments on consultation and engagement proposals

Submission point 8. The specific requirement for the operator to engage with relevant agencies

27. It is unclear which marine management agencies an operator must engage with as part of the plan application process. If, for whatever reason, an agency is unwilling or unable to engage with an operator in relation to a plan application, this should not disadvantage or penalise the applicant. To achieve that, we suggest that the concept of 'best endeavours' is in included in the regulations. We point out at the EPA must, at a later stage, engage with marine management agencies regardless.

Submission point 9. The concept of 'agreement'

28. Page 20 includes the phrase about "[incentivising] *engagement* between operators and marine management agencies, iwi and the public to agree the best overall approach to decommissioning". The idea of "agreement" between parties has not been part of the EEZ regime to date and risks introducing whole new concepts and practices into the regime. We understand from officials that this expression was not used with the intention of carrying that term into the regulations, and we support the use of an appropriate substitute word or phrase.

Submission point 10. Timeframes for public consultation

29. We support the proposal that minimum timeframe for public notification and submissions "must be at least 30 working days". To provide a book-end and upper limit we recommend that regulations specify that this timeframe can be doubled at the EPA's discretion, and that with the applicant's agreement it can be extended further. Such a limit should be included in legislation to provide certainty on the timeframe and process.

30. On the topic of timeframes, we also suggest that a maximum timeframe for agencies to call technical expertise is also proposed for inclusion in the regulations. This puts discipline back on the agencies to ensure that agencies obtain internal/external technical input in a timely manner.

Submission point 11. Requirement to consult councils with responsibilities for managing waste

31. We oppose the regulatory requirement that descriptions of alternatives to dumping "should be informed by seeking advice from the relevant local authorities with responsibilities for managing waste" (page 16).

32. This is because consideration of disposal options is intrinsic to corporate decision-making on decommissioning and will happen as a matter of course, and it is unclear why this particular process is singled out for specification in

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incorporation by reference should be used only if there is a strong need or benefit from doing so or it is impracticable to do otherwise."
Source: LDAC guidelines, p73. http://www.ldac.org.nz/assets/Uploads/Legislation-Guidelines-2018-edition.pdf

engagement requirements. The comparative assessment is already proposed to require analysis of the cost of reuse, recycling or disposal alternatives, and we consider that is the appropriate level of information required.

33. We point out that facilities, when decommissioned, are not required to complete this type of assessment through the RMA with the Regional Councils, and we also query whether this is outside of the bounds of the EPA's jurisdiction.

Submission point 12. Changes to a decommissioning plan

34. We support the proposals that the EPA has discretion in relation not notification of changes, within the framework that:

    - public consultation is required only in relation to the changes from the decommissioning plan,
    - and that public consultation is not required if the effects from the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan.

Part 4: Ownership of infrastructure

35. The document states it does not consider the matter of ownership of abandoned infrastructure and associated liabilities (saying that the EEZ Act does not cover this). We nonetheless wish to note that liabilities are an integral part of the decommissioning regime and it is concerning that this is left unresolved.

36. Related to this, under the proposed criteria for accepting a plan, the document requires that "installations that project above the surface of the sea must be adequately maintained to prevent structural failure" (p27). We query who in practice would have this responsibility, and under what legal framework this obligation is imposed, and whether an absolute requirement is appropriate and in line with the 'case-by-case' approach generally proposed for decommissioning. We consider that the focus of the regulations should be on ongoing marine safety rather than ongoing maintenance. To this end, has consideration been given to the 500m exclusion zones around installations, (which are formally charted), in terms of retaining these around an abandoned installation/structure?

37. We seek that if conditions are being considered in relation to any material left *in situ*, that these should be consistent in nature with the sinking of a marine vessel.