New Zealand

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1. Background

1.1 New Zealand

New Zealand is a British Commonwealth country located in the South Pacific 1,150 nautical miles east of Australia. It is constituted of several islands, the largest two of which are named North Island and South Island with an overall land mass of 268,000 square kilometres. However, a United Nations Commission confirmed New Zealand's custodial rights to more than 5.7 million km^2 of seabed in 2008. Petroleum exploration and production rights are allocated by the New Zealand government over this extensive subsea area that extends out to 200 nautical miles from the coastline (the exclusive economic zone or EEZ) and into the extended continental shelf beyond that. As such, the islands of New Zealand are merely the emergent parts of a significant continental landmass, 96% of which is submerged, and includes 19 sedimentary basins. It is the fourth largest EEZ in the world, with a maritime jurisdiction up to 22 times the size of its land area – equivalent in size to the European Union, the North Sea and a quarter of the Mediterranean Sea combined.

1.2 New Zealand petroleum industry

The petroleum industry has a long history in New Zealand with oil being first dug out of beaches in 1867 along the Taranaki coast on the West Coast of the North Island. Modern oil and gas exploration and production activities commenced in the 1950s with the onshore Kapuni gas and condensate field discovered in 1959 and brought on stream in 1969.

The Kapuni discovery was followed by the discovery of Maui in 1969, 35 km offshore in the Taranaki Basin. Maui was a world-class discovery with original reserves of 3.4 trillion cubic feet (tcf). A 307 km pipeline from Taranaki, where Maui gas is landed, to Huntly, just south of Auckland was constructed that links into the wider North Island gas transmission network developed on the back of the Kapuni field development. Production from Maui commenced in 1979 through the Maui A platform, weighing 20,000 tonnes. A second platform was added in 1992 and oil was extracted from deeper sections and loaded onto the Whakaaropai, a floating production storage and offloading (FPSO) vessel installed in 1996 for processing and storage, until it was decommissioned in 2006. Although in decline, Maui continues to be a major gas producer today.

There are 20 producing fields ranging in size from Maui down to fields of close

to 10 million barrels of oil equivalents (mmboe). Most fields are located onshore. Of the offshore fields, Tui and Maari are produced through FPSOs with the Pohokura and Kupe fields being produced to onshore production facilities through offshore wellheads and associated facilities. Maui remains New Zealand's only offshore installation that is connected permanently to the seabed and, with New Zealand committing to ensure any new facilities are designed for removal, is likely to be the only installation of this type. By the end of 2011, some 418 million barrels of oil (mmbbl) of oil and 6,190 billion cubic feet (bcf) of gas had been produced. However, there are no immediate plans to decommission any offshore production facilities.

Recently the government introduced an annual 'block offer' process by which oil companies may bid for the award of exploration acreage on an annual basis. The process has been received warmly by the industry and exploration is now underway in the large frontier basins where massive structures hold the promise of significant discoveries. However, the Taranaki Basin remains New Zealand's only basin where commercial quantities of hydrocarbons are produced.

2. Summary of the legislation applicable to the decommissioning of petroleum facilities in New Zealand waters

The New Zealand system of law and government is based squarely on the Westminster parliamentary system of government and English common law. Requirements relating to petroleum (and other) activities, including decommissioning, are determined by a mix of industry specific and more general legislation that seeks to implement the international instruments which New Zealand has ratified.

2.1 International legislation

A full examination of the international legislation relating to decommissioning is undertaken elsewhere in this book. New Zealand is a signatory to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention) and its 1996 Protocol. While both the London Convention and its Protocol explicitly exclude from their scope the disposal or storage of waste or other matter arising directly or resulting from exploration, exploitation and associated offshore processing of seabed mineral resources, including petroleum (as does New Zealand's implementing legislation), New Zealand has accepted the report of the Ad Hoc Group of Legal Experts on Dumping[1] concluding that the abandonment of offshore platforms and toppling of platforms *in situ* should be considered as 'dumping' for the purposes of the London Convention.

New Zealand is a party to a regional instrument, the Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986 (Noumea Convention). The convention is a comprehensive umbrella agreement for the protection, management and development of the marine and costal environment of the South Pacific Region. It requires parties to, among other things,

1 As summarised in the Report of the Thirteenth Consultative Meeting LDC 13/15 1990, paragraphs 7.4–7.6.

take all appropriate measures to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at its disposal, and in accordance with its capabilities.

In 1990 a Protocol to the Noumea Convention was ratified known as the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping. It constitutes the instrument for the contracting parties to meet the obligations of the Noumea Convention and the London Convention.

2.2 Crown Minerals Act 1991

Petroleum exploration and production activities are regulated by the Crown Minerals Act 1991 (CMA). Production activities are undertaken pursuant to a mining permit issued by the Crown that entitles the permit holder to undertake exploration and extraction activities in accordance with an approved work programme. The CMA is supported by a Minerals Programme for Petroleum (Petroleum Programme) that is revised every 10 years. The Petroleum Programme fleshes out how the responsible minister will implement the CMA. Under the current and previous Petroleum Programme, it is an obligation in each permit to properly decommission production facilities and abandon wells in accordance with good industry practice.[2] The minister may include provisions in an approved work programme for decommissioning structures and abandoning wells in accordance with good industry practice.[3]

2.3 Resource Management Act 1991

For onshore areas (including up to 12 nautical miles offshore) the relevant regional authority has jurisdiction under the Resource Management Act 1991 (RMA) with the Resource Management (Marine Pollution) Regulations 1998 that implement the London Convention and its Protocol within the coastal sea area (up to 12 nautical miles offshore). Pursuant to this legislation the dumping of platforms or other man-made structures at sea is a discretionary activity in any regional coastal plan.

2.4 Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

Outside the 12 nautical-mile limit, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) regulates maritime activities on the continental shelf. The EEZ Act, and regulations made thereunder, is the primary statutory instrument regulating the decommissioning of offshore oil and gas installations. The Environmental Protection Authority (EPA) has jurisdiction over the EEZ Act's administration. The EEZ Act implements New Zealand's commitments under the applicable international legislation. It provides for an effects-based permitting system whereby activities are classified as follows:

- Permitted activity – allowing a person to undertake the activity without a marine consent, although the EPA may need to be notified;[4]

2 See clause 11.1(1)(j) of the Petroleum Programme 2013.
3 See clause 8.9 of the Petroleum Programme 2013.
4 Section 35 of the EEZ Act.

- Discretionary activity – applies where specifically stated in the legislation; where a marine consent is required; or where the legislation does not classify the activity. If a marine consent is required, then it may be sought for:
  - a 'non-notified' activity whereby the applicant would be required to make an application that includes an impact assessment that identifies the effects of the activity on the environment and existing interests, but the application process does not require public notification; or
  - a 'publicly notifiable' activity whereby public notice, submissions and a hearing is required[5] in respect of the application for the relevant marine consent. The applicant would be required to make an application that includes an impact assessment, and the application process would also provide an opportunity for public submissions on the application;
  - prohibited activity – where the activity cannot be the subject of a marine consent application and cannot be undertaken at all.[6]

Offshore oil and gas production activities are a publicly notifiable discretionary activity requiring a marine consent and public notification. In particular, activities requiring the placement, alteration, extension, removal or demolition of a structure on or under the seabed will require a marine consent.[7]

In October 2015, the dumping of waste or other matter within New Zealand's EEZ and continental shelf, transitioned from the jurisdiction of Maritime New Zealand under the Maritime Transport Act 1994 to the EPA under the EEZ Act. Section 20G provides for a general prohibition on the dumping of waste or other matter, which will likely catch the abandonment at sea of decommissioned structures, unless regulations allow the dumping to be authorised by a marine consent and one is accordingly obtained. The regulatory provisions relating to dumping are set out in the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015, Part 5 at Regulations 31–34. The effect of the regulations is to classify dumping of production platforms or other structures as a publicly notifiable discretionary activity unless the structure was placed for the purposes of exploration, in which case it is classified as a 'non-notified' discretionary activity.[8]

Going forward, a decommissioning programme that contemplates either or both of the dismantling of a structure and its disposal at sea – including its abandonment *in situ* – will require an application to the EPA for a marine consent necessitating a public hearing.

With the EEZ Act still bedding in, knowledge gained from recent applications and gaps identified in the legislation are expected to be addressed in amendments which may have the effect of reordering the sections and providing substantive amendments. One gap in the regulatory regime means that the government has no information on the likely method of decommissioning or cost estimate until the

5 Sections 44C–58 of the EEZ Act.
6 Section 37 of the EEZ Act.
7 Section 20(2) of the EEZ Act.
8 Regulation 33(c).

relevant installation operator prepares an application for a marine consent for decommissioning activities at a time of its choosing. This gap is likely to be plugged when the Resource Legislation Amendment Bill is passed in 2016.[9] The bill, if passed, will amend the EEZ Act and provide the EPA with the power to call for a decommissioning programme well ahead of the expected cessation of production in the same way as in the United Kingdom. The relevant installation operator will be required to develop and submit a proposal to the EPA for all activities expected in the course of decommissioning, including the disposal of waste at sea, as part of a marine consent application. A regulatory framework that sets out the requirements for decommissioning, including any requirements for financial security, is then expected to be developed.[10] In addition, where a 'nationally significant' activity is proposed that straddles the boundary between the territorial and EEZ waters then the role of the EPA as the marine consent authority may be performed by a board of inquiry appointed by the minister in line with the RMA.[11]

2.5 Maritime Transport Act 1994

Prior to October 2015, the dumping of waste or other matter into the sea or on the seabed was regulated by Maritime New Zealand (MNZ) under the Maritime Transport Act 1994 (MTA) as supplemented by the Marine Protection Rules.[12] As summarised above, this responsibility has now transitioned to the EPA although the MTA and Marine Protection Rules still regulate the dumping of waste or other matter into waters beyond the continental shelf.[13] Section 261 of the MTA prohibits such activity unless a permit is issued by MNZ[14] which will necessitate a national public notification of the application to dump waste or other matter outside New Zealand's continental waters. Like the publicly notifiable process under the EEZ Act, the MTA process provides an opportunity for the public to make submissions. However, notification is not required if the director of MNZ considers that the application will have a minor adverse effect on the marine environment.

(a) Health and safety

The safety of workers at onshore and offshore oil and gas installations is regulated by Worksafe New Zealand under the Health and Safety in Employment Act 1992 (HS&E Act). The HS&E Act promotes the prevention of harm to all people at work, and others in, or in the vicinity of, places of work. It applies to all New Zealand workplaces and places duties on employers, the self-employed, employees, principals

9 The text of the bill may be viewed at www.legislation.govt.nz/bill/government/2015/0101/latest/DLM6669131.html#DLM6669672.

10 As recommended by the Ministry for the Environment in its Regulatory Impact Statement in regards to the bill dated October 28 2015, available at www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/rlab-eez.

11 See proposed new Section 99a of the EEZ Act as set out in Section 216 of the Resource Legislation Amendment Bill.

12 Available at www.maritimenz.govt.nz/Rules/List-of-all-rules/Part180-marine-protection-rule.asp: Part 180 – Dumping of Waste and Other Matter.

13 Section 20D(3) of the EEZ Act in conjunction with Part 21 of the MTA.

14 Under Section 262 of the MTA and in accordance with Section 270 and Part 180 – Marine Protection Rules.

and others who are in a position to manage or control hazards. The law requires employers and others to maintain safe working environments and implement sound practice. The Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013 requires decommissioning activities to be subject to an approved safety case.[15]

3. Governing bodies

Five government agencies and 16 regional councils carry out specific roles and responsibilities in regards to decommissioning arising from petroleum exploration and production activities undertaken in New Zealand waters.[16]

3.1 New Zealand Petroleum and Minerals

The principal government department responsible for the general management of New Zealand's mineral resource is New Zealand Petroleum and Minerals (NZP&M) in accordance with the Crown Minerals Act 1991 and its secondary legislation. NZP&M identifies areas of exploration interest and makes them available to companies under the permitting system via the annual block offer process. Exploration permits are awarded after a competitive tender process, based on, among other criteria, the work programme submitted that is most likely to improve NZP&M's knowledge base in the block. Before granting a permit, NZP&M will assess an operator's technical and financial capability, and compliance history, and undertake an assessment of the operator's capability and systems that are likely to be required to meet applicable health, safety and environmental legislation. If a commercial discovery is made the permit holders are able to obtain exclusive rights to extract and produce petroleum pursuant to a mining permit.

The mining permit is subject to the Petroleum Programme that was in force when it was issued. The Petroleum Programme is revised and issued by the minister approximately every 10 years. The Petroleum Programme sets out in more detail how the minister, via NZP&M, intends to apply the provisions of the CMA and his expectations with regard to the permit holders. The current Petroleum Programme was issued in 2013.

The Petroleum Programme sets out a list of the main obligations of each permit holder and includes a requirement to properly decommission production facilities and abandon wells in accordance with good industry practice. However, how decommissioning is executed is provided for pursuant to the marine permitting processes under:

- the RMA, for activities within the 12-nautical mile territorial waters;
- the EEZ Act for areas outside the territorial waters but within the continental shelf; and
- the MTA for the dumping of waste or other material into the waters beyond the continental shelf.

15 Regulation 34(1)(b).

16 A sixth government agency also plays a role in regulating oil and gas offshore activities. The Department of Conservation (DoC) is responsible for protected species under the Wildlife Act 1953 and Marine Mammals Protection Act 1978 but does not feature prominently in decommissioning decisions.

It should be noted, however, that the Resource Legislation Amendment Bill provides that where the proposed decommissioning activity straddles the boundary between the territorial waters and the EEZ and is a project of 'national significance'[17] then a board of inquiry will be appointed by the minister to consider the application on a joint basis.[18]

3.2 The Ministry for the Environment

The Ministry for the Environment (MfE) is the government's principal adviser on the environment in New Zealand and on international environmental matters. It is responsible for developing environmental management systems, national direction through national policy statements and strategies, guidance and training on best practice, information about the health of the environment and administering the legislation and regulations applying to the EEZ and territorial waters. This includes the EEZ Act and the RMA.

3.3 The Environmental Protection Authority

The EPA is a Crown agent whose board comprises six to eight people appointed by the Minister for the Environment. It is responsible for managing the effects of specified restricted activities on the environment under the EEZ Act.

Under the Section 20 of the EEZ Act, activities of the kind associated with decommissioning (ie, removal or demolition of a structure on or under the seabed) are prohibited unless permitted by regulation or by a marine consent.[19] Decommissioning activity, whether including dumping at sea or not, is not a permitted activity and so must take place after a publicly notified hearing to obtain a marine consent.

3.4 Maritime New Zealand

MNZ is the regulator of maritime safety, security and marine environment protection under the MTA. MNZ formerly managed all applications for the dumping or storage of oil and gas equipment, including platforms or installations, under the MTA. This role has now transitioned to the EPA for applications pertaining to the waters within the EEZ and continental waters.

The MTA still regulates the dumping of waste or other matter into the waters beyond the continental shelf.

MNZ is governed by an independent board appointed by the Governor General on the recommendation of the Minister of Transport. The five-member authority directs the overall MNZ strategy, and appoints the Director of Maritime New Zealand. The director manages the organisation and has independent statutory powers under the MTA.

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17 There is no definition of 'nationally significant activity' but onshore examples given are those relating to national roads and power stations. It is not clear if the decommissioning of Maui, for example, would be considered 'nationally significant' but due to the environmental interest and precedent-setting nature it is submitted that it would be.

18 Section 216 of the Resource Legislation Amendment Bill.

19 Other than those activities that were already being undertaken prior to the EEZ Act's commencement pursuant to permits granted under the previous legislation.

3.5 WorkSafe NZ

WorkSafe NZ is New Zealand's workplace health and safety regulator. WorkSafe reviews each operator's safety case. A safety case is a comprehensive document which demonstrates that the operator has the ability and means to effectively control major accident hazards. The duty holder must define appropriate controls for safe operation, evaluate their adequacy for the installation and decide how to implement and maintain these controls. This is then described and demonstrated within the safety case.[20] It is a legal requirement that the duty holder ensures that the provisions, control measures and systems in the safety case are fully and properly applied. This includes ensuring that any limitations or conditions on the safety case are observed. Failure to operate in compliance with the approved safety case is an offence.[21]

A safety case approved for petroleum production operations will need to be amended and approved to cover decommissioning activities.

3.6 Regional councils

Regional councils are responsible under the RMA for managing the effects of activities on the environment in territorial waters (0 to 12 nautical miles offshore). The councils are responsible for issuing the regional coastal plan. The regional council is the consent authority for coastal permits. The Minister of Conservation is the consent authority for 'restricted coastal activities', including certain types of dumping. Schedule 1 to the New Zealand Coastal Policy Statement states that any proposal to dump in excess of 50,000 cubic metres of waste in any 12-month period is a restricted coastal activity, except if such dumping is designated in a regional coastal plan as a discretionary activity and for which the plan:

- defines or provides the criteria for determining the location where and the time during which the dumping could be carried out;
- requires consideration of the likely adverse effects of the dumping, and defines or provides the criteria for determining such effects.

With regard to petroleum activities, the RMA provides for an approach that is similar to that under the EEZ Act. Accordingly, decommissioning is a discretionary activity requiring a resource consent in the same way as it would require a marine consent outside the 12-nautical-mile limit. Decisions on applications for consents for dumping within the coastal marine area are made under the RMA and the Resource Management (Marine Pollution) Regulations 1998, although the Resource Legislation Amendment Act is expected to allow activities of national significance that extend into the EEZ to be determined under a single joint application.

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20 The content of a valid safety case is set out in Schedule 2 to the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013. See also WorkSafe NZ's Interpretative Guidelines: Petroleum major accident prevention policy and safety cases.

21 Regulation 39 of the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013.

4. EEZ process

4.1 Decommissioning activity generally

Decisions under the EEZ Act (and RMA) are broadly based upon the applicant's ability to sustainably manage the adverse effects of a proposed activity. Generally, if an applicant can show that the adverse effects of a proposed activity will be minor, it will invariably be granted consent to undertake its proposal.[22] Approval is needed to retire a production facility through the marine or resource consenting process depending on whether the structure is in territorial or EEZ waters. A marine consent issued by the EPA will usually be required for activities in the EEZ that involve the construction, mooring or long-term anchoring, placement, alteration, extension, removal or demolition of a structure or part of a structure.[23]

Wells must be plugged according to the health and safety regulations. WorkSafe NZ has to be satisfied that the risks are identified and the right precautions taken. A revised safety case has to be approved by WorkSafe NZ. All decommissioning activities are required under the mining permit to be conducted in accordance with good oil field practice.

4.2 Disposal at sea

Where decommissioning of an installation involves the deliberate disposal into the sea of platforms or other man-made structures, the EPA invites prospective applicants to take advantage of a pre-lodgement process with the EPA before submitting an application. The pre-lodgement process provides an opportunity for applicants to understand the marine consenting process and discuss the proposed activities, its effects and likely information requirements needed in support. Guidance in regards to the EPA's requirements, process and timing has been issued.[24] Two key principles that are critical to the EPA's assessment and therefore should be foremost in the applicant's considerations when developing its application are:

- the EPA is required to base its decisions on the best available information. This means "the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time";[25]
- the EPA is also required to "favour caution and environmental protection"[26] if the information available is uncertain or inadequate. The application may accordingly be refused if the EPA considers it has inadequate information to make a decision.

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22 See R Makgill, Chapter 46 – New Zealand, in *International Environmental Law: The Practitioner's Guide to the Laws of the Planet*, American Bar Association Section on Environment, Energy and Resources, 2014, Section X for a more detailed analysis of decision making under the EEZ and RMA.

23 Section 20 EEZ Act. Note that under the present draft Resource Legislation Amendment Bill currently before the New Zealand Parliament, decisions under Section 20 of the EEZ Act (that refer to the removal or demolition of a structure) will be decided by a board of inquiry selected by the minister in line with the RMA process, rather than the EPA. Decisions under Section 20G (that relate to the dumping of structures) may be included with Section 20 applications at the applicant's discretion.

24 Available at www.epa.govt.nz/Documents/EEZ%20Guidance%20Doc%20(Dump%20Waste)%20final.pdf.

25 Section 61(1)(b) and Section 61(5) of the EEZ ACT.

26 Section 61(2) of the EEZ Act.

Other high-level points for consideration when applying for a marine dumping consent under the EEZ Act include the following.

(a) A full description of the proposal

The description of the proposal must be sufficiently clear to enable the EPA and people with an 'existing interest' to understand the nature of the activity and application. People with an existing interest include those with rights established under other statutes or regulations including rights of access, navigation and fishing, also including rights under another marine consent under the EEZ Act or resource consent issued pursuant to the RMA. New Zealand also recognises customary rights and rights arising from a Treaty of Waitangi[27] settlement as an existing interest.

Examples of information that an applicant might include are:

- the origin, total amount, form and average composition of the waste;
- the physical, chemical, biochemical and biological properties;
- the toxicity;
- the physical, chemical and biological persistence;
- the accumulation and biotransformation in biological materials or sediments contained within the waste.

(b) Effects on the environment

Applicants must file an environmental impact assessment that should enable the EPA to understand the effects the proposed activity will have on the environment, including cumulative effects that might arise over time or as a result of different environmental stressors working together. The application should detail any issues relating to the toxicity of dumped materials, how it behaves in a marine environment and the potential for it to accumulate within living organisms and enter the marine food chain and effect on human health if thereafter consumed. The EEZ Act highlights the importance of protecting biological diversity and integrity of marine species, ecosystems and processes, rare and vulnerable ecosystems and the habitats of threatened species. Accordingly, consideration should be given to the effects of the proposed activity on a larger ecosystem scale, as well as effects on species that may be threatened or particularly vulnerable to disturbance.

(c) Effects on people

The impact assessment must also identify people with 'existing interests' and how they are likely to be affected by the proposed activity. As such, supporting information about the commercial, customary or community uses of the area might be included. Consultation with stakeholders, such as affected Maori groups, tourist operators and commercial fishers should be documented with copies of any written approvals to undertake the activity included.

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27 The Treaty of Waitangi is a treaty signed in 1840 between the British Crown and New Zealand's indigenous peoples, the Maori.

28 Available at www.imo.org/en/OurWork/Environment/LCLP/Publications/wag/Pages/default.aspx.

29 Respectively, Section 59(2)(f), (g) and (i) of the EEZ Act.

(d) Avoidance, remediation or mitigation

The EPA will want to ensure the applicant for a dumping permit has considered alternatives to dumping both in methodology and in location. These considerations should be set out in the impact assessment and should identify measures considered to avoid, remedy or mitigate any harmful effects of the proposed dumping activity and alternative locations or methods. Positive information, such as the beneficial effects arising from the development of an artificial reef, should also be noted.

(e) Additional guidance

The EPA is also required to comply with IMO Conventions and Protocols and, accordingly, the 1989 Guidelines and Standards for the Removal of Offshore Structures on the Continental Shelf and in the Exclusive Economic Zone (IMO Resolution A. 672(16)) and the IMO documents on 'Waste Assessment Guidance'[28] may also be a useful reference for dumping marine consents. Similarly, account must be taken of the economic benefit to New Zealand of allowing the application, the efficient use and development of natural resources and industry best practice.[29] As such, factors such as the taxpayers' interest, the effect any decision will have on further offshore exploration and production activities and practices from other jurisdictions, such as the Gulf of Mexico or the North Sea, may be relevant to an application.

(f) Timing

For a publicly notifiable marine consent application, as the decommissioning of an offshore installation will require, the EPA is subject to a statutory timeframe of 140 working days. The EPA's process and timing to arrive at a decision will attempt to follow the sequence below:

Application lodged	+ 10 working days
Application accepted as complete or otherwise rejected	+ 10 working days
Public notification and commencement of submissions from the public	+ 20 working days
Submissions close	+ 20 working days
Hearing notice	+ 20 working days
Hearing commences	+ 40 working days
Consideration and preparation of decision	+ 20 working days
Decision released	

(g) ***Post-decommissioning obligations***

The EPA will monitor the activities authorised by a marine consent to ensure compliance with any consent obligations. Conditions applying to the consent may place operational limits on how waste is dumped or require the applicant to monitor the waste and report findings to the EPA. Applicants may apply for a change or cancellation of marine consent conditions which may be considered by the EPA internally if of minor importance but may be publicly notified if likely to affect people with existing interests.

(h) ***Costs***

The costs incurred by the EPA in processing a marine consent application, including pre-lodgement discussions and commissioning of external advice or services, are recovered from the applicant.

5. Examples

With the recent transition of responsibility for dumping of waste or other material in the sea from the MTA to the EEZ Act, the consenting process for the offshore dumping of oil and gas structures has yet to be tested under the EEZ Act. However, the process under the MTA, prior to the transition of responsibility, was utilised when the Whakaaropai FPSO was decommissioned in 2006.

5.1 Whakaaropai FPSO

The Whakaaropai FPSO was used to extract oil from a deeper structure within the Maui mining licence area. When the oil accumulation had been depleted, Whakaaropai had its engine restored and, after the anchor chains were cut loose, was sold and relocated to overseas interests. Shell Todd Oil Services (STOS), the Maui operator, applied to MNZ for a dumping permit covering the mooring array left *in situ*. This array comprised 10 one kilometre lengths of 15 centimetre diameter steel wire, chain and anchors, a steel clump weight and mid-water arch assembly. STOS obtained a marine dumping permit under the former regime underpinned by the Marine Protection Rules – Part 180. The permit provided for the permanent disposal of the 10 anchors and temporary storage on the seafloor of the remainder of the mooring system until December 31 2007 with the intent that STOS could recover these items when suitable marine vessels were available.

STOS had undertaken an evaluation of the possibility of mooring leg burial as an alternative to mooring leg recovery. Its report concluded: "Burial was considered as a preferred methodology largely due to the difficulty in sourcing the specialist heavy construction equipment required to safely recover the mooring legs." Capsize of the recovery vessel and trench work collapsing on divers were the main risks identified. STOS made reference to the capsizing of the Bourbon Dolphin in the North Sea in 2005 during a similar recovery operation which had resulted in the loss of eight lives.

5.2 Raroa FPSO

A more recent marine dumping consent application under the Marine Protection Rules Part 180 process, as it was prior to October 2015, was submitted by OMV on

behalf of the Maari joint venture.[30] Maari is an offshore oil field that is produced through the Raroa FPSO. OMV New Zealand sought and obtained a marine consent to temporarily store a disused well head on the sea floor with a view to recovering it when the Maari field is decommissioned, expected in 2023. Its application included an analysis of differing options, including the immediate recovery and cost implications without an appropriate vessel in New Zealand waters.

5.3 HMS Canterbury and the Rainbow Warrior

A non-oil and gas industry consent was granted to scuttle the HMS Canterbury, a decommissioned naval vessel. In December 2006 the Bay of Islands Canterbury Charitable Trust (that had acquired the vessel from the New Zealand navy) was granted resource consent to sink the frigate as an artificial reef and dive attraction in 30 metres of water at Deep Water Cove, near Cape Brett in the Bay of Islands.[31] Similarly, Greenpeace scuttled its flagship the Rainbow Warrior in 1987 that had been sunk in Auckland harbour by the French secret service.[32] Dumping in these examples has been undertaken on the expectation – that has subsequently proved to be correct – that the scuttled structures will provide an artificial habitat for marine life and a diving attraction.

6. Commercial considerations

6.1 Tax

In New Zealand the corporate tax rate is 28%. Deductions from assessable income are allowed for removal and restoration operations including abandonment. Where the deduction results in a tax loss that could be carried forward, then it may be spread backwards to offset taxable income from previous years. In addition, under the Crown Minerals (Royalties for Petroleum) Regulations 2013 royalty is paid at 20% of the accounting profit of petroleum production. In calculating the accounting profit, deductions are made and may include decommissioning costs carried back. How NZP&M respond to the decommissioning of offshore facilities, such as Maui, will be an important test of the 'clean seas' policy against the practicalities of funding the government's share through returned tax or royalty. Maui is likely have a decommissioning cost ranging upwards of NZ$1 billion with full removal increasing the cost significantly to both the joint venture participants and to the government.

6.2 Security

There is no statutory mechanism to require decommissioning security to be posted, although this is expected to be addressed in the Resource Legislation Amendment Bill currently before Parliament.

The issue is receiving attention for older onshore facilities that are being marketed to smaller operators. With the recent downturn in oil prices, the value of unproduced reserves has reduced, giving the abandonment liability a stronger focus in acquisitions.

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30 Summarised by MTA at http://www.maritimenz.govt.nz/Consultation/Dumping-permit.

31 See www.divewreck.co.nz/Canterbury.php for more on the scuttling of the HMS Canterbury.

32 See www.seafriends.org.nz/issues/res/rainbow_warrior.htm for more on the scuttling of the Rainbow Warrior and the positive environmental effects doing so has had.

As part of its evaluation when approving a transfer, NZP&M is required to consider whether a permit participant will meet the terms of the permit. This could include the ability to finance the decommissioning and site reclamation required under the legislation. As such, as a condition of its consent to transfer, companies may be required to demonstrate adequate financial security to meet decommissioning costs.

The Association of International Petroleum Negotiator's model form of joint operating agreement is the most widely used form in New Zealand. While the most recent version (2012) includes a form of decommissioning security agreement, it would appear that there are no decommissioning security agreements currently in operation. This is likely to change as the offshore fields mature and funding the decommissioning of the associated facilities becomes a reality.

Assuming the recommendations of the MfE[33] are accepted, then regulations promulgated under the Resource Legislation Amendment Bill (that proposes a new Section 100A to the EEZ Act requiring a decommissioning plan to be approved) are likely to include the opportunity to seek financial security as a condition to granting a marine consent to undertake decommissioning.

7. Conclusions

New Zealand has ratified the key international instruments that are relevant to offshore decommissioning of oil and gas installations. The EEZ Act provides for a permitting system whereby some wastes and other matter may be candidates for dumping with others prohibited in accordance with the 1996 Protocol.

Leaving equipment and installations *in situ* or otherwise disposed at sea is permissible but is viewed as a last resort and the regulatory authorities require the applicant to undertake a full examination of other options to sea disposal. It is possible that reuse of installations as artificial reefs would be acceptable in certain circumstances. The regulatory authorities will weigh the effect on the environment that leaving installations *in situ* or otherwise disposing of them at sea will cause against the cost, safety to human life and effect on the environment that partial or full removal is likely to have. The evaluation will be undertaken as a publicly notifiable activity, entitling members of the public to provide submissions.

With the offshore fields still some way away from ceasing production, funding the costs of decommissioning has not been a significant priority for government to date although it is likely to become a feature as fields mature and the new process under the EEZ Act becomes more established. The financial implications for the government will need to be fully understood, and weighed against competing social objectives, given the ability of permit holders to claw back tax and royalty paid to recover decommissioning expenses.

This chapter 'New Zealand' by Sea Rush is from the title Oil and Gas Decommissioning: Law, Policy and Comparative Practice, Second Edition*, published by Globe Law and Business*.

33 Set out in its Regulatory Impact Statement dated October 28 2015, available at www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/rlab-eez.