PROACTIVE RELEASE COVERSHEET

Minister	Minister David Parker	**Portfolio**	Environment
Name of package	**Final policy recommendations for decommissioning plans under the EEZ Act**	**Date of issue**	04 September 2019

List of documents that have been proactively released		
Date	**Title**	**Author**
04/09/19	*2019-C-05406 final policy recommendations for decommissioning plans under the EEZ Act*	*Office of the Minister for the Environment*
04/09/19	*Impact Summary: Development of regulations under the EEZ Act for decommissioning offshore oil and gas infrastructure (As Appendix 8 to 2019-C-05406)*	*Ministry for the Environment*

Information withheld

The information contained within the Cabinet paper and Impact Summary has been released in full. There are no reasons for withholding that are consistent with the Official Information Act 1982 or any other legislation. There is no potential liability that may result from release.

In Confidence

Office of the Minister for the Environment

Chair, ENV Committee

Final policy recommendations for decommissioning plans under the EEZ Act

Proposal

1. This paper seeks Cabinet approval:
   - for final policy recommendations to:
     - develop regulations relating to decommissioning plans for offshore installations under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act)
     - issue drafting instructions to the Parliamentary Counsel Office (PCO).
   - to release an exposure draft of the regulations (including amendments to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013) for targeted consultation.

Executive summary

2. Unlike other activities in the exclusive economic zone (EEZ), decommissioning of offshore installations at the end of their life is something that has to happen. There needs to be early discussion and broad agreement about what material is acceptable to remove or leave behind. A requirement for decommissioning plans was introduced through the Resource Legislation Amendment Act 2017, but will not take effect until regulations setting out details for the plans have come into force. This is what I now propose to do.
3. Decommissioning plans will:
   - strengthen the decommissioning framework by introducing an obligation for operators to engage in conversation with stakeholders and the EPA in advance of applying for marine consents to carry out decommissioning related activities
   - ensure that agreed environmental outcomes are achieved in line with the purpose of the EEZ Act and international obligations.
4. The purpose of the decommissioning regulations is not to change the activities provided for under the EEZ Act.
5. I have consulted on policy proposals and taken account of feedback received and the information principles in section 34 of the EEZ Act (Appendix 1) in finalising the recommended approach. I am now seeking your agreement on the:
   - scope of, and information to be included, in a decommissioning plan
   - process for dealing with a plan and criteria against which it must be assessed

- process for making amendments to an accepted plan, and
- cost recovery for decommissioning plans.

Background to the proposed regulations

6. There are currently four petroleum-producing fields in New Zealand's EEZ, all located offshore Taranaki. These fields and their respective infrastructure will need to be decommissioned once they reach the end of their productive and economic life. Decommissioning includes activities such as the removal or "dumping," as defined under the Act[1], of platforms, wells and pipelines.
7. Appendix 2 details when decommissioning is expected to occur and estimated costs associated with this.
8. Cabinet previously agreed to release a discussion document seeking feedback on policy proposals for decommissioning plans (CAB-18-MIN-0306).

Objectives of the proposed regulations

9. The primary objective of the decommissioning regulations is that all offshore structures, installations and pipelines in the EEZ be decommissioned in a way that meets the purpose of the EEZ Act (to promote sustainable management of natural resources and to protect the environment from pollution) and New Zealand's international obligations. In addition, these regulations shall ensure that:
    - processes are efficient and cost-effective, with the cost to government and operators proportionate to the level of environmental effects addressed
    - the regulatory framework explicitly provides for New Zealand's international obligations relating to decommissioning under relevant conventions
    - the process is clear and flexible allowing for a case-by-case approach
    - consultation with iwi and the public is appropriate and fit for purpose.

Ensuring environmental outcomes are achieved

Presumption for complete removal

10. The United Nations Convention on the Law of the Sea (UNCLOS) provides that States have a general obligation to protect and preserve the marine environment and a more specific obligation to take all measures necessary to prevent, reduce and control pollution of the marine environment from any source. Article 60 of UNCLOS states that:

    any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization.

11. The International Maritime Organisation (IMO), being the "competent international organization", recommends criteria for coastal states to consider when

[1] Dumping, as defined under the Act, includes a list of activities that do not involve complete removal. For example, abandonment in situ is considered a form of dumping. It is not necessarily the act of taking a structure and disposing of it on the seabed.

determining whether to allow an offshore installation or structure to remain on the seabed[2]. These obligations are not binding, but reflect international good practice. Under these guidelines (the IMO Guidelines and Standards), the general premise is that all disused installations and structures must be entirely removed unless it can be shown special circumstances apply. I have taken this into account in recommending matters to be included in a decommissioning plan, and the criteria the EPA must consider in accepting a plan.

12. Under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, to which New Zealand is also a party, dumping of all waste at sea (including the abandonment or disposal of platforms or structures) is prohibited except where a permit is granted by the coastal state. In line with international obligations and best practice, I propose all installations and structures should be removed from the seabed unless there are acceptable reasons for them to remain, and it can be demonstrated that removing infrastructure will not result in the best practicable environmental outcome.

13. What is considered "practicable" depends on the cost, technical feasibility and risk of injury associated with different decommissioning options. In determining the preferred approach that will deliver the best practicable environmental outcome, operators will need to undertake a comparative assessment of the different available decommissioning options, which typically includes:

- complete removal to land
- partial removal to land
- abandonment in situ
- disposal at sea.

Requirements for abandoned structures

14. Full removal of some parts of an installation, such as piles or footings, may not be possible without incurring unreasonable costs or risks to personnel, and may not result in any additional environmental benefit. In these cases where it is necessary to dump parts of an installation (ie not remove), I propose that, in line with the standards set out in the IMO Guidelines and Standards, the regulations require:

- any installations that project above the sea surface must be adequately maintained to prevent structural failure
- there must be an unobstructed water column above any partially removed installations or structures of sufficient depth to ensure safety of navigation
- the materials will remain in the same location on the seabed and not move under the influence of waves, tides, currents, storms or other foreseeable natural causes (so as not to cause a hazard to navigation).

Delivering the best practicable environmental outcome

15. I propose the operator has to demonstrate in its decommissioning plan how it has taken account of environmental, social, cultural, economic and technical matters in

[2] Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone 1989.

reaching a view on the option that delivers the best practicable environmental outcome (Appendix 3).

16. The criteria against which the EPA must assess and either accept or reject a decommissioning plan are set out in Appendix 4. I propose that, where the preferred approach in a decommissioning plan is to dump material (including abandonment), the EPA may only accept that plan if it is satisfied that:

    - dumping of the material complies with New Zealand's international obligations with respect to the dumping of waste, and
    - dumping of the material will not cause unjustifiable interference with existing interests, and
    - dumping of the material results in the best practicable environmental outcome, and
    - entire removal is not technically feasible, would involve an unacceptable risk of injury to personnel or would involve an unreasonable cost, and
    - there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs.

17. Once a decommissioning plan has been accepted, operators must still apply for marine consents and marine dumping consents under the EEZ Act. These consents will still be determined based on the matters set out under section 59(2B) of the Act.

18. I propose a comparative assessment of different decommissioning options is not required if the operator proposes complete removal of its installation and structures.

19. However, I propose comparative assessments are required for decommissioning plans concerning pipelines regardless of the approach proposed. This approach is consistent with international practice, where there appears to be a greater allowance for leaving pipelines in place than other structures.

Scope of decommissioning plans

20. Section 38(3) of the EEZ Act requires operators to hold an accepted decommissioning plan before they can apply for decommissioning-related marine consents, and any applications must be in accordance with that accepted plan. Decommissioning-related activities that are the subject of an accepted decommissioning plan are non-notified under the EEZ Act.

21. I propose the regulations relate to those activities that must be carried out in order to take an offshore installation, including its associated structures, cables and pipelines, permanently out of service when it is no longer exploiting or processing petroleum. This includes activities associated with preparing the offshore installation, associated structures, cables and pipelines for decommissioning and any post-decommissioning activities that may need to be undertaken (eg, monitoring and reporting). However, it does not include:

    - any activities to be undertaken at an offshore installation while the installation is still processing petroleum (ie, still operational)
    - restricted activities already authorised under a marine consent

- any restricted activities associated with reusing the offshore installation to serve a purpose other than that which it was originally intended for.

22. Installations include fixed steel, concrete gravity, floating and subsea installations (eg, well heads, production manifolds, drilling templates) but for the purposes of these regulations, I propose it does not include any part of an offshore installation which is located below the surface of the seabed (eg, wells and well casings).

23. This distinction is necessary to ensure that the plugging and abandonment (P&A) of wells does not in itself require a decommissioning plan. Given the risk that poorly maintained wells pose to the environment, it is desirable that P&A occurs as soon as reasonably possible. I propose the decommissioning plan must include information about all active, suspended and previously abandoned wells, to ensure the EPA (and other relevant marine management agencies) have a complete picture of the infrastructure that is to be decommissioned, and any wells that may still be active and therefore subject to a future process.

24. I do not propose to set out a list of activities for the decommissioning of an offshore installation in the regulations as it is not possible to know what all of these might be in the future. However, I propose that the regulations are drafted in such a way as to be clear about the activities that the decommissioning plan requirements apply to. If there is no decommissioning plan requirements for P&A, then this activity will not be caught by these regulations.

Information to be included in a decommissioning plan

25. Appendix 5 outlines the information I propose be included in a decommissioning plan. The plan will deal with the high-level outcomes proposed (what will be removed and what, if anything, will be left behind), and describe the implications in enough detail for the public to make informed submissions, and for the regulator to come to a decision. Plans will be prepared well in advance of decommissioning and will likely rely to some degree on estimates and assumptions.

26. I propose that all decommissioning plans include:

- background information about the existing environment and the items to be decommissioned
- a general description of the anticipated method associated with the preferred decommissioning approach
- information about consultation and engagement undertaken
- an indicative schedule for the decommissioning programme
- any post-decommissioning monitoring and maintenance.

27. Where complete removal is not the preferred approach, the plan must include:

- the results of the comparative assessment exercise identifying all feasible decommissioning options for installations and structures that are not proposed to be removed, and for subsea pipelines
- the best practicable environmental outcome demonstrating how the matters listed in Appendix 3 have been taken into account.

Process for dealing with and amending a decommissioning plan

28. Appendix 6 illustrates how a decommissioning plan will be dealt with once submitted to the EPA.

Ensuring sufficient engagement occurs

29. I propose that before the EPA gives public notice of the plan, it must be satisfied that sufficient engagement has been undertaken with relevant marine management agencies, relevant iwi authorities and existing interests to inform the comparative assessment and preferred option identified in the plan. A description of the consultation and engagement undertaken must be set out in the plan, which must include, as a minimum:

    - identifying the relevant marine management agencies, relevant iwi authorities and existing interests
    - providing information to those identified on options for the plan
    - seeking views from those identified, and considering those views in any comparative assessment (if required)
    - demonstrating the extent to which matters raised have been considered and addressed
    - details of any engagement strategy mutually developed with the relevant iwi authority.

30. To ensure meaningful engagement occurs with iwi authorities, I propose to use a similar provision to that set out under Section 3B of Schedule 1 of the Resource Management Act, to prescribe a minimum standard in relation to appropriate consultation with iwi authorities.

31. I propose that for the purposes of these regulations, an operator would be treated as having engaged with iwi authorities in relation to the plan, if it has demonstrated in the plan that it has:

    - considered ways in which it may foster the development of the relevant iwi's capacity to respond to an invitation to engage
    - established and maintained processes to provide opportunities for iwi authorities to input into the comparative assessment (if required) or developed a mutually determined engagement strategy
    - consulted with those iwi authorities
    - enabled those iwi authorities to identify issues of concern to them
    - indicated how those issues have been or are to be addressed.

32. By undertaking engagement early and throughout the development of the plan it is more likely that issues can be identified and resolved before the formal public consultation process.

Public notification requirements and dealing with submissions

33. Prior to giving public notice of the plan, and to assist submitters in making a submission, I propose that the EPA requests any further information it considers is necessary to be included in the plan and prepares or commissions a report on what it considers to be the key matters relating to the plan. This may include an

indication of information it seeks through submissions, and any advice it has received from other marine management agencies and the EPA's Maori Advisory Committee, Ngā Kaihautū Tikanga Taiao.

34. Once it is satisfied that the information provided is sufficient, it must give public notice of the full decommissioning plan and publish any submissions subsequently received. Sufficient detail means that the information provided is:

- proportionate to the potential impact of the proposed approach on the environment and existing interests
- enables the EPA and public to understand the nature of the activities and make informed submissions on the proposal
- enables the EPA to assess the plan against the criteria for acceptance.

35. I propose that the regulations provide for information provided during engagement (eg, culturally sensitive information) to be withheld at the request of the consultee or owner of the plan, and any commercially sensitive information to be withheld at the request of the owner of the plan. The grounds for withholding will reflect those in section 158 of the EEZ Act for proceedings. Information may be withheld:

- to avoid causing serious offence to tikanga Māori or to avoid disclosing the location of wāhi tapu or
- to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information.

36. I propose to allow the EPA to set the consultation period for each decommissioning plan of no less than 30 working days. Plans are likely to vary in terms of length and complexity and providing this flexibility is more likely to allow for considerations proportionate to the level of effects.

37. Once public submissions have been received on the plan, I propose that the regulations require the owner of the plan to consider each submission made and either amend its plan in response to the submission, or to explain to the EPA why it does not propose to amend the plan. The EPA must then assess the plan against the criteria set out in these regulations.

Deciding whether to accept a decommissioning plan

38. When determining whether to accept the plan, I propose that the EPA must be satisfied that (in addition to the matters in para 14):

- the final plan has adequately considered and responded to the matters raised during public consultation, or
- the operator has provided an adequate justification as to why it proposes not to amend the plan.

39. The EPA may seek advice or information from any persons it considers necessary at any time before it accepts the plan.

40. When reaching a view on the best practicable environmental outcome and before determining whether to accept a plan, I propose that the EPA consult with other relevant marine management agencies and iwi authorities. Other relevant marine management agencies include:

- the adjacent regional council(s)
- WorkSafe New Zealand
- Maritime New Zealand
- Department of Conservation
- Ministry for Primary Industries
- Ministry of Business, Innovation and Employment.

41. This is to ensure that information about other matters relevant to decommissioning of offshore installations (eg, risk of injury, risks to navigation, costs to the Crown) is available to the EPA when making its decision. It also mitigates the risk that the EPA accepts an approach in a decommissioning plan that is not achievable in terms of another marine management regime.

42. The EPA must then either accept or reject the plan and provide notice of its decision to the owner of the plan. Once accepted, the plan must be made available on the EPA website.

43. Given plans are expected to be developed well in advance (usually 2 to 5 years) of operators applying for and undertaking decommissioning activities, some of the information in a plan may be uncertain. However, this does not preclude the EPA from accepting a plan, if it has adequate information to determine whether it meets the criteria.

Amending an accepted decommissioning plan

44. In the event that an operator submits a revised plan (for example, due to changes in technology or other circumstances), the EPA must determine the scale of impact of the changes in the revised plan. In accordance with section 100C of the EEZ Act, I propose that regulations provide that:

    - public consultation is required only in relation to the changes from the current plan to the revised plan
    - public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised plan would not be materially different from, or would be less than, the effect of implementing the current plan.

45. This will ensure that those submitters, and any potential new submitters, are given the opportunity to comment on any revised plan where changes are beyond administrative matters and may result in a greater effect on the environment or existing interests.

46. To assist the EPA in reaching a view on the scale of the impact of changes, I propose that the EPA may seek further information or advice from any persons including those it considers may have existing interests affected by the changes to the current plan.

Cost recovery for processing decommissioning plans

47. Under section 30(1)(c) of the EEZ Act, regulations may prescribe the charges payable and the persons liable to pay the charges in relation to decommissioning

plans. I propose that the EPA recover the costs associated with processing and assessing a decommissioning plan from the owner of the plan.

48. Given plans will be accepted by the EPA (as opposed to a Board appointed by the EPA or the Minister for the Environment), I propose that a new category for a delegated decision maker for decommissioning plans and related marine consent applications is included in the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013, with an hourly rate of $257.04.

Consultation

49. The relevant statutory requirements for developing regulations under the EEZ Act are set out in Appendix 2.

50. In July 2018, Cabinet approved the release of a discussion document setting out proposals for these regulations. In accordance with section 32 of the EEZ, in developing policy proposals for the discussion document, my officials engaged with iwi in the Taranaki region and with the offshore oil and gas industry ahead of, and during the public consultation period.

51. Nine submissions were received following a 10-week consultation period: four from industry, three from iwi, one from a regional council and one from a community group. Appendix 7 includes a summary of the responses to the questions asked as part of the consultation.

52. The Ministry for the Environment (MfE) has worked with the Ministry of Business, Innovation and Employment, the EPA and WorkSafe New Zealand in developing the proposals in this paper.

53. The EPA raised concerns around baseline funding. This is discussed under “financial implications.”

54. MfE also consulted the following agencies on this paper: Ministry of Primary Industries, the Treasury, the Department of Conservation, Maritime New Zealand, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, and the Ministry of Justice. The Department of Prime Minister and Cabinet has been informed of the paper.

Financial implications

55. The cost of developing the regulations will be met from existing departmental baseline. While it is difficult to estimate, a group of researchers from the University of Otago have developed a methodology which gives an average of $530,000 to develop a set of regulations, and an estimate of $50,000 per page of regulations in New Zealand.

56. The EPA estimates that it will cost $100,000 to establish operational guidelines, new business process and public education of roles and processes for decommissioning plans. The EPA and MfE are currently considering reprioritisation options from within Vote Environment appropriations, and will meet the implementation costs from within baselines. Any adjustments to appropriations will be approved by joint Ministers as fiscally neutral adjustment(s). The EPA has said that it is already facing a number of funding pressures, which has led the EPA to adopt a deficit funding model for the last two financial years. This approach is planned to continue in the 2019/20 financial year.

57. To enable the EPA to recover costs for the ongoing functions of the EPA under these regulations (distinct from the implementation costs identified above) a consequential amendment to section 6 of the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 is needed. There will be a cost to government when amending these regulations.

58. The process is new, so costs to applicants can only be estimated at this stage but may range from approximately $200,000 to $500,000 to assess and accept a decommissioning plan. These are based on indicative fees charged in the UK for assessing decommissioning plans for a range of different facilities. These costs reflect fixed fees that are determined by the complexity of the project.

Legislative implications

59. I am seeking Cabinet approval to instruct PCO to draft regulations that reflect the policy recommendations set out in this paper.

60. I am also seeking Cabinet approval to release an exposure draft of the regulations (including the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013), once drafted, to the EPA, WorkSafe, nine submitters and two owners of offshore installations. This will be in compliance with the Attorney-General's protocol for release of drafts in CO (14) 4.

61. I seek Cabinet approval to make any minor policy changes to the regulations following feedback on the exposure draft before submitting the regulations to the Cabinet Legislative Committee for approval.

Regulatory impact analysis

62. The Ministry for the Environment's Regulatory Impact Analysis Panel (the Panel) has reviewed the Regulatory Impact Summary (RIS) (Appendix 8) produced by the Ministry for the Environment. The Panel considers that the RIS meets the quality assessment criteria.

63. The RIS is written clearly and concisely and does enough to make the case for the recommended option with the elements of the proposal being clear and the potential impacts having been identified. The problem definition is clearly articulated, and the analysis and advice is commensurate with the issue of developing regulations under the EEZ Act for the decommissioning of offshore oil and gas infrastructure. The RIS explains in a semi-quantitative manner the likely costs and benefits of the preferred option. The Panel acknowledges the difficulty of monetising these costs and benefits.

64. The RIS draws from the engagement undertaken through consulting on a discussion document and adequately incorporates the feedback.

Human rights

65. There are no inconsistencies between the proposal in this paper and the Human Rights Act 1993.

Gender implications

66. There are nil gender implications arising from these proposed regulations.

Disability perspective

67. There are nil implications for persons with disabilities arising from these proposed regulations.

Publicity

68. There is unlikely to be strong public interest in these regulations beyond the parties that submitted on the policy proposals (that will receive the exposure draft). There may be some interest in the wider government response to issues that were outside the scope of these regulations (eg, financial liability for abandoned material). Officials have prepared responses to frequently asked questions in preparation for any enquiries from the media or the public.

Proactive Release

69. I intend to delay proactive release of this paper pending approval of the regulations by the Cabinet Legislation Committee.

Recommendations

The Minister for the Environment recommends that the Committee:

1 **Note** the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) was amended in 2017 to require decommissioning plans to be submitted and accepted by the Environmental Protection Authority (EPA) ahead of marine consents for decommissioning-related activities

2 **Note** regulations are needed to deliver these changes and the remaining recommendations cover the detailed decisions needed on:

- 2.1 the scope of, and information to be included in, a decommissioning plan
- 2.2 the process for dealing with a plan, and the criteria for assessing and accepting a plan
- 2.3 the process for making amendments to an accepted decommissioning plan
- 2.4 cost recovery for decommissioning plans

Scope of decommissioning plans

3 **Agree** these regulations will impose plan requirements on activities that must be carried out in order to prepare and take an offshore installation including its associated structures, cables and pipelines permanently out of service

4 **Agree** these regulations will not include requirements for:

- 4.1 any activities to be undertaken at an offshore petroleum installation or on its associated structures, cables and pipelines while that installation is still being used for petroleum production
- 4.2 activities already considered and granted under a marine consent (eg, deposit of drill cuttings)
- 4.3 any activities associated with reusing the offshore petroleum installation to serve a purpose other than that for which it was originally intended

5 **Agree** that for the purposes of these regulations 'installations':

5.1 include fixed steel, concrete gravity, floating and subsea installations (eg, well heads, production manifolds, drilling templates)

5.2 do not include any part of an offshore installation that is located below the surface of the seabed (eg, wells and well casings)

Information to be included in a decommissioning plan

To be included in all decommissioning plans

6 **Agree** the decommissioning plan must include:

6.1 background information including, as a minimum:

6.1.1 a description of the existing environment

6.1.2 a description of the items (installations, wells, structures and pipelines) to be decommissioned, including the amount, type, location, depth, size, stability, age and condition of all materials

6.1.3 a description and explanation of any related equipment not covered by the decommissioning plan

6.2 for the proposed approach:

6.2.1 a description of the anticipated method for the removal, disposal or dumping of material

6.2.2 description of any preparatory activities

6.2.3 a general description of how any waste generated will be dealt with

6.2.4 opportunities to reuse, recycle or treat materials

6.3 a list of all active, suspended and previously abandoned wells relating to the installation (that are not included as items to be decommissioned)

6.4 information about the consultation and engagement that has been undertaken including, as a minimum:

6.4.1 details of any engagement strategy mutually developed with the relevant iwi authority

6.4.2 a description of the engagement carried out, which must include:

6.4.2.1 identifying the relevant marine management agencies, relevant iwi authority and existing interests

6.4.2.2 providing information to those identified on options for the plan

6.4.2.3 seeking views from those identified, and considering those views in any comparative assessment (if required)

6.4.2.4 demonstrating the extent to which matters raised have been considered and addressed

6.5 an indication of the likely timescale for undertaking the proposed decommissioning approach, including when various stages of the decommissioning are expected to start and finish

6.6 information about any post-decommissioning monitoring and maintenance that may be necessary including:

6.6.1 a description of any post-decommissioning monitoring and maintenance including seabed sampling surveys to monitor levels of hydrocarbons, heavy metals and other contaminants in sediments and biota

6.6.2 an indication of monitoring timeframes and how results will be reported

6.6.3 where material is to be dumped on or above the seabed or abandoned in situ, a description of the anticipated inspection and maintenance programme and an estimation of the cost of the programme

6.6.4 a description of any engagement activities to be undertaken during and post-decommissioning

For pipelines, and where complete removal is not the preferred approach

7 **Agree** a comparative assessment of all the feasible decommissioning options (including partial removal and dumping) must be included in a decommissioning plan for:

7.1 all installations and associated structures and cables except where complete removal is the preferred approach

7.2 all subsea pipelines regardless of the preferred approach

8 **Agree** the plan must identify the preferred approach that will result in the best practicable environmental outcome by demonstrating how the following have been taken into account:

8.1 the potential impact on cultural values

8.2 the potential effect on the safety of surface or subsurface navigation or existing interests

8.3 the potential effect, including cumulative and future effects, on the marine environment, including:

8.3.1 the rate of deterioration of any material left on the seabed and its present and possible future effects on the environment

8.3.2 the risk of material shifting from its position in the future

8.4 potential effects on human health

8.5 the cost, technical feasibility and risk of injury to personnel associated with removal

8.6 practical limitations of disposal alternatives

8.7 the cost of reuse, recycling or disposal alternatives, and any potential ongoing management and monitoring necessary to ensure the protection of the environment and human health

8.8 exclusion of future uses

8.9 opportunities for off-site recycling

8.10 destruction of hazardous constituents

8.11 treatment to reduce or remove the hazardous constituents

Process for dealing with a decommissioning plan

Public notification requirements

9 **Agree** that once an operator submits a draft decommissioning plan to the EPA (ie, for public consultation), the EPA may request any further information it considers necessary to be included in the plan in accordance with the requirements set out above

10 **Agree** that before notifying the plan, the EPA must be satisfied that:

10.1 sufficient engagement has been undertaken with relevant marine management agencies, relevant iwi authority and existing interests to inform the comparative assessment and preferred option identified in the plan (this information should be set out in the consultation and engagement section of the plan)

10.2 the plan includes all of the information to be included in a plan in sufficient detail, meaning the information provided:

10.2.1 is proportionate to the potential impact of the proposed approach on the environment and existing interests

10.2.2 enables the EPA and the public to understand the nature of the activity and make informed submissions on the proposal

10.2.3 enables the EPA to assess the plan against the criteria for acceptance (this does not preclude the EPA from being able to request further information following submissions before making its decision)

11 **Agree** that for the purposes of the regulations, an operator is to be treated as having engaged with iwi authorities in relation to the decommissioning plan, if the operator has demonstrated it has done all the following:

11.1 considered ways in which it may foster the development of the relevant iwi's capacity to respond to an invitation to consult

11.2 established and maintained processes to provide opportunities for those iwi authorities to input into the comparative assessment (if applicable)

11.3 developed a mutually determined engagement strategy

11.4 consulted with those iwi authorities

11.5 enabled those iwi authorities to identify issues of concern to them

11.6 indicated how those issues have been or are to be addressed

12 **Agree** that the EPA:

12.1 must also prepare or commission a report on the key matters relating to the decommissioning plan, which may include an indication of information it seeks through submissions and any advice it has received from other marine management agencies and the EPA's Maori Advisory Committee, Ngā Kaihautū Tikanga Taiao

12.2 must publish its report and any relevant further information it has received at the same time it gives public notice of the decommissioning plan

12.3 has discretion to set the timeframe for the submission process, subject to the submission process being no less than 30 working days

13 **Note** that in deciding the consultation period the EPA must consider the interests of:

13.1 any person who, in the regulator's opinion, may be directly affected by the length of the consultation period

13.2 the community in being able to achieve an adequate assessment of the potential effects of a proposal

Dealing with submissions

14 **Agree** the owner of the decommissioning plan must consider each submission made and either amend its plan in response to the submission, or explain to the EPA why it does not propose to amend the plan

15 **Agree** submissions must be provided to the EPA to be published on its website and to the owner of the decommissioning plan

Withholding sensitive information

16 **Agree** the EPA can withhold any information in a submission or decommissioning plan that is considered to be culturally sensitive at the request of a consultee, the owner of the decommissioning plan or on its own initiative

17 **Agree** the EPA can withhold any information in a decommissioning plan that is considered to be commercially sensitive information at the request of the owner of the decommissioning plan

18 **Agree** that the grounds for withholding information in a decommissioning plan (or submission) include:

18.1 to avoid causing serious offence to tikanga Māori or to avoid disclosing the location of wāhi tapu

18.2 to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information

19 **Agree** the EPA may not give a direction to withhold information if, in the circumstances of the particular case, the public interest in making the information available outweighs the importance of avoiding such offence, disclosure, or prejudice

Deciding whether to accept a decommissioning plan

20 **Agree** the EPA may seek advice or information from any persons it considers necessary at any time before it accepts the plan

21 **Agree** that in reaching a view on the best practicable environmental outcome the EPA must consult with other relevant marine management agencies and iwi authorities before determining whether to accept a plan or not including:

21.1 the adjacent regional council(s)

21.2 WorkSafe New Zealand

21.3 Maritime New Zealand

21.4 Department of Conservation

21.5 Ministry for Primary Industries

21.6 Ministry of Business, Innovation and Employment

22 **Agree** that after consulting with other relevant marine management agencies and iwi authorities, and after considering any further information sought as a result, the EPA must accept the plan if it is satisfied that it meets the criteria set out in regulations

23 **Note** the EEZ Act requires the EPA to give written notice of its decision, and if it refuses to accept the plan, reasons for that decision, to the owner of the decommissioning plan

24 **Agree** that, once accepted, the final decommissioning plan must be made available on the EPA website

Criteria for assessing and accepting a plan

25 **Note** that the EEZ Act requires the EPA, having assessed the plan, to accept the plan if it is satisfied that the plan meets the criteria prescribed by these regulations, or to refuse to accept the plan

26 **Note** the EPA may refuse to accept a plan if it considers that it does not have adequate information to determine whether it meets the criteria

27 **Agree** all installations, structures and cables must be removed from the seabed unless it can be demonstrated to the satisfaction of the EPA that removing material will not result in the best practicable environmental outcome

28 **Agree** any installations, or parts thereof, that are allowed to remain on the seabed should meet the following requirements:

28.1 installations that project above the surface of the sea must be adequately maintained to prevent structural failure

28.2 there must be an unobstructed water column above any partially removed installations or structures of sufficient depth to ensure safety of navigation

28.3 the materials will remain in the same location on the seabed and not move under the influence of waves, tides, currents, storms or other foreseeable natural causes (so as not to cause a hazard to navigation)

29 **Agree** that for the EPA to accept a decommissioning plan, the EPA must be satisfied:

29.1 the final decommissioning plan has adequately considered and responded to the matters raised during public consultation, or

29.2 the operator has provided an adequate justification as to why it proposes not to amend the plan

30 **Agree** that where the preferred approach in a decommissioning plan includes dumping (structures, installations or pipelines), the EPA may only accept the plan if it considers all the following are met:

30.1 dumping of the material complies with New Zealand's international obligations with respect to the dumping of waste

30.2 dumping of the material will not cause unjustifiable interference with existing interests

30.3 after taking account of the matters listed in recommendation 8 that dumping of the material results in the best practicable environmental outcome

30.4 entire removal is not technically feasible, would involve an unacceptable risk of injury to personnel or would involve an unreasonable cost

30.5 there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs

Amending an accepted decommissioning plan

31 **Agree** that, if the owner of a decommissioning plan accepted by the EPA seeks to amend its plan, the EPA may determine:

31.1 public consultation is required only in relation to the changes from the current plan to the revised plan, or

31.2 public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan

32 **Agree** that the EPA may seek further information or advice from any persons, including those it considers may have existing interests affected by changes to the accepted decommissioning plan, when reaching a view on whether to undertake public consultation on changes to a plan

Cost recovery for processing decommissioning plans

33 **Agree** to amend the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 to enable the EPA to recover costs associated with processing and assessing a decommissioning plan from the owner of the decommissioning plan

34 **Agree** a new category for a delegated decision maker in respect of decommissioning plans will be included in the regulations with an hourly rate of $257.04

General

35 **Invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to draft the proposed regulations based on the agreed decisions above

36 **Authorise** the Minister for the Environment to approve minor policy changes during drafting of the regulations

37 **Agree** to release an exposure draft of the regulations (including amendments to the Exclusive Economic Zone and Continental Shelf (Fees and Charges)

Regulations 2013) for targeted consultation with submitters (including industry, three iwi, one community group, one regional council), owners of offshore installations, the EPA and WorkSafe

Authorised for lodgement.

Hon David Parker

Minister for the Environment

Appendix 1: Statutory requirements for developing regulations under the EEZ Act

There are certain statutory requirements under the EEZ Act that the Minister must satisfy while developing regulations, before making a recommendation to the Governor-General. These requirements are set out below.

Section 32 Process for developing or amending regulations

(1) Before making a recommendation to the Governor-General under section 27, 29A, 29E, or 30(1)(a) or (c), the Minister must comply with subsection (2).

(2) The Minister must—

(a) notify the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected of—

(i) the proposed subject matter of the regulations; and

(ii) in the case of regulations to which section 27, 29A, or 29E applies, the Minister's reasons for considering that the regulations are consistent with the purpose of the Act; and

(b) establish a process that the Minister considers gives the public, iwi authorities, and persons whose existing interests are likely to be affected adequate time and opportunity to comment on the subject matter of the proposed regulations.

(3) However, the Minister need not comply with subsection (2) if the Minister is recommending the making of an amendment to regulations that has no more than a minor effect or that corrects errors or makes minor technical changes.

Section 10 Purpose

(1) The purpose of this Act is—

(a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and

(b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

(2) In this Act, sustainable management means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while—

(a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of the environment; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

(3) In order to achieve the purpose, decision-makers must—

(a) take into account decision-making criteria specified in relation to particular decisions; and

(b) apply the information principles to the development of regulations under section 27, 29A, 29B, or 29E and the consideration of applications for marine consent.

Section 34 Information principles

(1) When developing regulations under sections 27, 29A, and 29B, the Minister must—

(a) make full use of the information and other resources available to him or her; and

(b) base decisions on the best available information; and

(c) take into account any uncertainty or inadequacy in the information available.

(2) If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.

(3) If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary.

(4) In this section, best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

Section 30 Regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

(a) requiring the holder of a marine consent to gather information and keep records relating to the exercise of the consent and to supply information to the Environmental Protection Authority:

(b) prescribing forms:

(c) prescribing the amounts of charges payable or the method by which they are to be assessed or calculated, and the persons liable to pay the charges:

(d) providing for any other matters contemplated by this Act and necessary for its administration or necessary for giving it full effect.

(2) However, the Minister must not recommend the making of regulations under subsection (1)(a) or (c) unless he or she is satisfied that the requirements of section 32 have been met.

(3) Nothing in subsection (2) or section 32 requires consultation in relation to specific charges, or the specific levels of charges, so long as the charges set are reasonably within the scope of any general consultation, and a failure to comply with subsection (2) does not affect the validity of any regulations made for the purposes of this Act.

Appendix 2: Offshore installations in New Zealand's EEZ

Installation name	Resource extracted	Operator	Type of installation	Approx. cost of decommissioning[1]	End of field life (min)	End of field life (max)
Maui A and B	Gas condensate	OMV	Large, heavy, fixed platform	$1 - $2 billion	2027	2046
Maari field	Oil	OMV	Wellhead platform connected to a FPSO[2]	$100m - $200m	2020	2026
Kupe Field	Gas condensate	Beach	Small unmanned, fixed platform	$100m - $200m	2026	2030
Tui	Oil	Tamarind	FPSO installation	$100m - $200m	2019	2022

N.B. There are a number of structures and pipelines associated with each installation that would also be captured by the decommissioning regime (e.g. wellheads, submarine cables and pipelines, anchor chains).

[1] Costs are estimates only and are based on the general type of offshore installation. MBIE is working with industry and PEPANZ on getting more accurate decommissioning cost estimates.
[2] FSPO is a floating production, storage and offloading vessel.

Appendix 3: Demonstrating and assessing the best practicable outcome

The decommissioning plan must demonstrate the best practicable environmental outcome (BPEO) having taken account of the below matters. These will then be assessed by the EPA:

- the potential impact on cultural values
- the potential effect on the safety of surface or subsurface navigation or existing interests
- the potential effect, including cumulative and future effects, on the marine environment, including:
- the rate of deterioration of any material left on the seabed and its present and possible future effects on the environment
- the risk of material shifting from its position in the future
- potential effects on human health
- the cost, technical feasibility and risk of injury to personnel associated with removal
- practical limitations of disposal alternatives
- the cost of reuse, recycling or disposal alternatives, and any potential ongoing management and monitoring necessary to ensure the protection of the environment and human health
- exclusion of future uses
- opportunities for off-site recycling
- destruction of hazardous constituents
- treatment to reduce or remove the hazardous constituents.

The BPEO is the option delivering the most benefit to (or the least adverse impact on) the environment at a reasonable cost, in the long and the short term. The BPEO may represent one option, or a combination of options (eg, partial removal to land and abandonment). What is considered ‘practicable’ will depend on the circumstances associated with the cost and technical feasibility of available options. Certain options may present significant health and safety risks, and these need to be considered.

Appendix 4: Criteria against which the EPA must assess and either accept or reject a plan

For the EPA to accept a decommissioning plan, the EPA must be satisfied that:

- the final decommissioning plan has adequately considered and responded to the matters raised during public consultation, or
- the operator has provided an adequate justification as to why it proposes not to amend the plan.

Where the preferred approach in a decommissioning plan includes dumping material (structures, installations or pipelines), the EPA may only accept the plan if it considers:

- dumping of the material complies with New Zealand's international obligations with respect to the dumping of waste
- dumping of the material will not cause unjustifiable interference with existing interests
- dumping of the material results in the best practicable environmental outcome
- entire removal is not technically feasible, would involve an unacceptable risk of injury to personnel or would involve an unreasonable cost
- there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs
- the operator has adequately considered and responded to the matters raised during public consultation, or-
- the operator has provided an adequate justification as to why it proposes not to amend the plan in response.

Appendix 5: Information to be included in a decommissioning plan

Our preferred approach to decommissioning is that the following information be included in a decommissioning plan:

Background information

- a description of the existing environment
- a description of the items (installations, wells, structures and pipelines) to be decommissioned, including the amount, type, location, depth, size, stability, age and condition of all materials
- a description and explanation of any related equipment not covered by the decommissioning plan.

Comparative assessment (only required for proposals relating to pipelines and where complete removal is not the preferred approach)

- a description of the options considered
- a description of how the matters in Appendix 4 have been taken into account.

A description of the preferred approach (which should result in the best practicable environmental outcome)

- description of the anticipated method for the removal and / or disposal of material
- description of any preparatory activities
- a general description of how any waste generated will be dealt with
- opportunities to reuse, recycle or treat materials.

Schedule

- an indication of the likely timescale for undertaking the proposed option, including when various stages of the decommissioning are expected to start and finish.

Post-decommissioning monitoring and maintenance

- a description of any post-decommissioning monitoring and maintenance including seabed sampling surveys to monitor levels of hydrocarbons, heavy metals and other contaminants in sediments and biota
- an indication of monitoring timeframes and how results will be reported
- where material is to be dumped on or above the seabed, a description of the anticipated inspection and maintenance programme and an estimation of the cost of the programme
- a description of any engagement activities to be undertaken during and post-decommissioning.

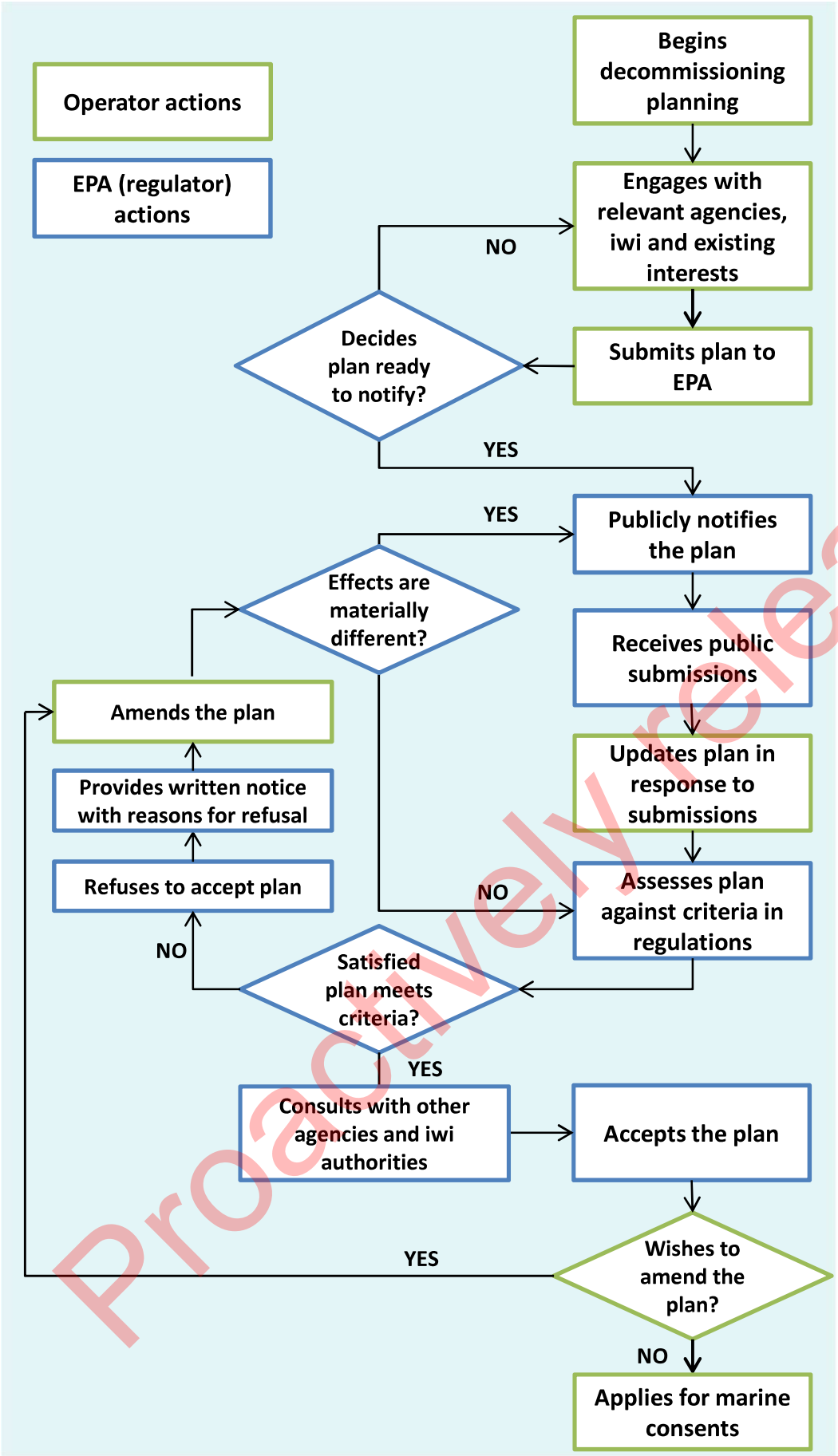
Wells

- a list of all active, suspended and previously abandoned wells relating to the installation (that are not included as items to be decommissioned above).

Consultation and engagement

- details of any engagement strategy mutually developed with the relevant iwi authority
- a description of the engagement carried out which must include:
- identifying the relevant marine management agencies, relevant iwi authority and existing interests
- providing information to those identified on options for the plan
- seeking views from those identified, and considering those views in any comparative assessment (if required)
- demonstrating the extent to which matters raised have been considered and addressed

Appendix 6: The decommissioning plan process



Appendix 7: Summary of submissions responding to the proposal for decommissioning regulations

In July 2018, Cabinet approved the release of a discussion document for public consultation on policy proposals for decommissioning regulations for offshore petroleum installations under the EEZ Act. Following a 10-week consultation period, nine submissions were received. Four from industry, three from iwi, one from a regional council, and one from a community group. This document lists the questions asked in the discussion document and provides a high-level summary of the responses received.

What to define as a decommissioning activity

Do you agree with the Government's proposal not to specifically list the activities for which section 38(3) applies? (question 1)

Submitters generally agreed with our proposal not to specifically list activities given the need for flexibility, although some considered a non-exhaustive list could be useful. However, all submitters considered that the term 'decommissioning' needed to be defined either within the regulations or through a guidance document. Submitters were concerned that decommissioning plans would be required for activities that are not intended to be 'true' decommissioning (such as plugging and abandonment of wells, which is a requirement under Health and Safety Regulations 2016, or repair and maintenance activities during normal operations).

A number of submitters supplied an example list of exceptions and definitions as templates.

General approach to decommissioning plans

Do you agree that a case-by-case approach should be taken to determine how installations, structures and pipelines should be dealt with? (question 19)

All submitters that responded to this question supported a case-by-case approach although one submitter was wary of too much flexibility, considering robust policy necessary. In contrast, an industry submitter considered that the regulations needed to be flexible so as not to impose cost burdens that are inconsistent with permits and environmental consents obtained at the beginning of a project.

Information to be included in a decommissioning plan

Do you agree with the information requirements for a decommissioning plan? If not, what do you think should be required in a decommissioning plan? (question 2)

Four submitters agreed with our proposals to require, as a minimum, a description of the:

- existing environment including material to be decommissioned
- proposed approach to decommissioning
- schedule for decommissioning
- post-decommissioning monitoring and maintenance.

Others either did not supply an opinion, or had some concerns with the information requirements. This included:

- that the information requirements for iwi/ hapū engagement did not go far enough to ensure that proper consultation will take place. It was suggested there be a requirement on operators to provide a cultural impact assessment (CIA) and that

the plan includes detail about feedback received from iwi/ hapū, as well as the response to that feedback

- that the information required is too prescriptive and detailed, potentially duplicating the subsequent marine consent process.

Comparative assessments

Do you agree that a comparative assessment is an appropriate methodology to present the available options for dealing with structures to be decommissioned? (question 3)

All submitters agreed that comparative assessments are an appropriate methodology to present and compare available options for decommissioning. However, there was some uncertainty as to the factors that should be taken into account when assessing options (eg, health and safety) to determine a preferred option. While industry focused on cost effectiveness and risk to health and safety as key concerns, four submitters, including all three iwi/ hapū, were concerned that cost effectiveness would be given too much weight and that environmental criteria should outweigh costs.

Do you agree that a comparative assessment should only be required if an operator seeks to dump or abandon an installation, or parts thereof? (question 4)

Do you agree that a comparative assessment should be required for pipelines regardless of whether the operator seeks to abandon or remove the pipeline? (question 5)

All submitters agreed that a comparative assessment should be required when an operator is seeking to dump (including abandoning in situ) an installation. However, three submitters considered comparative assessments should also be required for removal proposals, as it provides an opportunity to discuss different removal options, which may have different impacts.

All submitters considered that a comparative assessment should be required for pipelines regardless of whether they were being removed or abandoned.

Standard templates and guidance

Do you think it would be useful if there were a standard template for decommissioning plans? (question 6)

Opinions were mixed on whether a standard template would be useful. Submitters generally considered that this might limit the ability for a case-by-case approach to be taken and could result in the information that is provided being limited to that set out in the template. One submitter noted that, given there are only four offshore fields that require decommissioning, there will not be many regular applications that necessitate consistency.

Do you think that guidance would be helpful for industry and the public to understand how decommissioning would work under the EEZ Act and RMA? (question 20)

Six submitters were in support of guidance being issued to understand how decommissioning would work under the EEZ Act and the Resource Management Act 1991 (RMA). One industry submitter considered that prescriptive requirements should be included in the guidance document rather than regulations to provide greater flexibility. One submitter would like to see guidance on the re-use of structures. One submitter also

supported the preparation of guidance material for when to prepare and submit a decommissioning plan.

Process for dealing with a plan

Do you agree with the information required to describe the engagement and consultation carried out by an operator on a decommissioning plan? (question 7)

Most submitters agreed with our proposal to require that decommissioning plans include a description of the engagement carried out, which must include:

- identifying the relevant marine management agencies, relevant iwi and existing interests
- providing information to those identified on options for the plan
- seeking views from those identified, and considering those views in any comparative assessment (if available)
- demonstrating the extent to which matters raised have been considered in the plan submitted to the EPA.

However, one submitter was concerned that this would be treated as a box ticking exercise. One industry submitter considered that an approach of 'best endeavours' should be used in case an agency or group is unwilling or unable to engage. Other suggestions raised by iwi submitters in order to strengthen the requirements and ensure meaningful engagement occurs included:

- ensuring that engagement with iwi/ hapū happens at the earliest opportunity, and not only as an opportunity to respond to the plan
- development of a mutually determined engagement strategy between operators and iwi/ hapū established from the start
- a requirement for a cultural impact assessment, approved or commissioned by relevant iwi/ hapū
- requiring decision panels to include a Māori Moana representative
- requiring Ngā Kaihautū to report a Māori perspective to the EPA on the proposed decommissioning plan.

One submitter also considered that the regulations should set out when a decommissioning plan must be submitted to ensure engagement starts early, recommending at least two years before production ceases.

Do you think the proposed regulations should specify a list of parties that the EPA must consult or seek advice from prior to making a decision? (question 12)

Four submitters agreed that a non-exhaustive list of parties could be provided, with one submitter listing the Climate Change Commission as a necessary party. Other submitters did not respond to the question.

Before the EPA publishes a decommissioning plan for public notification, should it be required to undertake (1) an administrative check that the plan contains the information prescribed by regulations (2) a limited but evaluative assessment of the adequacy of the information or (3) a full assessment against the set of criteria prescribed in regulations? (question 8)

Responses were mixed on the level of assessment that the EPA should carry out before notifying the plan, with three submitters preferring option 3 – a full assessment, and four

submitters preferring option 2 – a limited assessment. It was unclear which option the remaining two submitters preferred. Industry submitters generally preferred option 2 as they considered that undertaking a full assessment prior to notification was unnecessary given the EPA would assess the plan following public consultation. Iwi submitters generally preferred option 3.

What is your experience of submitting on notified marine consent applications and do you consider that the quality of information was adequate to make an informed submission? (question 9)

One submitter has no experience with submitting on marine consents, and two consider that the information they were provided was inadequate. Reasons include:

- the information not being complete
- the information provided was biased and favourable to the operators who were commissioning the information (community group).

Are you aware of any parts of a decommissioning plan that are unlikely to be appropriate or relevant for public notification? Are there any matters that you consider should be withheld? (question 10)

One submitter considered that the EPA should engage operators before publishing a plan to establish whether any information should be withheld. They suggested that the full decommissioning plan is likely to be extensive and technical in detail and therefore only a briefing document should be released.

One submitter considered that too much technical detail may be unhelpful, but that if information is withheld in error, then parties affected by poor decision-making should be compensated.

Do you agree with the minimum timeframe for submissions? If not, why not? (question 11)

Five submitters supported the proposed timeframe for submissions (30 day minimum) and one supported a timeframe proportionate to the scale of the application. One industry submitter also recommended that a maximum timeframe be included.

Do you agree that the EPA should be able to request further information on a decommissioning plan at any stage of the process to enable it to carry out its functions? (question 13)

Three submitters explicitly agreed that the EPA should be able to request further information.

One submitter considered that a “good practice” approach similar to the RMA should be applied so that further information requests and responses are received before publicly notifying the application.

Criteria for accepting a plan

Do you agree with the criteria proposed? If not, what criteria do you think should be considered for accepting a decommissioning plan? (question 18)

Do you agree that the same criteria can be applied to pipelines as applied to installations and structures? (question 17)

Submitters generally supported the proposed criteria but all had further comments for improvement.

The discussion document proposed that where the proposed or preferred approach in a decommissioning plan is to dump or abandon in-situ material (structures, installations or pipelines), the EPA may only accept the plan if it considers:

- the abandonment in-situ or dumping of the material complies with New Zealand's international obligations with respect to the dumping of waste
- the abandonment in-situ or dumping of the material will not cause unjustifiable interference with existing interests
- the abandonment in-situ or dumping of the material results in the best practicable environmental outcome
- entire removal is not technically feasible or would involve an unreasonable cost
- there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs.

Iwi submitters generally did not consider that cost effectiveness should be a consideration when determining whether to accept a plan but supported the notion of the preferred option being one that is likely to deliver most benefit and least harm.

Industry submitters considered that health and safety should also be taken into account as this will be a main driver for determining a preferred option.

One iwi/ hapū submitter suggests that a cultural monitoring regime relating to identified cultural indicators be included with the criteria for accepting a decommissioning plan.

Changes to an accepted plan

Do you agree that the proposed regulations should provide for both (a) and (b) below? (question 15)

a) **that public consultation is required only in relation to the changes from the current plan to the revised plan**

b) **that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan.**

Only three submitters responded to this question. One submitter agreed with our proposal that regulations should provide for both (a) and (b). Two submitters considered that the regulations should not provide for (b), with one submitter citing the reason as a lack of transparency.

Do you agree that the EPA should be able to decide whether public consultation on changes to a plan is necessary? (question 16)

Two submitters considered that the EPA should be able to decide if public consultation on changes to a plan is necessary. One submitter considered that public consultation on changes should be mandatory, and two submitters considered that a revised plan should be notified to those persons who made a submission, except for where the changes are administrative in nature.

Cost recovery

Do you agree the EPA should recover costs relating to decommissioning plans from the person who submits a decommissioning plan? (question 14)

Four submitters responded to this question with three submitters agreeing that the EPA should be able to recover costs. One industry submitter considered it inappropriate because “the EPA is not established as a commercial enterprise and the EPA’s parent is a beneficiary of this activity via royalties and taxes”. This submitter suggests that cost sharing may be more appropriate, with a fixed fee favoured.

Other matters

Are there any other matters you would like to raise? (question 21)

We asked submitters if there were any other matters they would like to raise. Some of these, while outside the scope of the regulations, are still important issues or concerns that may need to be addressed. Submitters raised issues about:

- the need for clarification surrounding liability and post-decommissioning ownership of structures
- the resource disparity between iwi/ hapū and operators
- the need for definitions for words such as ‘good practice’ and ‘abandonment’
- submitters being given the opportunity to comment on the assessments in marine consent applications when assumptions are made in the plan
- the need for guidance on structure re-use
- a review of the EEZ Act
- researchers employed by operators having a perverse incentive to provide biased results
- the lack of a hearing in the decommissioning plan process.

Appendix 8: Impact Summary- Development of regulations under the EEZ Act for decommissioning offshore oil and gas infrastructure

Section 1: General information

Purpose
The Ministry for the Environment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of supporting a Cabinet proposal for approval of final policy recommendations relating to regulations on decommissioning plans.
Key Limitations or Constraints on Analysis
Assumptions and scope: The analysis (and supporting evidence) carried out for amendments to the EEZ Act through the Resource Legislation Amendment Act 2017 (RLAA) in relation to decommissioning still applies. It has been assumed that the regulations would be created within the existing regulation-making powers, therefore no further changes to the EEZ Act are considered as part of this regulatory impact assessment. There is some uncertainty about the scale of costs and benefits at this stage, since the number and complexity of decommissioning plans and consents that are likely to be submitted under the regulations is unknown. There are only preliminary estimates of the possible cost per plan, as there is no comparable decommissioning activity or planning activity that has been undertaken to date in New Zealand. Any functions relating to decommissioning will be monitored, evaluated and reviewed by the Ministry as part of the wider EEZ Act framework to help address any information gaps and build up our information.
Responsible Manager (signature and date):
G. Wigley 20/6/19 Glenn Wigley Director, Natural and Built System Ministry for the Environment

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Decommissioning is the work that is undertaken to take equipment permanently out of service at the end of its life.

There are currently four petroleum production fields operating in New Zealand's Exclusive Economic Zone (EEZ), which will need to be decommissioned. Depending on production and economic factors, decommissioning of the first of these facilities is expected to begin within the next 5 years.

The infrastructure in place varies between fields, but these activities would likely involve a combination of:

- preparing facilities for decommissioning
- plugging wells and severing well casings
- cleaning and/or removing pipelines and other production infrastructure
- removing or partially removing platforms
- disposing of platforms and other infrastructure
- removing debris and potential obstructions
- monitoring the site and/or any infrastructure left behind.

New Zealand's international obligations

The United Nations Convention on the Law of the Sea (UNCLOS), to which New Zealand is a party, provides that States have a general obligation to protect and preserve the marine environment and a more specific obligation to take all measures necessary to prevent, reduce and control pollution of the marine environment from any source. Article 60 of UNCLOS states that:

"any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization."

The International Maritime Organisation (IMO), being the 'competent international organization', recommends standards for coastal states to follow when making decisions on decommissioning. These obligations are not binding, but reflect international good practice. Under these guidelines (referred to hereafter as the IMO Guidelines and Standards), the general premise is that all disused installations and structures must be entirely removed except when it can be shown that special circumstances apply. It provides criteria for the coastal state to consider when determining whether to allow an offshore installation or structure to remain on the seabed.

Under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the "London Protocol"), to which New Zealand is a party, dumping of all waste at sea is prohibited except where a permit is granted by the coastal state. The abandonment of platforms or other man-made structures at site and the disposal into the sea of platforms, structures and other matter are considered 'dumping' under the London Protocol.

The framework for managing decommissioning in the EEZ

The Crown Minerals Act 1991 (CMA) establishes the framework for issuing and managing mining permits within the EEZ. When evaluating an application for a petroleum mining permit under the CMA the Minister may include provisions in the work programme for decommissioning structures in accordance with good industry practice. The CMA also requires the Crown to assess applicants of mining permits to ensure that they are financially capable of giving effect to the permit. This requirement also applies when considering whether to allow the transfer of a permit to another company, including sale of late life assets.

Decommissioning is likely to involve activities that are restricted under the EEZ Act. Restricted activities (unless permitted or prohibited by legislation) will each require either a marine consent or a marine dumping consent.

Operators must also get an installation's safety case approved by WorkSafe prior to undertaking any decommissioning activities and wells must be plugged and abandoned in accordance with requirements.

Petroleum mining decommissioning incurs significant expenditure near or after the end of production at which point there will be little or no assessable income. Under current settings the Crown may be liable to pay up to 48 percent of decommissioning costs as tax and royalty rebates to operators. While these arrangements are regulated under the Income Tax Act 2007, it remains in the interests of both the operator and the Crown to ensure that safe, pragmatic and cost-effective solutions are developed.

Issues identified with the existing framework for decommissioning

Analysis in 2015 and 2016[1] identified gaps in the regulatory framework. Most of the gaps were associated with the fact that the EPA could only grant or decline (on the basis of their effects) individual marine consents for which an operator applied. There was no scope to direct operators to apply for marine consents that better met sustainable management and protection purposes, nor to require early engagement to identify an agreed overall approach to a decommissioning project, creating uncertainty for government and the public as to how operators may approach decommissioning of their offshore infrastructure

The marine consent process does not provide for a working dialogue to develop the best options for decommissioning, and is therefore unlikely to provide operators with guidance about the options available for decommissioning. An activity-by-activity approach does not reflect international good practice, guidelines and standards.

There is also a risk to the environment and existing interests if an operator does not seek consent to decommission, but instead leaves the infrastructure in place at the end of production without consent. This is an issue because the purpose of the EEZ Act is to ensure sustainable management of activities and to protect the environment from pollution.

Changes to the EEZ Act, which came into force from 1 June 2017, were intended to provide a project-level approach to regulating decommissioning through a "decommissioning plan".

The Resource Legislation Amendment Act 2017 (RLAA) introduced changes that were

[1] In particular, see the *Regulatory Impact Statement: Resource Legislation Amendment Bill 2015: EEZ Amendments* and *Regulatory Impact Statement: Resource Legislation Amendment Bill 2015: Decommissioning of offshore installations in the EEZ*.

designed to achieve the following:

- require operators to submit a decommissioning plan for acceptance by the EPA before they can apply for marine consent to undertake decommissioning activities
- allow the EPA to accept the plan subject to meeting certain criteria (to be developed through regulations)
- require public consultation to occur early in the process (on the plan) when options are being considered, instead of on the later marine consents
- allow the EPA to remain the decision-maker on the later marine consents to improve consistency
- require all future marine consent applications for the placement of structures and pipelines for the purpose of petroleum production to demonstrate a consideration of decommissioning
- make the abandonment of pipelines a restricted activity subject to a marine consent from the EPA.

Regulations are needed for changes to have effect

The decommissioning plan regulatory framework created in the EEZ Act will not apply until regulations come into force. Section 29E gives power for the making of these regulations.

Regulations under the EEZ Act would not manage all aspects of decommissioning, eg. The regulations will not manage issues of liability and ownership, but the regulatory framework for decommissioning would be incomplete without them.

Regulations will provide detail to make sure the relevant provisions operate effectively and to ensure that the environmental effects of decommissioning are managed in the best possible way.

They are also intended to provide a clear and transparent process for how operators would approach decommissioning their offshore infrastructure. The process would provide greater certainty for the public, the Government and operators.

Objectives:

The primary objective of the regulations is to ensure that **all offshore infrastructure from petroleum production operations will be decommissioned in a manner that meets New Zealand's international obligations and achieves the purpose of the EEZ Act**. The decommissioning regulations must be consistent with the purpose of the EEZ Act to promote sustainable management and protect from pollution, and would work toward the following objectives:

- ensure that the environmental regulatory framework explicitly provides for New Zealand's obligations under relevant international conventions and reflects international best practice for decommissioning
- ensure that processes are efficient and cost-effective, with the cost to government and operators proportionate to the level of environmental effects addressed
- ensure that the process is clear and flexible, allowing for a case-by-case approach to be taken depending on the infrastructure involved

- ensure that consultation with iwi and the public is appropriate and fit for purpose.

Our preferred approach has been assessed as meeting these objectives as set out in a table 1 in Appendix 1—

- significantly better than the status quo (✓✓)
- better than the status quo (✓)
- no better than the status quo, or having no effect (-).

A list of all the options that were considered pre-consultation is set out in Appendix 2. Appendix 3 includes all of the questions that were asked during consultation and a summary of the responses received.

2.2 Who is affected and how?

The changes seek to—

- ensure that **operators** carry out decommissioning in line with good practice and New Zealand's obligations: by completely removing installations and structures unless there is a good case for another approach to be preferred. This is intended to eliminate the long term risk associated with infrastructure abandoned in the environment and minimise effects on the environment and existing interests.
- encourage **operators** to take a strategic approach to decommissioning projects.
- encourage **operators** to engage early with relevant iwi, existing interests and agencies.
- provide opportunities for **iwi** to engage in planning discussions that consider decommissioning as a whole, rather than on individual activities.
- provide opportunities for the **public** to engage early in planning for decommissioning, rather than during the later marine consent stage. This is intended to give operators greater certainty about public views and to ensure that outcomes of consultation can influence the decommissioning approach in a meaningful way.

Feedback from consultation and engagement in developing the regulations suggests that operators support these changes as they will provide greater certainty in terms of the requirements for decommissioning structures and pipelines. Feedback from engagement with iwi also suggests support for the changes as they will provide for greater iwi and public involvement earlier in the process when different decommissioning options are still being considered.

The changes will impose an additional function on the EPA to process and assess decommissioning plans and on other relevant marine management agencies to engage with the EPA in determining whether to accept plans.

2.3 Are there any constraints on the scope for decision making?
Section 29E provides for the making of regulations prescribing— • the information that must be included in a decommissioning plan, • the process for dealing with a decommissioning plan, and • the criteria against which a decommissioning plan must be assessed. Other legislative changes are outside the scope of this project. The project is not intended to— • make further changes to the primary legislation • address decommissioning or regulatory processes outside the EEZ, including in the territorial sea and on land • address matters governed by other regimes, including issues of health and safety, liability, financial assurance, or tax.

Section 3: Options identification

3.1 What options have been considered?

The purpose of the EEZ Act is—

(a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and

(b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

Section 29E of the EEZ Act, as amended, provides that regulations can be made prescribing—

(a) information that must be included in a decommissioning plan

(b) the process for dealing with a decommissioning plan

(c) the criteria against which a decommissioning plan must be assessed.

We identified and consulted on a number of options under each of the following headings to assist in determining the information to be prescribed in regulations. The final policy approach represents a package of options under these headings:

- General approach to decommissioning
- Comparative assessments
- Information to be included in a decommissioning plan
- Process for dealing with a decommissioning plan
- Assessing and accepting a decommissioning plan
- Amendments to an accepted decommissioning plan

Appendix 2 details the package of options that were considered.

Appendix 3 lists all of the questions that were asked during consultation and a summary of the submissions received in response.

3.2 Which of these options is the proposed approach?

Below, we set out our preferred approach following feedback from submissions and engagement with agencies in terms of:

1. **General approach to decommissioning**

What outcomes are acceptable? What activities will be treated as decommissioning activities?

2. **Comparative assessments**

How should the best decommissioning option be determined? What factors should be considered?

3. **Information to be included in a decommissioning plan**

What are the minimum information requirements? How much detail should be prescribed in regulations?

4. **Process for dealing with a plan**

What test should the EPA apply before publishing a plan? How long should the submission process be? What sensitive information should be withheld? When should further information or advice be sought?

5. **Assessing and accepting a plan**

What criteria should the EPA consider when determining whether to accept a plan? Who should the EPA consult with?

6. **Amendments to a decommissioning plan**

How should the EPA deal with changes to an accepted plan?

Progressing this approach will give effect to the decommissioning plan process created through the RLAA and fill the gaps identified in the legislative framework. It will provide more certainty to all parties about how decommissioning will progress, and ensure that decisions are made in a consistent way. It will give the opportunity for regulators to provide guidance to operators early in the planning process, and bring consultation with iwi and the public forward, to a point where they can be engaged in a meaningful way.

Options considered and analysis

The following sections detail the preferred approaches to decommissioning (Appendix 1). These are based on our own analyses, options that were considered in a pre-consultation RIS (Appendix 2) and comments received by submitters in response to consultation (Appendix 3). The pre-consultation options considered relating to each preferred option are listed in brackets next to each preferred option. Refer to Appendix 2 for further details.

1. General approach to decommissioning

Case by case approach to leaving material on the seabed

Given some installations (or parts thereof) were built at a time when little consideration was given to how they might be removed in the future, and given the range of different infrastructure types used offshore by the oil and gas industry, there is unlikely to be one

decommissioning solution suitable for all, even within a single field. Therefore, we consider a case-by-case approach to the decommissioning of installations, structures and pipelines is needed.

Our preferred approach is that, in line with New Zealand's international obligations and the purpose of the EEZ Act to protect the environment from pollution, **(1a) disused installations and structures must be removed from the seabed unless there are reasons for them to remain** (2.1).

Submitters all agreed with this position and our proposal to assess decommissioning plans on a case-by-case basis.

Requirement for abandoned material

The 1989 International Maritime Organisation (IMO) Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone (herein referred to as the 'IMO Guidelines and Standards') recommend standards to be followed by a coastal state when making decisions regarding decommissioning. These are not binding obligations, but reflect international practice from the IMO. The guidelines set out requirements in the case of partial removal of subsea structures to prevent a hazard to navigation:

- Installations that project above the surface of the sea must be adequately maintained to prevent structural failure.
- There must be an unobstructed water column above any partially removed installations or structures, of sufficient depth to ensure safety of navigation, but not less than 55 metres.
- The materials will remain in the same location on the seabed and not move under the influence of waves, tides, currents, storms or other foreseeable natural causes (so as not to cause a hazard to navigation).

One submitter identified that a clearance of 55m would not be possible at some New Zealand sites (as installations were in water depths of less than 55m) and that this was unlikely to be necessary for the size of vessels that enter New Zealand. Therefore our preferred approach is to **(1b) apply existing frameworks** (i.e require the above standards for partially removed structures) **but tailor this to be specific to the New Zealand context** (i.e remove the requirement for 55m clearance) (2.2).

What to define as a decommissioning activity

Section 100A(1) of the EEZ Act states that:

The owner or operator of an offshore installation used in connection with petroleum production, or a structure, submarine pipeline, or submarine cable associated with such an installation, may submit a decommissioning plan to the Environmental Protection Authority for acceptance.

Section 38(3) of the EEZ Act 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.

Our policy position is that **(1c) decommissioning activities are those activities that must**

be carried out in order to take an offshore installation including its associated structures, cables and pipelines permanently out of service (1.1-1.3). This includes activities associated with preparing the offshore installation, associated structures, cables and pipelines for decommissioning and any post-decommissioning activities that may need to be undertaken (eg, monitoring and reporting).

It does not include:

- any activities to be undertaken at an offshore installation while the installation is still processing petroleum (ie, still operational)
- restricted activities already authorised under a marine consent (eg, deposit of drill cuttings)
- any restricted activities associated with re-using the offshore installation to serve a purpose other than that which it was originally intended for (eg, rigs to reef).

For the purposes of the regulations, 'Offshore installations' include fixed steel, concrete gravity, floating and subsea installations (e.g. well heads, production manifolds drilling templates). It does not include any part of an offshore installation which is located below the surface of the seabed (e.g. footings). 'Pipelines' include flexible flowlines, umbilicals and pipelines that are buried, trenched or rock-dumped.

Our preferred approach is **(1d) not to set out a list of the activities for the decommissioning of an offshore installation** (1.1-1.3)**.** 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. Submitters generally agreed with our proposal not to list activities but considered that the term "decommissioning" needs to be defined either within the regulations or in guidance to provide greater certainty about the activities that trigger the need for a decommissioning plan to ensure that general maintenance and operations do not inadvertently get captured by the requirement for a decommissioning plan.

While the regulations cannot alter what is set out in section 38(3) of the EEZ Act, the regulations can provide context by specifying the requirements for decommissioning plans relating to specific activities for offshore installations or other structures.

Providing the above clarification means that well P&A, in isolation, will not trigger the need for a decommissioning plan. Operators may wish to plug and abandon non-productive wells ahead of the decommissioning stage, especially if other installations and parts of the field are still operational. These regulations will not hinder the operators' ability to plug and abandon the well at their earliest convenience. Any wells not plugged and abandoned as part of field management must be captured in decommissioning plans, to ensure they are not overlooked.

2. Comparative assessments

The approaches available to an operator for decommissioning its installations, structures and pipelines could range from complete removal to complete abandonment, with intermediate options involving partial removal.

All submitters were supportive of a comparative assessment as a methodology to present the available options for decommissioning and to determine the best practicable environmental option (the option that delivers the most benefit to (or least adverse impact on) the environment at a reasonable cost, in the long and short term). What is considered 'practicable' depends on the cost, technical feasibility and health and safety risks associated

with the different options. There was some uncertainty among the feedback as to the factors that should be taken into account when assessing options (eg, health and safety) to determine a preferred option. While industry focused on cost effectiveness and risk to health and safety as key concerns, others were concerned that cost effectiveness would be given too much weight and that environmental criteria should outweigh costs (see section 5: criteria for assessing a plan).

Our preferred approach is that **(2a) where dumping or abandonment of a structure is the proposed approach, a decommissioning plan would be required to include a comparative assessment that assesses all available options, and ranks them demonstrating the best practicable environmental option** (2.1, 2.2, 3.3-3.5), having taken account of:

- the potential impact on cultural values
- the potential effect on the safety of surface or subsurface navigation or existing interests
- the potential effect, including cumulative and future effects, on the marine environment, including:
    - the rate of deterioration of any material left on the seabed and its present and possible future effects on the environment
    - the risk of material shifting from its position in the future
- potential effects on human health
- the cost, technical feasibility and risk of injury to personnel associated with removal
- practical limitations of disposal alternatives
- the cost of reuse, recycling or disposal alternatives, and any potential ongoing management and monitoring necessary to ensure the protection of the environment and human health
- exclusion of future uses
- opportunities for off-site recycling
- destruction of hazardous constituents
- treatment to reduce or remove the hazardous constituents.

Some submitters considered that a comparative assessment should be provided even when complete removal is the preferred option as it provides an opportunity to discuss different removal options, which may have different impacts. However, the purpose of the comparative assessment is to demonstrate to the EPA that all available decommissioning options have been considered and abandonment or dumping of material is the best practicable environmental option in the circumstances. The decommissioning plan accepted by the EPA is not intended to specify or limit the operator to a particular removal method as this will be subject to the later marine consent process. Therefore, our preferred approach is that **(2b) a comparative assessment is not required if the operator is seeking to remove its installations** (2.1).

All submitters agreed with our proposal that **(2c) a comparative assessment be required for pipelines, irrespective of the preferred decommissioning approach** (2.1)**.** This is because effects associated with removing or abandoning a pipeline are likely to differ from those associated with installations and structures. Also, leaving a pipeline in place (particularly if it is buried, flushed and cleaned) is less likely to pose risks to navigation or have adverse effects on existing interests. This approach is consistent with international practice where there appears to be a greater allowance for leaving pipelines in place (than other structures). In these cases there are requirements for cleaning and capping of the pipeline and assessment of the long-term effects.

Consideration of cultural values

The EEZ Act contains a more limited consideration of cultural values in decision-making than the RMA. Only those cultural values or customary rights that are captured within the definition of "existing interests" are explicitly required to be considered in existing processes under the EEZ Act (although cultural values may be, and sometimes are, considered in some processes as "any other matter").

However, this does not preclude the consideration of cultural values in regulations, provided it is not inconsistent with the purpose of the Act. The assessment of a decommissioning plan will be a new process under the Act, and is not intended to duplicate the marine consent process, but to consider appropriate factors at a project level.

Given the permanence of the decommissioning proposals (that is, all material will either be removed or permanently abandoned), and following discussions with iwi, we consider that it is important that **(4a) the regulations establish what constitutes appropriate consultation** to better provide for cultural values beyond "existing interests" being taken into account in identifying the best approach to a decommissioning project (as part of the comparative assessment).

Disposal of waste

In some jurisdictions, options for disposal of waste away from the site are considered as part of the evaluation of decommissioning proposals. We consider that that approach would not be appropriate in New Zealand, given that these factors will be considered in later regulatory processes (including marine dumping consent processes if the proposal is for dumping at sea). However, it is important that the EPA reaches a decision on the plan that can be implemented through the later marine consents. The EEZ Act states that the EPA must refuse a marine consent application to dump installations, structures or other waste, if it considers the material may be reused, recycled or treated without more than minor effects on human health or the environment or without imposing unreasonable costs on the applicant. Therefore, as part of the subsequent marine consent, applicants will need to give the EPA information about any alternatives to dumping (and the costs and risks associated with those alternatives).

To ensure consistency between the information required in a decommissioning plan and matters the EPA considers for a marine dumping consent, our preferred approach is that **(2d) the decommissioning plan would identify the practical limitations of disposal alternatives and include information on the cost of re-use, recycling and treating items for disposal** (2.2).

The plan should demonstrate that disposal of any waste can technically and legally be accomplished. This approach would require an operator to give consideration to waste

streams early in the planning process, without binding them to a particular disposal method.

3. Information to be included in a decommissioning plan

The Act sets out in section 100A that a decommissioning plan must—

(a) *identify the offshore installations, structures, submarine pipelines, and submarine cables that are to be decommissioned; and*

(b) *fully describe how they are to be decommissioned; and*

(c) *if it is a revised decommissioning plan referred to in section 100C, identify the changes from the accepted decommissioning plan that it is intended to replace; and*

(d) *include any other information required by the regulations.*

Regulations may elaborate on the requirements under (a) to (c). Regulations, together with any guidance, are needed to ensure that the decommissioning plan requirements are clear and proportionate to the effects of the project. They should ensure that plans contain all the information needed to inform public discussions and regulatory decisions.

Submitters were generally supportive of the information we proposed to be included in a decommissioning plan. However, some industry submitters were of the view that the decommissioning plan should be a high level document setting out what infrastructure will be removed and what will remain without going into the specifics of how this might be undertaken. They expressed concern that prescribing detailed information to be included in a decommissioning plan may duplicate the requirements for information that must be provided for the subsequent marine consents.

The decommissioning plan is not intended to replace or duplicate the marine consent application process. It should deal with the high-level outcomes proposed (that is, what will be removed and what, if anything, will be left behind), and describe the implications of these in enough detail for the public to make informed submissions and for the regulator to come to a decision. The regulations will acknowledge that decommissioning plans will be prepared well in advance of decommissioning and will likely rely to some degree on estimates and assumptions.

Iwi submitters suggested that a cultural impact / values assessment also be included in the information to be provided as part of a decommissioning plan. However, while this may provide a useful tool for identifying and assessing cultural impacts, we do not want to limit how that information is presented. We note that this is often recommended and carried out for resource consent applications under the RMA however, it is not prescribed in legislation. We consider it is better to refer to the tools and mechanisms that could be used to provide the information that is required in regulations, in guidance which can be updated as practices and knowledge improve.

We have based the information to be included in a decommissioning plan on international best practice and the matters set out in the IMO Guidelines and Standards, and under the London Protocol. However, these have been tailored to be specific to the New Zealand context and take account of issues raised by submitters (**1b**). Our preferred approach is that the following information be included in a decommissioning plan:

a) **(3a) Background information** (3.1)

- a description of the existing environment
- a description of the items (installations, wells, structures and pipelines) to be decommissioned, including the amount, type, location, depth, size, stability, age and condition of all materials.
- a description and explanation of any related equipment not covered by the decommissioning plan

A description of the existing environment is also required for the later marine consents. However, if the proposed decommissioning approach is other than complete removal, a description of the existing environment will be necessary to understand potential effects and to justify the best practicable environmental option. A brief description is useful context for public discussion and decision-making in any case.

The descriptions reflect good practice in other jurisdictions, and setting down the requirements in regulations or guidance will make the regulatory system more clear and transparent. We consider that including these elements of background information will lead to a more informed and meaningful public consultation, and allow a more complete consideration of effects, consistent with the purpose of the Act.

b) **(3b) A description of the preferred approach and how the best practicable environmental outcome was determined** (3.3 and 3.4)

The proposed regulatory approach to decommissioning includes a general principle of complete removal, with a process for the regulator to assess proposals other than complete removal on a case-by-case basis. A case to abandon or incompletely remove elements of the infrastructure should be supported by a comparative assessment that demonstrates why that approach is the best option taking account of the matters listed in **2.1**. Plans that do not require a comparative assessment (i.e. where complete removal is proposed) will still need to demonstrate consideration of the matters listed in **2.1.**

c) **(3c) Proposed approach to decommissioning** (3.2 and 3.6)

- description of the preferred approach (which should result in the best practicable environmental outcome) including:
  - description of the anticipated method for the removal and / or disposal of material
  - description of any preparatory activities
  - a general description of how any waste generated will be dealt with
  - opportunities to reuse, recycle or treat materials
- an indicative schedule including:
  - an indication of the likely timescale for undertaking the proposed option, including when various stages of the decommissioning are expected to start and finish.

- post-decommissioning monitoring and maintenance
    - a description of any post-decommissioning monitoring and maintenance including seabed sampling surveys to monitor levels of hydrocarbons, heavy metals and other contaminants in sediments and biota
    - an indication of monitoring timeframes and how results will be reported
    - where material is to be dumped or abandoned on or above the seabed, a description of the anticipated inspection and maintenance programme and an estimation of the cost of the programme
    - a description of any engagement activities to be undertaken during and post-decommissioning.

We consider that these requirements will lead to a more informed consultation, clearer expectations for the operator, and better reflections of international good practice than the status quo (which sets out no explicit requirement).

Since the effects of specific activities on the environment and existing interests will be considered at the marine consent stage, it is not necessary to bind the operator to a programme of activities at the decommissioning plan stage. And since some of the activities may take place years after submission of the decommissioning plan, it is desirable to allow flexibility for operators to use methods that might not have been available or considered at the time the plan was accepted.

The descriptions are to provide context to demonstrate the feasibility of achieving the outcomes proposed and understand the likely environmental effects, but are not intended to restrict the operator to the programme of activities.

d) (3d) Wells (1.1)

- A list of all active, suspended and previously abandoned wells relating to the installation (that are not included as items to be decommissioned above)

While well plugging and abandonment may not always be part of decommissioning, it is expected that the decommissioning plan includes information about all wells related to an installation (including active, suspended and previously abandoned wells) to provide a complete picture of all the infrastructure remaining and how and when it will be dealt with.

e) (3e) Consultation and engagement (3.7)

- Details of any engagement strategy mutually developed with the relevant iwi authorities
- A description of the engagement carried out, which must include:
    - identifying the relevant marine management agencies, relevant iwi authorities and existing interests
    - providing information to those identified on options for the plan
    - seeking views from those identified, and considering those views in any

comparative assessment (if required)

- demonstrating the extent to which matters raised have been considered.

In order for the EPA to determine whether engagement has been satisfactorily carried out before it notifies the plan, it is necessary that the information be provided as part of the decommissioning plan. Following feedback, our preferred approach is that the consultation and engagement section also includes **(3f) details of any engagement strategy mutually developed with the relevant iwi authorities** (new option)**.**

Standard templates and guidance

Opinions were mixed on whether a standard template for decommissioning plans would be useful. Submitters generally considered that this might limit the ability for a case by case approach to be taken and could result in the information that is provided being limited to that set out in the template. One submitter noted that, given there are only four offshore fields that require decommissioning, there will not be many regular applications that necessitate consistency.

Most submitters were in support of guidance being issued to understand how decommissioning would work under the EEZ Act and the Resource Management Act 1991 (RMA). One industry submitter considered that prescriptive requirements should be included in the guidance document rather than regulations to provide greater flexibility. One submitter also supported the preparation of guidance material for when to prepare and submit a decommissioning plan.

Our preferred approach is that the regulations set out the minimum requirements in relation to the information to be included in a decommissioning plan but given feedback during consultation, **(3g)** we **do not consider that a template for providing that information is necessary**. Our preferred approach is that **guidance is developed to support the regulations**, in particular how decommissioning of infrastructure that spans the EEZ and coastal marine area should be dealt with under the respective legislation.

4. Process for dealing with a plan

A critical function of the decommissioning plan is to provide a forum for public consultation on the decommissioning project in an appropriate and meaningful way. Section 100D of the EEZ Act includes minimum requirements for public consultation to be included in the regulations, and we here consider how the regulator will make sure that sufficient engagement has occurred and that it is fit for public consultation before it is published, how it will deal with any sensitive information that might be included in a decommissioning plan, how long will be allowed for public consultation, and how it will request any further information.

Early engagement and consultation

The Government's intention with the introduction of decommissioning plans is to incentivise engagement between operators and marine management agencies, iwi and the public to agree the best overall approach to decommissioning. By undertaking engagement early and throughout the development of the plan it is more likely that issues can be identified and resolved before the formal public consultation process. Operators should identify relevant marine management agencies, relevant iwi and existing interests, whose views will inform the comparative assessment included in the plan.

The engagement process should be an ongoing, iterative dialogue between the operator or owner of the plan and other parties, identifying and resolving potential issues as far as is reasonably practicable before submission of the decommissioning plan to the EPA.

Most submitters agreed with our proposal to require that decommissioning plans include a description of the engagement carried out. However, industry submitters suggested that requirements around this consider the concept of 'best endeavours' to provide for those situations where stakeholders may be unwilling to engage. Conversely, iwi submitters considered it was important to ensure that the regulations provide for meaningful engagement that is not just a 'tick-box' exercise. Meaningful engagement included engaging early in the process in order to input into the decommissioning plan as opposed to responding to it.

The policy intent is that meaningful engagement occurs between operators, iwi and stakeholders early in the process so that issues are understood and resolved as far as possible before the plan is submitted to the EPA. However the regulations cannot prescribe how engagement must be undertaken as this is likely to change depending on the operator and its relationship with the different iwi and stakeholders, the type of installation being decommissioned and the proposed decommissioning options.

However, the EPA can determine on a case by case basis whether an operator has undertaken a satisfactory level of engagement before deciding to notify the plan. Therefore our preferred approach is to **(4a) establish in the regulations what constitutes appropriate consultation in line with requirements under section 3B of Schedule 1 of the Resource Management Act 1991 (RMA) for policy statements and plans** (new option).

Section 3B of Schedule 1 of the RMA sets out how local authorities must consult with iwi authorities in relation to the preparation of policy statements and plans. This provides a useful framework to prescribe a minimum standard for iwi engagement in relation to decommissioning plans.

For the purposes of these regulations, an operator would be treated as having engaged with iwi authorities in relation to the decommissioning plan, if the operator has demonstrated it has —

- considered ways in which it may foster the development of the relevant iwi's capacity to respond to an invitation to engage; and
- established and maintained processes to provide opportunities for those iwi authorities to input into the comparative assessment (if applicable); and
- developed a mutually determined engagement strategy
- consulted with those iwi authorities; and
- enabled those iwi authorities to identify issues of concern to them; and
- indicated how those issues have been or are to be addressed.

Notifying the plan

Once a decommissioning plan has been submitted and is considered by the EPA to contain

all the information set out in regulations, the EPA would publish the plan, or the relevant parts thereof, on its website and give public notice of the plan. We considered options with varying degrees of assessment required by the EPA and sought feedback on the different options.

All submitters preferred the options that required some level of assessment of the plan by the EPA before it was publicly notified. Iwi submitters were generally in favour of having the EPA assess the plan before public consultation, and only notifying plans it intends to accept whereas, industry submitters considered that undertaking a full assessment prior to notification was unnecessary given the EPA would assess the plan following public consultation.

When asked about their experience of submitting on marine consents and whether the quality of information was adequate to make an informed submission, some submitters considered that the information they were provided was inadequate due to the information not being complete prior to notification or being biased to the operators that have commissioned the information.

In light of the feedback received, our preferred approach is that **(4b) the EPA undertakes a limited assessment of the plan but requests any further information it considers necessary to be included in the plan before notifying it** (4.1). To assist submitters and decision-makers, we also propose that **(4c) the EPA prepares or commissions a report on what it considers to be the key matters relating to the decommissioning plan** (new option). This may include an indication of information it seeks through submissions and any advice it has received from other marine management agencies and the EPA's Maori Advisory Committee, Nga Kaihautu Tikanga Taiao (NKTT).

(4d) The EPA would publish the plan (and its own report) once it is satisfied that sufficient engagement has occurred to inform the comparative assessment and that the information in the plan is provided in sufficient detail (new option) meaning the information provided:

- is proportionate to the potential impact of the proposed approach on the environment and existing interests
- enables the EPA and the public to understand the nature of the activity and make informed submissions on the proposal
- enables the EPA to assess the plan against the criteria for acceptance (although this does not preclude the EPA from being able to request further information following submissions before making its decision).

Withholding sensitive information

Our preferred approach is that **(4e) the full decommissioning plan is made publicly available, as well as the public submissions received** (4.2). Section 158 of the EEZ Act provides for the EPA to withhold information in relation to proceedings—

(a) to avoid causing serious offence to tikanga Māori or to avoid disclosing the location of wāhi tapu; or

(b) to avoid disclosing a trade secret or to avoid causing unreasonable prejudice to the

commercial position of the person who supplied, or is the subject of, the information.

These provisions apply in relation to proceedings under the Act, but not in relation to the processing of a decommissioning plan. Engagement with industry indicated that it would be appropriate for the decommissioning plan process to also provide for sensitive information to be withheld from the published plan.

One submitter considered that the EPA should engage operators before publishing a plan to establish whether any information should be withheld. They suggested that the full decommissioning plan is likely to be extensive and technical in detail and therefore only a briefing document should be released.

One submitter considered that too much technical detail may be unhelpful, but that if information is withheld in error, then parties affected by poor decision-making should be compensated.

We consider that it is important that the decommissioning plan published for consultation includes all of the relevant information to inform submissions, including technical information and records of engagement, so that those involved in the development of the plan can see how their input has been taken into account. However, we consider that sensitive information will likely need to be protected in order for genuine and open engagement to take place, and in order for the regulator to be provided with sufficiently complete information to inform decision-making.

Our preferred approach is to provide for both **(4f) information that is provided during engagement (e.g. culturally sensitive information) to be withheld at the request of the consultee and for commercially sensitive information to be withheld at the request of the owner of the decommissioning plan** (4.3). Our preferred approach is that the regulations reflect the requirements for proceedings under the EEZ Act in terms of the grounds for withholding information (set out above) and the circumstances under which the EPA may decide to release information that has been the subject of a request to withhold:

- the EPA may not withhold information if, in the circumstances of the particular case, the public interest in making the information available outweighs the importance of avoiding such offence, disclosure, or prejudice.

Public consultation and submissions

Section 100D (3) of the EEZ Act states that:

Regulations are to be regarded as providing for public consultation in relation to a plan if the regulations—

- require the EPA to publicly notify the plan; and
- allow any person who wishes to make a submission about the plan a reasonable opportunity to do so; and
- require the owner or operator of the offshore installation, structure, submarine pipeline, or submarine cable to consider each submission and either—
- amend the plan in response to the submission; or
- explain to the EPA why it does not propose to amend the plan in response to the

submission.

Five submitters supported the proposed timeframe for submissions (30 day minimum) and one supported a timeframe proportionate to the scale of the application. One industry submitter also recommended that a maximum timeframe be included.

Our preferred approach is that regulations **(4g) allow the EPA to set the consultation period for each decommissioning plan, of no less than 30 working days** (4.3) We consider that this would allow the greatest flexibility for the submission period to be set on a case-by-case basis for a period appropriate to the complexity of the proposals, and that it is more likely to allow for considerations proportionate to the level of effects. Setting the minimum consultation period at 30 working days would give greater scope for the EPA to adjust the period to be proportionate to the complexity of the proposal and scale of effects, compared with setting a longer minimum period.

The EEZ Act allows, in sections 159 and 160, that the EPA may extend a time period specified in the Act or in regulations, whether or not the time period has expired, if it has taken into account—

- the interests of any person who, in the regulator's opinion, may be directly affected by the length of the consultation period; and
- the interests of the community in being able to achieve an adequate assessment of the potential effects of a proposal.

Our preferred approach is also to require that **(4h) submissions be provided to the EPA and to the owner of the draft decommissioning plan**

As required under section 100D(3), the regulations must also provide for the owner of the decommissioning plan to consider submissions and either amend and provide a final decommissioning plan in response or explain why it does not propose to amend the plan in response to submissions.

Commissioning advice / further information

Submitters agreed that the EPA should be able to request further information at any stage of the process to enable it to carry out its functions, with one suggesting that a "good practice" approach similar to the RMA should be applied so that further information requests and responses are received before publicly notifying the application.

This is reflected in our preferred approach which is that the **(4b) EPA assesses and requests any further information it considers necessary to be included in the plan before it is publicly notified**. This will ensure that the decommissioning plan includes all the information necessary to enable the public to make an informed submission. However, **(4i) the EPA may still seek information throughout the process in order to fulfil its functions**. For example, it may need to commission advice following new information that comes to light as a result of the consultation process.

Several submitters expressed concern about our proposal not to require a hearing as part of the public consultation process. The EPA's acceptance or otherwise of a decommissioning plan is not an approval for the operator to undertake work as this will occur as part of the future marine consents. However, the EPA has general powers to do what is reasonably necessary to carry out its functions, therefore the EPA may hold meetings with submitters if it

considered this was appropriate. The purpose of any meeting would to be to clarify the information provided in written submissions. It would not grant additional rights to those submitters.

5. Assessing and accepting a plan

Section 100B (1)(b) states that:

When a decommissioning plan is submitted, the Environmental Protection Authority must—

(b) assess the plan against the criteria prescribed by the regulations.

Sections 100B (2), (3) and (4) then set out what the EPA must do once it has assessed the plan against the criteria set out in regulations:

(2) Having assessed the plan, the EPA must,—

- *if it is satisfied that the plan meets those criteria, accept the plan as the accepted decommissioning plan for the installations, structures, pipelines, and cables to which it relates; or*
- *otherwise, refuse to accept the plan.*

(3) To avoid doubt, the EPA may refuse to accept a plan if it considers that it does not have adequate information to determine whether it meets the criteria.

(4) The EPA must give to the owner or operator—

- *written notice of its decision under subsection (2); and*
- *if it refuses to accept the plan, written reasons for that decision.*

Criteria for assessing a plan

The criteria for assessing and accepting a plan were informed by the matters set out in the IMO Guidelines and Standards, and under the London Protocol. Submitters generally supported the proposed criteria but all had further comments for improvement.

Iwi submitters generally did not consider that cost effectiveness should be a consideration when determining whether to accept a plan but supported the notion of the preferred option being one that is likely to deliver most benefit and least harm. One iwi/ hapū submitter suggests that a cultural monitoring regime relating to identified cultural indicators be included with the criteria for accepting a decommissioning plan. In order for the EPA to grant a marine dumping consent under the EEZ Act (following acceptance of the decommissioning plan), the EEZ Act requires the EPA to consider alternative methods of disposal and it must refuse an application if there are practical opportunities to reuse, recycle or treat the material without imposing unreasonable costs. Therefore it is appropriate for the EPA to consider costs (and alternatives) when assessing and accepting the decommissioning plan.

We did not consult on the weighting that should be applied to different matters and our preferred approach is not to specify this in the regulations. Doing so would not align with how matters set out under the EEZ Act are currently considered for marine consents nor does it align with international best practice. However, we consider that the criteria proposed, and the purpose of the EEZ Act, will ensure that only those options that result in the best

environmental option (taking account of other factors) will be accepted and progressed.

Through the consultation it was highlighted that technical feasibility is not an appropriate proxy for health and safety as there are situations where an action may be technically feasible (e.g. using divers to cut subsurface piles) but poses a high safety risk. Industry submitters considered health and safety to be one of the main drivers for determining a preferred option. Therefore, our preferred approach is now to **(5a) explicitly provide for consideration of the risk of injury to personnel in the comparative assessment and criteria for accepting a plan** (3.5). This also reflects international best practice.

Our preferred option is for the EPA to accept a decommissioning plan, it must be **(5b) satisfied that it has adequately considered and responded to the matters raised during public consultation or the operator has provided an adequate justification as to why it proposes not to amend the plan in response** (3.7). In addition, where the preferred approach in a decommissioning plan is to dump or abandon material in-situ (structures, installations or pipelines), our preferred option is that **(5c) the EPA may only accept the plan if it considers** (2.2):

a) the abandonment in-situ or dumping of the material complies with New Zealand's international obligations with respect to the dumping of waste

b) the abandonment in-situ or dumping of the material will not cause unjustifiable interference with existing interests

c) the abandonment in-situ or dumping of the material results in the best practicable environmental outcome

d) entire removal is not technically feasible, would involve an unacceptable risk of injury to personnel or would involve an unreasonable cost

e) there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs.

The best practicable environmental outcome means the best outcome for the environment, taking account of the effect on cultural values and existing interests that is technically feasible without imposing an unreasonable cost or unacceptable risk of injury to personnel.

Submitters agreed with our proposal to **(5d) apply the same criteria to pipelines as is to be applied to installations and structures** (2.2), despite the fact that neither of the guidelines that the criteria have been based on directly relate to the removal or abandonment of pipelines.

Accepting the plan

Our preferred approach is that **(5e) the EPA be required to consult with other relevant marine management agencies and iwi authorities as necessary throughout the process, and before determining whether to accept a plan or not** (new option)**.**

Some submitters agreed that a non-exhaustive list of parties could be provided, with one submitter listing the Climate Change Commission as a necessary party. Our preferred approach is to provide for **(5f) the EPA to seek advice or information from any persons it considers necessary throughout the process but require it to consult with other relevant marine management agencies and iwi authorities when reaching a view on the best practicable environmental outcome before determining whether to accept a**

plan or not (new option). The relevant iwi authorities would depend on the region adjacent to where the decommissioning activities are taking place. Other relevant agencies are likely to include:

- the relevant regional council(s)
- WorkSafe New Zealand
- Maritime New Zealand
- Department of Conservation
- Ministry for Primary Industries
- Ministry of Business, Innovation and Employment.

After consulting with other relevant marine management agencies and iwi authorities, and after considering any further information or advice sought, the EPA must either accept or reject the plan and notify the owner of its decision.

The final decommissioning plan and a summary of the plan, once accepted, must be published on the EPA website.

6. Amending an accepted decommissioning plan

Section 100D of the EEZ Act provides for owners of offshore installations with accepted decommissioning plans to submit a revised plan to the EPA. In relation to the process for dealing with the revised plan, regulations may provide for either or both of the following:

(a) that public consultation is required only in relation to the changes from the current plan to the revised plan

(b) that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan.

Submitters were in general agreement that the regulations should provide for (a) above but views were mixed about whether the EPA should be able to decide if it was necessary to consult on changes to a plan. Some suggested that the EPA notify the changes in the revised plan to those who had made a submission on the current plan except where the changes were administrative in nature. However, the Act does not provide for the EPA to carry out limited notification or public consultation.

Our preferred option is to **(6a) provide for both (a) and (b) of section 100D(2)** (4.4). This recognises there are likely to be minor changes to a plan not resulting in effects greater or materially different than those previously considered and subjected to public consultation. By providing for (b) the EPA will have to determine the scale of impact of the changes in the revised plan and if it deems these to be more than what was previously consulted on, it would undertake a further public submission process. This would ensure that those submitters, and any potential new submitters, are given the opportunity to comment on the revised plan where the changes are beyond administrative matters and may result in a

greater effect on the environment or existing interests.

In addition to providing for (a) and (b) above, and to assist the EPA in reaching a view on whether public consultation on changes to a plan is required, our preferred approach is that **(6b) the EPA may seek further information or advice from any persons, including those it considers may have existing interests affected by the changes to the accepted decommissioning plan** (new option).

7. Cost recovery for decommissioning plans

As a result of these regulations, the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2015 will need to be amended to enable the EPA to recover the costs associated with processing and assessing a decommissioning plan.

Submitters agreed that the EPA should be able to recover costs apart from one submitter who suggested that cost sharing may be more appropriate, with a fixed fee favoured.

In discussion with the EPA, we agree that it is appropriate to **(7) cost recover in the same manner currently undertaken for marine consents i.e., on an hourly charge rate basis**. While other jurisdictions charge a fixed fee for processing decommissioning plans based on the type of installation, these are based on known costs from experience of processing decommissioning plans. Given no decommissioning has occurred in New Zealand, it is not possible to estimate with confidence what an appropriate fixed fee would be. And given the relatively low number of offshore oil and gas installations in New Zealand, we do not think it is necessary to establish a new fees regime specifically for decommissioning.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties *(identify)*	**Comment**: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	**Impact** *$m present value, for monetised impacts; high, medium or low for non-monetised impacts*
Additional costs of proposed approach, compared to taking no action		
Regulated parties	Will bear cost of preparing and consulting on decommissioning plan, including cost recovery of processing costs. If regulations lead to operators pursuing more complete removal than they would have otherwise, actual costs associated with decommissioning will be increased.	Costs could range from approximately $200,000 to $500,000 to assess and accept a decommissioning plan. This estimate is based on indicative fees charged in the UK[2] for assessing decommissioning plans for a range of different facilities. It costs around $100,000 to $450,000 for the EPA to process non-notified discretionary marine consents (consent applications submitted in accordance with an accepted decommissioning plan will be non-notified). When considered in the context of the estimated cost of decommissioning (between $100 million and $2 billion depending on the type of installation), the cost associated with preparing a decommissioning plan and associated marine consent is minor.
Regulators	Resourcing for processing decommissioning plans—this is cost-recoverable from the operator. Resourcing for engaging with operators during the preparation of the plan—this is	The functions required of the regulator (EPA) will be significant, but will be cost-recoverable.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43418/5796-decomm-fees.pdf

	cost-recoverable from the operator.	
Wider government	Under current tax settings, the Crown may be liable for up to 48% of decommissioning costs. If regulations lead to operators pursuing more complete removal than they would have otherwise, actual decommissioning costs will be increased. There could be costs to related agencies associated with engaging with operators during the preparation of the plan.	It is uncertain to what degree the actual costs of decommissioning will be altered.
Other parties	Submitters—some additional cost from being involved in the new project-level plan but is more efficient than submitting several times on separate marine consents.	Unknown, but likely to be low.
Total Monetised Cost	The scale of monetised costs is uncertain, and will largely depend on the number and complexity of decommissioning plans processed.	Not able to be calculated at this time, as possible number and complexity of plan applications is unknown
Environment	If regulations lead to operators pursuing more complete removal than they would have otherwise, there may be short-term costs to the environment that result from removal of infrastructure however there is unlikely to be long-term costs associated with this. For example, if infrastructure is providing a substrate for any organisms then removal will create disturbance. In the event that the preferred approach to decommissioning is to abandon some or all of the infrastructure, the regulations will ensure that any longer-term costs to the environment are understood and acceptable to the public and decision-makers.	Medium
Total Non-monetised costs	Impact will depend on the scale of any damage resulting from removal of infrastructure or any damage or long-term effects resulting from abandonment	Medium

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	Will have cost savings in relation to consultation on later marine consent applications, as consultation moved onto decommissioning plan. There are likely to be multiple consents/bundles of consents covered by each decommissioning plan.	As noted, non-notified discretionary marine consent processing costs are typically in the range of $100,000 to $450,000, while notified discretionary marine consent processing costs are

		typically in the range of $250,000 to $1,500,000. A key fiscal impact of the proposed policy would be to front-load the costs of consultation into the decommissioning-plan process (rather than the later marine consent).
Regulators	Front-ending process through a decommissioning plan provides for a more holistic view of the outcomes of a decommissioning work programme. It also better manages the risks around the approach to decommissioning projects being acceptable to the public.	Unknown, but likely to be low or medium.
Wider government	Reduced risk. If regulations result in operators removing more than they would have otherwise, the risk of costs arising from abandoned infrastructure will be decreased.	Unknown.
Other parties	Submitters—moving consultation to the project-level plan should enable submitters to direct resource more efficiently and effectively, rather than submitting several times on different pieces of the project. Improved environmental outcomes—the proposed policy would ensure that decommissioning proposals are carefully considered, and incomplete removal is only allowed where it is the best option.	Submitters are expected to gain a medium level of benefit.
Total Monetised Benefit	The scale of monetised benefits is uncertain, and will largely depend on the number of decommissioning plans and related marine consent applications.	Not able to be calculated at this time, as possible number of plan and consent applications is unknown.
Environment	The decommissioning plan is able to provide a holistic and high-level view of the entire decommissioning process which allows stakeholders to consider the environmental outcomes of the proposal as a whole. In the event that incomplete removal is the preferred option the operator will have to demonstrate that the proposed approach is the best practicable environmental outcome by assessing and ranking all available options. There is an incentive for operators to plan for decommissioning which provides	*High*

	more certainty that operators will not default on their obligations.	
Non-monetised benefits	The scale of benefit relative to the process as it currently stands will be different case-by-case however if an operator were to default the environmental costs to this could be high relative to complete removal	*Medium-high*

4.2 What other impacts is this approach likely to have?

There is significant uncertainty about the scale of the costs and benefits of the proposed policy. However, broadly speaking, the policy is likely to—

- bring costs associated with consultation forward (on the decommissioning plan rather than the later consents).
- encourage more complete removal than the status quo, resulting in more certain environmental outcomes, and also higher costs to operators and the Crown. This could also result in increased economic activity for a period of time.
- improve clarity for all parties. This could include more certainty for owners of infrastructure and future investors, as well as for government and communities.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

We engaged with iwi, industry, central and local government to develop policy proposals ahead of undertaking wider public consultation:

- Iwi in Taranaki have existing interests in the coastal marine area and wider cultural interests in the region, and have a history of engagement with operators. We invited the eight iwi in the Taranaki region to discuss early thinking on policy for regulations for decommissioning offshore oil and gas infrastructure. Representatives of six organisations (Ngāti Tama o Taranaki; Te Kotahitanga o Te Atiawa Trust; Te Kāhui o Taranaki Trust; Te Kaahui o Rauru; Te Korowai o Ngāruahine Trust; and Te Rūnanga o Ngāti Ruanui Trust) engaged in discussions and contributed perspectives. We addressed some of the points they raised in the policy development as follows:
    - Consideration and weighting of cultural values was incorporated in comparative assessment
    - Presumption for complete removal was endorsed
    - Requirements to describe engagement with relevant iwi were incorporated
    - EPA assessment of the adequacy of early engagement was proposed
    - Some concerns were raised about the wider regime that could not be addressed through these regulations but have been retained for consideration in future policy work.
- We provided an embargoed copy of a draft discussion document to the iwi organisations listed above, and received comments from Te Runanga o Ngāti Ruanui Trust, Te Korowai o Ngāruahine Trust and Te Kaahui o Rauru. As a result, the policy proposals were revised to include a requirement for operators to describe engagement during and after decommissioning, clarifications were made to the discussion document, and other in-scope comments have been retained for further consideration in the context of any views expressed during public consultation.
- The Petroleum Exploration and Production Association of New Zealand (PEPANZ) is the industry body representing regulated parties. Representatives from PEPANZ participated in a workshop early in policy development. Some of the perspectives shared have been incorporated in policy development, in particular:
    - Flexibility for treatment of well P&A activities in or out of decommissioning plan.
    - Indicative timing to be non-binding to allow for flexible planning.
    - Criteria to be incorporated directly into regulations (rather than by reference to an international standard) to avoid potentially conflicting criteria.
- Taranaki Regional Council (TRC) is the regulator concerned with petroleum infrastructure onshore and in the territorial sea in the region where current installations are operating. Representatives from TRC have been consulted during policy development, especially regarding cross-boundary issues between the EEZ and territorial sea.
- Staff from EPA, Ministry for Business, Innovation and Employment (MBIE) and Ministry for the Environment (MfE) have been involved in the working group developing this policy. These agencies, as well as Inland Revenue Department (IRD), WorkSafe New Zealand, and TRC, are represented in a governance group overseeing the project, chaired by MBIE.
- We also consulted with Ministry for Primary Industries, Te Puni Kōkiri (TPK), Department of Conservation (DOC), and Ministry for Foreign Affairs and Trade

(MFAT) on the policy proposals.

A discussion document was released for public consultation in July 2018. Appendix 3 includes the questions asked in the discussion document and feedback received. The way in which that feedback has shaped the policy proposals is set out in this RIS under the different headings in section 3.2.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposed approach would be given effect through regulations made under Section 29E of the Act, and potentially supporting guidance. The industry organisation representing the regulated parties (PEPANZ) has been involved in the development of the regulations, and we would continue to communicate through that body. Since decommissioning of current facilities has not yet begun, there would be no transitional arrangements.

Responsibilities for the EEZ Act are largely split between MfE and the EPA. MfE largely administers the EEZ Act and its implementing regulations and policies.
The EPA is responsible for processing and/or considering applications for marine consents, monitoring compliance with the EEZ Act and any conditions on marine consents, carrying out enforcement, and promoting public awareness of the requirements of the EEZ Act and associated regulations. The EPA would be responsible for ongoing operation and enforcement of the new arrangements, as the decision-maker on decommissioning plans submitted for acceptance, and as the agency most involved in advance planning discussions with operators.

The new arrangements would come into effect as soon as regulations were made – likely end-2019. We understand that regulated parties would prefer to have certainty about the requirements as soon as possible.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

MfE has a responsibility in its regulatory stewardship role to monitor, review and report on regulatory systems.

Any functions relating to decommissioning would be monitored, evaluated and reviewed as part of the wider EEZ Act framework. This includes monitoring the ongoing performance of the system and reviewing it at appropriate intervals to determine whether it is still fit for purpose.

Further consideration will be given to appropriate measures for monitoring decommissioning arrangements when regulations and guidance are developed to implement the proposed policy.

7.2 When and how will the new arrangements be reviewed?

MfE would carry out any monitoring, evaluation or review as the responsible agency, which may include:

- evaluation of costs and the effectiveness of all EEZ functions including those related to decommissioning activities
- evaluation of how effective the EPA and other management agencies are in meeting the purpose of the Act.

Appendix 1: Preferred policy approach and objectives for the regulations. The table also highlights the related policy options that were considered prior to consultation (as set out in the pre-consultation RIS) and the related questions that were asked in the disucssion document which have informed the preferred policy approach

	Preferred policy approach	Related policy options considered (see Appendix 2)	International obligations/ practice	Efficient/ proportionate	clear/ flexible	consultation	Related questions asked in consultation (see Appendix 3)
General approach to decommissioning	**1a** structures must be removed from the seabed unless there are reasons for them to remain	2.1	✓✓	✓	✓	✓	Q19
	1b Apply existing frameworks but tailor this to be specific to the New Zealand context	2.2	✓✓	✓✓	✓✓	-	Q18
	1c decommissioning activities are those activities that must be carried out in order to take an offshore installation including its associated structures, cables and pipelines out of service. It does not include (1) activities to be undertaken at an offshore installation while the installation is still processing petroleum, (2) restricted activities already authorised under a marine consent or, (3) any restricted activities associated with re-using the offshore installation to serve a purpose other than that which it was originally intended for. **1d** Our approach is not to set out a list of activities for the decommissioning of an offshore installation	1.1, 1.2, 1.3	✓✓	✓✓	✓✓	-	Q1
Comparative assessments	**2a** where dumping or abandonnment of a structure is the proposed approach, a decommissioning plan will be required to include a comparative assessment that assesses all available options and ranks them demonstrating the best practicable environmental option	2.1, 2.2, 3.3, 3.4, 3.5	✓✓	✓✓	✓✓	✓✓	Q3
	2b a comparative assessment is not required if the operator is seeking to remove its installations except for **2c** pipeline proposals, which must be supported by a comparative assessment of available options	2.1	✓	✓	✓	✓	Q4, Q5
	2d the decommissioning plan will identify the practical limitations (for e.g. cost, technical feasibility and health and safety risks) of disposal alternatives and include information on the cost of re-use, recycling and treating items for disposal	2.2	✓	✓	✓	✓✓	Q18
Information to be included in a decommissioning plan	**3a** background information will include a description of the existing environment, a description of the items to be decommissioned, and a description and explanation of any related equipment not covered by the decommissioniong plan	3.1	✓	✓	✓	✓	Q2
	3b the plan will include a description of the preferred approach and how the best practicable environmental outcome was determined	3.3, 3.4	✓	✓	✓✓	-	Q2
	3c the assessment should include a description of the preferred approach including methods and schedule for decommissioning, and descriptions for preparatory and follow-up activities. The description will not restrict the operator to the programme of activities	3.2, 3.6	✓	-	✓✓	✓	Q2
	3d a plan will include information about all wells related to a plan even if P&A is not captured	1.1	-	✓	✓✓	✓	Q2

	3e the plan should include a description of the engagement carried out which must include (1) identifying the relevant marine management agencies, relevant iwi authority and existing interests and (2) providing information to those identified on options for the plan and (3) seeking views from those identified and considering those views in any comparative assessment and (3) demonstrating the extent to which matters raised have been considered	3.7	✓	✓	✓	✓✓	Q2, Q7
	3f the consultation and engagement section should also include details of any engagement strategy mutually developed with the relevant iwi authority	new option identified following consultation	-	✓✓	✓✓	✓✓	Q7
	3g a template for decommissioning plans is not necessary	n/a	-	-	-	-	Q6
Process for dealing with a plan	**4a t**he regulations will establish what constitutes appropriate consultation in line with requirements under section 3B of Schedule 1 of the Resource Management Act 1991	new option identified following consultation	-	✓	✓✓	✓✓	Q7
	4b the regulator will perform a limited assessment of the plan but can request further information before notifying it	4.1	-	✓✓	✓✓	✓	Q8, Q9, Q13
	4c the EPA will prepare or commission a report on what it considers to be the key matters relating to the decommissioning plan, including any advice it has received from the EPA's Maori Advisory Committee, Nga Kaihautu Tikanga Taiaoand, and **4d** the EPA will publish the plan (and its own report) once it is satisfied that sufficient engagement has occurred and that the information in the plan is sufficient	new option identified following consultation	-	✓✓	✓✓	✓✓	Q8, Q9
	4e the full decommissioning plan and public submissions should be made publicly available, however **4f** the EPA can withhold culturally and commercially sensitive information at the request of the consultee and the operator	4.2	-	✓	✓	✓✓	Q10
	4g the EPA may set the consultation period based on the complexity of the plan at a minimum consultation period of 30 working days	4.3	-	✓✓	✓	✓	Q11
	4h submissions will be provided to the EPA and to the owner of the draft decommissioning plan	n/a	-	-	-	-	n/a
	4i the EPA may still seek information throughout the process in order to fulfill its functions	n/a	-	✓✓	✓✓	✓✓	Q13
	5a explicitly provide for consideration of the risk of injury to personnel in the comparative assessment and criteria for accepting a plan	3.5	✓	✓	✓	-	Q7
	5b the EPA must be satisfied that the operator has adequately considered and responded to the matters raised during public consultation or the operator has provided an adequate justification as to why it proposes not to amend the plan in response	3.7	✓	✓	✓	✓✓	Q18

Criteria for assessing and accepting a plan	**5c** the EPA may only accept the plan if it considers: (a) the abandonment in-situ or dumping of the material complies with New Zealand's international obligations, (b) the abandonment or dumping of the material will not cause unjustifiable interference with existing interests, (c) the abandonment or dumping of the material results in the BPEO, (d) entire removal is not technically feasible, would involve an unacceptable risk of injury or would involve an unreasonable cost, and (e) there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs	2.2	✓✓	✓✓	✓	✓✓	Q18
	5d the same criteria is applied to pipelines as is applied to installations and structures	2.2	✓✓	✓	✓	✓	Q17
	5e and 5f the EPA will seek advice or information from any persons it considers necessary throughout the process, however will be required to consult with other relevant marine management agencies and iwi authorities as necessary throughout the process and when reaching a view on the BPEO before determining whether to accept a plan or not	new option identified following consultation	-	✓✓	✓✓	✓✓	Q12, Q13
Amendments to a decommissioning plan	**6a** the regulations will provide for both (a) that public consultation is required only in relation to the changes from the current plan to the revised plan, and (b) that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised plan would not be materially different from, or would be less than, the effect of implementing the current plan	4.4	-	✓	✓	✓	Q 15, 16
	6b further to 6a, the EPA may seek further information or advice from any persons, including those it considers may have existing interests affected by the changes to the accepted decommissioning plan	new option identified following consultation	-	✓✓	✓	✓	Q13
Cost recovery	**7** the EPA will recover costs via an hourly charge rate basis	n/a	-	✓✓	✓✓	-	Q14

Appendix 2: list of options developed in the pre-consultation RIS

Below is a list of options developed in relation to the decommissioning regulations. Ministry for the Environment's preferred options pre-consultation are highlighted in bold. Note that some of these have changed or been further developed since receiving submissions. Options that are not highlighted have previously been evaluated and were determined not to best meet the objectives of the regulations.

The numbering used here relates to the numbering assigned to each option in the pre-consultation RIS.

General approach to decommissioning

1.1 Well plugging and abandonment

P&A is an activity that is already captured by the Health and Safety at work Act 2015 and associated regulations, which require that P&A be completed once a well is no longer in use, even if the field is still in use. However, P&A is still a critical part of decommissioning. We considered that P&A could be addressed by:

a) requiring consent applications that relate to P&A to be covered by an accepted decommissioning plan
b) excluding P&A activities from the requirements for a decommissioning plan
c) **allowing flexibility for P&A to be progressed either under an accepted decommissioning plan and subsequent non-notified consent(s), or under fully notified marine consents**.

1.2 Drill cuttings

Cuttings piles have been deposited on the seabed from previous drilling activities and generally contain drilling fluids. Moving or disturbing these piles is likely to have negative environmental effects. We considered that P&A could be addressed by:

a) requiring decommissioning plans to include proposals for dealing with cuttings piles
b) **providing for consideration in the decommissioning plan of the effects of disturbing cuttings piles, in relation to proposals for site remediation or dealing with other infrastructure**.

1.3 New use (this has changed since receiving submissions)

Some production infrastructure could be intended for re-use at the end of its life. Activities associated with re-use could be addressed by:

a) including the re-use activities as a type of decommissioning activity
b) **excluding the re-use of activities from the scope of decommissioning (status quo**).
c) including only reefing as a type of decommissioning activity.

Comparative assessments

2.1 Identifying the preferred approach to decommissioning projects

Any approach that involves the dumping or abandonment of any part of the installation or structure (i.e. any approach other than complete removal) will require dumping consent(s) under the EEZ Act.

In coming to a decision about how a comparative assessment can inform on a decommissioning option, the regulations could provide that:

a) **for installations and structures complete removal is presumed, and proposals for incomplete removal must be supported by a comparative assessment**
b) in conjunction with option (a), a comparative assessment of options for decommissioning a pipeline is only required if a plan proposes to abandon or partially abandon a pipeline
c) in conjunction with option (a), **all pipeline proposals must be supported by a comparative assessment of available options**
d) a comparative assessment is required to support all proposals.

3.3 Comparative assessment methodology

The assessment should use a robust, consistent methodology to identify the preferred option. It could use:

a) **ALARP**- 'as low as reasonably practicable'
b) **BPEO**- 'best practicable environmental outcome'
c) a methodology set out in regulations or guidance.

Information to be included in a decommissioning plan

3.1 Background information

The regulations may elaborate on the identifying information required. International good practice examples suggest requirements similar to the following:

a) **a description of the material (installations, structures, pipelines) to be decommissioned including the amount, type, location, surveyed depth, size, stability, age and condition of the material**
b) **a description of the existing environment**.

3.2 A description of the proposed approach to the decommissioning project

The requirement for the operator to fully describe how the installations, structures, pipelines and cables are to be decommissioned is somewhat open to interpretation. It should deal with the high-level outcomes proposed (that is, what will be removed and what, if anything, will be left behind), and describe the implications in enough detail for the public to make informed decisions. We could consider it would be necessary to include, at least briefly:

a) **a description of anticipated methods for undertaking decommissioning of material and an indicative schedule**
b) **a description of activities associated with preparation of the site for decommissioning and/ or activities following from decommissioning**.

In conjunction with (a) and/ or (b) above, acceptance of the plan could either:

c) accept the description as part of the plan, and restrict the operator to the programme of activities described, or
d) **consider the description as context** which demonstrates the feasibility of achieving the outcomes proposed and describes the likely environmental effects, but does not restrict the operator to the programme of activities.

3.4 Cultural values

The EEZ Act contains a more limited consideration of cultural values in decision-making than the RMA. Only those cultural values or customary rights that are captured within the definition of "existing interests" are explicitly required to be considered in existing processes. However, this does not preclude the consideration of cultural values in regulations, and these regulations could provide that:

a) explicit consideration of cultural values is limited to the "effects on existing interests" (status quo)
b) **wider cultural values are given weight in comparative assessments of decommissioning options**.

3.7 Engagement and consultation

In order to meet the requirement of "providing for public consultation" under section 100D of the EEZ Act, the plan could:

a) require the plan to describe engagement and consultation undertaken with relevant iwi, agencies, existing interests and the public
b) in conjunction with option (a), **require the plan to demonstrate that the operator has assessed the merits of feedback from engagement and consultation, and has taken it into account in the identification of the preferred option**
c) in conjunction with option (a), **require the plan to describe any engagement activities to be undertaken during and post-decommissioning**.

3.5 Safety implications of removal (this has changed since receiving submissions)

Some consideration of safety is considered necessary in order to avoid the situation that an operator is bound to a course of action under the EEZ regulations that, under health and safety legislation, they are unable to undertake. The regulations could:

a) consider safety explicitly in a comparative assessment
b) **consider safety as part of technical feasibility**.

3.6 Waste streams

Any dumping or abandonment in the EEZ would be subject to marine dumping consent, which includes consideration of the effects of dumping as well as alternative methods of disposal and practical opportunities to reuse, recycle, or treat waste. Re-use, recycling or final disposal outside the EEZ is subject to other regimes, where the effects can best be considered. The policy could provide that:

a) waste streams are not considered
b) the plan must give effect to the principles of the waste hierarchy
c) the plan must demonstrate that disposal of any waste can technically and legally be accomplished.

Process for dealing with a decommissioning plan

4.1 Making sure the plan is fit for public consultation

In order for public consultation on the plan to be meaningful, the regulator should be certain that the plan contains all the relevant information at the time of notification. It should also be certain

that adequate engagement has taken place in the preparation of the draft plan. The policy could make sure that decommissioning plans are fit for public consultation by:

a) including no gateway step (status quo). The regulator would publish any decommissioning plan submitted for acceptance
b) including an administrative exercise such as a "concordance document"
c) **having the regulator perform a limited assessment of the plan**
d) having the regulator assess the plan before public consultation, and notify only the plans it intends to accept.

4.2 Dealing with sensitive information

The policy could provide for the EPA to:

a) publish all parts of a plan (status quo)
b) withhold information provided during engagement (eg, culturally sensitive information) at the request of the consultee
c) withhold commercially sensitive information at the request of the operator.

We considered that it was most appropriate to seek more information about these options and preferences toward them through public consultation before deciding on a preferred option.

4.3 Notification period

The regulations could:

a) set the default period for consultation
b) **allow the EPA to set the consultation period based on the complexity of the plan**
c) **in conjunction with option (a) or (b), require a minimum consultation period of 30 working days**
d) in conjunction with option (a) or (b), require a longer minimum period for consultation.

Criteria for assessing and accepting a plan

2.2 Use of existing frameworks

Several frameworks for decommissioning have been established under international conventions and in the domestic context of other jurisdictions. In New Zealand, information requirements and decision-making criteria could:

a) codify the 1989 IMO Guidelines and Standards for the Removal of Offshore installations and Structures on the Continental Shelf and in the Exclusive Economic Zone
b) adopt another international framework (eg, Norway or the UK)
c) tailor the content to be specific to the New Zealand context
d) include relevant provisions of specific guidance under the London Convention and Protocol.

Amendments to a decommissioning plan

4.4 Revised plans

The regulations can provide for either or both of the following:

a) **that public consultation is required only in relation to the changes from the current plan to the revised plan**
b) **that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan**.

Cost recovery

No options for cost recovery were discussed in the pre-consultation RIS.

Appendix 3: Summary of submissions responding to proposals on decommissioning regulations

In July 2018, Cabinet approved the release of a discussion document for public consultation on policy proposals for decommissioning regulations for offshore petroleum installations under the EEZ Act. Following a 10 week consultation period, nine submissions were received. Four from industry, three from iwi, one from a regional council, and one from a community group.

This document lists the questions asked in the discussion document and provides a high level summary of the responses received. It does not provide an analysis of those submissions in relation to further development of the policy. This is provided in the regulatory impact summary.

What to define as a decommissioning activity

Do you agree with the Government's proposal not to specifically list the activities for which section 38(3) applies? (question 1)

Submitters generally agreed with our proposal not to specifically list activities given the need for flexibility, although some considered a non-exhaustive list could be useful. However, all submitters considered that the term 'decommissioning' needed to be defined either within the regulations or through a guidance document. Submitters were concerned that decommissioning plans would be required for activities that are not intended to be 'true' decommissioning (such as plugging and abandonment of wells which is a requirement under Health and Safety Regulations 2016, or repair and maintenance activities during normal operations).

A number of submitters supplied an example list of exceptions and definitions as templates.

General approach to decommissioning plans

Do you agree that a case by case approach should be taken to determine how installations, structures and pipelines should be dealt with? (question 19)

All submitters that responded to this question supported a case-by-case approach although one submitter was wary of too much flexibility, considering robust policy necessary. In contrast an industry submitter considered that the regulations needed to be flexible so as not to impose cost burdens that are inconsistent with permits and environmental consents obtained at the beginning of a project.

Information to be included in a decommissioning plan

Do you agree with the information requirements for a decommissioning plan? If not, what do you think should be required in a decommissioning plan? (question 2)

Four submitters agreed with our proposals to require, as a minimum, a description of the:

- existing environment including material to be decommissioned
- proposed approach to decommissioning
- schedule for decommissioning
- post-decommissioning monitoring and maintenance.

Others either didn't supply an opinion, or had some concerns with the information requirements. This included:

- that the information requirements for iwi/ hapū engagement did not go far enough to ensure that proper consultation will take place. It was suggested there be a requirement for operators to provide a cultural impact assessment (CIA) and that the

plan includes detail about feedback received from iwi/ hapū, as well as the response to that feedback

- that the information required is too prescriptive and detailed, potentially duplicating the subsequent marine consent process.

Comparative assessments

Do you agree that a comparative assessment is an appropriate methodology to present the available options for dealing with structures to be decommissioned? (question 3)

All submitters agreed that comparative assessments are an appropriate methodology to present and compare available options for decommissioning. However, there was some uncertainty as to the factors that should be taken into account when assessing options (eg, health and safety) to determine a preferred option. While industry focused on cost effectiveness and risk to health and safety as key concerns, four submitters, including all three iwi/ hapū, were concerned that cost effectiveness would be given too much weight and that environmental criteria should outweigh costs.

Do you agree that a comparative assessment should only be required if an operator seeks to dump or abandon an installation, or parts thereof? (question 4)

Do you agree that a comparative assessment should be required for pipelines regardless of whether the operator seeks to abandon or remove the pipeline? (question 5)

All submitters agreed that a comparative assessment should be required when an operator is seeking to dump or abandon an installation. However, three submitters considered comparative assessments should also be required for removal proposals, as it provides an opportunity to discuss different removal options, which may have different impacts.

All submitters considered that a comparative assessment should be required for pipelines regardless of whether they were being removed or abandoned.

Standard templates and guidance

Do you think it would be useful if there were a standard template for decommissioning plans? (question 6)

Opinions were mixed on whether a standard template would be useful. Submitters generally considered that this might limit the ability for a case by case approach and could result in the provided information being limited to that set out in the template. One submitter noted that, given there are only four offshore fields that require decommissioning, there will not be many regular applications that necessitate consistency.

Do you think that guidance would be helpful for industry and the public to understand how decommissioning would work under the EEZ Act and RMA? (question 20)

Six submitters were in support of guidance being issued to understand how decommissioning would work under the EEZ Act and the Resource Management Act 1991 (RMA). One industry submitter considered that prescriptive requirements should be included in the guidance document rather than regulations to provide greater flexibility. One submitter would like to see guidance on the re-use of structures. One submitter also supported the preparation of guidance material for when to prepare and submit a decommissioning plan.

Process for dealing with a plan

Do you agree with the information required to describe the engagement and consultation carried out by an operator on a decommissioning plan? (question 7)

Most submitters agreed with our proposal to require that decommissioning plans include a description of the engagement carried out, which must include:

- identifying the relevant marine management agencies, relevant iwi and existing interests
- providing information to those identified on options for the plan
- seeking views from those identified, and considering those views in any comparative assessment (if available)
- demonstrating the extent to which matters raised have been considered in the plan submitted to the EPA.

One submitter was concerned that this would be treated as a box ticking exercise. One industry submitter considered that an approach of 'best endeavours' should be used in case an agency or group is unwilling or unable to engage. Other suggestions raised by iwi submitters in order to strengthen the requirements and ensure meaningful engagement occurs included:

- ensuring that engagement with iwi/ hapū happens at the earliest opportunity, and not only as an opportunity to respond to the plan
- development of a mutually determined engagement strategy between operators and iwi/ hapū established from the start
- a requirement for a cultural impact assessment, approved or commissioned by relevant iwi/ hapū
- requiring decision panels to include a Māori Moana representative
- requiring Ngā Kaihautū to report a Māori perspective to the EPA on the proposed decommissioning plan.

One submitter also considered that the regulations should set out when a decommissioning plan must be submitted to ensure engagement starts early, recommending at least two years before production ceases.

Do you think the proposed regulations should specify a list of parties that the EPA must consult or seek advice from prior to making a decision? (question 12)

Four submitters agreed that a non-exhaustive list of parties could be provided, with one submitter listing the Climate Change Commission as a necessary party. Other submitters did not respond to the question.

Before the EPA publishes a decommissioning plan for public notification, should it be required to undertake (1) an administrative check that the plan contains the information prescribed by regulations (2) a limited but evaluative assessment of the adequacy of the information or (3) a full assessment against the set of criteria prescribed in regulations? (question 8)

Responses were mixed on the level of assessment that the EPA should carry out before notifying the plan, with three submitters preferring option 3 – a full assessment, and four submitters preferring option 2 – a limited assessment. It was unclear which option the remaining two submitters preferred. Industry submitters generally preferred option 2 as they considered that undertaking a full assessment prior to notification was unnecessary given the EPA would assess the plan following public consultation. Iwi submitters generally preferred option 3.

What is your experience of submitting on notified marine consent applications and do you consider that the quality of information was adequate to make an informed submission? (question 9)

One submitter has no experience with submitting on marine consents, and two consider that the information they were provided was inadequate. Reasons include:

- the information not being complete
- the information provided was biased and favourable to the operators who were commissioning the information (Community group).

Are you aware of any parts of a decommissioning plan that are unlikely to be appropriate or relevant for public notification? Are there any matters that you consider should be withheld? (question 10)

One submitter considered that the EPA should engage operators before publishing a plan to establish whether any information should be withheld. They suggested that the full decommissioning plan is likely to be extensive and technical in detail and therefore only a briefing document should be released.

One submitter considered that too much technical detail may be unhelpful, but that if information is withheld in error, then parties affected by poor decision-making should be compensated.

Do you agree with the minimum timeframe for submissions? If not, why not? (question 11)

Five submitters supported the proposed timeframe for submissions (30 day minimum) and one supported a timeframe proportionate to the scale of the application. One industry submitter also recommended that a maximum timeframe be included.

Do you agree that the EPA should be able to request further information on a decommissioning plan at any stage of the process to enable it to carry out its functions? (question 13)

Three submitters explicitly agreed that the EPA should be able to request further information.

One submitter considered that a “good practice” approach similar to the RMA should be applied so that further information requests and responses are received before publicly notifying the application.

Criteria for accepting a plan

Do you agree with the criteria proposed? If not, what criteria do you think should be considered for accepting a decommissioning plan? (question 18)

Do you agree that the same criteria can be applied to pipelines as applied to installations and structures? (question 17)

Submitters generally supported the proposed criteria but all had further comments for improvement.

The discussion document proposed that where the proposed or preferred approach in a decommissioning plan is to dump or abandon in-situ material (structures, installations or pipelines), the EPA may only accept the plan if it considers:

- the abandonment in-situ or dumping of the material complies with New Zealand’s international obligations with respect to the dumping of waste
- the abandonment in-situ or dumping of the material will not cause unjustifiable interference with existing interests
- the abandonment in-situ or dumping of the material results in the best practicable environmental outcome
- entire removal is not technically feasible or would involve an unreasonable cost

- there are no other opportunities to re-use, recycle or treat the material, without undue risks to human health or the environment or disproportionate costs.

Iwi submitters generally did not consider that cost effectiveness should be a consideration when determining whether to accept a plan but supported the notion of the preferred option being one that is likely to deliver the most benefit and the least harm.

Industry submitters considered that health and safety should also be taken into account as this will be a main driver for determining a preferred option.

One iwi/ hapū submitter suggests that a cultural monitoring regime relating to identified cultural indicators be included in the criteria for accepting a decommissioning plan.

Changes to an accepted plan

Do you agree that the proposed regulations should provide for both (a) and (b) below? (question 15)

a) **that public consultation is required only in relation to the changes from the current plan to the revised plan**

b) **that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan.**

Only three submitters responded to this question. One submitter agreed with our proposal that regulations should provide for both (a) that public consultation is required only in relation to the changes from the current plan to the revised plan, and (b) that public consultation is not required if the EPA is satisfied that the effect on the environment and existing interests of implementing the revised decommissioning plan would not be materially different from, or would be less than, the effect of implementing the current plan. Two submitters considered that the regulations should not provide for (b), with one submitter citing the reason as a lack of transparency.

Do you agree that the EPA should be able to decide whether public consultation on changes to a plan is necessary? (question 16)

Two submitters considered that the EPA should be able to decide if public consultation on changes to a plan is necessary. One submitter considered that public consultation on changes should be mandatory, and two submitters considered that a revised plan should be notified to those persons who made a submission, except for where the changes are administrative in nature.

Cost recovery

Do you agree the EPA should recover costs relating to decommissioning plans from the person who submits a decommissioning plan? (question 14)

Four submitters responded to this question with three submitters agreeing that the EPA should be able to recover costs. One industry submitter considered it inappropriate because "the EPA is not established as a commercial enterprise and the EPA's parent is a beneficiary of this activity via royalties and taxes". This submitter suggests that cost sharing may be more appropriate, with a fixed fee favoured.

Other matters

Are there any other matters you would like to raise? (question 21)

We asked submitters if there were any other matters they would like to raise. Some of these, while outside the scope of the regulations, are still important issues or concerns that may need to be addressed. Submitters raised issues about:

- the need for clarification surrounding liability and post-decommissioning ownership of structures
- the resource disparity between iwi/ hapū and operators
- the need for definitions for words such as ‘good practice’ and ‘abandonment’
- submitters being given the opportunity to comment on the assessments in marine consent applications when assumptions are made in the plan
- the need for guidance on structure re-use
- a review of the EEZ Act
- researchers employed by operators having a perverse incentive to provide biased results
- the lack of a hearing in the decommissioning plan process.