

A New Marine Protected Areas Act

SUBMISSION FORM

Submission by Climate Justice Taranaki Inc.

Key Points of Submission

- 1) Climate Justice Taranaki Inc. (CJT) welcome a reform of marine protected areas legislation.
- 2) The new Marine Protected Areas (MPA) Act places economic growth way above environmental conservation and ignores the fact that the so-called 'balance' has long been tipped.
- 3) The Act must include the entire marine areas of New Zealand, including territorial seas, the Exclusive Economic Zone and continental shelf (EEZ-CS), to be fit for purpose, notably for NZ to meet its international obligations.
- 4) Areas under petroleum and mineral licenses should not be excluded from MPA consideration. There cannot possibly be a representative and adaptive network of MPAs when the entire EEZ-CS and all licensed areas are excluded.
- 5) The foundation and emphasis of the Act should be full protection of marine areas with significant conservation values, as ensured under the Marine Reserve Act.
- 6) The regulations and management of other MPAs, notably existing marine mammal sanctuaries and the proposed seabed reserves, require substantial strengthening to offer adequate species protection and opportunities for recovery of threatened species or communities.
- 7) Recreational fishing parks do not enhance, protect or restore marine biodiversity and ought not be introduced into the MPA Act. Conflicts between recreational and commercial fisheries are best managed under the Fisheries Act.
- 8) CJT support meaningful recognition of the Treaty of Waitangi and customary rights and values in the Act.

Submission form

The questions below are a guide only and all comments are welcome. To ensure your point of view is clearly understood, please explain your rationale.

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Submitter type*	Individual	<input type="checkbox"/>
	NGO	<input checked="" type="checkbox"/>
	Business / Industry	<input type="checkbox"/>
	Local government	<input type="checkbox"/>
	Central government	<input type="checkbox"/>
	Iwi	<input type="checkbox"/>
	Other	<input type="checkbox"/>

Please select an overall stance*

Support	<input type="checkbox"/>
Support in part	<input checked="" type="checkbox"/>
Oppose	<input type="checkbox"/>
Oppose in part	<input checked="" type="checkbox"/>
Unclear / not stated	<input type="checkbox"/>

An asterisk (*) indicates a mandatory field.

Section 2: The need for a new approach to marine protection

1. Do you agree there is a need for reform of New Zealand's approach to marine protection?

Yes

No

Climate Justice Taranaki Inc. (CJT) believe that "To achieve the Government's ambition for New Zealand to be a world leader in the sustainable management and protection of our marine environment," we need to have a major paradigm shift well beyond what is presently proposed, which is piecemeal legislative reform that will continue to facilitate unsustainable, extractive and polluting activities at the expense of our marine environment (See our answers to questions 4 and 9).

2. Are there any significant issues that haven't been identified?

Cross- or trans-boundary issues were not mentioned. Activities outside MPA boundaries often impact on the integrity of the MPA. Notably oil and gas drilling may occur right next to marine reserve boundaries. Buffer zones around such reserves could help buffer or reduce the adverse impacts from such activities.

Marine species, with their pelagic phases, disperse (as larvae) or migrate (as adults) great distances, requiring protection within and beyond territorial waters, sometimes even beyond the EEZ-CS. Such transboundary issues concerning dispersal and migratory routes, of rare, threatened or exploited species in particular, require special attention when designing the network of MPA and fostering international cooperation.

Rules and regulations on existing protected areas such as marine mammal sanctuaries require major review and strengthening, to make them effective in truly protecting the species of concern.

3. Are there any parts of the existing approach to marine protection that should be retained? Why?

The Marine Reserve Act approach of giving full protection to important marine areas should be the core of any new marine protection legislation and policy. It is a proven means of protecting biodiversity, habitats, ecosystems, target fish stocks and restoring some over-exploited fisheries nearby.

Section 3: The proposal: a new approach to marine protection

4. Do you support the outlined objectives of the new MPA Act?

Yes

No

Objective 1 is written to fail. There cannot possibly be a "representative and adaptive network of MPAs" when much of the territorial sea is excluded because of existing petroleum and mineral permits, and the entire EEZ is excluded. Insufficient knowledge of the marine environment in the EEZ is not a valid reason to exclude it from consideration. Indeed, the much lauded but rarely implemented Precautionary Principle explicitly states as much.

When a petroleum or mineral corporation lack the knowledge or information of a particular area, it applies for a prospecting, then exploratory, permit to find out the information needed to make a decision for mining or not. Likewise, the government should be gathering information and listening to marine experts, in other words 'exploring' the potential of such areas for MPAs. Unfortunately, New Zealand's international reputation for ocean protection, the sub-Antarctic Islands and proposed Kermadecs Sanctuary notwithstanding, has been badly tarnished by the present government's open-handed approach to fossil fuel mining in our EEZ, and this Act, as proposed, will do nothing but reinforce that view.

In particular, the explicit exclusions of the EEZ, and areas under petroleum and mineral licenses, indicate an abrogation of responsibility to good governance based on the Precautionary Principle, sound climate and ocean science, and inter-generational equity. The revelation that the removal of the EEZ from the proposed Act occurred as a result of a meeting in mid-2015 of the Cabinet Economic Growth and Infrastructure Committee which decided to "remove any reference to the Exclusive Economic Zone and replace the term with 'territorial seas' ", is truly disturbing. http://www.nzherald.co.nz/environment/news/article.cfm?c_id=39&objectid=11601574

The science on size of reserves has demonstrated that 30 percent of ocean areas must be well protected from extractive industries. NZ falls far short of this target, and this Act will do little to redress this deficiency. CJT therefore argue strongly for:

- The EEZ and continental shelf to be included for MPA consideration / designation under the proposed MPA Act;
- Areas under prospecting and exploration permits for petroleum and minerals in all marine areas (territorial, EEZ and continental shelf) to be open for consideration / designation of MPAs; and
- Areas under petroleum and mineral mining licenses may be considered once such licenses are expired or have been surrendered.

Objective 2 presents little more than an oxymoron because economic growth, e.g. in the form of petroleum and mineral permits, takes the top priority over environmental protection. There can be no integrated planning when existing permits (even for prospecting) precludes any consideration for MPAs.

CJT support the intention of objective 3 to recognise and ensure that the principles of the Treaty of Waitangi and customary rights and values are respected, and the Crown's Treaty obligations are delivered.

CJT agree with the intention of objective 4 to support collaboration through meaningful engagement, although it is unclear how it could be achieved when businesses, especially large corporations and the extractive industry (mining), are given so much power from legislative reforms to decision making. Indeed, as it presently stands, the Act would be more aptly named 'The Fossil Fuel Free-For-All Act', as this extractive industry, which is causing major long-term damage to earth's ecosystems, including marine reserves, via local and regional pollution, climate change and ocean acidification, is given a free hand.

Failure to consider the EEZ and the spatial restriction of exploration and mining activities in this Act will be seen as grave, deliberate abuses of the rights of present and future New Zealanders. There is nothing 'sustainable' about fossil fuels and other extractive industries, and for far too long they have been given a free reign, indeed actively subsidized, to operate at the major expense of our environment and future prospects. There are clear cases of regulatory capture at central and local government levels. E.g. http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10887489 and http://www.nzherald.co.nz/environment/news/article.cfm?c_id=39&objectid=11601574

Objective 5 is impossible to achieve under current government policies and values which prioritise current exploitation and economic benefits over long-term sustainability and steady-state economy. Future generations do not have a say, and future uses and values are under-represented in any considerations, debates and decision making processes.

Objective 6 to meet NZ's international obligations also cannot be achieved without the inclusion of the EEZ and continental shelf.

5. Are there additional objectives that should be included in marine protection reform?

Climate change, ocean acidification and sea level rise need to be prominently recognised and considered in this reform. The network of MPAs needs to be representative, adaptive, as well as resilient to climate change and the associated changes in ocean chemistry, notably acidification. Some MPAs may be selected because of innate resilience to climate change impacts. Others may be selected to help protect or increase the resilience of coastal ecosystems, habitats, amenities and/or infrastructures to climate change impacts such as extreme waves and storm surges.

Transboundary issues concerning dispersal and migration of species and their protection and management, sometimes requiring international cooperation, need to be addressed. Species that are rare, threatened or under fishing pressure are of particular concern.

6. Are the four categories proposed for marine protection an appropriate way to achieve a representative and adaptable network of marine protected areas (objectives 1, 2, 5 and 6)?

Yes

No

CJT agree with the first three categories: marine reserves, species-specific sanctuaries and seabed reserves, provided their designs and regulations are fit for purpose.

Marine reserves are of the greatest importance as these are a proven tool for biodiversity conservation and restoration of some fisheries, if designed and managed well. Current marine reserves in NZ are generally far too small and ineffective as stand-alone no-take zones. The effectiveness of marine reserves can be enhanced by a) having larger areas, b) setting up buffer zones around them where certain activities are regulated, thereby reducing cross-boundary impacts on the reserve itself while allowing some degree of use in the buffer zones, and c) having a network linked by ocean currents fostering dispersal and replenishment.

Species-specific sanctuaries are appropriate as long as all the biological and ecological needs of the specific species are well understood and met. The current rules for marine mammal sanctuaries, e.g. the West Coast North Island sanctuary, are deficient. Notably CJT argue that seismic surveys (blasting) and all forms of mining should be prohibited entirely within such sanctuaries and fishing restrictions need to be much stricter to offer adequate protection.

Re the Kermadec Ocean Sanctuary, CJT seek clarifications from the Minister of Conservation and Minister for the Environment as to why the Message from the Ministers states, "Applications for seabed mining activities requiring decisions meant the Government needed to resolve its position on the future of this area" (consultation document p.6). The MfE website clearly states that "oil, gas and mineral prospecting, exploration and mining" will be prohibited in the sanctuary, and "no fishing or mining applies to both the sanctuary and marine reserve"

<http://www.mfe.govt.nz/marine/kermadec-ocean-sanctuary/question-answers-kermadec-ocean-sanctuary>)

Seabed reserves "will control activities that affect the seabed and a zone above it" (Table 1). CJT seek clarifications on this statement, as well as the definition of "seabed mining" which is proposed to be prohibited in such reserves. Petroleum exploration and mining involve drilling into the seabed and discharging contaminants onto the seabed and into the water column from where they may settle onto the seabed. Given the intrusive and polluting effects of such activities, petroleum exploration and mining must also be prohibited in seabed reserves.

CJT do not support the establishment of recreational fishing parks because they do not enhance, protect or restore marine biodiversity. Maintaining and restoring marine resources that are already over- or heavily exploited by recreational and commercial fishers require fisheries specific management and conflict resolution. Where there is heavy recreational fishing pressure, simply taking out commercial fishing will not necessarily reduce fishing impacts significantly or contribute to sustainability of the fishery. Recreational fishing is potentially more difficult to regulate and monitor than commercial fishing. All these should be dealt with under the Fisheries Act.

It may be worth considering a Marine Park category which offers some protection from commercial and/or recreational fishing, tourism and/or other activities.

7. If the options outlined in table 1 in the consultation document were applied in an area of interest to you, what impact would that have on your existing or future activities?

No comment.

8. Does the approach take account of the way the fishing sector operates?

Yes

No

Why/why not?

It is encouraging that the integrity of rights and interests under the Marine and Coastal Area (Takutai Moana) Act 2011 remain recognised.

See also answer to question 6.

9. Does the approach take account of the way the oil, gas and minerals sector operates?

Yes

No

Why/why not?

The approach, by excluding all marine areas with oil, gas and mineral prospecting, exploratory and mining permits from protection, is farcical. It makes biodiversity conservation subservient to short-

term exploitation and economic gain by corporations (See also our answers to Q4 and Q6). Why is the government providing "certainty" to extractive and polluting industries that directly poison our collective future, but not to biodiversity conservation or future generations? This short-term extractivist mindset is the core problem we face in trying to reverse the massive and growing impacts caused by these very industries.

This approach promises a huge loss of opportunity for conservation; when it is most in need, when the majority of the world's fisheries have either collapsed or been over-exploited, when much of our nearshore waters are now heavily degraded or 'dead-zones', and when species and entire ecosystems across oceans are being affected by ocean acidification. Still the government is hell bent on providing certainty to the oil, gas and minerals sector, to the detriment of our marine environments, future generations and our life-supporting climate. With centuries of an economic growth agenda which ignores the planet's finite resources and carrying capacity, we have long tipped the "balance".

10. Are there other economic interests that haven't been covered?

Ecosystem services have been ignored and marine tourism (other than fishing based) is under represented.

11. Is the new MPA Act likely to have the intended effect that decisions about environmental protection and economic growth are made in a planned and integrated way (objective 2)?

Yes

No

Why/why not?

See our answers to Q4 and Q9.

Section 4: How it will work: a new process for establishing marine protected areas

12. What do you think would be the best process for initiating MPA proposals in areas where multiple categories of protection may be needed?

The process for initiating MPA proposals should be underpinned by science and the precautionary principle, not economics or political pressure from any sector. The entire territorial sea, EEZ and continental shelf should be under consideration in the first instance.

CJT are not confident that the Sustainable Seas National Science Challenge would deliver the scientific and impartial information and assessment needed for the identification of MPAs, when the objective of the challenge is "to transform New Zealand into a world-leader in sustainable marine economic development" (<http://sustainableseaschallenge.co.nz/>). It appears that the focus here is "economic", which is at odds with the government's ambition "to be a world leader in the sustainable management and protection of our marine environment..." (Document p.8).

The \$31.3 million for the Sustainable Seas Challenge is less than the combined tally of the \$24 million upgrade of NIWA's research vessel Tangaroa "to enhance its ocean, science, oil and gas exploration and marine engineering capabilities" (<https://www.niwa.co.nz/vessels/rv-tangaroa>) plus the \$12

million Energy and Minerals Research Fund MBIE granted GNS and the University of Waikato in 2015 (<http://www.mbie.govt.nz/info-services/science-innovation/investment-funding/current-funding/pdf-document-library/Energy%20and%20Minerals%20Research%20Fund%202015%20Science%20Investment%20Round.pdf>).

Having a lead Minister alone to consider MPA proposals does not guarantee transparency or objectivity.

Where multiple categories of protection may be needed, stakeholder engagement is essential, to determine any potential collaboration in management or fair compensation.

13. Are the proposed marine protected areas decision-making processes (collaborative process and board of inquiry process) the best way of achieving our objectives (2, 3, 4 and 5)?

Yes

No

Why/why not?

It is fair that "public consultation" should occur in both the collaborative and board of inquiry processes. The specific "assessment criteria" for MPA proposals are critical and should be spelled out clearly and openly in the current consultation document, in advance of the two processes.

CJT caution the appointment of board members by Ministers and the emphasis placed on economics in both processes. If board members must include economic expertise and an independent economic assessment is a stated requirement in both processes, then there should also be experts on international law and climate change, especially in relation to impacts on coastal processes and ocean chemistry, and an independent assessment on ecosystem services including future scenarios.

CJT believe established scientific institutions could play a prominent role in both processes.

14. What are the advantages and disadvantages of having two different decision-making processes? Is one of the processes preferable to the other, or are there alternative decision-making processes that would better achieve the desired outcomes (objectives 2, 4 and 5)?

No comment.

15. Do you agree with the proposed review arrangements?

Yes

No

Why/why not?

CJT support that the Act will provide for MPAs in the territorial sea to be recognised in regional coastal plans and that councils will be required to take MPAs into account when making decisions on

proposed activities. The interface between coastal and marine areas, existing Coastal Protection Areas (e.g. in South Taranaki District Plan) and potential impacts of coastal activities on MPAs, or marine activities on Coastal Protection Areas, are important issues for consideration.

Are there any additional approaches that should be considered for reviewing MPAs?

While regular or incidental reviews in response to emerging threats or discoveries are a good idea, the importance of regular monitoring and evaluation of the status and management effectiveness of the MPAs needs to be emphasized.

16. Are the proposed decision-making processes sufficient to ensure customary interests, rights and values are appropriately taken into account, Treaty of Waitangi principles are met, and decisions are consistent with the Crown's historical Treaty settlement obligations (objectives 3 and 4)?

Yes

No

If not, what are your concerns?

The objectives can only be met with genuine hapu/iwi/public consultation and participation and substantive inputs from local communities.

Section 5: Recreational fishing parks

Please be clear as to whether your responses apply to the Hauraki Gulf, Marlborough Sounds or both proposed areas.

17. Do you support the proposal for recreational fishing parks in the Hauraki Gulf and Marlborough Sounds?

Yes

No (See our answer to question 6 re our objection to the concept of recreational fishing parks)

18. What do you think should be the boundary lines for the recreational fishing parks? In the Hauraki Gulf, could we use the Statistical Area 7 of Fishing Management Area 1 (see map 1 in the consultation document)? In the Marlborough Sounds, could we use the Blue Cod Management Area (see map 2 in the consultation document)? Are these boundary lines easily recognisable, that is, would prominent landmarks help with identifying the boundaries of the park when you are on a boat?

No comment

19. Do you think commercial fishing should be allowed to continue for some species within recreational fishing parks?

Yes

No

If so, what species would you allow and why?

No comment

20. What do you think about the proposed compensation scheme for commercial fishing affected by the creation of recreational fishing parks?

No comment

21. What do you think about who should manage the recreational fishing parks? How could the park management work together with existing groups?

No comment

22. How should benefits and changes created through the proposed parks be monitored? How could this work?

No comment

Section 6: Implementation

23. Do you agree with the proposed arrangements for transitioning existing MPAs?

Yes

No

If not, what are your concerns?

It is of critical importance that none of the existing MPAs is downgraded in terms of the level of protection. E.g. the Auckland Islands marine mammal sanctuary is also a marine reserve (<http://www.doc.govt.nz/nature/habitats/marine/other-marine-protection/auckland-islands/>). This appears to contradict with the proposed Act which does not allow overlap of marine reserve with other categories of MPAs (p.18 of consultation document). CJT seek clarification on this point.

The Te Rohe o Te Whanau Puha / Kaikoura Whale Sanctuary extends beyond the territorial sea into the EEZ (<http://www.doc.govt.nz/kaikoura-marine#whalesanctuary>). How will this sanctuary and others that extend into the EEZ and continental shelf be incorporated into the new MPA Act?

CJT argue that any existing benthic protection areas and seamount closures under the Fisheries Act be automatically transitioned to seabed reserves, with added protection against all petroleum and mineral prospecting, exploration and mining, within the territorial sea and into the EEZ and continental shelf.

CJT propose that existing MPAs such as Mimiwhangata Marine Park and Sugar Loaf Islands MPA be assessed for potential expansion and upgrade into Marine Reserve category with buffer zones, or a new Marine Park category, while retaining existing fishing regulations under the Fisheries Act.

24. Do you agree that customary management areas should be able to be used alongside the proposed MPA Act to create integrated management packages?

Yes

No

New Zealand Government

If not, what are your concerns?

25. What would be required to ensure the integrity of current protected areas is maintained while achieving the objectives of the new MPA Act (section 3.1)?

The EEZ and continental shelf and all areas under petroleum and mineral licenses must be included in the proposed MPA Act. Adequate resources for enforcement, management, monitoring, evaluation and research.

26. Are the proposed approaches sufficient to ensure communities are involved in managing MPAs? Are there alternative approaches that would better ensure community involvement in managing MPAs?

Adequate funding for community management, education and citizen science initiatives; as well as support for research by universities and scientific institutions, must be allocated.

27. What role can iwi/Māori play in managing MPAs? Are the proposed approaches sufficient to ensure iwi/Māori are involved in managing MPAs?

Hapu need to be sitting at the decision-making tables rather than just consulted at a superficial level.

28. Do you agree with managing commercial tourism activities in MPAs in a similar way to how they are managed on public conservation land?

Yes

No

Why/why not?

Careful planning and rules including caps are needed to prevent overuse.

Other comments

29. Do you have any further comments you wish to make about the Government's proposal?

CJT support the general views expressed in the submissions of Forest & Bird, Environmental Defence Society, Dr. Lyndon DeVantier and Emily Bailey.

CJT wish to speak to this submission at any formal consultation or hearings.

Releasing submissions

Your submission may be released under the Official Information Act 1982 and may be published on the Ministry's website. Unless you clearly specify otherwise in your submission, we will consider that you have consented to website posting of both your submission and your name.

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Please check this box if you would like your name, address, and any personal details withheld.

Note that the name, country, email, submitter type, and stance fields are mandatory for you to make your submission.

When your submission is complete

If you are emailing your submission, send it to mpaconsultation@mfe.govt.nz as a:

- PDF
- Microsoft Word document (2003 or later version).

If you are posting your submission, send it to New MPA Act, Ministry for the Environment, PO Box 10362, Wellington 6143.

Submissions close at 5.00pm on Friday 11 March 2016.