Proposed policy for regulating decommissioning under the Exclusive Economic Zones and Continental Shelf (Environmental Effects) Act 2012

Climate Justice Taranaki Submission to the Ministry for the Environment

21 September 2018

Climate Justice Taranaki Inc. (CJT) is a community group dedicated to environmental sustainability and social justice. This includes issues of inter-generational equity, notably in relation to climate change, which will impact future generations' inalienable rights to safe water, food and shelter, crucial to sustaining livelihoods and quality of life. CJT has been an incorporated society since 2015.

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

No

There should be a clear definition of decommissioning in the policy and regulations, and a non-exclusive list of activities for which section 38(3) applies.

There also needs to be a centralised registrar/database of all plugged and abandoned (P&A) wells with information such as location, water depth, ownership (at the time of plugging), company that did the P&A, the methodology employed and relevant technical details. Such information is critical for monitoring and in case something goes wrong.

Our research on onshore oil and gas activities shows that abandoned wells and contaminated sites in Taranaki are not properly documented or made known, making monitoring impossible and posing risks to people. https://www.stuff.co.nz/national/85196184/abandoned-oil-wells-still-cropping-up-in-new-plymouth-back-yards-after-100-years

A recent review MBIE undertook of more than 960 onshore wells drilled showed that some had outstanding plugging and abandonment (P&A) commitments, i.e. they are not recorded as having been plugged and abandoned. In July 2017, MBIE called for tenders to provide 'Onshore Petroleum Wells Technical Assessment' to aid the evaluation of integrity of wells that, and rank the risk they pose to health and safety and the environment.
https://www.gets.govt.nz/MBIE/ExternalTenderDetails.htm?id=18827350

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

No

While the requirements listed contain the basic information, there are several critical elements missing:
- Financial assurance, security and liability, and costing
- Who will conduct the post-decommissioning monitoring of environmental health
- Who will conduct inspections and maintenance of dumped or abandoned materials
- Who will pay for monitoring and maintenance, and for how long
- Ownership of abandoned infrastructure

Section 4 of the proposal says "*these regulations would not require operators to provide evidence of financial assurance as part of the decommissioning plan*." It says that the Crown Minerals Act is the only

regime that considers the financial capability of operators as part of its permit process. Given that decommissioning often takes place decades after the initial permit process, ownerships of the installation often change in the interim period, oil prices fluctuate enormously, and there is no costing of decommissioning, the initial financial assessment would not provide the assurance needed.

Moreover, "*Operators so far have not proved adept at estimating decommissioning costs. As a result, many projects have experienced overruns of 30% to more than 100%, with particular variation around well P&A operations… The US Government Accountability Office estimates continuing decommissioning liabilities in the Gulf [of Mexico] at an additional $38 billion*", Oudenot et al, 2017. https://www.bcg.com/publications/2017/energy-environment-north-sea-decommissioning-challenge.aspx

The document also points out that the requirement of a bond under the EEZ Act only applies when a marine consent is applied for and granted. So this would not apply to the decommissioning plan which is not part of the marine consent process. In effect, companies/operators can put forward the most elaborate decommissioning plan without any financial assurance for its implementation. It would be useful to have a bond required to ensure monitoring, as a consent condition, although it is not clear how the bigger liability issue can be covered if a major incident occurs to the abandoned structures such as a leaky plugged well.

The penalty of up to $10 million for breaching the EEZ Act (s 134H) falls well short of the decommissioning cost, or of environmental and economic damage from a major incident. "*Offshore installations in overseas jurisdictions normally cost between NZ$100 million and NZ$1 billion to decommission. The lower end of this range generally incorporates FPSO installations, through to smaller unmanned fixed platforms with larger manned fixed platforms at the higher end. New Zealand has examples of all types*." http://taxpolicy.ird.govt.nz/publications/2017-ris-areiirm-bill/petroleum-mining-decommissioning

The proposal also explicitly excludes any discussions on the ownership of abandoned infrastructure. These are critical considerations especially once a consent expires or a bond is refunded. Who will carry the responsibilities associated with such infrastructure then?

The Parliamentary Commissioner for the Environment (PCE, 2014) emphasized, "*The bigger challenge comes once a well has been abandoned. The likelihood of an abandoned well leaking increases with its age. Moreover, there is no guarantee that the company that drilled the now abandoned well will still be operating in New Zealand... Under law, once a well has been abandoned and 'signed off' by High Hazards Unit and the councils, any leaks from the well become the responsibility of the owner or occupier of the land."* https://www.pce.parliament.nz/publications/drilling-for-oil-and-gas-in-new-zealand-environmental-oversight-and-regulation

CJT propose that operators pay into a Decommissioning and Restoration Fund with which independent institutions conduct the necessary inspections and monitoring over the long term. These institutions may include WorkSafe and EPA or engineering and research institutions commissioned by them.

The PCE (2014) also pointed out, "*There are also cases of old, abandoned wells leaking in New Zealand. These were abandoned before modern abandonment practices were adopted by the industry in 1965. There are also wells abandoned poorly both before and after 1965 that are considered to be at risk of failing and releasing gas into the atmosphere*."

CJT therefore submit that methane and other greenhouse gas emissions from and around the abandoned infrastructure offshore, notably plugged wells and pipelines, should also be monitored as part of the post-decommissioning monitoring. Such fugitive emissions have long been understated and contribute substantially to escalating climate change.

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

Yes

4. **Do you agree that a comparative assessment should only be required if an operator seeks to dump or abandon an installation, or parts thereof? If not, why not**?

No

Comparative assessment should also be useful in considering options of how to remove certain installations as the different methods used could have different environmental impacts.

5. **Do you agree that a comparative assessment should be required for pipelines regardless of whether the operator seeks to abandon or remove the pipeline? If not, why not?**

Yes

6. **Do you think it would be useful if there were a standard template for decommissioning plans? If not, why not?**

No.

Different installations have very different specifications and hence decommissioning requirements. A standard template would not cover all requirements.

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

No

The information required is too basic and resembles a tick-box exercise. The list needs to include detailed descriptions of the activities that have taken place such as who, when, where and how… as well as the issues raised and any process of resolution. 'Existing interest' should include community and environmental groups.

The engagement and consultation sections of the proposal contain many words indicating caveats: e.g. "*identifying and resolving potential issues as far as is reasonably practicable… most efficient and inexpensive way to involve stakeholders… reasonable effort to engage… proportionate to the potential impact…*". Such wordings are very subjective and favour companies and operators with no consideration on the capacity, limitations and resource burdens on the side of the public, iwi and other existing interests.

Moreover, without public hearings on the submissions over the decommissioning plan, there is little transparency in the process.

8. **Before the EPA publishes a decommissioning plan for public notification, should it be required to undertake**

Yes to admin check

Yes to limited but evaluative assessment

CJT believe that EPA should directly notify existing interest, in addition to giving public notice of the plan.

9. **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**?

CJT has extensive experience as submitter on notified consent applications under the EEZ Act as well as other central and local government policies and proposals.
https://climatejusticetaranaki.wordpress.com/resources/fact-sheets-presentations/

No, we do not consider the information provided was adequate to make informed submissions or indeed robust decisions on the applications by the decision makers.

Detailed quantitative information was usually lacking and what was available was typically largely based on 'expert opinion'. The 'experts' are usually in the employ of the companies involved, or large environmental engineering firms whose income derives from the companies, and hence under significant pressure to deliver findings favourable to the companies. This situation is endemic to the EIA process globally.

Some aspects of this problem could be addressed by having a system whereby the applicants provide funds to the regulator for independent specialists to conduct the assessments, rather than their own employees or pet scientists / environmental engineering companies.

From experience, the so-called public consultation and submission process is not genuine or effective. This is especially true when dealing with the oil and gas industry. Public notifications generally occur far too late. By the time the public read about them, decisions have largely been made behind the scenes and sometimes companies have already committed to their programs. e.g. Tamarind has already entered into a contract with COSL Drilling Europe for the semi-submersible rig Hai Yang Shi You 982 in July 2018 when EPA assessments of its marine consent applications are still underway and public hearings are not due till Nov 2018. http://www.energyglobalnews.com/tamarind-hires-hysy-982-semi-sumersible-to-drill-offshore-new-zealand/

There is no or little support for iwi, hapu, community groups or individuals in terms of technical or financial resources to properly prepare their submissions and go through the hearing and subsequent processes. Iwi, hapu and community groups generally lack resources to respond and assess the numerous applications that are going over their desks. They need substantive support for genuine and effective engagement and consultation.

It's not an even playing field when oil companies have millions to spend on lawyers and experts to argue their case while community groups struggle to put together their submissions with voluntary efforts. This leads to disenfranchisement and disengagement of the public from the process. These issues are further exacerbated by companies also having direct, untoward access to the ears of politicians and regulators. https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10887489

10. **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**?

Submitters' names and contacts should be withheld from companies. The standard requirement of all submissions to EPA under the EEZ Act being copied to the consent applicants offers no protection to individuals, and deters some people from submitting. Here is another example of uneven playing field: When individuals submit on an application, their submissions, including submitters' details, are copied

to the applicant; yet when individuals request information under the OIA, names of employees in the companies of concern are redacted from the OIA responses.

11. **Do you agree with the minimum timeframe for submissions? If not, why not**?

    Yes

    Thirty days is appropriate as the minimum except over the Christmas and New Year holidays. However, having a minimum timeframe does not address the overarching issues of lack of support for submitters as explained above. CJT and other such community groups volunteer many person-days to each application.

12. **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**?

    Yes

    And please include the new Climate Commission. https://zerocarbonact.nz/getting-us-to-zero-carbon/the-climate-commission

13. **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**?

    Yes

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

    Yes

    And costs on submitting iwi and hapu should also be recovered from the company that lodge the decommissioning plan.

15. **Do you agree that the proposed regulations should provide for both (a) and (b) in section 100D(2**)?

    No

    Section 100D(2)(b) should not be provided for because it lacks transparency and opens an opportunity for companies to pressure EPA into avoiding public consultation on changes in the approved decommissioning plan

16. **Do you agree that the EPA should be able to decide whether public consultation on changes to a plan is necessary? If not, why not**?

    No

    Public consultation should be mandatory on any changes in the approved decommissioning plan. The EEZ Act and its amendments have deliberately excluded public participation from key sections, notably exploratory drilling. This is clearly undemocratic.

17. **Do you agree that the same criteria can be applied to pipelines as applied to installations and structures? If not, why not**?

Yes

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

No

The criteria are a good start but need some adjustments and elaboration:

- Delete references to 'unreasonable cost'
- Elaborate on 'adequately maintained' – For how long? By whom? Who will inspect such structures to ensure integrity?
- What are the guarantees that the materials will 'remain in the same location on the seabed and not move…' especially considering increasingly extreme climate events and also degradation of the materials over time?
- What are the measures to avoid collisions between remotely operated vehicles working on the seabed (e.g. ROV proposed for use by TTRL for seabed mining) and abandoned or dumped materials, especially if they are overgrown or buried?
- More consideration is needed in terms of impacts on cultural values

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

Yes

20. **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**?

Yes

CJT submits that the same set of regulations needs to apply to decommissioning within the territorial sea (under the RMA) and beyond (under the EEZ Act) to avoid any legislative/regulatory gaps and loopholes. MfE, EPA and regional councils need to work together to develop such or comparable and complementary regulations and the needed capacity to implement them effectively.

From our experience, there is little transparency or publicly available information on the regulatory and monitoring processes over oil and gas activities in the territorial waters.

21. **Are there any other matters you would like to raise**?

Yes

Every new drilling activity being approved by EPA under the EEZ Act adds to the need and burden from decommissioning of structures, with risks to health and safety, and potential long-term environmental impacts, notably fugitive emissions that further escalate climate change.

CJT urge strongly that no more well drilling, be it exploratory or developmental, be approved in the EEZ, territorial waters or on land.