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Committee Secretariat  
Local Government and Environment  
Parliament Buildings  
Wellington

# Submission on Kermadec Ocean Sanctuary Bill

## 1.0 Introduction

The Environment and Conservation Organisations of NZ (ECO) is the national alliance of about 50 organisations with a concern for the environment and conservation. ECO has been involved in issues of resource and marine management, biosecurity, biodiversity protection, toxics and environmental administration since its formation in 1972. ECO has a long-standing interest in marine and fisheries management, in biodiversity and in protected areas as well as other aspects of environmental and resource management.

This submission has been prepared by members of ECO Executive and is in line with ECO Policy that was developed in consultation with ECO member bodies and endorsed by our (successive) AGMs.

ECO supports the development of marine protected areas. ECO members have been involved in nominating marine reserves, marine mammal sanctuaries, and areas under the Wildlife Act. ECO was represented on the Sub-Antarctic Marine Protected Areas forum.

## 2.0 General Comments

ECO support the establishment of the Kermadecs Ocean Sanctuary and the general intent of the Bill.

New Zealand has been slow at establishing large marine protected area which extend in to the Exclusive Economic Zone. New Zealand has been well behind Australia and many of our Pacific Island neighbours in establishing large marine reserves and marine protected areas.

The Kermadec area is special area worthy of protection as a Sanctuary.

This Bill shows that it is totally feasible to extend Marine Reserves legislation to include the EEZ. ECO looks forward to similar provisions being included in the Marine Reserves Act.

ECO can see little reason to include the Minister for the Environment and the Environmental Protection Agency to the provisions of the Bill that could be adequately dealt with by the Minister of Conservation and the Department of Conservation. Adding the Minister for the Environment and the EPA just adds duplication of Minister and agencies.

The Department of Conservation already deals with marine research and is the consenting authority for the Kermadecs and Sub-Antarctic Islands Territorial Sea.

ECO supports in the Bill:

- Prohibitions on Mining;
- Prohibitions on disturbance of the seabed and subsoil;
- Prohibitions on undertaking marine scientific research without approval;
- Prohibitions vibrations having adverse effect on marine life;
- Prohibitions on fishing;
- Establishment of the Kermadecs Conservation Board.

### 3.0 Suggested changes

#### **Part 1: Preliminary Provisions**

##### **Clause 3: Purpose**

ECO supports the purpose of the Bill.

##### **Clause 7: Application to national security activities or ships and aircraft of NZ Defence Force and foreign states**

ECO notes the blanket exemptions for NZ Defence forces in the Bill. New Zealand certainly can apply provisions to its own defence forces. We assume that the defence forces are not intending to fish, mine, disturb the seabed or subsoil, or dump waste?

The provisions of section 9 of Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 allow some provisions to apply to military vessels. “(1A) However, the following provisions of this Act do apply to warships and other ships of the New Zealand Defence Force:

- (a) subparts 2 (as if those ships were New Zealand ships), 3, and 4 of Part 2;
- (b) regulations made under sections 29A and 29C;
- (c) subpart 2A of Part 3;
- (d) sections 134 to 134M.”

This includes:

- Subpart 2—Restrictions and prohibitions on discharges and dumping;
- Subpart 3—Existing activities and planned petroleum activities

- Subpart 4—General matters
  - This includes: 25 Duty of persons operating in exclusive economic zone or on continental shelf
- 26 Relationship with other legal requirements
- Subpart 2A—Marine discharge consents and marine dumping consents
- Section 134 to 134M is “Offences and defences in relation to discharge or escape of harmful substances”.

Section 25 is “a general duty to avoid, remedy, or mitigate the adverse effects of the activity on the environment;”

For these reasons we cannot see why this Bill should not apply to Defence forces.

**Amend section 7 to add:**

*“(1A) However, the provisions of section 9 of this Act do apply to warships and other ships of the New Zealand Defence Force.*

**Part 2: Kermadec Ocean Sanctuary**

**Clause 8: Kermadec Ocean Sanctuary established**

ECO support these provisions.

**Clause 9: Activities prohibited in Kermadec Ocean Sanctuary**

ECO supports the scope of the activities prohibited in the Kermadec Ocean Sanctuary.

**Clause 10: Activities to which prohibition does not apply**

ECO notes that the provisions of UNCLOS means that New Zealand as a coastal state cannot prevent other states from placing pipelines or cables in our EEZ, including the area of the Sanctuary. Given the distance offshore this provision only applies to cables.

New Zealand can restrict its own pipelines and cables. In addition, it could advocate for cables to avoid sensitive areas including this sanctuary. New Zealand as the coastal state has to consent to the route and can place conditions (article 79 of UNCLOS).

**Cause 11 Effect of Prohibitions under EEZCS Act, Fisheries Act 1996, and other enactments**

ECO supports the prohibitions under these enactments applying the purpose and prohibitions in this Bill.

## **Authorisation for marine scientific research**

### **Clauses 13 to 21**

ECO support a process for authorisation of marine scientific research but considers it should be carried out by the Department of Conservation rather than the EPA. DOC already administers similar provisions that apply within Marine Reserves which includes the Territorial Sea around the Kermadec Islands.

Including the EPA in these provisions only adds duplication and lead to inconsistent decisions inside and outside the 12 nautical mile limit.

In clauses 31 to 22 replace the EPA with the Department of Conservation.

## **Kermadec Conservation Board**

### **Clauses 23 to 26**

ECO supports the establishment of the Kermadec Conservation Board and the proposed membership and appointment structure.

### ***Regulations***

#### **Clause 27 Regulations**

ECO supports the ability to establish regulations but as indicated in the introduction to this submission, the provisions should be amended with:

- i the removal of the reference to the Minister for the Environment and replacement of “Minister” with the Minister of Conservation;
- ii. the replacement of the reference to the EPA with the Department of Conservation.

## **Part 3: Consequential and Transitional Amendments**

### **Amendment to Biosecurity Act 1993**

#### **Clause 29:**

ECO supports the general intent of this provision but considers the requirements for consultation in section 7B(3) of the Biosecurity Act should be to the Department of Conservation and the Kermadec Conservation Board. The changes proposed in clause 37 refers to consultation with the Director-General of Conservation.

Add a new sub-section (7):

*(7) Before making a decision that affects the Kermadec Ocean Sanctuary the Responsible Minister shall consult the Director-General of Conservation and the Kermadec Conservation Board.*

## **Amendment to Conservation Act 1987**

### **Clauses 30 to 33:**

ECO supports the amendments proposed in these provisions of the Conservation Act.

## **Amendment to EEZCS Act 2012**

### **Clauses 34 to 37**

ECO supports the changes to these provisions but considers clause 37 (Section 20H) should be amended to add consultation with the Kermadec Conservation Board.

Add after the “Director-General of Conservation” the words “and the Kermadec Conservation Board”.

### **Clause 38**

#### **Subpart 2A – Additional Restrictions on Activities in Kermadec Ocean Sanctuary**

#### **Clause 39 New Section 37AA (Kermadec prohibited activities)**

ECO supports the addition of restrictions and prohibitions set out these clauses.

### **Clause 41 Offences and defences in relation to Kermadec prohibited activities**

The inclusion of these offences and strict liability and defences are essential to the approach taken in this Bill.

## **Amendments to Fisheries Act 1996**

ECO supports the amendments proposed to the Fisheries Act 1996.

## **Schedule 1: Transitional, savings and related provisions**

### **Clause 5 Kermadec Conservation Management Strategy**

ECO considers there should be a requirement on the Department to Notify the Kermadec Conservation Management Strategy within a year of the Bill coming into force.

## **4.0 Conclusion:**

ECO welcome the opportunity to make this submission. ECO wishes to be heard in support of this submission. Please contact BOTH the Michael Pringle at the ECO office at [eco@eco.org.nz](mailto:eco@eco.org.nz) tel 04 385 7545, and Barry Weeber [baz.weeber@gmail.com](mailto:baz.weeber@gmail.com), cell 021

738807. We will need good notice of the hearing since we may be out of Wellington and several of us may have to travel to attend the hearing.

Yours sincerely,

Barry Weeber  
Co-Chairperson  
Environment and Conservation Organisations of NZ