

Submission | Submission on the Kermadec Ocean Sanctuary Bill April 2016

28 April 2016

Committee Secretariat
Local Government and Environment
Parliament Buildings
Wellington 6160

Dear Hon Dr Nick Smith

Kermadec Ocean Sanctuary Bill – Submission (April 2016)

Please accept the following letter and attachments as the McGuinness Institute's submission on the Kermadec Ocean Sanctuary Bill.

I would appreciate the opportunity to be heard in support of this submission.

Kind regards,



Wendy McGuinness
Chief Executive
McGuinness Institute

Attachments:

1. *Think Piece 22: Proposal for the Creation of an Oceans Institution* (November 2015)
2. *Report 10: One Ocean: Principles for the stewardship of a healthy and productive ocean* (March 2015)
3. *Working Paper 2015/01: Ocean Management in New Zealand: Findings from a structured discussion* (January 2015)
4. *Working Paper 2013/01: Notes on the New Zealand King Salmon Decision* (May 2013)
5. *Think Piece 16: New Zealand King Salmon: Was it a good decision for New Zealand?* (March 2013)

About the McGuinness Institute

The McGuinness Institute was founded in 2004. The McGuinness Institute is a non-partisan think tank working towards a sustainable future, contributing strategic foresight through evidence-based research and policy analysis. *Project 2058* is the Institute's flagship project, which includes a research programme that aims to explore New Zealand's long-term future. In preparing this submission the Institute drew largely on the McGuinness Institute's overarching project, *Project 2058*, and in particular our work on *Project One Ocean*.

The following is a list of research publications produced for *Project One Ocean*:

- March 2016: *Submission on A new Marine Protected Areas Act*
- November 2015: *Think Piece 22: Proposal for the Creation of an Oceans Institution*
- March 2015: *Report 10: One Ocean: Principles for the stewardship of a healthy and productive ocean*
- March 2015 (draft): *Working Paper 2015/03: Legal instruments of New Zealand's oceans management*
- January 2015: *Working Paper 2015/01: Ocean Management in New Zealand: Findings from a structured discussion*
- March 2014: *Submission: Draft for Consultation: Exclusive Economic Zone and Continental Shelf (Environmental Effects - Discharge and Dumping) Regulations 2014*
- February 2014: *Submission: Draft for Consultation: Exclusive Economic Zone and Continental Shelf (Environmental Effects - Non-Notified Activities) Regulations 2013*
- September 2013: *Submission: Activity classifications under the EEZ Act: A discussion document on the regulation of exploratory drilling, discharges of harmful substances and dumping of waste in the Exclusive Economic Zone and continental shelf*
- June 2012: *Submission: Regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*
- February 2012: *Written responses to questions from committee: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*
- February 2012: *Oral Submission: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*
- January 2012: *Submission: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill*

Ministry for the Environment workshops and meetings attended:

- 3 March 2014: EEZ Draft Regulations Workshop
- 27 January 2014: Workshop on proposed EEZ Regulations
- 14 May 2013: EEZ Regulations Workshop

About the Chief Executive

Wendy McGuinness wrote the report *Implementation of Accrual Accounting in Government Departments* for the Treasury in 1988. She founded McGuinness & Associates, a consultancy firm providing services to the public sector during the transition from cash to accrual accounting. From 2003–2004 she was Chair of the NZICA Sustainable Development Reporting Committee and became a fellow chartered accountant (FCA) in 2009. In 2004 she established the Institute in order to contribute to a national discussion on New Zealand's long-term future. In more recent years this has included the Institute undertaking public policy workshops with participants between the ages of 18 and 25 years.

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Introduction

The McGuinness Institute strongly supports the Kermadec Ocean Sanctuary Bill and commends this example of New Zealand leadership. New Zealand's oceans have not had a great deal of attention since the 1980s, and is now clearly overdue for a more considered and reflective review based on scientific evidence and strategic governance.¹ We therefore view the sanctuary as a significant achievement in oceans governance, and that it aligns with the Minister for the Environment Hon Dr Nick Smith's 2 October 2015 statement that 'New Zealand's ambition is to be a leader in oceans management'.² By including 15 percent of New Zealand's Exclusive Economic Zone (hereafter referred to as EEZ) in the Kermadec Ocean Sanctuary, we are setting an international precedent for marine protection. This sanctuary puts New Zealand on course to make real progress at a local, national and global level; however, there is still a great deal of work to do to this end.

Below are the Institute's recommendations which we believe would help New Zealand become a more innovative, integrated and effective manager of our oceans.

Key points

The idea underlying the Kermadec Ocean Sanctuary Bill and continued policy action to protect our oceans is fully supported by the McGuinness Institute. Biodiversity and climate change are pressing global issues of our time. This sanctuary is one of many policy actions New Zealand should be taking in order to steer public policy in a sustainable direction. These issues are increasing the risk and uncertainty facing current and future generations.

The Institute is aware that some stakeholders believe there was a lack of consultation with Iwi in the processes leading to this Bill.³ We have not looked into this grievance in any detail and therefore cannot comment on these claims. However, we do wonder if this is a further symptom of Government's failure to provide New Zealand with an overarching set of guiding principles to drive public policy and an oceans institution to help develop an overarching policy framework (see *Report 10: One Ocean: Principles for the stewardship of a healthy and productive ocean* [March 2015] and *Think Piece 22: Proposal for the Creation of an Oceans Institution* [November 2015] respectively).

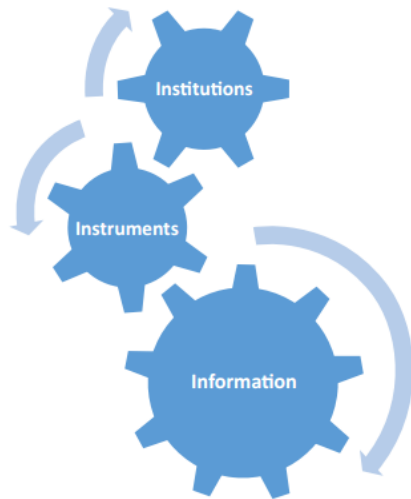
¹ New Zealand's marine leadership began with the Marine Reserves Act in 1971. This was 84 years after New Zealand established its first national park in 1887. Land governance has consistently preempted ocean governance. Although the Marine Reserve Act 1971 was a landmark piece of legislation, it is also important to remember that this was six years before the Territorial Sea and Exclusive Economic Zone Act 1977 was passed, seven years before the Marine Mammal Protection Act 1978 came into being and 11 years before the United Nations Convention on the Law of the Sea (UNCLOS) was signed in 1982. This illustrates that governing to protect and conserve our natural environment is part of an ongoing narrative, but one that has involved a number of peaks and troughs.

² Smith, N. (2015, October 2). *NZ aims to improve oceans management*. Retrieved April 20, 2016 from <https://www.beehive.govt.nz/release/nz-aims-improve-oceans-management>

³ Smith, N. (2016, April 11). *Kermadec Ocean Sanctuary objections mistaken*. Retrieved April 20, 2016 from <https://www.beehive.govt.nz/release/kermadec-ocean-sanctuary-objections-mistaken>

The answer to the question ‘what framework, in particular what institutions, instruments and information will enable efficient and effective outcomes for oceans management going forward?’ is unclear. Figure 1 below illustrates how ‘Institutions, Instruments and Information’ should together create an effective framework for policy analysts and others to explore durable policy options and for Government to make informed decisions.

Figure 1: Three components that bring about change and drive the system in which you operate⁴



Recommendations

We believe it is timely to develop some guiding principles that build on shared values around oceans governance. The values should drive the ends (goals) as well as the means (processes). Key to this approach is keeping the focus on relationships.⁵ Hence, our four recommendations are closely linked, highlighting the importance of providing a space for this dialogue to explore common ground.

Recommendation 1: Establish a set of guiding principles to drive public policy

There is a difference between a purpose and a set of principles. The first sets out the problem the legislation aims to resolve (the why), whereas a set of principles guides and drives progress (the how). We believe a set of principles should sit within the legislation. Based on the work the Institute undertook in 2014 and 2015, we believe the following set of principles, illustrated by Figure 2 below, could drive better public policy outcomes in oceans governance going forward, and underpins the following three recommendations.

⁴ TalentNZ. (2015). *Worksheet 4: Illustrate an understanding of the three components that bring about change and drive*. Retrieved April 18, 2016 from <http://talentnz.org/wp-content/uploads/2015/11/20150514-TalentNZ-worksheet-41.pdf>

⁵ Watch, for example, the late Dr Apirana Mahuika talk on *Why we need relationships, rather than partnerships* <https://www.youtube.com/watch?v=0nTWJ7hXLmU>

Figure 2: Framework for One Ocean: Collaborative governance within the community of ocean users, government, conservationist and the public⁶



Recommendation 2: Create an Oceans Institution to act as a chronicler and steward of ocean policy

The Kermadec Ocean Sanctuary is an example of why coordinated oceans policy is so important. The 30 perspectives in *Report 10* and our broad church discussions in *Think Piece 22* explain why we need to create an Oceans Institution to fill the framework gap needed to deliver robust ocean governance. New Zealand has a community of diverse, interdisciplinary and committed stakeholders, all of whom are eager to engage with each other to discuss issues facing New Zealand’s oceans governance. However, there is currently no independent place to discuss New Zealand’s oceans governance. The institution we propose would focus on chronicling the narrative (sharing data, information and strategic knowledge about our oceans) and stewardship (collating and integrating information to inform all stakeholders and suggest effective and durable public policy making), thereby creating a space for collaboration and creativity. This would enable policy to be developed with stakeholders over time, and provide New Zealanders with durable public policy.

At present we have many effective institutions operating in this policy area, but no single independent institution that brings together research and policy to explore common ground, record lessons learnt, describe existing conflicts and identify emerging issues in a considered manner. The oceans institution would not take over or replace any current institutions or instruments, but would instead be a central institution connecting the large number of organisations and stakeholders that have an interest in New Zealand’s oceans.

⁶ McGuinness Institute (2016, March). *Report 10: One Ocean: Principles for the stewardship of a healthy and productive ocean*, p.44. Wellington: McGuinness Institute.

The lack of a central platform for oceans policy problems means trade-offs in ocean policy are being made around the Cabinet table under urgency instead of being thoroughly considered by a diverse range of stakeholders, researchers and policy analysts. An oceans institution would solve a policy gap for Cabinet by developing an integrated, informed, durable, trusted, collaborative, evidence-based and innovative approach to ocean management. This will ensure we develop a framework that will enable New Zealand to become, as Minister for the Environment Hon Dr Nick Smith stated, ‘a leader in oceans management’.⁷

Recommendation 3: Establish a Minister of Water (including fresh and salt water)

There needs to be greater coordination around policy decisions regarding water. Creating a Minister of Water would provide a central figure for dealing with policies relating to New Zealand water. This would encompass both fresh water and oceans, as our rivers flow into the ocean.

From the Institute’s experience – in discussion with the oceans community (when researching for *Report 15* and *Think Piece 22*) – we see that this space requires a coordinated approach. We need a way to bring together research and methods of protection and use on the quality and quantity of this key resource. Clearer leadership in oceans governance and policy formation will help smooth management and foster public engagement.

Recommendation 4: Include the Kermadec Ocean Sanctuary Bill in the Marine Protected Areas Act.

In March 2016 the Institute made a submission on ‘a new Marine Protected Areas Act’, which included a desire for the new legislation to include the EEZ as an area under its jurisdiction.

We believe the Kermadec Ocean Sanctuary Bill should be integrated into the proposed new Marine Protected Areas Act. This would enable the new Marine Protected Areas Act to be the central legislation for all areas under protection.

In our view, there is a need for legislation to be clear, concise, understandable and accessible. It seems timely to bring all of the marine protected areas under one piece of legislation. Oceans cannot be determined by arbitrary lines in the sea; instead they should be viewed in terms of areas that we want to protect and use. Creating different legislation for different domains is sensible (e.g. land, air and water) but not for the same one, i.e. water. We need to work harder to make logical and comprehensive legislation more easily assessed and understood by the general public. Our understanding is that regulations might be a useful mechanism for protecting marine areas.

⁷ Smith, N. (2015, October 2). *NZ aims to improve oceans management*. Retrieved April 20, 2016 from <https://www.beehive.govt.nz/release/nz-aims-improve-oceans-management>

Treating the Kermadec Ocean Sanctuary Bill and the Marine Protected Areas Act separately highlights the lack of alignment currently affecting policy formation. The effect of combining the legislation is that the public will be better equipped to access oceans and marine information and therefore be able to engage in this space in an informed way.