



Seafood New Zealand

Submission to the Environment Select Committee on The Spatial Planning Bill

3 February 2023

-
1. Seafood New Zealand Ltd welcomes the opportunity to submit to the Committee on the Spatial Planning Bill.
 2. Seafood NZ is a professional organisation delivering industry-good services for the wider benefit of the seafood industry, an industry that generates \$5.2 billion annually in economic output and employs some 16,500 kiwis. Seafood NZ plays a role in developing and presenting responses on legislative and regulatory proposals affecting the industry.
 3. We work closely with several other bodies that also represent the interests of specific parts of the seafood industry: Sector Representative Entities. These include NZ Rock Lobster Industry Council, the Paua Industry Council and Fisheries Inshore NZ.¹ This submission has been developed with those groups.

Our Submission

4. We are concerned that the Bill does not adequately reflect the fundamental differences between the terrestrial and marine environments and consequently represents a risk to New Zealand's fisheries, its management regime, quota owners, fishers, or on the Fisheries Settlement with Māori.
5. We highlight these issues in the attached submission and provide recommendations to resolve these.
6. Seafood NZ requests the opportunity to be heard on this matter and looks forward to discussing the Bill with the Committee.

Contact details:

Dr Jeremy Helson
Chief Executive

Jeremy.helson@seafood.org.nz

¹ A recent amalgamation has seen Fisheries Inshore New Zealand and Seafood NZ combine into a new entity, also called Seafood NZ.

Submission to the Environment Committee on the Spatial Planning Bill

Introduction

1. This submission is made jointly by the NZ Rock Lobster Industry Council (**NZ RLIC**), the Pāua Industry Council (**PIC**) and Fisheries Inshore New Zealand (**FINZ**) (**the fishing industry submitters**). We welcome the opportunity to provide input on the Spatial Planning Bill (**the SP Bill**) and wish to be heard in support of our submission.
2. This submission should be read in conjunction with the fishing industry submission on the Natural and Built Environment Bill (**NBE Bill**), which provides more background on who we represent and the reasons for our interest in both Bills.

Ensuring the SP Bill works effectively in the marine environment

3. The fishing industry is wholly dependent on a healthy and sustainable marine environment and we therefore strongly support the need for a more integrated approach to resource management, both within the coastal marine area (**CMA**) and across the terrestrial/marine boundary. Strategic planning has an important role to play in achieving a more integrated approach. We were therefore disappointed that the name of this Bill has been changed from 'Strategic Planning' to 'Spatial Planning'. In our experience, the static nature of spatial planning – essentially, drawing lines on maps² – is poorly suited to the dynamic attributes and shifting scale of marine ecosystems, and the need for responsive, adaptive management of marine resources.
4. In our view, an effective strategic planning regime for the CMA should involve:
 - Identifying the full range of threats to the marine environment, including those arising from terrestrial activities; and
 - Ensuring that adverse effects of all activities are effectively managed under sector-specific legislation by appropriately-resourced authorities using a full range of spatial and non-spatial management responses.
5. In spite of our significant reservations about the application of spatial planning in the CMA, we acknowledge that the Government is committed to this tool and we therefore wish to ensure that the SP Bill provides an adequate framework for implementing spatial planning in the CMA.
6. The CMA comprises well over a third of the jurisdiction covered by the SP Bill, yet little consideration has been given to the differences between marine and terrestrial environments. Instead, there is an implicit assumption in the Bill that the CMA is essentially the same as dry land and that terrestrial planning concepts, decision makers, and expertise can simply be transposed directly to the CMA. Although the SP Bill seeks to integrate decision making across

² The Bill's Explanatory Note states that Regional Spatial Strategies *are expected to have a strong visual mapping component*.

two other terrestrial planning statutes, it does not recognise or interact effectively with significant marine management legislation such as the Fisheries Act 1996.

7. It is important that the interaction between the SP Bill (and NBE Bill) and the Fisheries Act is carefully considered, because the SP Bill and the NBE Bill both have implications for the sustainable management of fisheries under the Fisheries Act 1996 and for the Crown's obligations under the Maori Fisheries Settlement.
8. Fisheries management will be directly affected by plans made under the NBE Bill because these plans can include *provisions that manage the effects of fishing in the coastal marine area*.³ For example, fishing methods may be prohibited in identified significant biodiversity areas. Although the SP Bill does not have such a direct effect on fisheries management, it does contain provisions that require the identification in regional spatial strategies (**RSS**) of *areas that may require protection, restoration, or enhancement* (clause 17(1)(a)). An NBE plan must be consistent with the RSS and therefore the identification in the RSS of such areas may ultimately result in the inclusion of fishing prohibitions in an NBE plan.
9. The prohibition of fishing in one area typically displaces fishing effort into adjacent areas, reducing the abundance of surrounding fish populations and potentially increasing fishing-related pressure on marine biodiversity values outside the closed area.⁴ These outcomes are clearly contrary to the stated purpose and 'system outcomes' of the NBE Bill and illustrate why it is important to ensure that the interface between the SP Bill and the Fisheries Act is effective with respect to the implementation of spatial planning in the CMA.

Summary of recommended changes

10. The four main changes that the fishing industry submitters consider are necessary to ensure that the SP Bill provides an adequate framework for spatial planning in the CMA are:
 - More explicit and effective integration of resource management issues across the land-sea boundary;
 - A requirement for regional planning committees (**RPC**) to effectively represent marine interests;
 - Explicit recognition of management measures adopted under the Fisheries Act during the preparation of an RSS; and
 - Formal opportunities for the Minister for Oceans and Fisheries to provide input on matters related to fisheries management and the Maori Fisheries Settlement.
11. We also comment on a more technical matter related to the incorporation of information from planning documents into RSS.

³ NBE Bill clause 105(1)(f).

⁴ The adverse effects of displaced fishing effort are discussed in more detail in the fishing industry submission on the NBE Bill (see in particular, **Box 1** of that submission).

Integration across the land-sea boundary

12. The RMA Review Panel recommended that spatial planning should be extended into the CMA primarily to promote integration between land use, the coastal environment and water quality.⁵ It is therefore disappointing that the SP Bill's promotion of integrated management is limited to integration in the performance of the functions under the NBE Act, the Land Transport Management Act 2003 (**LTMA**) and the Local Government Act 2002 (**LGA**).⁶ This is a step backwards from the broader concept of integrated management promoted – but not always effectively implemented – under the Resource Management Act 1991 (**RMA**).
13. Although fisheries sustainability is managed under the Fisheries Act, fish stocks and fish habitats are critically dependent on the quality of the surrounding marine environment. The health of our inshore marine fisheries is directly influenced by the levels of sediments, nutrients and other contaminants entering the coastal environment from land and freshwater. MacDiarmid et al (2012) identify threats deriving from human activities in catchments that discharge into the coastal marine environment as some of the most significant threats to New Zealand's marine habitats.⁷ Sedimentation resulting from changes in land use is the third equal highest ranked threat over all habitats and is the *highest ranked threat* for five coastal habitats (harbour intertidal mud and sand, subtidal mud, seagrass meadows and kelp forest). Other threats deriving from human activities in catchments ranking within the top one third of all threats include sewage discharge, increased nitrogen and phosphorus loading and heavy metal pollution. Three other highly ranked threats, (algal blooms, increased turbidity, and oil pollution) stem in part from human activities in catchments.
14. SP Bill clause 15(b) provides that a RSS must *provide for the integrated management of the environment* [...] but aside from repeated references to the LTMA and LGA there is nothing in the 'contents of RSS'⁸ that promotes an integrated approach across different environmental domains, including the management of adverse effects that cross the critical boundary between terrestrial or freshwater environments and the CMA.
15. We consider that the RSS should identify matters that are significant because of their impacts across the land/sea boundary or the freshwater/coastal water boundary, so that steps must then be taken to address these issues in the NBE plan. For example, an RSS might usefully identify areas where current land uses are incompatible with the vision and objectives for the coastal environment of a region, or where land uses have a negative effect on areas of the CMA that require protection, restoration or enhancement.

⁵ Resource Management Review Panel (2020). *New Directions for Resource Management in New Zealand*. Report of the Resource Management Review Panel. June 2020.

⁶ SP Bill clause 3, Purpose.

⁷ This risk assessment evaluated and ranked 65 risks to 62 marine habitat types. MacDiarmid, A, A McKenzie, J Sturman, J Beaumont, S Mikaloff-Fletcher and J Dunne (2012). Assessment of anthropogenic threats to New Zealand marine habitats. New Zealand Aquatic Environment and Biodiversity Report No 93.

⁸ Clause 16 general contents, clause 17 contents key matters, clause 18 contents other matters.

Recommendation

16. The fishing industry submitters recommend that clause 18 – contents of regional spatial strategies: other matters of sufficient significance – should be amended by inserting a new subsection as follows:

(1) A matter is of sufficient significance for the purposes of section 16(1)(c)(ii) if the regional planning committee considers that the matter meets 1 or more of the following criteria:
[...]
(ba) the matter relates to uses of land or freshwater that have adverse effects in the coastal marine area;

Better representation of marine interests

17. The RPC is responsible for preparing the RSS which applies in the CMA. The RPC membership should therefore include skills and expertise relevant to marine issues. Such a requirement would be consistent with the requirement in the NBE Bill for RPCs to effectively represent *urban and rural* interests.⁹ The Ministerial representative on the RPC, whose role is to communicate the government's strategic priorities in relation to the SP Act, should also have experience in marine issues, where relevant to the RSS. This is particularly the case if a review of an RSS is directed by the Minister of Conservation in relation to the CMA.
18. The fishing industry submission on the NBE Bill therefore recommends the following amendments in relation to the membership of an RPC:
- Require RPC composition arrangements to ensure that marine interests are adequately represented on the RPC; and
 - Require the responsible Minister to consult other Ministers who have an interest in the issues relevant to the RSS before appointing the Ministerial representative on the RPC.

Recognition of Fisheries Act management measures

19. Currently, integration between decision-makers under the Fisheries Act and the RMA is promoted by the inclusion of reciprocal provisions in each Act, as follows:
- Under the RMA, a regional council, when preparing a Regional Policy Statement, must *have regard to management plans and strategies prepared under other Acts [and] ... regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing)* (s.61(2)); and
 - Under the Fisheries Act, a decision-maker must *have regard to any provisions of any regional policy statement, regional plan, or proposed regional plan under the Resource Management Act 1991* (s.11(2)).
20. When the NBE Bill and SP Bill come into effect, Fisheries Act decision makers will be required to *have regard to any provisions of any national planning framework, natural and built*

⁹ NBE Bill Schedule 8 clause 3(2).

*environment plan, or proposed natural and built environment plan under the Natural and Built Environment Act 2022 and any regional spatial strategy under the Spatial Planning Act 2022.*¹⁰

21. However, the SP Bill contains no provision equivalent to RMA s.61(2) requiring RPCs to have regard to Fisheries Act matters. The SP Bill contains only a general requirement to have regard to *any strategies, plans or instruments made under other legislation* (clause 24(3)(a)) – but the two examples that are provided under this requirement both relate to Treaty settlement legislation, not to other resource management legislation. It is not clear why these two examples have been picked out while the existing RMA reference to the Fisheries Act (including instruments that implement the Maori Fisheries Settlement) has not been carried forward into the SP Bill.

Recommendation

22. The fishing industry submitters recommend that clause 24(3)(a) should be amended to read:

(3) The regional planning committee must have regard to the following, to the extent relevant to the regional spatial strategy:

- (a) any strategies, plans, or instruments made under other legislation (other than those referred to in subsection 2)), including –
 - (i) statutory acknowledgements; and
 - (ii) a plan prepared under section 14 of the Maori Commercial Aquaculture Claims Settlement Act 2004; and
 - (iii) fisheries plans or instruments made under the Fisheries Act 1996 relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including instruments relating to taiāpure, mahinga mātaihai, or other non-commercial Maori customary fishing).¹¹

A role for the Minister for Oceans and Fisheries

23. At the beginning of this submission we set out how an RSS made under the SP Bill can affect the sustainable utilisation of fisheries under the Fisheries Act. RSS provisions that may have negative implications for sustainable fisheries management can also affect the Crown's obligations under the Maori Fisheries Settlement. It is the Minister for Oceans and Fisheries – not an appointed RPC – who is responsible on behalf of the Crown for protecting the integrity of the Fisheries Settlement.¹²
24. The Minister for Oceans and Fisheries' responsibilities for fisheries sustainability and the Maori Fisheries Settlement mean that it is not sufficient to leave the involvement of this Minister dependent on the discretion of another Minister. Providing the Minister for Oceans and Fisheries with a secure role under the SP Bill would be consistent with the existing recognition in the Bill of the Minister responsible for the Maori Commercial Aquaculture Claims Settlement

¹⁰ SP Bill Schedule 5, amendments to the Fisheries Act 1996.

¹¹ Note that this wording is taken directly from equivalent provisions in the RMA – in our view the provision could be worded more efficiently while still having the same effect.

¹² Treaty of Waitangi Fisheries Claims Settlement Act 1992.

Act 2004.¹³ We consider that the Minister for Oceans and Fisheries should be involved (a) when the RPC initiates an RSS planning process, and (b) if the Minister of Conservation directs a review of an RSS that relates to the CMA.

Recommendations

25. The fishing industry submitters recommend that clause 36 (and its heading) should be amended to read:

~~36 Ministers responsible for aquaculture and fisheries settlements~~ ~~Maori Commercial Aquaculture Claims Settlement Act 2004~~ must be notified
A regional planning committee must notify the Ministers responsible for the administration of the Maori Commercial Aquaculture Claims Settlement Act 2004 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 of the opportunities for the Ministers to participate in a process adopted under section 30.

26. The fishing industry submitters recommend that clause 61(3) – Ministers may direct review of regional spatial strategies – should be amended to read:

(3) The Minister or the Minister of Conservation, as the case may be, must –
[...]
(b) prepare a statement of expectations that sets out the objectives expected to be achieved, which the regional planning committee must have regard to; and
(c) consult any relevant Ministers or any other person the responsible Minister considers appropriate to consult on the content in the statement of expectations and, if the review relates to the coastal marine area, consult with the Minister for Oceans and Fisheries.

Incorporation of information from planning documents

27. The SP Bill provides for the incorporation into an RSS of information on areas or features of the environment that have been classified in a particular way in NBE plans (clause 29) or existing RMA plans (schedule 1 clause 2). When incorporating this information, the RPC need not have regard to the statutory considerations in clauses 24 to 28 or any submission or other comment received on the information.
28. While this approach may be reasonable for the incorporation of material from an operative NBE plan (clause 29) we consider that it is unreasonable to incorporate material into an RSS from an existing RMA plan without regard to relevant new statutory requirements. RMA plans are prepared under a different statutory regime from the RSS or NBE plans – i.e., a regime with a different purpose and planning approach, different national direction, and different statutory criteria and definitions. It is therefore not appropriate to incorporate this material into an RSS without the discipline of checking whether the area or feature complies with the new statutory requirements under the NBE Bill.
29. In both circumstances (i.e., incorporation of material from RMA plans or NBE plans) the RPC should be required to have regard to submissions that are relevant to the matters that the RPC

¹³ SP Bill clause 36.

must consider when incorporating the information – i.e., whether there has been a significant change in the relevant environment or any significant new information about the relevant environment has become available. This is particularly important for the CMA because marine users are likely to be able to contribute timely and relevant information about the marine environment and any environmental changes that may not be readily available from other sources.

Recommendations

30. The fishing industry submitters recommend that clause 29 – incorporation of information from natural and built environment plan – should be amended to read:

(1) [...]
(2) Before incorporating the information, a regional planning committee must consider whether, in the period since the natural and built environment plan became operative, -
(a) there has been a significant change in the relevant environment:
(b) any significant new information about the relevant environment has become available
(3) [...]
(4) In doing so, the regional planning committee need not –
(a) comply with sections 24 to 28; or
(b) have regard to or respond to any submissions or other comment received on the information during the process for preparing the strategy, except to the extent that submissions or comments relate to the matters in subsection (2).

31. The fishing industry submitters recommend that Schedule 1 clause 2 – incorporation of information from RMA planning documents into regional spatial strategies – should be amended to read:

(1) A regional spatial strategy may incorporate the following from an operative RMA planning document that applies within the region:
(a) information on the state and characteristics of the environment:
(b) decisions on whether areas or features of the environment have particular characteristics, should be classified in a particular way, or meet related criteria that are set out in legislation.
(2) Before incorporating the information, a regional planning committee must consider:
(a) whether in the period since the RMA planning document became operative –
~~(a)~~ (i) there has been a significant change in the relevant environment;
~~(b)~~ (ii) any significant new information about the relevant environment has become available;
(b) whether the area or feature and its characteristics comply with relevant classifications and criteria in the Natural and Built Environment Act 2022.
(3) [...]
(4) In doing so, the regional planning committee need not –
(a) comply with sections 24 to 28; or
(b) have regard or respond to any submission or other comment received on the information during the process for preparing the strategy, except to the extent that submissions or comments relate to the matters in subclause (2).
(5) [...]