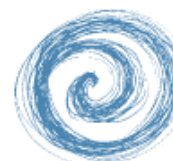


OCEANS POLICY SECRETARIAT



BACKGROUND PAPER ONE

14 March 2003

OCEANS POLICY

SETTING THE SCENE: NEW ZEALAND'S OCEANS-RELATED OBLIGATIONS AND WORK ON THE INTERNATIONAL STAGE

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Introduction

This paper is a companion background paper for Working Paper 11 ‘Issues arising for New Zealand under the international framework for oceans management’.

How international law is made

International law is created by sovereign states. In theory, a state is only bound at international law to the extent that it has consented to be bound. Most international law is created either by the establishment of international agreements, which create rules that are legally binding on those states that sign on to them, or by customary rules, which evolve from consistent state practice generally recognised as requiring compliance.

Over the past few decades, international environmental law-making has been prolific. A large number of agreements for the protection of the environment have been negotiated and adopted by the international community - many of which relate to management of the marine environment. In addition to the number of international legal agreements adopted, however, there has been a far larger number of other instruments and documents generated by the international community which provide important, non-legally-binding statements and guidelines on generally-accepted policy and practice for environmental protection. These non-binding documents do not of themselves create legal obligations. They are sometimes known, however, as “soft law”, in order to recognise the role they play in influencing the direction of international legal development and the political value states place on acting in accordance with them.

How international law is applied in New Zealand

In New Zealand, the power to take on a new international treaty obligation lies with the Executive. In 2000, New Zealand adopted a new process to ensure greater transparency before legally-binding treaty obligations are adopted. The new formal process requires that any multilateral treaty be tabled in Parliament and afforded the opportunity for consideration by Select Committee before a binding treaty action is taken by New Zealand.

Treaties presented in the House for consideration must be accompanied by a National Interest Analysis (NIA). The NIA must explain, among other things, what new obligations the treaty would impose on New Zealand and the legislative, administrative and other measures that would need to be adopted to implement the treaty in New Zealand.

Jurisdictions

In the context of oceans management, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines the comprehensive governance framework for management of marine spaces. UNCLOS sets down in international law the extent of jurisdiction of a coastal state over the waters and continental shelf surrounding its land

territory and their resources. Understanding the scope of these jurisdictional maritime zones is critical to proper management of our oceans environment.

The jurisdictional zones defined by UNCLOS are set out in Annex 3.

New Zealand’s legally-binding obligations under international instruments

The United Nations Convention on the Law of the Sea (UNCLOS) – ratified by New Zealand on 19 July 1996 – is the overarching international policy framework for oceans globally. Countries that have ratified are bound by its 320 articles and 9 annexes. This is critical as the convention itself establishes a key policy principle in its objective of providing for the optimum utilisation of living resources (among other objectives) and access to them in terms of specified rights according to the spatial dimensions of the territorial sea, contiguous zone, exclusive economic zone, continental shelf and area beyond the EEZ.

While the concept of “optimum utilisation” is not explicitly discussed in UNCLOS, it is clear that states are obliged to *provide* for the utilisation of living resources and that attention must be paid to how this might be best achieved having regard to the future of the resource and the maximisation of benefit. Articles of the convention that refer to states’ *environmental* responsibilities would seem to suggest that optimisation may include both the notion of sustainable yield and broader consideration of marine environmental values. (That is, long run commercial use and non-commercial values). It is of note that the principle of “optimum utilisation” does not apply to non-living resources (although when exercising sovereign rights over non-living resources states have obligations in terms of environmental protection).

The Convention on Biological Diversity (CBD) also provides important international policy context. The CBD calls for “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits...”. Obligations include *inter alia* the *sustainable use* of components of biodiversity, environmental *impact assessment* of projects that are likely to affect biodiversity and the facilitation of *access to genetic resources*. All of these obligations have direct relevance to contemporary and future oceans management.

A list of international oceans-related agreements (treaties) to which New Zealand is a party is attached as Annex 1. A subset of these is analysed in detail in the Stocktake¹, Appendix 5.

New Zealand’s non legally-binding obligations under international instruments

The soft law instruments outlined below do not represent the full extent of international soft law associated with oceans issues, rather they are key pieces of soft law relevant to the New Zealand Oceans Policy process. Numerous examples of soft law also exist in each of the specific sectors associated with the management and use of the oceans.

¹ Oceans Policy Stocktake – Legislation and Policy Review, November 2002. See www.oceans.govt.nz/resources/publicdoc.html.

United Nations General Assembly (UNGA) Resolutions

Each year the United Nations General Assembly negotiates a number of Resolutions associated with oceans and the Law of the Sea. The Resolutions serve as an affirmation by Member States' of various existing international instruments and other commitments relating to oceans management and the law of the sea. They also identify areas where additional international cooperation or domestic action is required. A number of significant international initiatives such as the 1992 United Nations Conference on Environment and Development (UNCED), and the UN Conference that negotiated the 1995 United Nations Fish Stocks Agreement have been mandated by UNGA via these resolutions.

The Rio Declaration and Agenda 21

The Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro from 3-14 June 1992, provides a statement of principles and the context for the specific proposals and actions outlined in Agenda 21. Agenda 21 provides the blueprint for action for global sustainable development into the 21st century. Chapter 17 of Agenda 21 sets down the programme of action for achieving sustainable development of oceans, coastal areas and seas. It provides three important principles that underpin the ecologically sustainable development of ocean resources - that management of such development must be integrated, precautionary and anticipatory. It also sets out 7 programmes that have formed major themes in the development of comprehensive and integrated oceans policy elsewhere. The themes are:

- Integrated management and sustainable development of coastal and Marine Areas
- Marine environmental protection
- Sustainable use and conservation of the marine resource of the high seas
- Sustainable use and conservation of the marine resources under national jurisdiction
- Addressing critical uncertainties for the management of the marine environment and climate change;
- Strengthening international, including regional, cooperation and coordination;
- Sustainable development of small islands.

Further analysis of Agenda 21 is provided in Appendix 5 of the Stocktake.

WSSD Declaration

The World Summit on Sustainable Development (WSSD) held in Johannesburg in August 2002 adopted the WSSD Declaration, which among other things reaffirms the commitments made by states to the principles contained in the Rio Declaration. Associated with the WSSD Declaration is the WSSD Plan of Implementation. The Plan is intended to build upon the achievements made since UNCED and to expedite the realization of the remaining goals. The Plan includes a specific section that addresses issues associated with the sustainable development of the oceans. Areas covered include: sustainable fisheries including the restoration of depleted fish stocks;

promotion of integrated multidisciplinary and multi-sectoral coastal and ocean management; development of programmes to halt the loss of marine biodiversity, protection of the marine environment from land-based activities, and enhancement of maritime safety and protection of the marine environment from marine pollution and environmental damage caused by ships.

Legislation that codifies international obligations

New Zealand has implemented UNCLOS jurisdictional provisions via the Territorial Sea, Contiguous Zone and Exclusive Economic Act 1977.

Marine protection rules promulgated under the Maritime Transport Act (MTA) work in combination with marine pollution regulations under the Resource Management Act to give effect to New Zealand's obligations under MARPOL and the London Dumping Convention. Marine pollution regulations under the RMA give effect to these obligations *within* the territorial sea, and marine protection rules under the MTA give effect to these same obligations *beyond* the territorial sea to the limits of the exclusive economic zone - and in some cases, to the limits of the continental shelf. In addition, marine protection rules cover the design, construction and equipment requirements, and shipboard operational and emergency procedures relating to the prevention of pollution from boats, both within the territorial sea and beyond.

Another example of domestic implementation of an important multilateral oceans-related treaty is the 1991 Driftnet Prohibition Act, which ensures New Zealand compliance with the obligations of the 1989 Driftnet Convention.² Other examples of legislation that codifies obligations under international treaties are:

- Continental Shelf Act 1964
- Trade in Endangered Species Act 1989
- UN Convention on the Law of the Sea Act 1996.

Strategies that help implement international obligations

A large number of strategies are developed domestically at least in part to meet commitments under international instruments such as the Convention on Biological Diversity and the 1992 Rio Declaration on Sustainable Development. Many of these are discussed in detail in the Stocktake (see Appendix 5).

Current activities underway in key international institutions with oceans responsibilities and functions

Oceans issues are by nature transboundary, and therefore cannot be successfully addressed only by domestic action. Broader regional or global approaches to oceans management should influence the development of New Zealand's oceans policy. The relationship between New Zealand domestic oceans policy and international initiatives is however not a one-way street. Future development of policy positions in the international context will need to be informed by and be consistent with New Zealand's domestic policy.

² The full title of the Driftnet Convention is the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989.

The following is a brief description of some of the main international institutions with a mandate in the oceans area.

United Nations Informal Consultative Process On Oceans And The Law Of The Sea (UNICPOLOS)

Following the review in 1999 by the Commission on Sustainable Development of the sectoral theme of ‘oceans and seas’ the General Assembly decided in GA res. 54/33 (1999) to establish an open-ended informal consultative process to facilitate its annual review of developments in ocean affairs. The Oceans Process is open to all states as well as intergovernmental organisations with competence in ocean affairs. Discussion panels allow the input from representatives of the major groups identified in Agenda 21.

The Process is to consider the Secretary-General’s annual report on Oceans and the Law of the Sea and carry out three interrelated tasks:

- To study developments in ocean affairs consistent with the legal framework provided by the Convention on the Law of the Sea and the goals of Chapter 17 of Agenda 21
- Against the backdrop of overall developments of all relevant oceans issues, to identify particular issues to be considered by the General Assembly, and
- While identifying such issues, to place emphasis on areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

The mandate for UNICPOLOS was renewed by the General Assembly at its fifty-seventh session.

International Seabed Authority (ISA)

The International Seabed Authority was established under UNCLOS to provide a management framework for seabed resources found beyond the boundaries of state jurisdiction – that is, in the deep seabed. The principal organs of the Authority are the Assembly, the Council, and the Secretariat. The Authority has 138 members. All States Parties to the Convention are ipso facto members of the Authority.

International Tribunal For The Law Of The Sea

The Tribunal is an international court, made up of 21 elected members or judges, that deals with the peaceful settlement of disputes relating to use of the ocean and its resources. It was established in 1996 by UNCLOS.

The Tribunal can deal with cases submitted to it by States Parties to the Convention, other states, international organisations and other entities in accordance with the Convention, including cases concerning the international seabed area, and all matters specifically provided for in any other international agreement which confers jurisdiction on the Tribunal.

The Seabed Disputes Chamber of the Tribunal has certain compulsory jurisdiction with respect to disputes arising out of the exploitation and exploration of the seabed and ocean floor beyond the limits of national jurisdiction, which is also known as the International Seabed Area.

The Seabed Disputes Chamber can also give advisory opinions at the request of the Assembly or Council of the International Seabed Authority on legal questions arising within the scope of their activities.

Commission On The Limits Of The Continental Shelf

The Commission on the Limits of the Continental Shelf was also established by UNCLOS. The Commission was established to consider submissions by coastal states on the outer limits of their continental shelves where they extend beyond 200 nautical miles from the coastline. The Commission will make recommendations on the outer shelf limits, and can provide scientific and technical advice to coastal states if requested.

The Commission is composed of 21 elected members who are experts in geology, geophysics or hydrography.

The Food And Agriculture Organisation (FAO)

The FAO of the United Nations has a subsidiary body, the Committee on Fisheries (COFI). COFI is the only global inter-governmental forum where major international fisheries issues are examined from a technical perspective.

The two main functions of COFI are to review FAO work programmes in the field of fisheries and aquaculture and their implementation, and to conduct periodic general reviews of international fishery and aquaculture issues.

The International Maritime Organisation (IMO)

The IMO Convention entered into force in 1958 and the Organisation met for the first time in 1959. The purposes of the Organisation are to enable technical cooperation among Governments in the regulation and practices of shipping by vessels engaged in international trade. The IMO also facilitates adoption of the highest standards in maritime safety, navigation, and prevention of marine pollution from ships. New Zealand's Maritime Safety Authority has close involvement in the IMO's work, and can implement a wide range of international marine protection and navigational safety obligations through IMO enactments (e.g. designation of an 'Area to Be Avoided' for Poor Knights Island).

United Nations Environment Programme: Activities In Marine And Coastal Areas

Key oceans-related activities of the United Nations Environment Programme (UNEP) include the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities (GPA). The GPA aims to prevent the degradation of the marine environment from land-based activities by facilitating state compliance with the duty to preserve and protect the marine environment.

The Regional Seas Branch of UNEP fosters regional cooperation in relation to the marine and coastal environment. It has accomplished this by encouraging the creation of Regional Action Plans. These include a series of regional Conventions - unique legal instruments designed to protect shared environmental interests.

UNEP also produces the UN Atlas of Oceans. This Internet-based Atlas provides users with continuously updated strategic data on the state of the world's oceans,

maps, development trends and threats to human health from the deteriorating marine environment. It is the result of extensive cooperation in the UN and with leading scientific agencies. It is designed to be an encyclopedic resource but also the world's foremost information clearinghouse and online forum for experts in ocean issues.

The Commission on Sustainable Development (CSD)

The CSD was established by the United Nations General Assembly after the Rio Earth Summit (1992). Chapter 17 of Agenda 21 addresses high seas fishing issues, sustainable use and conservation of marine living resources, and the sustainable development of small islands. CSD provides political impetus and an institutional focal point for the implementation of Agenda 21, co-ordinates and catalyses action on issues related to sustainable development; and provides a forward-looking forum for emerging sustainable development issues.

The New Zealand Minister for the Environment was the Chair of the Seventh Meeting of the CSD (CSD VII) in 1999, which had 'oceans and seas' as its main theme. The need for improved co-ordination and co-operation in the way the UN system deals with the oceans was a focus of the meeting. An outcome of the meeting was the CSD's recommendation that "an open-ended informal consultation process" be established to provide focus for the General Assembly's annual debate on Oceans and to provide a genuine impetus for improved inter-agency co-ordination.

World Trade Organisation & Committee on Trade and Environment

New Zealand plays a close role in the work of the WTO and CTE. The Ministry of Foreign Affairs and Trade can provide details of extensive work programmes currently in train.

Regional institutions with oceans mandates

In addition to the various international institutions, there are a number of regional organisations whose work is relevant to the oceans policy process in New Zealand. South Pacific regional institutions with an oceans mandate include the Secretariat of the Pacific Community (SPC), the South Pacific Applied Geoscience Commission (SOPAC), the Forum Fisheries Agency (FFA) and the South Pacific Regional Environment Programme (SPREP). New Zealand has had some involvement in the work of the APEC Marine Resources Working Group, which is based in Australia. A secondee from Fisheries and Oceans, Canada is working within Environment Australia as the chair of the APEC Marine Resources Working Group, and is also involved in the development of Australian Oceans Policy. New Zealand has also taken a lead role in the work of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Oceans policy programmes in other countries and regions

Below is a description of key approaches to oceans policy development taken by other countries and regions.

Australia

Australia has proceeded down a policy (versus legislative) pathway towards implementation of an oceans policy. The oceans policy establishes an overarching framework for integrated and ecosystem-based planning and management across

Australia's marine jurisdiction. The policy builds on, rather than replaces, existing sectoral and jurisdictional mechanisms.

The core tool used is "Regional Marine Plans". These are based on large marine ecosystems or biogeographic regions and are pluralistic in nature, incorporating multiple values. Regional plans adopt a risk assessment framework for identifying and responding to threats to the marine environment. No regional plans have been implemented to date.

A "multiple use" management approach aims to achieve an integrated allocation of resource access and use to achieve an acceptable balance of outcomes across the full range of oceans uses. Adaptive management³ is employed to respond to adverse environmental changes or changes in social, cultural and economic values. A key issue with the Australian Oceans Policy is that it is a Commonwealth only policy, because the State governments have yet to endorse the policy. This has obvious implications for the implementation of the policy, which is reliant on inter-jurisdictional regional plans. The Australian Commonwealth government is aiming for a national approach by the end of 2003.

Canada

The Canadian *Oceans Act 1997* establishes the framework for cross-sectoral integrated management through the implementation of a national Oceans Strategy. The Act is based on the principles of *Agenda 21* and the United Nations Convention on the Law of the Sea [UNCLOS]. The Act establishes the Minister of Fisheries and Oceans as the Minister responsible for leading and facilitating the development and implementation of the Strategy.

The Canadian model is based on the concept of Integrated Management Planning (IMP), which provides for stakeholder input in decision-making processes. IMP is based on the principles of ecosystem-based management, sustainable development, the precautionary approach, conservation, duty in shared responsibility, flexibility and inclusiveness. Ecosystem-based management objectives are to be set for what are described as Large Oceans Management Areas, with Coastal Marine Areas nested under these. IMP collaborative management forums are to be established, but it seems that no such forums are yet in place in a formal sense.

South Pacific

There is currently no South Pacific Oceans Policy as such, although through the various regional organisations [and collaboratively through the Council of Regional Organisations in the Pacific – CROP] oceans issue, and particularly those relating to straddling stocks, sea level rise / climate change, and marine biodiversity [including bioprospecting], are being co-ordinated.

A large number of individual ocean/marine management and research initiatives occur throughout the Pacific, reflecting the number of regional, bilateral and multilateral aid

³ Adaptive management approaches have various forms but generally rely upon a time-based, sequencing approach to development with clear outcomes, milestones and trigger points, and close monitoring of effects and impacts, before progressing between identified stages. The phrase "learning by doing" is increasingly associated with adaptive management.

donors operating and sponsoring projects – and the disproportionately large Exclusive Economic Zones of many of the region’s small island states.

The main regional bodies involved include the Pacific Islands Forum Secretariat [PIFS], South Pacific Regional Environment Programme [SPREP], South Pacific Applied Geoscience Commission [SOPAC], Forum Fisheries Agency [FFA], University of the South Pacific [USP], and the Secretariat of the Pacific Community [SPC].

NZAid is a significant contributor to regional organisations and projects.

South Africa

The South African Policy review is a coastal management review, rather than a fully-fledged oceans policy review. The policy focuses on achieving inter-coastal zone management with specific objectives for management of land. No new institutions are proposed in the short-term, although the policy does propose a new *Coastal Management Act* but the exact nature of the legislation is yet to be determined.

The policy currently has no statutory effect and simply provides the framework for development of more detailed proposals. The policy displays a strong commitment to increasing participation and exploring co-management arrangements, but there are no specific proposals at this stage.

United Kingdom

In the United Kingdom “*Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of Our Marine Environment*” was developed in 2001. The strategy promotes an ecosystem-based approach, underpinned by the principles of sustainable development, integrated management, conservation of biological diversity, robust science, the precautionary principle and stakeholder involvement.

The Strategy is very high level and essentially sets out a vision, provides a compilation of what is already being done to promote the vision and sets out a series of high-level initiatives to further promote the vision. Emphasis is placed on “working together more effectively” and improving co-ordination of Government”.

Many groups, particularly NGOs, are impatient with progress under the strategy and are calling for an Oceans Act to be developed to provide a stronger legislative basis to an oceans policy.

United States of America

An *Oceans Act 2000* has the single purpose of establishing an Oceans Commission, which is tasked with undertaking a detailed review of existing and planned US oceans and coastal programmes. So far the Commission has produced a mid-term report which sets out a framework for developing the final report and recommendations. There have been a number of delays getting to this point, which are blamed on the lack of a constituency in the US for an oceans policy, along with very strong sectoral interests.

Frustration with the slow progress of the Oceans Commission has led to the establishment of a parallel Pew⁴ Oceans Commission, which is described as “an

⁴ The Pew Charitable Trusts support non-profit activities in the areas of culture, education, the environment, health and human services, public policy and religion. Based in Philadelphia, the Trusts make strategic investments that encourage and support citizen participation in addressing critical issues

independent group of American leaders conducting a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters”. After reviewing scientific information and speaking with people from around the country, the Commission will make its formal recommendations in a report to Congress in early 2003.

Other management approaches

This section looks at two further management approaches that may offer some useful insights for a New Zealand oceans policy.

Great Barrier Reef Marine Park Authority (GBRMPA)

This provides a useful example of multiple use management in a highly sensitive marine area. The overriding goal is to provide for the “*protection, wise use, understanding and enjoyment of the Great Barrier Reef in perpetuity...*” There are a further 12 subordinate aims that are to be read in conjunction. Two of these are of particular interest. One is the subsidiary aim of providing for conservation and “reasonable use” in such a way that the natural values are protected, while opportunities are provided for sustainable use and enjoyment. The other is the aim of providing for the recognition of Aboriginal and Torres Strait Islander traditional affiliations and rights in the management of the Marine Park.

The principle tools are the GBRMPA, a single independent management agency, and zoning plans supported by management plans. These plans must consider the precautionary principle, world heritage site values, and involve the people who use, and activities related to, the Reef. The GBRMPA provides the sole example of an operational management agency with a specific focus on multiple use.

Great Lakes

The Council of the Great Lakes Governors is one attempt to provide co-operative integrated management over the largest body of freshwater in the world (estimated as containing one fifth of the earth’s freshwater resource). The Council comprises the eight US Governors and two Canadian Premiers whose states/provinces border the five central lakes (Superior, Michigan, Huron, Erie, and Ontario). It is an executive rather than a management agency.

The primary focus of the Council has been on the quality and quantity of water in the watersheds. This has recently been extended quite deliberately into a concern for the associated water-dependent natural resources.

The Council operates by means of the 1985 Great Lakes Charter and the more recent Great Lakes Charter Annex 2001.

The central mission of the Council is to encourage and facilitate environmentally responsible economic growth.

and effecting social change, and have established several Commissions.

Development of New Zealand’s position on international oceans issues

All engagement in international policy debates is ultimately the product of ministerial direction. Long standing strategic, political, economic and environmental policy settings guide the approach that New Zealand delegates are to adopt in international debates on oceans policy. Where new policy is under development, or where there may be financial, political, or significant economic consequences, ministerial views are sought as a final check against standing instructions. This may take the form of Cabinet approval.

Detailed preparations for engagement on specific issues, or the development of new policies, are likely to differ slightly among departments. But the key elements are similar. Various government agency experts are engaged where policy cuts across agency lines. In addition, departments work together with stakeholders on specific issues in order to feed their views into the policy-making process.

A recent example of the international policy making process at work was the formation of New Zealand’s approach to oceans debates at the World Summit on Sustainable Development. The Ministry of Foreign Affairs and Trade convened an “Oceans Contact Group” comprising government departments with oceans interests, the National Institute of Water and Atmospheric Research (NIWA), and non government representatives.⁵ The group was briefed on policy issues under discussion and its views were sought on policy options. Those views were factored into recommendations to ministers which were finally approved by Cabinet. Following the Summit, the group was reconvened to review outcomes and plan follow up work.

⁵ Non government representatives were The Council for International Development; the World Wide Fund for Nature and the Sea Food Industry Council.

ANNEX 1 - Multilateral Oceans-related Agreements

This Annex presents a list of the multilateral oceans-related agreements (treaties) that New Zealand is a party to. A subset of these is reviewed in Appendix 5 of the Stocktake. Further discussion of key instruments is also contained in Annex 2 of this paper.

Multilateral agreements relating to the oceans which are in force in New Zealand	Year treaty entered into force	Date of NZ's signature (S) ratification(R) or accession (A)	Date treaty came into effect in NZ¹
Antarctica			
The Antarctic Treaty 1959	1961	R 1.11.60	23.6.61
Convention on the Conservation of Antarctic Marine Living Resources 1980 [CCAMLR]	1982	R 8.3.82	7.4.82
Protocol on Environmental Protection to the Antarctic Treaty 1991 [Madrid Protocol]	1998	R 22.12.94	14.1.98
Atmosphere and Space			
United Nations Framework Convention on Climate Change [FCCC] 1992	1994	R 16.9.93	21.3.94
Protection of the Marine Environment and Resources			
United Nations Convention on the Law of the Sea [UNCLOS] 1982	1994	R 19.7.96	18.8.96
Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea 1982	1996	R 19.7.96	28.7.96
International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL)			1998
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 [London Convention]	1975	R 30.4.75	30.8.75
International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties 1969	1975	A 26.3.75	6.5.75
International Convention on Civil Liability for Oil Pollution Damage (as amended) 1969	1975	A 27.4.76	26.7.76
Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1992			
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992			
Protocol [to SPREP*] for the Prevention of Pollution of the South Pacific Region by Dumping 1986	1990	R 3.5.90	22.8.90
Protocol [to SPREP*] concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region 1986	1990	R 3.5.90	22.8.90
Convention on the Continental Shelf 1958	1964	R 18.1.65	17.2.65
International Convention on Oil Pollution Preparedness, Response and Cooperation 1990			
Fishing			
Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989 [Wellington Convention]	1991	R 17.5.91	17.5.91

Draft working paper only – Not Government Policy

Convention for the Conservation of Southern Bluefin Tuna 1993	1994	R 9.5.94	20.5.94
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995	2001	R 18.4.01	11.12.01
Whaling			
International Convention for the Regulation of Whaling 1946	1948	R 2.8.493	15.6.76
Protocol to the International Convention for the Regulation of Whaling 1956	1959	R 21.6.574	15.6.76
Hazardous Substances			
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989	1992	R 20.12.94	20.3.95
Conservation of Natural Resources			
Statutes of the International Union for the Conservation of Nature and Natural Resources 1948	1948	R 6.5.74	6.5.74
Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES] 1973	1975	A 10.5.89	8.8.89
Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Fauna (Art XI) 1979	1987	A 10.5.89	8.8.89
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage 1972	1975	R 22.11.84	22.2.85
Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 [Ramsar Convention]	1975	S 13.8.76	13.12.76
Protocol to the Convention on Wetlands of International Importance... 1982	1986	S 9.2.87	9.2.87
Amendments to Art.s 6 & 7 of the Convention on Wetlands of International Importance especially... 1987	1994	R 7.7.93	1.5.94
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 [SPREP]	1990	R 3.5.90	22.8.90
Convention on Biological Diversity 1992 [CBD]	1993	R 16.9.93	29.12.93
Arms Control and Nuclear Pollution			
Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water 1963	1963	R 10.10.63	10.10.63
South Pacific Nuclear Free Zone Treaty and Protocols 1985 [SPNFZ]	1986	R 13.11.86	11.12.86
Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Techniques 1976	1978	A 7.9.84	7.9.84
Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil Thereof 1971	1972	R 24.2.72	18.5.72

¹This was the later of either the date the Treaty came into force, or the date it came into effect in New Zealand.

*The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region - see **Conservation of Natural Resources** heading.

ANNEX 2 - Significant international instruments that New Zealand is a party to

- The *United Nations Convention on the Law of the Sea (UNCLOS)* – ratified by New Zealand in 1996, UNCLOS is a comprehensive treaty codifying the law of the sea. It recognises, amongst other things, sovereignty over 12 nautical miles of territorial sea, and sovereign rights over the resources in the EEZ and on the continental shelf. It imposes obligations on states to protect and preserve the marine environment to the defined limit of its continental shelf. Under this convention, New Zealand may gain exclusive rights to explore and exploit mineral resources (but no further rights to fisheries resources) of the continental shelf beyond the EEZ. Under the convention, New Zealand is required to define the outer limits of its continental shelf and submit its claim by May 2009.
- The *International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL)* - The legislation necessary to enable New Zealand to become a party to MARPOL was passed in 1998. MARPOL is now binding in New Zealand. The annexes are prevention of pollution: by oil (I); by harmful substances carried by sea in packaged form (III); by sewage from ships (IV)⁶; by garbage from ships (V); and control of pollution by noxious liquid substances in bulk (II). A further annex (Annex VI) considers air pollution from ships. This annex is not yet in force internationally. Regulations under the Resource Management Act and marine protection rules under the Maritime Transport Act have been developed to control discharges of pollutants specified under MARPOL.
- *Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal*. New Zealand ratified this in 1995. The convention aims to both reduce the amount of waste being produced by signatories and regulate the international traffic in hazardous wastes (especially to developing countries).
- The *Convention on the Prevention of Marine Pollution by Dumping⁷ of Wastes and Other Matter 1972* (the London Convention). Ratified and implemented initially by the Marine Pollution Act 1974⁸. The Maritime Transport Act rules and Resource Management Act regulations that enable New Zealand to implement the 1996 Protocol to the London Convention came into force in 1998. New Zealand ratified the 1996 Protocol on 30 August 2001.
- The *Convention on Biological Diversity (CBD)*. New Zealand has signed and ratified this convention and is currently developing its Biodiversity Strategy (see above). The CBD requires New Zealand, as a party, *inter alia*, to take action to protect components of coastal and marine biodiversity within its jurisdiction. It also requires co-operation to achieve conservation and sustainable use of biodiversity outside its national jurisdictions, on the high seas and on the deep-sea

⁶ At this time, New Zealand does not accept Annex IV except in relation to the Antarctic Special Area.

⁷ Dumping is the deliberate disposal of waste carried on board for the purpose of disposal. It does not include operational discharges, such as sewage, which are addressed by MARPOL

⁸ The Marine Pollution Act 1974 was repealed on 20 August 1998 and was replaced by the Maritime Transport Act 1994.

bed. The draft New Zealand Biodiversity Strategy has a chapter on marine biodiversity.

- *Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 (SPREP)*. New Zealand ratified this convention in 1990. It provides for the control and prevention of marine pollution in the South Pacific region and has Protocols on Combating Pollution Emergencies and Prevention of Pollution by Dumping.
- *International Convention on the Regulation of Whaling 1946 (ICWR)*. New Zealand ratified this Convention in 1949. It provides for the regulation of whaling activities. A moratorium on commercial whaling has been in place since 1982.
- *UN Convention on the Management of High Seas Migratory Fishes and Straddling Stocks*. New Zealand has signed but not ratified this agreement. The Government has approved ratification and legislation (amending the Fisheries Act) which will implement this is being drafted. The legislation necessary to enable New Zealand to become party to this Convention is under preparation. Ratification will oblige New Zealand to protect biodiversity in the marine environment, apply the precautionary approach, and take into account the interests of artisanal and subsistence fishers etc. The Agreement provides for implementation through regional management arrangements. It gives participating states strong enforcement powers.
- *Convention for the Conservation of Southern Bluefin Tuna (CCSBT)*. New Zealand has signed and ratified this convention. The objective of the convention is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna.
- *Convention on the Prohibition of Fishing with Long Drift Nets in the South Pacific (Wellington Convention)*. New Zealand ratified this in 1991. It bans the use of driftnets over 2.5 kilometres long in the South Pacific.
- *Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR)*. New Zealand has signed and ratified this convention. The Convention's objective is to safeguard the environment and protect the integrity of the ecosystems of the seas surrounding Antarctica, and to conserve Antarctic marine living resources. The Ministers for the Environment, Conservation, and Food, Fibre and Biosecurity have recently expressed concerns about the illegal and unregulated fishing of Patagonian toothfish in the Southern Ocean.
- *The Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention)*. New Zealand ratified the convention in 1984. New Zealand has five sites listed as wetlands of importance under the Convention.
- *UN Global Action Plan on Marine Pollution from Land Based Sources*. New Zealand contributed to the development of this Plan. Its prime focus is on regional seas initiatives, such as those promoted by the South Pacific Regional Environmental Programme. It also led to a process which may culminate in a convention controlling the use of persistent organic pollutants.

ANNEX 3: New Zealand's jurisdictional boundaries and maritime zones as defined by UNCLOS

Zone/boundary	Location	Area	Rights/obligations under UNCLOS
The Baselines	Normally the line of mean low water springs (MLWS), but with exceptions for rivers, bays, islands, fiords, harbour works etc.		
Internal waters	Waters on the landward side of the baseline of the territorial sea.		Part of New Zealand's 'sovereign territory' , which means that New Zealand has full 'sovereignty' over its internal waters .
Territorial sea	Seaward of the baseline out to 12NM		New Zealand has full 'sovereignty' over its territorial sea, subject to the rights and duties established in the Convention and to other rules of international law. Other states have rights such as 'innocent passage' of their vessels.
Contiguous zone	Between the outer limits of the territorial sea (12NM) to 24 NM.		In addition to 'sovereign rights' conferred over this area as part of the EEZ, New Zealand may exercise such control as is necessary to <i>prevent</i> and <i>punish</i> infringements in its territory or territorial sea of its customs, immigration, tax and sanitary laws.
Exclusive Economic Zone	Seaward of the outer limits of the territorial sea, including the contiguous zone, to an outer limit of 200NM from the baselines (ie., breadth of the EEZ is normally 188NM).	New Zealand's EEZ is the fourth largest in the world, with an area of 405 million hectares. This amounts to more than 15 times the area of our land mass.	New Zealand has 'sovereign rights' – a more limited jurisdiction than sovereignty – for the purposes of exploring and exploiting, conserving and managing natural resources of the waters, seabed and subsoil. It also has 'jurisdiction' with regard to the establishment of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment. NZ must also have due regard for the rights of other states. Other states have certain freedoms including navigation, overflight, laying cables in the EEZ.
Continental shelf	The seabed and subsoil of submarine areas beyond the territorial sea (12NM) to the outer edge of the continental margin or to 200NM from the baselines (whichever is greatest).	Although the outer limits of New Zealand's continental shelf are not yet finalised, the area that extends beyond New Zealand's EEZ to the limits of our continental shelf is likely to include up to 1.5 million square kilometres or more. This area alone equates to about six times the area of our land mass.	'Sovereign rights' (as for the EEZ) for the purpose of exploring and exploiting the natural resources of the seabed and subsoils (including immobile organisms which live on or under the seabed/subsoil). In areas where the continental shelf extends beyond 200NM from the baselines, the water itself above the continental shelf is not within New Zealand's jurisdiction and is part of the high seas.
High Seas	Water column beyond the outer limits of coastal states' EEZs		Open to all states, subject to due regard for the interests of other states. All states have 'freedom of the high seas' which includes freedom of navigation, overflight, laying of cables and pipelines, construction of artificial installations, fishing and scientific research.
The Area	Seabed and subsoil beyond the limits of national jurisdiction (i.e. seaward of the outer limit of the continental shelves.		Vested in humankind as a whole and administered by the International Seabed Authority. No state can claim or exercise sovereignty or sovereign rights over the Area.