



Ministry for the
Environment
Manatū Mō Te Taiao

Supporting information for the exposure draft of proposed regulations for exploratory oil and gas drilling under the EEZ Act

New Zealand Government

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Regulating exploratory drilling under the EEZ Act

What is the purpose of the exposure draft process?

Exposure drafts are designed to give interested parties an early indication of what the key provisions of new regulations are likely to look like, and to provide an opportunity to comment on the drafting of them before they come into force. This process can help identify concerns about the workability of the regulations. In this case, the Minister for the Environment also seeks further comment on regulations that classify exploratory drilling for oil and gas as defined in the exposure draft as 'non-notified' discretionary. The Government has decided to release an exposure draft of proposed regulations that would classify activities involved in exploratory drilling under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). New Zealand's Exclusive Economic Zone (EEZ) is the portion of ocean extending from 12 to 200 nautical miles offshore and our EEZ is one of the largest in the world. The continental shelf is the seabed out to the continental margin (the point where the shelf drops into deeper water).

The Government has decided to publicly release an exposure draft of these regulations for two reasons:

1. Feedback from the public consultation process conducted from 28 August to 25 September 2013¹ indicated that a clear definition of exploratory drilling is important to support a decision on its classification under the EEZ Act.
2. The Minister would find it useful to have public submissions on the proposed regulations, including their workability.

The views in this document on which the draft regulations are based are a preliminary conclusion of the Government. Final decisions will be made after submissions on the regulations and information in this document are considered.

What decision needs to be made?

Under the *status quo*, exploratory drilling became a discretionary activity by default when the EEZ Act came into force. Transitional provisions contained in the EEZ Act mean exploratory drilling activities have been able to commence during the transitional period without the need for a marine consent if they are compliant with other existing regulatory regimes, and if they meet the transitional requirements established under the EEZ Act.

From 28 June 2014, all activities described in section 20 of the EEZ Act that are not permitted or prohibited will require a marine consent before they can begin.

¹ The discussion document that was consulted on is available at <http://www.mfe.govt.nz/publications/oceans/managing-our-oceans/activity-classification-under-the-eez-act.html>.

There are four ways that an activity can be classified under the EEZ Act:

1. It can be **prohibited**, meaning that it cannot be undertaken in any circumstances.
2. It can be **permitted**, meaning that the activity can occur and does not require a marine consent as long as the activity meets certain conditions set out in advance. For example, marine scientific research is a permitted activity provided it meets certain conditions including notifying the Environmental Protection Authority (EPA) in advance, undertaking an initial impact assessment, and keeping a logbook. Seismic surveying is also a permitted activity subject to compliance with the Department of Conservation Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations 2013.²
3. It can be a **non-notified discretionary**³ activity, meaning that a marine consent is required to be granted before the activity can begin. The applicant would be required to make an application that includes an impact assessment that identifies the effects of the activity on the environment and existing interests, but the application process does not require public notification.
4. It can be a **discretionary** activity, which also means that a marine consent is required to be granted. The applicant would be required to make an application that includes an impact assessment, and the application process would also provide an opportunity for public submissions on the application. For example, production drilling for oil and gas is a discretionary activity.

The Government is making a decision on how exploratory drilling should be classified within this framework and is committed to ensuring that New Zealand has a regulatory regime that provides for investor confidence while maintaining high environmental integrity.

The EEZ Act and the proposals for regulations set out in this document form one of the actions the Government has committed to as part of the Building Natural Resources work stream of the *Business Growth Agenda*. This work stream recognises our economy and environment are linked. For the EEZ, this work stream focuses on getting the right regulatory settings to maximise economic opportunities, while better managing the environmental effects of activities.

The Government considers that exploratory drilling is a legitimate and important activity for the petroleum industry. The petroleum industry is a well-established industry in New Zealand and an important contributor to the New Zealand economy. The Government has no intention to prohibit exploratory drilling activities.

Why shouldn't exploratory drilling be a permitted activity?

The Government does not consider that a permitted activity classification for exploratory drilling is appropriate. A permitted classification means the activity does not require consent to begin and would mean the Environmental Protection Authority (EPA) would not be able to:

² <http://www.doc.govt.nz/conservation/marine-and-coastal/seismic-surveys-code-of-conduct/>.

³ The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 received Royal assent (signed into law by the Governor-General of New Zealand) on 22 October 2013. It created a new non-notified discretionary classification under the EEZ Act.

- undertake a case-by-case assessment of the activities
- assess the potential for adverse effects on a case-by-case basis
- take cumulative effects into account
- establish conditions to mitigate effects
- take a cautious approach to new activities or technologies, such as by applying adaptive management.

These assessments are key in ensuring the effects of exploratory drilling activities are adequately managed.

Only 30 per cent of the seabed of the EEZ and continental shelf has been mapped to date,⁴ and only 13 per cent has been mapped in detail.⁵ A classification that provides for full regulatory oversight and a case-by-case assessment of different sites is therefore warranted for exploratory drilling to allow for effects on rare and vulnerable ecosystems and the habitats of threatened species to be taken into account.

What do the draft regulations say?

The draft regulations define exploratory drilling and classify it as a non-notified discretionary activity under the EEZ Act.

The draft regulations are available on the Ministry for the Environment's website at: <http://www.mfe.govt.nz/issues/oceans/current-work/eez-continental-shelf-regulations-2013.pdf> [PDF, 20 KB].

What do these regulations mean?

If the regulations are implemented as proposed, it would mean that exploratory drilling would be classified as a non-notified discretionary activity. From 28 June 2014, under the EEZ Act, a marine consent would be required before exploratory drilling could begin.

Sections 38 to 45 of the EEZ Act explain what happens when an applicant applies for a marine consent. These steps can be broadly summarised as:

- An application must fully describe the proposal and must include an impact assessment.
- The impact assessment must:
 - describe the activity and the area where it will occur
 - identify the effects of the activity on the environment and existing interests
 - identify persons whose existing interests are likely to be adversely affected and describe any consultation undertaken with these persons
 - specify any alternative locations, or methods, for undertaking the activity and the measures intended to be applied to avoid, remedy or mitigate the adverse effects identified.

⁴ <http://www.gns.cri.nz/Home/News-and-Events/Media-Releases/Origin-of-seabed>.

⁵ <http://www.linz.govt.nz/hydro/projects-programmes/ocean-survey-2020/about-ocean-survey-2020>.

- The EPA must be satisfied that the applicant has made a reasonable effort to outline the above matters in their impact assessment, and can return the application as incomplete if it is not satisfied.
- The EPA can request further additional information from the applicant and can obtain advice or commission an independent review of the impact assessment, or seek advice from any person about any aspect of the application.
- The EPA will be required to make the impact assessment available to the public to provide transparency and encourage adequate identification of existing interests.

The EPA would assess the application in the same manner as it would for a discretionary activity, but it would not be obliged to call for public submissions as part of the consenting process. Under new section 44B⁶ of the EEZ Act, the EPA can conduct a hearing for a non-notified discretionary marine consent if it considers it necessary or desirable, but conducting a hearing is not mandatory unless an applicant requests it.

Under the non-notified discretionary activity classification, the EPA would have 60 working days to assess the application and make a decision on whether to grant the consent, to impose conditions on the consent that it deems appropriate, or decline the consent.

Other existing marine management regimes will continue to manage oil spill prevention, oil spill contingency planning, and responses. These include the Maritime Transport Act 1994, the Marine Protection Rules, and the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013 (HSE). A further explanation of these regimes is provided in this document.

How can I have my say on the draft regulations?

The easiest way to make a submission on this document is to email eezregulations@mfe.govt.nz. Where you have information or evidence that supports your views, you can attach it to your email.

Submissions close at 5.00 pm on Friday 31 January 2014.

Submissions on the draft regulations will be considered once the submission period ends on 31 January 2014. At that point, a final set of regulations will be drafted. If agreed, the regulations would come into force shortly after the date on which the Minister recommends to the Governor-General that regulations are made.

⁶ Inserted by the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013.

Further information to inform your submission

New Zealand's drilling history

Since offshore oil and gas drilling began in 1968, 177 wellbores have been drilled in New Zealand's EEZ,⁷ 98 of which have been exploratory wells. Eight petroleum exploration wells have been drilled in deep water since 1976. The deepest, Waka Nui-1, was drilled in 1999 to a depth of 1467m. This was later plugged and abandoned.

The Taranaki Basin is New Zealand's most developed area for oil and gas and currently New Zealand's only producing petroleum basin. Over 400 onshore and offshore exploration and production wells have been drilled in Taranaki to date. Oil and gas exploration has been undertaken in the region for over 60 years, the majority of this drilling has occurred within the territorial sea (up to 12 nautical miles from the shore). The Regional Coastal Plan for Taranaki,⁸ which was publicly consulted on within the region, classifies drilling for oil and gas as a permitted activity in areas of open coast, which means that no resource consent is required to undertake the activity in areas that meet this requirement, provided relevant conditions are met.

In 2012, New Zealand produced an average of 40,368 barrels of oil, condensate and naphtha per day. The economic benefit of the petroleum industry to New Zealand includes the payment of royalties and taxes, capital investment, employment, and technology and innovation transfers. In 2012/13, the petroleum sector paid \$407 million in royalty and Energy Resource Levies to the Government.

The phases of oil and gas activities

The four main phases of the petroleum production sequence are outlined below. It can take many years to progress to the production phase and not all assessment and exploration activities will result in production. Industry figures suggest that there is a generally a one in 10 chance of a discovery following the drilling of an exploration well in a new location. In known fields, where more data is available, this may increase to a one in three chance.

Exploratory drilling is an expensive activity, and the likelihood of finding a commercially recoverable reservoir is a factor that oil and gas companies consider carefully before deciding to apply for the necessary regulatory approvals.

⁷ This number includes well side-tracks and re-entries.

⁸ <http://www.trc.govt.nz/assets/Publications/regional-coastal-plan/coastal-plan-index/4.2-Coastal-mgt-AreaC-mar2011.pdf>.

Phase 1: Prospecting

A permit is permission granted by the Crown to prospect for, explore for or mine Crown-owned minerals in a defined area. Petroleum Prospecting Permits⁹ allow for the gathering of technical data. Prospecting covers any activity undertaken for the purpose of identifying land likely to contain mineral deposits or occurrences, and activities may include:

- I. geological, geochemical, and geophysical surveying
- II. aerial surveying
- III. taking samples by hand or hand held methods, or
- IV. taking small samples offshore by low-impact mechanical methods.

Similar activities associated with prospecting have been classified as permitted activities under the EEZ Act, subject to conditions. This achieves a balance between environmental protection and economic costs. These include seismic surveying, marine scientific research, submarine cabling, prospecting for petroleum and minerals, and exploration for minerals (excluding exploration drilling for petroleum).

Seismic surveying, which is a form of geophysical surveying, is a permitted activity under the EEZ Act as long as it is done in accordance with the Department of Conservation *Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations 2013*.¹⁰

A prospecting permit applies to a specific geographic area, and may be granted for up to four years or longer in some circumstances.

Phase 2: Exploration

Exploration activities are those undertaken to identify mineral deposits or occurrences and to evaluate the feasibility of mining particular deposits or occurrences.

A Petroleum Exploration Permit must be obtained before any exploration activities can begin. These permits may have a duration of up to 15 years, or longer if further appraisal work is necessary.

Exploration activities include seismic surveys, sampling, aeromagnetic surveys, exploratory drilling, geological studies, geophysical data reprocessing, compiling reports, and data analysis. This work helps to identify the places within a permit area that are most likely to contain commercially recoverable amounts of oil and gas.

Exploratory drilling includes the drilling of any well, and necessary associated activities, for the purpose of exploration. Production activities related to petroleum will require a separate, discretionary marine consent that allows for the public to make submissions on the proposed activity.

If a discovery is made while undertaking exploratory drilling, an operator may undertake the drilling of additional wells to identify the extent of the petroleum resource. This process is

⁹ Administered by New Zealand Petroleum & Minerals.

¹⁰ <http://www.doc.govt.nz/conservation/marine-and-coastal/seismic-surveys-code-of-conduct/>.

known as appraisal and the drilling of appraisal wells is included in the definition of exploratory drilling, subject to the same constraints around production as noted above.

An application for a marine consent for exploratory drilling would need to take into account the potential for any additional wells to be drilled.

Phase 3: Production

The production phase is clearly distinguished from exploration and requires a separate Petroleum Mining Permit. Production for oil and gas is classified as a discretionary activity and requires a separate marine consent before it can begin. The application process for a discretionary marine consent includes full public notification. Once a Petroleum Mining Permit is issued and all the appropriate approvals and consents have been received, permit holders will be able to develop the resource. The mining programme will include the development of necessary production facilities and infrastructure, which can be in place for many years, as well as further drilling.

Phase 4: De-commissioning and restoration

De-commissioning involves the removal, disposal or re-use of oil and gas production facilities and structures at the end of their useful life (generally once production ceases, or when exploration ceases if production does not occur). De-commissioning activities occurring in the EEZ need to comply with the EEZ Act. De-commissioning and restoration activities will be considered at the time of the application for a marine consent, and wells must also be plugged and abandoned in accordance with HSE regulations.

What normally happens during exploratory drilling?

An operator would likely plan to drill an initial exploration well, with the potential to drill some subsequent appraisal wells if the exploration well makes a discovery.

The proposed regulations do not specify the number of exploratory wells or the length of time allowed for exploratory drilling to be undertaken. Each exploratory drilling operation will take place under different circumstances and it is appropriate for the EPA to consider the scope of the consented activities, and conditions placed upon them, on a case-by-case basis. It is also appropriate for the well operator to have flexibility to tailor their application to particular circumstances.

Once these wells have been drilled, the operator will take some time to assess the data it has collected from the exploration programme and decide to either:

- drill additional appraisal wells at that time to further investigate the viability of the resource, if the marine consent allows, and if the rig equipment is available
- seek a subsequent marine consent from the EPA to return to the site at a later date to drill further appraisal wells and gather more information in a future drilling season
- abandon the field as uneconomical and permanently cap the well (or wells), or
- seek a Petroleum Mining Permit and discretionary marine consent so it can proceed to develop the field for the purpose of production, including drilling production wells and establishing permanent production infrastructure such as platforms, pipelines and mooring lines for floating production vessels.

How long would exploratory drilling normally take to complete?

The advice provided to the Government is that drilling a single exploratory well generally takes four to six weeks, though exploratory drilling can vary in its time and scale. Additional appraisal wells are similar in nature to exploration wells and would be likely to take a similar time to drill.

Drilling times for each well will depend on the underlying geology, depth of drilling, equipment used and weather conditions. The total duration of exploratory drilling activities will depend on how many wells are drilled. This is based on whether a discovery is made, and whether subsequent research determines that the discovery is of sufficient size to make it commercially viable. As this will not be known at the time of the marine consent application, it is not appropriate to set time limits on the activity in regulations. We know the following about well drilling duration in New Zealand:

- Over New Zealand's drilling history in the EEZ, most exploratory permits have resulted in a single well being drilled (65% of permits have resulted in a single well).
- Over the same time, the median drilling duration for drilling a single exploration well in the EEZ was 34 days, and the median drilling time under a permit (including where multiple wells were drilled) was 51 days.

What activities are included in the definition of exploratory drilling?

The regulations are intended to cover all potential techniques and approaches to exploratory drilling within the entire EEZ. It is not possible to anticipate every single different aspect of a drilling operation in advance of operations so that they can be drafted in regulations. For this reason it is the responsibility of the operator to explain the activity in sufficient detail so the EPA can make a decision about whether or not to grant a marine consent for the activity.

An exploration drilling programme would be likely to include the following activities:

- placing a rig, which would sit on the water surface (such as a ship, barge or platform).
Different rig types can be used to suit different site characteristics
- taking seabed samples to test for site stability
- placing anchors and moorings on the sea floor
- setting up monitoring equipment
- drilling an exploration well in a single permit area and any subsequent appraisal wells
- seismic surveying down a well
- capping a well.

Related activities required to carry out exploratory drilling are proposed to be classified as non-notified discretionary in the regulations. This is to ensure that necessary activities will be captured in the same way as is proposed for the parent activity, which is exploratory drilling.

What activities are not in the scope of the regulations?

If an operator wants to undertake exploratory drilling in more than one Crown Mineral Permit area they will need to apply for multiple marine consents. This is because the site-specific considerations could be significantly different for each permit area.

The draft regulations do not propose to limit the number of wells that can be drilled under a single marine consent. The EPA will only accept applications for activities as complete when they are satisfied the applicant has made a reasonable effort to identify the likely effects of an activity. This means it is unlikely that an applicant would be granted a marine consent to drill an undefined number of wells because they would not be able to provide full information on the likely effects of the overall activity, including effects on existing interests. In addition, the EPA must consider cumulative effects when making decisions and the number of wells would be key to this consideration.

At this stage, temporarily suspended wells¹¹ have not been included in the definition of exploratory drilling under the draft regulations. While the information available suggests that these wells present a low probability of significant adverse effects, officials are still compiling information to support the risk assessment and while the activity is relatively commonplace internationally, it is new to New Zealand. The Minister is required under section 34 of the EEZ Act to take into account any uncertainty in the information available. Officials will therefore further investigate the environmental effects to ensure the Minister can be satisfied that the probability of significant environmental effects is indeed low, before incorporating this activity into the definition of exploratory drilling. This issue will be considered further in 2014 and a decision to include them or not will be made when this information has been analysed and understood, and after consultation.

Production activities are not covered by the proposed regulations. There is a clear distinction between an exploratory drilling rig that is contracted for use over a single season and a production platform, which can remain in place for several decades. There is also a clear distinction about the routine environmental effects of production activities; for example, production activities may require permanent placement of structures and pipelines back to shore and the routine discharges into the surrounding water column over many years, and therefore may have a higher impact on the environment and existing interests. Production activities will require a discretionary marine consent to be granted before they can begin and are outside the scope of the non-notified discretionary classification. Production activities are also undertaken under a separate Crown Minerals Permit.

The EPA has discretion to set conditions it considers appropriate to manage the effects of an activity as long as these conditions do not conflict with a measure under another marine management regime. Conditions could: relate to sensitive environments; set a limit on the maximum number of wells that can be drilled under the particular marine consent; or require the operator to maintain public liability insurance of a specified value, to appoint an observer to monitor the activity and its effects on the environment, or to make records related to the activity available for audit.

¹¹ These are wells that are initially drilled for exploration and, in the event of a discovery of hydrocarbons, are then 'suspended' by being temporarily capped to enable them to be later developed for production, once a production permit and marine consent are obtained.

What does New Zealand's oil and gas production system look like?

Improving environmental consideration

New Zealand's approach for ensuring the safety of oil exploration is based on a prevention-control-recovery-response framework.

The EEZ Act added to existing regulatory regimes by providing an extra layer of environmental oversight¹² while at the same time ensuring investment certainty for users and operators. Until its enactment, comprehensive regulations covering activities in the EEZ had not been in place. The gap filled by the EEZ Act regime is:

- consideration of the effects on the environment and existing interests when determining the location of drilling for oil and gas
- addressing whether effects are acceptable in a particular location before substantive investments are made in establishing an operation in that location.

The introduction of the EEZ Act was part of a package of reforms intended to ensure the regulatory system for oil and gas activities works effectively as a whole. Related reform processes were:

- the establishment of a High Hazards Unit within MBIE to improve capability and capacity to operate effectively in the mining, petroleum, and geothermal industries
- the Ministry of Business, Innovation and Employment's (MBIE) review of the Crown Minerals Act 1991 (CMA) to update the legislation, improve coordination, and provide greater transparency in the development of new petroleum and minerals opportunities
- the Ministry of Transport's review of the minimum insurance requirement for offshore installations in the territorial sea and EEZ.

In addition to these regulatory reforms, Maritime NZ completed a review of New Zealand's marine oil spill preparedness and response capability in 2011. The review's recommendations were implemented, which included upgrading offshore installations' on-site response capability.

The offshore oil and gas regulatory regime in New Zealand's EEZ

The oil and gas industry in New Zealand has to meet a number of regulatory requirements before operations can begin. The EEZ Act regime forms part of this regulatory system by providing explicit consideration of environmental effects associated with activities.

¹² The extra layer of environmental oversight is provided by ensuring a full assessment of impacts and conditions to mitigate impacts if required.

Petroleum Programme

The Petroleum Programme¹³ under the CMA requires the Crown to consult with iwi and hapū whose rohe includes some or all of a proposed permit area or who may be directly affected by a permit, when permits are offered by competitive tender or when NZP&M receives an 'acceptable work programme offer' application or an application for a permit over 'newly available acreage'.

Iwi and hapū are able to request that land be excluded from a Petroleum Exploration Permit Round, a minerals competitive tender, or a permit, or that activities within certain areas be subject to additional requirements to recognise the particular characteristics of those areas.

Crown Minerals Permit

Under the CMA, operators must obtain a Petroleum Prospecting Permit, a Petroleum Exploration Permit or a Petroleum Mining Permit from New Zealand Petroleum & Minerals (NZP&M), a business group of MBIE.

NZP&M assesses the financial and technical capability of an operator and the operator's high-level health, safety and environmental ability. The permit is granted under the CMA.

Obtaining a marine consent

Operators who successfully gain an exploration permit from NZP&M must apply for and be granted a marine consent by the EPA before they can carry out any oil and gas drilling activities. The EPA manages the environmental impact of activities in the EEZ and Continental Shelf and a marine consent sets out what conditions are imposed to address the effects of the activity on the environment and existing interests.

Under section 13 of the EEZ Act, the functions of the EPA include:

- a. decide applications for marine consents
- b. monitor compliance with the Act
- c. enforce the requirements of the Act, and of regulations made and consents granted under it.

The marine consent process allows for the EPA to build case-by-case conditions into a marine consent to reduce the level of environmental risk to sensitive environments and other locations of significance, and the effects on existing interests.

Preparation of a safety case

Under the Health and Safety in Employment Act 1992 and the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013, operators must submit a safety case for any offshore installation to the HHU. The HHU need to accept this before the operation of the offshore installation can begin.

The Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013 also require an operator to produce and implement a well examination scheme. This involves

¹³ <http://www.nzpam.govt.nz/cms/pdf-library/petroleum-legislation-1/petroleum-programme-2013.pdf>.

independent and competent examination of a well's design, construction, operation, maintenance and abandonment.

Preparation of a discharge management plan

Under the Marine Protection Rules,¹⁴ operators must complete a discharge management plan (DMP) that must be approved by Maritime NZ. The plan includes a well control contingency plan, which is focussed on measures to re-establish well control, and an oil spill contingency plan that anticipates the steps the operator would take in response to an oil spill.

Part of Maritime NZ's assessment of an operator's DMP is consideration of the operator's financial capability to undertake the proposed well control contingency plan.¹⁵ The assessment of financial capability may take into account the level and type of insurance held by the operator, but is separate to the insurance requirement as described in the following section on liability insurance.

Other protections in place

Liability insurance

Under the Maritime Transport Act 1994 (MTA), owners and operators of offshore installations are liable for the full costs related to oil pollution damage to third parties, and clean-up costs to public agencies, without the need to prove fault.

This is supported by a requirement in the MTA for operators of offshore installations to hold liability insurance, or other financial security, that covers the operator's potential liability under the MTA.

The minimum amount of insurance or financial security that is required is set out in Marine Protection Rules (Part 102).¹⁶ The insurance requirement does not limit liability. Therefore, the owner and/or operator would still be liable for any clean-up costs or pollution damage that results in the event of an oil spill. The minimum insurance requirement is currently set at 14 million International Monetary Fund Units of Account, (approximately NZ\$26 million).¹⁷

Maritime NZ issues a certificate of insurance, following verification that the operator has provided evidence of insurance or other financial security that meets the requirement set out in Part 102.

The requirement to hold insurance or financial security for liabilities under the MTA is distinct from the operators' responsibility to have financial capability to undertake the well control contingency plan.

¹⁴ Made under the Maritime Transport Act 1994.

¹⁵ A discharge management plan approval is a marine protection document under the Maritime Transport Act 1994. Section 268 of the Maritime Transport Act 1994 requires that the holder of a marine protection document shall ensure that they provide sufficient resources to ensure compliance with the relevant prescribed standards and the conditions attached to the marine protection document.

¹⁶ <http://www.maritimenz.govt.nz/Rules/List-of-all-rules/Part102-marine-protection-rule.asp>

¹⁷ As at 1 October 2013, 1 Unit of Account is equal to NZ\$1.868. Based on this rate the insurance requirement is approximately NZ\$26 million.

Other relevant legislation

Other legislation applicable in the EEZ includes the Marine Mammals Protection Act 1978, the Wildlife Act 1953, and Fisheries Act 1996.

Why is exploratory drilling being proposed as a non-notified discretionary activity?

For an activity to be classified as non-notified discretionary under the EEZ Act, the Minister must be satisfied that:

- the proposed classification meets the purpose of the Act
- the activity meets the requirements to be classified as non-notified discretionary under new section 29D of the Act.

The Minister must also take into account the matters set out in section 33(3), and have regard to comments received under consultation. Furthermore, decisions on regulations must be based on best available information.

An assessment of whether the classification meets these requirements is set out in the sections below.

Purpose of the Act

The purpose of the EEZ Act, as stated in section 10, is to promote the sustainable management of the natural resources of the EEZ and the continental shelf. Under the EEZ Act, sustainable development means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their economic well-being while –

- a. sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations
- b. safeguarding the life-supporting capacity of the environment
- c. avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The purpose is therefore not necessarily to prohibit the commercial use of natural resources, but to ensure that where natural resources are used, they are used in a way that is sustainable and that takes account of the impact of those activities on the environment and existing interests.

The Minister's preliminary view is that she considers classifying exploratory drilling as a non-notified discretionary activity is consistent with the purpose of the EEZ Act because:

- the applicant that is applying for a marine consent will be required to identify any adverse effects on the environment or existing interests, explain how it has consulted with existing interests, and specify other locations or methods for undertaking the activity that may avoid, remedy or mitigate adverse effects as well as specify any other measures the applicant intends to take to achieve this
- the EPA will assess applications on a case-by-case basis, and can set conditions it considers appropriate to avoid, remedy or mitigate any adverse effects for each consent it grants
- the EPA will be required to consider the cumulative effect of activities

- a non-notified discretionary classification provides for the protection of the environment in the EEZ and continental shelf, while enabling economic activity of benefit to operators and the New Zealand economy. Deterring or prohibiting exploration drilling activities in New Zealand does not equate to sustainable management of New Zealand’s natural resources
- the EEZ Act does not operate in isolation and several other regulatory regimes reinforce the requirements on operators to operate safely and minimise the likelihood of significant adverse effects
- an operator cannot begin exploratory drilling until all of the required regulatory consents or approvals are received.

Section 29D – Non-notified activities

New section 29D(2)¹⁸ of the EEZ Act specifies that regulations must only provide that a discretionary activity is to be non-notified if, in the Minister’s opinion,:

- a. *the activity has a low probability of significant adverse effects on the environment or existing interests; and*
- b. *the activity is:*
 - I. *routine or exploratory in nature, or*
 - II. *an activity of brief duration, or*
 - III. *a dumping activity.*

The probability of an incident resulting in significant adverse effects

High probability incidents with adverse effects that are not significant

The activities of drilling for oil and gas, such as placing structures and disturbing the seabed, result in some routine effects.

Expert advice provided to the Government by National Institute Water and Atmospheric Research Ltd (NIWA)¹⁹ advises that the routine impact of drilling on benthic (seafloor) environments is limited to the direct disturbance caused by the legs of the drill platform, the drill head (an area of 5–10m²), and mooring chain (which can be 1–2km long). While drilling affects only a small area of seabed, benthic communities are likely to take years to recover, so the potential cumulative effects of drilling in such areas must be considered. The non-notified discretionary classification enables the EPA to assess cumulative effects.

Given the size of the well head, and the ability for the EPA to impose case-by-case conditions on marine consent applications, the Minister’s preliminary view is that she considers the routine effects are not significant adverse effects.

¹⁸ Inserted by the EEZ Amendment Act 2013, which will come into force when an activity is first classified as non-notified discretionary.

¹⁹ <http://www.mfe.govt.nz/publications/oceans/managing-our-oceans/risk-assessment-activities-in-nz.html>.

Low probability incidents that could result in incidents with significant adverse effects

Probability

The definition of “effect” is set out in section 6 (1) of the EEZ Act and includes “any potential effect of low probability that has a high potential impact”. This definition captures oil spills.

A prolonged and uncontrolled release of oil from an offshore installation into the marine environment is likely to have significant social, cultural, environmental and economic implications for New Zealand. Effects are considered in the next section.

Since offshore drilling began in 1968, 177 offshore wells have been drilled. Eight petroleum exploration wells, have been drilled in deep water since 1976. There has never been a major accident in New Zealand’s offshore upstream petroleum sector.

The largest recorded spill from oil and gas drilling was a spill of 23 tonnes of oil from the Umuroa processing vessel on the offshore Tui Field in the Taranaki Basin. This was the result of an accidental discharge. By comparison, the spill from the cargo ship *Rena* which grounded in the Bay of Plenty in 2011 was estimated at 350 tonnes.

Probability and water depth

A key concern raised by submitters on the discussion document was the likelihood of a large-scale loss of well control in deep water, such as the Deepwater Horizon blowout in the Gulf of Mexico in 2010.²⁰ While it is difficult to put an exact number on the probability of an oil spill because of variations in reporting and analysis, the evidence shows that the probability is low. Maritime NZ has undertaken a review of publicly available spill data, which suggests a loss of well control event occurs in approximately 2.54 out of every 1000 deep offshore exploration wells drilled. The majority of loss of well control events result in discharges that are contained and recovered without significant environmental effects.

There is evidence that as water depth increases, the likelihood of an incident during drilling also increases.²¹ However, the number of incidents reported does not reflect the number of well blowouts or oil spills. The incidents referred to include incidents involving structural damage to a facility, injury that leads to an evacuation or days away from work, or property damage exceeding \$25,000. The HSE regime in New Zealand requires the development of a safety case to specifically mitigate the likelihood of such events occurring.

Data collected by the Bureau of Safety and Environmental Enforcement in the United States identified 74 instances of spills of oil or other substances of over 50 barrels from a deep sea platform or rig,²² out of over 2,000 deep sea wells drilled in the Gulf of Mexico. Over half the

²⁰ The Deepwater Horizon blowout is estimated to have resulted in a spill of around 4.9 million barrels. See http://www.uscg.mil/foia/docs/dwh/fosc_dwh_report.pdf.

²¹ <http://www.rff.org/Publications/Resources/Pages/Deepwater-Drilling-Recommendations-for-a-Safer-Future-177.aspx>.

²² [http://www.bsee.gov/uploadedFiles/BSEE/Enforcement/Accidents_and_Incidents/Spills%20greater%20than%2050%20barrels1964-2012%20\(As%20of%20August%203,%202012\).pdf](http://www.bsee.gov/uploadedFiles/BSEE/Enforcement/Accidents_and_Incidents/Spills%20greater%20than%2050%20barrels1964-2012%20(As%20of%20August%203,%202012).pdf).

reported spills were classified as ‘minor’²³ according to the US Coast Guard classification. Of the over 2000 wells drilled in the Gulf of Mexico, five reported spills have been attributed to loss of well control.

Based on the evidence presented, the Minister’s preliminary view is that she considers that the probability of a significant oil spill incident resulting from a loss of well control in deep waters is low. An event would require the alignment of a set of circumstances that are, in themselves, unlikely and would require the failure of sophisticated multi-stage systems and planning. Low probability does not mean that there is no risk, but the Minister’s preliminary view is that based on the evidence she has seen, the probability of significant adverse effects caused by exploratory drilling is low. Exploratory drilling therefore meets this part of the legislative requirement enabling it to be classified as a non-notified discretionary activity.

Exploratory in nature

The definition of exploratory drilling clearly distinguishes exploration and production activities, and production activities are expressly excluded.

The Minister considers that exploratory drilling as defined in the regulations meets the requirements of section 29D of the EEZ Act in relation to the activity being exploratory in nature, and can therefore be classified by regulations as a non-notified discretionary activity.

Section 32 – Process for developing or amending regulations

Before making a recommendation to the Governor-General, the Minister must—

- (a) notify the public, iwi authorities, regional councils, and persons whose existing interests are likely to be affected of—
 - (i) the proposed subject matter of the regulations; and
 - (ii) in the case of regulations to which section 27 applies, the Minister's reasons for considering that the regulations are consistent with the purpose of the Act; and
- (b) establish a process that the Minister considers gives the public, iwi authorities, and persons whose existing interests are likely to be affected adequate time and opportunity to comment on the subject matter of the proposed regulations.

The Minister has directed officials to undertake two separate processes to seek public feedback on proposals.

²³ The US Coast Guard spill size classification is:

- minor: less than 10,000 gallons (less than 238 barrels)
- medium: 10,000 to 99,999 gallons (238 to 2380 barrels)
- major: 100,000 gallons and greater (2381 barrels and greater).

The first public consultation was the release of the discussion document *Activity Classification under the EEZ Act*.²⁴ The consultation period ran from 28 August to 25 September 2013. The discussion document proposed that exploratory drilling for oil and gas be classified as a non-notified discretionary activity, and sought views on whether the classification was appropriate.

The Ministry for the Environment received 21,221 submissions before the submission period ended on 25 September 2013. The majority of the submissions (21,102) were made using online template forms with little or no modification and were opposed to exploratory drilling as an activity generally. The preference expressed in those submissions was for exploratory drilling to be prohibited, but if not, then for it to be considered a discretionary activity.

As part of the development of the proposed regulations consideration has been given to the issues raised in submissions and the key themes are addressed throughout this document.

Key issues raised were:

- the ability for the public to participate in decision
- the risk associated with exploratory drilling and the probability of significant adverse environmental effects or effects to existing interests
- a lack of clarity about what activities were included in exploratory drilling.

A more detailed summary of submissions is available on the Ministry for the Environment's website at: <http://www.mfe.govt.nz/publications/oceans/managing-our-oceans/activity-classification-under-the-eez-act-summary-submissions.html>.

To provide the public with more information, the Minister directed officials to further consult on draft regulations and to prepare this paper which provides additional information to help address concerns raised in feedback to the discussion document.

Section 33 – Matters to be considered for regulations

As outlined above, under section 33(3) of the EEZ Act, the Minister must take into account a number of factors when considering the development of regulations. How these factors have been considered is outlined below.

a. Any effects on the environment or existing interests of allowing an activity with or without a marine consent

Environmental effects

Through consultation with experts, including NIWA, officials have assessed the routine environmental effects of exploratory drilling (such as placing the rig and related activities) as minor.

Non-routine environmental effects, such as a large-scale oil spill, have a low probability of occurring and the environmental benefit of eliminating oil spill risk (prohibiting the activity) would not be proportionate to the probability of an event occurring.

²⁴ <http://www.mfe.govt.nz/publications/oceans/managing-our-oceans/activity-classification-under-the-eez-act.html>.

The overall impact of an oil spill is influenced by the quantity of oil spilled – a result of the rate of flow and the time taken to contain it. Containment of a spill depends partly on the proximity and availability of vessels, rigs and equipment with the capability to undertake capping or relief well drilling.

The grounding of the *Rena* in October 2011 demonstrates the significant effect a spill can have in New Zealand waters. The *Rena* is estimated to have spilled around 350 tonnes of oil into the Pacific Ocean east of Tauranga. At the height of the response, over 400 birds were being cared for in the Te Maunga wildlife facility, and a total of over 2000 dead birds were collected, of which over 1300 were oiled.²⁵ One year on from the spill it was estimated that the spill had resulted in direct financial costs to the Crown of approximately \$47 million.²⁶

The potential impact of an oil spill is also taken into account under other regulatory regimes. The HSE regulations require the approval of a safety case for the drilling facilities. The operator must also provide the HHU with a well design notification, which describes the results of the well examination which must be carried out by independent third parties. Maritime NZ has the responsibility to ensure operators undertake oil spill contingency planning.

Effects on existing interests

Existing interests are defined under section 4 of the EEZ Act. The definition includes both existing activities that are authorised under an Act or regulation and those that are not. Commercial fishing is an example of the former, and shipping is an example of the latter.

The routine effects on existing interests of exploratory drilling would most likely be limited to where an exclusion zone is required around a rig during drilling, and other users would be unable to use the space (for example, where the exclusion zone intersects with a fisheries ground). Given that the EEZ is such a large area, it is unlikely that a temporary exclusion zone would have a significant impact on the activities of others.

By contrast, a large-scale oil spill could have a significant adverse effect on existing users such as fishing operators, customary marine title groups, and other oil and gas operations.

If a significant adverse effect on an existing interest is identified, the EPA must either decline the marine consent application, or grant the consent subject to conditions that avoid, remedy or mitigate the effects so they are no longer significant – unless the interest holder provides written approval for the proposed activity. This provides a high level of protection for existing interests in the EEZ.

Cumulative effects

A marine consent will be required before exploratory drilling activities begin. In assessing a marine consent application, the EPA must take into account effects on the environment and existing interests, and may take a range of factors into consideration in its assessment. Decisions on whether to grant a marine consent are made on a case-by-case basis, and the EPA is specifically required to consider the cumulative effects of an activity.

²⁵ <http://www.maritimenz.govt.nz/Environmental/Responding-to-spills-and-pollution/Past-spill-responses/Rena-response.asp#latest>.

²⁶ <http://beehive.govt.nz/release/rena-compensation-agreed>.

b. The effects on the environment or existing interests of other activities undertaken in the Exclusive Economic Zone or in or on the continental shelf

Section 33(b) of the EEZ Act requires the Minister to take into account the effects on the environment or existing interests of other activities undertaken in the Exclusive Economic Zone or in or on the continental shelf, including—

- the effects of activities that are not regulated under this Act
- effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone. In addition to the effects of exploratory drilling, officials have identified several other activities that may have effects on the environment and existing interests, such as:
 - commercial fishing, which has impacts on certain fish stocks
 - seabed mining, which would have effects on the seafloor and water column, and may have wider effects on the marine ecosystem
 - seismic surveying, which may have effects on marine mammals and other marine animals
 - shipping, which produces noise in the water column and generally results in air and water discharges
 - laying cables on the seafloor
 - marine scientific research.

Other activities may occur in the future and have effects on the environment and existing interests, such as:

- aquaculture
- mining of gas hydrates
- renewable energy generation
- carbon sequestration.

The effects of other activities will be cumulative to the effects of exploratory drilling.

These types of effects will be considered by the EPA alongside the effects of the exploratory drilling activity itself when considering applications for marine consents.

c. The effects on human health that may arise from effects on the environment

The protection of human safety, health and welfare is of paramount importance in preparing for and responding to marine oil spills, and is one of the key principles underlying the New Zealand Marine Oil Spill Response Strategy. This includes the health and safety of the public, industry personnel, and the spill responders.²⁷

²⁷ <http://www.maritimenz.govt.nz/Publications-and-forms/Environmental-protection/Oil-spill-response-strategy.pdf>.

People's health could be affected through inhaling or touching oil products when responding to an oil spill,²⁸ or through the consumption of seafood that had been contaminated. As noted above, the probability of a large-scale oil spill is low, and given the activity will be occurring at least 12 nautical miles from the coast, in an area not used by a large number of people, the effects on human health arising from exploratory drilling are also considered to be low.

Effects on human health will be considered by the EPA alongside the effects on the environment and existing interests when considering applications for marine consents, and the EPA can set conditions it considers appropriate to avoid, remedy, or mitigate these types of effects.

d. The importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes

The Convention on Biological Diversity 1992 requires countries to provide for environmental impact assessments of proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimising such effects and, where appropriate, allow for public participation in such procedures.

Through consultation with experts including NIWA, officials have assessed the routine environmental effects of exploratory drilling (such as placing the rig and related activities) as minimal. The evidence available about non-routine impacts, such as a large scale oil spill, shows there to be a low probability of occurrence.

When considering an application for a marine consent, the EPA is required to take into account the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes. The EPA will assess the potential effects of an activity on a case-by-case basis, and can decline an application for a marine consent or apply conditions it deems appropriate before granting a marine consent.

e. The importance of protecting rare and vulnerable ecosystems and the habitats of threatened species

Given that only 30 per cent of the seabed of the EEZ and continental shelf has been mapped to date,²⁹ and only 13 per cent in detail,³⁰ a classification that provides for full regulatory oversight and a case-by-case assessment of different sites is warranted for exploratory drilling.

A non-notified discretionary classification enables the EPA to impose conditions on a marine consent to mitigate any adverse effects on sensitive environments.

Other activities associated with exploratory drilling in the EEZ would also be subject to conditions. An example of this is seismic surveying, which is subject to the Department of Conservation's *Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations 2013*.

²⁸ United Nations Environment Programme (2005), Global Marine Oil Pollution Information Gateway, <http://oils.gpa.unep.org/facts/economy-health.htm>.

²⁹ <http://www.gns.cri.nz/Home/News-and-Events/Media-Releases/Origin-of-seabed>.

³⁰ <http://www.linz.govt.nz/hydro/projects-programmes/ocean-survey-2020/about-ocean-survey-2020>.

Section 28 of the EEZ Act provides a mechanism to close areas of the EEZ to particular activities, no such areas have been established but there is potential to protect areas of the EEZ once there is a greater understanding of the location of important and sensitive areas.

f. New Zealand's international obligations

Section 11 of the EEZ Act states that “the Act continues or enables the implementation of New Zealand’s international obligations including the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and the Convention on Biological Diversity 1992”. As well as these international agreements, New Zealand has obligations under the convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 (Noumea Convention).

UNCLOS: In accordance with international law, including UNCLOS, New Zealand exercises sovereign rights over its continental shelf for the purpose of exploring it and exploiting its natural resources. These rights must be exercised with due regard to the rights of other states. At the same time, in exploiting their natural resources, states must do so in accordance with their duty to protect and preserve the marine environment. This includes evaluating as far as practicable the risks and effects of pollution on the marine environment and, where states have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of, or significant and harmful changes to, the marine environment, assessing the potential effects of such activities on the marine environment and publishing those reports or providing them to relevant international organisations.

The probability of significant adverse effects from exploratory drilling is low, and the non-notified discretionary process for exploratory drilling complies with this international obligation. Marine consents involve a discretionary decision and are considered on a case-by-case basis. Conditions can be placed on marine consents to avoid, remedy or mitigate effects on the environment and existing interests, and a case-by-case assessment enables the cumulative effect of activities to be considered.

Convention on Biological Diversity: The Convention on Biological Diversity requires countries to provide for environmental impact assessments of proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimising such effects and, where appropriate, allow for public participation in such procedures. Given that the process of assessing activities classified as non-notified discretionary requires the preparation of an impact assessment and allows the EPA to decline marine consent applications, the risk of an application for exploratory drilling succeeding that is likely to have significant adverse effects on biological diversity is negligible.

Noumea Convention: The Noumea Convention requires that, where appropriate, parties assess potential effects of “‘major projects’ so appropriate measures can be taken to prevent or minimise harmful impacts on the Convention Area (which includes New Zealand’s EEZ and continental shelf) and, where appropriate, each party shall invite public comment on major projects. What constitutes a major project is not defined.

The non-notified discretionary classification means there is no consultation on marine consent applications for certain activities classified as non-notified in regulation although persons with existing interests must be identified as part of the impact assessment and any consultation undertaken must be described. Iwi authorities, customary marine title groups, and protected customary rights groups must be served a copy of the marine consent application for non-notified discretionary activities. To satisfy the Noumea Convention requirements, the Minister

needs to be satisfied that exploratory drilling (as defined by the EEZ Act), as a general activity, is not a “major project” for the purpose of the Noumea Convention.

Through consultation with experts, including NIWA, officials have assessed the routine environmental effects of exploratory drilling (such as placing the rig and related activities) as minor. Officials have also identified the probability of an oil spill during exploration as being low, based on evidence in New Zealand and internationally. Officials have concluded that where the environmental effects of a project are minor and risks of causing pollution are low, then the activity is unlikely to be considered a major project. The Minister considers that the production phase of drilling for oil and gas is an appropriate time to invite public comment and this activity is classified as discretionary under the EEZ Act.

g. The economic benefit to New Zealand of an activity

Over 400 onshore and offshore exploration and production wells have been drilled to date and there remains potential for further discoveries.

The economic benefit of the petroleum industry to New Zealand includes the payment of royalties and taxes, capital investment, employment, and technology and innovation transfers. In 2012/13, the petroleum sector paid \$407 million in royalty and Energy Resource Levies to the Government.

A study by Venture Taranaki estimated with the oil and gas industry (both on land and offshore) already directly employs at least 3730 people. Further, the addition of indirect and induced impacts would extend employment flows from the industry to approximately 7700 jobs nationally.³¹

The Government’s recently released Petroleum and Minerals Sector Report shows is that the sector generates \$333 per hour worked, compared to the New Zealand average of \$48 per hour worked. Workers are paid on average \$105,000 per annum, over twice the New Zealand average.³²

Oil companies make investment decisions globally. The costs and uncertainty of the New Zealand regime compared with other regimes is one factor they will take into account when making investment decisions.

h. The efficient use and development of natural resources

The marine consent process under the default discretionary classification results in a longer and more costly consent process for the applicant (80 additional working days, not including any appeals) than the process under the proposed non-notified discretionary classification. It also introduces greater uncertainty for applicants because of the ability for a submitter to appeal a successful consent application; if an appeal occurs, it would result in further delays and costs, potentially without any impact on the original consent decision.

The industry has submitted that it is difficult to sufficiently plan for exploratory drilling on this basis. Certainty of timeframes is a key driver for industry because operators often only have

³¹ <http://www.taranaki.info/news/files/211.pdf>.

³² Petroleum and Minerals Sector Report: <http://www.mbie.govt.nz/what-we-do/business-growth-agenda/sectors-reports-series/petroleum-and-minerals-report>.

rigs available for a short period of time due to a limited worldwide supply of drill ships and supply vessels, and investors need to make decisions and put contracts in place many months in advance of an activity.

Industry submitters considered that requiring a public notification process would impose unfeasibly high costs on the industry without achieving any environmental benefit. The possibility that successful marine consent applications may be appealed could mean delaying the beginning of an operation by several months or even over a year, which is particularly problematic and costly for short duration activities.

The marine consent process under the non-notified discretionary classification would allow operators to plan and undertake exploratory activities more efficiently than under the discretionary classification, but would retain regulatory oversight of exploratory drilling activities and enable the EPA to consider marine consents on a case-by-case basis.

i The nature and effect of other marine management regimes

The oil and gas industry in New Zealand has to meet a number of regulatory requirements before operations can begin. The EEZ Act regime forms part of this regulatory system by providing explicit consideration of environmental effects associated with activities.

- Under the CMA, operators must obtain a permit from NZP&M, a branch of MBIE. NZP&M assess the financial and technical capability of an operator and high level health, safety and environmental ability. The permit is granted under the CMA.
- Under the HSE regulations,³³ operators must submit a safety case for any offshore installation, and this must be accepted by the High Hazards Unit (HHU). Well operators must ensure independent examination of working wells throughout the lifecycle of the well. Risks to well integrity are identified on a case-by-case basis through the safety case regime.
- Under the Marine Protection Rules,³⁴ operators must complete a DMP that must be approved by Maritime NZ. The plan includes a well control contingency plan, which is focussed on measures to re-establish well control, and an oil spill contingency plan that anticipates the steps that the operator would take in response to an oil spill.
- Other legislation applicable in the EEZ includes the Marine Mammals Protection Act 1978, the Wildlife Act 1953, and the Fisheries Act 1996.

The EEZ Act added to existing regulatory regimes by providing an extra layer of environmental oversight³⁵ while at the same time ensuring investment certainty for users and operators. Collectively the range of regulatory regimes cover environmental effects, effects on existing interests, health and safety, well integrity, contingency planning in case of an oil spill, and restoration of the environment post-production.

³³ Health and Safety in Employment Act 1992 (HSE Act) and the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013.

³⁴ <http://www.maritimenz.govt.nz/Rules/List-of-all-rules/Part200-marine-protection-rule.asp>.

³⁵ The extra layer of environmental oversight is provided by ensuring a full assessment of impacts and conditions to mitigate impacts if required.

j. Best practice in relation to an industry or activity

International regulatory regimes

Countries with a long history of oil and gas exploration such as the United States of America, Norway, Canada and the United Kingdom have moved away from highly prescriptive regimes to putting the onus on the operator to demonstrate safety and effectively manage the risk associated with an oil spill.

It is international best practice, incorporating recent lessons learned, that responsibility for prevention is vested with specialist environmental and safety regulators, and that their role is independent from the role of promoting investment in oil exploration.

New Zealand's regulatory framework puts that specialisation and separation in place. The prevention of well control contingency events and resultant oil spills is vested with specialist environmental and safety regulators. As a result of the *Rena* shipwreck and Deepwater Horizon well blowout, New Zealand has been through a period of re-aligning regulatory regimes. The HHU, the EPA and Maritime NZ are each required to either accept or approve the operator's proposals in their specific areas of expertise before the operator may proceed. Operators can be expected to spend a matter of years and invest tens of millions of dollars in the research, planning and measures necessary to meet these requirements.

As a result of the Deepwater Horizon well blowout, many countries are currently reviewing and amending their regulatory regimes to ensure health and safety and environmental compliance is better aligned.

Incident response

It is a fundamental principle in New Zealand and overseas that maintaining or recovering well control is the responsibility of the operator. All operators are required to produce detailed plans of how they will maintain and regain control of a well both under normal circumstances (safety case) and in the event of a failure of the primary and secondary systems (re-establishing lost control – covered in the DMP) and plans to respond to an oil discharge. Maritime NZ reviews the 'loss of control' plans and the oil spill plans using both independent and in-house experts. In line with general international practice, all resources in those plans must be available.

Under current arrangements around the world no government owns and operates its own well control equipment; even the most mature regimes require industry to provide the capability and that is the same in New Zealand.

k. In relation to whether an activity is classified as permitted, discretionary, non-notified, or publicly notifiable the desirability of allowing the public to be heard in relation to the activity or type of activity

The Minister must take into account the desirability of the public being heard in relation to an activity when developing regulations. Although there is a high level of public interest in drilling for oil and gas, this does not mean that the public needs to be heard with regard to every activity undertaken by the industry.

The scale of public participation should be commensurate with the nature of the activity and its effects. In the case of exploratory drilling, the activity is short in duration and exploratory in nature. Without undertaking this activity, operators will not know whether a commercially viable resource exists to produce from. The Minister's preliminary view is that she considers it appropriate for the public to be heard at the time when more is known about whether a longer-term programme of activities will occur (that is, when a marine consent is applied for to undertake production).

The non-notified discretionary process does not prevent those with existing interests being able to contribute to the assessment of a marine consent.

Where a marine consent is required for an activity:

- section 38 of the EEZ Act requires that an application for a marine consent include an impact assessment
- section 39 of the EEZ Act requires that an impact assessment:
 - identifies persons whose existing interests are likely to be adversely affected by the activity, and
 - describes any consultation undertaken with persons described above
- section 42 of the EEZ Act enables the EPA to request further information from an applicant and Section 44 enables the EPA to commission further advice
- section 61 requires the EPA to make full use of the powers set out in sections 42 and 44.

In addition to the provisions under the EEZ Act, the Petroleum Programme under the CMA provides that the Crown is required to consult with iwi and hapū whose rohe includes some or all of a proposed permit area or who may be directly affected by a permit, when permits are offered by competitive tender or when NZP&M receives an 'acceptable work programme offer' application or an application for a permit over 'newly available acreage'. Iwi and hapū are able to request that land be excluded from a Petroleum Exploration Permit Round, a minerals competitive tender, or a permit, or that activities with certain areas be subject to additional requirements to recognise the particular characteristics of those areas.

In addition, any technical issues relating to well integrity, containment, and response to an oil spill will be reviewed by technical experts. The Minister's preliminary view is that consideration by the EPA of all matters involved in the application including environmental effects, effects on existing interests, and response in the case of an oil spill are sufficient for exploratory drilling. Allowing the public to be heard is desirable where a production activity which could operate for many years is proposed.

I. Any other relevant matter

The Minister is required to consider a number of matters before making regulations, as outlined above. Officials have not identified any other relevant matters to be taken account of for the purposes of classifying exploratory drilling as a non-notified discretionary classification in regulations.

Section 34 – Information principles

Section 34 of the EEZ Act requires that when developing regulations under section 27 Act, the Minister must—

- (a) make full use of the information and other resources available to him or her; and*
- (b) base decisions on the best available information; and*
- (c) take into account any uncertainty or inadequacy in the information available.*

If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.

These requirements are also reflected under section 61 of the Act which requires the EPA, when considering an application for a marine consent, to:

- (a) make full use of its powers to request information from the applicant, obtain advice, and commission a review or a report; and*
- (b) base decisions on the best available information; and*
- (c) take into account any uncertainty or inadequacy in the information available.*

The proposed non-notified discretionary classification provides a precautionary approach by ensuring the EPA can assess applications on a case-by-case basis, and can set appropriate conditions, or decline a marine consent if it considers that the effects of the activity have not been adequately mitigated.

The probability of a large-scale oil spill is low, but it does exist. Significant oil spill and blowout incidents have occurred internationally and given these events, New Zealand adopts a precautionary approach and has several regulatory regimes in place to consider potential environmental impacts and impacts on existing interests, to ensure operations are designed to prevent any significant adverse events in the first instance, to respond to an oil spill if it does occur, and to set in place a programme of recovery where it is needed.

The Minister's preliminary view is that she considers, based on the information available and provided to her (including material provided as part of the public consultation process on the previous discussion document), that there is a low probability of significant adverse effects from exploratory drilling. This exposure draft process provides a further opportunity for the public to provide evidence, if they have it, that is counter to this position.

In addition, Cabinet has committed to reviewing regulations under the EEZ Act five years after implementation to ensure they remain fit for purpose.