



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*



# Exposure draft of activity classification of exploratory drilling for oil and gas under the EEZ Act

## Summary of submissions

New Zealand Government

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# 1 Introduction and overview

On 12 December 2013 the Ministry for the Environment (the Ministry) released an exposure draft of regulations for exploration drilling for oil and gas under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act). It was proposed that exploration drilling for oil and gas be classified as a non-notified discretionary activity. The draft regulations were accompanied by supporting information explaining the rationale for the proposed regulations.

The submission period closed at 5:00pm on 31 January 2014. The Ministry received 14,664 submissions on the exposure draft by the end of the submission period. An additional 129 late submissions were received between the end of the submission period and the end of counting at midday on 5 February 2014. Of these, three were substantively different in content and have been included in this summary, bringing the total of submissions considered to 14,667. This included:

- 14,356 submissions from submission templates with minor or no amendments, predominantly from Greenpeace and the Green Party
- 239 submissions that used templates as a starting point but had additional comments or modifications that deviated from the original template
- 72 unique submissions (not using a template) including:
  - 48 from individuals
  - 6 from local government bodies
  - 5 from environmental groups
  - 4 from iwi organisations / Māori representative groups
  - 1 from a policy organisation
  - 7 from private companies / industry organisations including:
    - 4 from the petroleum industry
    - 3 from groups with fisheries interests.

Of the 14,667 submissions considered:

- 14,653 were opposed to the proposed classification
- 10 supported the proposed classification (generally with some suggested amendments)
- four did not express a clear position on whether they supported or opposed the proposed classification.

In addition to accepting written submissions, the Ministry for the Environment held meetings with non-governmental organisations (NGOs) and industry representatives to hear their views on the proposed regulations.

**Table 1: Views on proposed classification of exploration drilling**

<b>Unique submissions</b>	Total no.	Disagree			Unspecified
		Agree	<i>Discretionary</i>	<i>Other</i>	
Individuals	48	2	27	18	1
Industry – petroleum	4	4	0	0	0
Industry – other	3	1	1	0	1
Local authorities	6	0	3	1	2
Environmental groups	5	0	5	0	0
Iwi	4	1	2	1	0
Science organisation	1	0	1	0	0
Policy research	1	0	0	1	0
<b>Unique submissions total</b>	<b>72</b>	<b>8</b>	<b>39</b>	<b>21</b>	<b>4</b>
<b>Form submissions</b>	14,356	0	14,346	10	0
<b>Modified form submissions</b>	239	2	181	56	0
<b>Form submission total</b>	<b>14,595</b>	<b>2</b>	<b>14,527</b>	<b>66</b>	<b>0</b>

## 2 Standard form submissions

All of the standard form submissions opposed the proposed classification.

The unaltered Greenpeace template submissions asked that exploration drilling be classified as discretionary while the unaltered Green Party template submissions asked that it be prohibited.

The general themes raised in modified form submissions are discussed alongside the themes raised in unique submissions.

### 3 Themes from submissions opposing the proposed classification

14,653 submissions opposed exploration drilling for oil and gas being classified as non-notified discretionary. Of these:

- 14,566 (14,527 form submissions and 39 unique submissions) considered that the activity should be classified as discretionary
- 87 (66 form submissions and 21 unique submissions) either proposed an alternative classification, or expressed opposition to the proposed classification without being specific about what they thought the classification should be. Proposed alternatives included:
  - that the activity be classified as prohibited
  - that the decision should be put on hold so it can be considered further
  - that decisions about notification should be made on a case-by-case basis.

The general themes identified from unique submissions and modified template submissions opposing the non-notified discretionary classification are as follows:

#### **Public involvement in the non-notified discretionary process**

- The issue of public participation in democratic process was one of the most widely discussed themes in submissions opposing the proposed classification. A number of submitters commented that the non-notified discretionary process is removing New Zealanders' democratic rights.
- Some of these submissions discussed the value added to the process by public engagement. It was submitted that allowing public involvement would enable the public to present expert evidence on conditions, to cross-examine the applicant's witnesses on technical issues, to cross-examine the applicant on matters such as the company's track record and insurance, and to make submissions on appropriate conditions.
- Some submissions commented that the proposed classification is inconsistent with the precautionary principle, as it prevents decision-makers from having access to the best available information.
- Some submissions also noted that the appeal process is an important constitutional check on the decision-making power of the EPA, and the absence of rights of appeal could potentially lead to inadequate decision-making. And that although the ability to appeal does introduce some uncertainty, it also allows case law to be developed to guide the interpretation of the Act and improve the decision making process.
- A number of submitters made comments relating to transparency. The general theme of these comments was that a transparent marine consent process is important to ensure the public knows what activities are taking place, and to give the public confidence in the quality of the EPA's decision-making and the appropriateness of operators' environmental practices.
- While a large number of submitters expressed some concern with the non-notified discretionary classification, a small number of submitters specifically voiced opposition to the



non-notified discretionary classification in principle, and considered that it should not be applied to any activity.

### **Environmental risks associated with exploration drilling**

- A significant number of submissions commented on risks associated with exploration drilling. The general theme of these comments was that although the probability of a major blowout from an exploration drilling operation was low, the consequences would be severe. Some of these submissions indicated that the potential consequences supported the case for increased public involvement or even prohibition of exploration drilling.
- Some submitters addressed the issue of water depth and commented on the increased probability of significant adverse effects in deeper waters.
- Several submissions commented that the effects of a major well blowout would outweigh any economic benefits of exploration drilling.

### **Impact on Māori and other existing interests**

- A number of submissions raised points relating to existing interests and/or affected parties. Many of these referred to the impact of exploration drilling (either its routine effects, or the possibility of a large scale spill) on other parties such as coastal communities, iwi, and fisheries interests.
- Many of these submissions, especially from iwi groups and local government, considered the provisions of the non-notified marine consent process inadequate as they fail to provide enough certainty that existing interests will be adequately engaged with.
- Key concerns in relation to Māori/iwi were a lack of iwi access to decision-making or any formal opportunity for iwi to describe the engagement that applicants may claim has occurred:
  - it was stated by Ngāi Tahu that under a non-notified discretionary classification, applicants will limit their engagement to the extent required to satisfy the law and obtain consent, which could mean arguing against the existence of particular iwi interests or values, or arguing against the existence of effects on particular iwi interests or values
  - Ngātiwai Trust Board stated that they have too often experienced applicants fabricating cultural impact assessments and alleged tangata whenua support for projects where none has existed. Under the RMA there are opportunities to identify these misrepresentations. Under the proposed regulation no such intervention is provided for
  - it was mentioned by Ngāi Tahu (and supported by Ngātiwai Trust Board) that the absence of a mechanism for iwi input represents a failure to honour the Treaty partnership.
- One submission from local government noted that there are no provisions in the regulations that allow input from persons who have a legitimate existing interest but are not identified as an existing interest through the impact assessment. This could prevent parties affected by a drilling operation to be excluded from the decision-making process.
- Other submitters considered that there are a range of affected parties who would not necessarily be considered existing interests under the proposed framework, and that the proposed regulations exclude these affected parties from decision-making.

## **Sustainability and the impact of fossil fuels on climate change**

- A significant number of submitters raised issues relating to the impact of fossil fuel extraction on climate change trends, and/or argued that New Zealand should be looking at opportunities to move away from fossil fuel extraction and towards more sustainable forms of energy generation.
- Several of these submissions commented on how New Zealand has an opportunity to be a world leader in sustainable energy technologies.
- Several submissions commented on New Zealand's "clean and green" and "100% Pure" brand, and highlighted the reputational risk associated with deep sea drilling.
- The issue of environmental stewardship, and the importance of protecting the environment for future generations was an important theme raised.

## **Criticisms of the Government's rationale**

- A number of submissions commented that the cost savings gained through a more streamlined process were not enough to outweigh the benefits of public engagement.
- One submission also noted that while exploration drilling is short in duration, the planning process is already lengthy enough to accommodate an environmental consenting component. The submission notes that oil and gas operators are required to allow for public participation during the process in other jurisdictions.
- Some submitters did not believe that the economic benefits would flow on to local communities or that the profits from oil exploration would be likely to benefit New Zealanders.
- Some submitters did not support the weight that is given to economic considerations compared with environmental ones.

## **New Zealand's international obligations**

- A number of submissions commented on international obligations, and considered the regulations inconsistent with obligations such as UNCLOS, the Noumea Convention and the Convention on Biological Diversity.
- One NGO also submitted that the proposed regulations conflict with the principles of the Rio Declaration. Another submitter mentioned the precautionary principle as an obligation under customary international law.
- Other submitters commented that the proposed regulations were inconsistent with domestic legislative obligations such as the Treaty of Waitangi and human rights law.

## **Spatial management**

- Some NGOs expressed concern that the regulations did not set aside any areas that would be protected from drilling activities (for example sensitive environments).
- They considered that in the absence of scientific information about the EEZ, the Government should be taking steps to better map biodiversity and ecosystems and use this information as the basis for determining which areas should be protected from drilling activities.
- They considered that a key vulnerability of the regulatory regime was that it fails to make use of any provisions under the EEZ Act that would better promote environmental protection.

## 4 Themes from submissions supporting the proposed classification

Ten submissions supported the non-notified classification. They were supportive of the classification for the following reasons:

- they consider it proportionate given the profile and scale of environmental effects of the activity
- they consider it appropriate given that a number of the component activities could be classified as permitted activities given their associated level of effects
- a discretionary process would add uncertainty due to the significant wasted investment if a marine consent was delayed after a rig had been booked, and the discretionary process would not add value to the decision for exploration in terms of minimising environmental risk.

Submissions from industry in support of the proposed classification also made the following points:

- they requested that regulations be implemented as soon as possible, and that the 28 day rule be waived
- submitters considered that the drilling of in-fill production wells should also be considered non-notified activities. This would apply only to existing production fields.

Some submissions in support of the proposed classification also suggested amendments to conditions. These suggestions are outlined on page 15.

## 5 Submissions on the proposed definition of exploration drilling

Seven submissions addressed the definition of exploration drilling. Those that did generally proposed amendments to make the regulations clearer.

In the definition of exploration drilling under section 3 of the proposed regulations, suggested amendments generally related to providing clarity on the inclusion or exclusion of wells that are temporarily suspended to later be used for production. Suggestions included:

- removing sub-clause (c) which states “does not include the drilling of wells that may be used for production”
- replacing sub-clause (c) with “does not include the drilling of wells solely for the purpose of production”
- replacing sub-clause (c) with “does not include the drilling of production wells, or the reuse of wells for production subsequent to exploration”.

In section 5(2) of the regulations, which sets out activities involved in exploration drilling, industry submitters were concerned that the list of activities may be interpreted as an exhaustive list, in which case they specified the addition of certain activities. If the list was not extended, they considered it would be appropriate to align the list more closely with the activities covered in section 20 of the EEZ Act.

Other suggested amendments relating to the list in section 5(2) included:

- replacing the words “capping a well” with “capping and abandoning a well” in sub-clause (f)
- amending sub-clause (f) to clarify whether temporarily capped wells are intended to be included or excluded in the list
- including “drilling” in the list of activities.

## 6 Submissions addressing temporarily suspended wells

Submissions relating to temporarily suspended wells were mainly received from industry submitters. There are broadly two sets of reasons for suspending a well:

- on a short-term basis as part of operational activities (for example, to undertake well maintenance, or if drilling needs to be suspended due to weather conditions), or
- on a long-term basis to enable easier transition to production at a later date.

The industry submitted that the activity of temporarily suspending wells in anticipation of production should be included within the definition of exploration drilling for the following reasons:

- industry considers the probability of a major release of hydrocarbons to the environment during the drilling of the well, when plugging the well, or subsequently, are equally low whether the well is temporarily or permanently abandoned
- in either case the well needs to be abandoned properly (whether this is temporary or permanent) with cement plugs set downhole to isolate hydrocarbons from the surface and other subsurface zones. Modern standards require effectively the same cement plugs to be set regardless of whether a well is temporarily or permanently abandoned
- temporarily abandoned wells are generally subject to ongoing monitoring over the period they are in this state to ensure they retain their integrity and no leaks to the environment are occurring
- the requirement to drill a new well instead of re-opening a temporarily suspended well is an unnecessary and inefficient outcome for operators and may result in greater environmental effects than re-entering an existing well
- before any well that is temporarily abandoned is ever produced from, a fully notified marine consent for a new field development would be required and so there is no potential for gaming by operators
- oil and gas industry submitters considered the effect on the fishing industry to be negligible, as any impacts would be no different to those of objects already on the sea floor.

## 7 Submissions on the Ministry's assessment of the legislative tests under section 29D of the EEZ Act

A number of submissions commented on the Ministry's assessments of whether the proposed classification of exploration drilling meets the requirements set out in section 29D of the EEZ Act. The following sections outline the comments on each of the legislative tests.

### **(a) low probability of significant adverse effects from exploration drilling**

- One NGO submission commented that NIWA's 'Expert Risk Assessment of Activities in the New Zealand Exclusive Economic Zone and Extended Continental Shelf' from 2012 had identified routine effects from exploration drilling that were considered to pose a high environmental risk, and that this meant the requirement to demonstrate a low probability of significant adverse effects had not been met.
- This submission also commented that no risk assessment relating to the risk of oil spills, or any comparative analysis of risk/adverse effects between exploration drilling and production drilling had been carried out. It was argued that this was a gap in the information provided to the Minister, and that this also meant the requirement to demonstrate a low probability of significant adverse effects had not been met.
- Another NGO submission noted that while the information provided by the Ministry indicates a low probability of significant adverse effects, this information does not take into account deepwater drilling conditions in New Zealand waters.

### **(b)(i) routine or exploration in nature**

- One NGO submission commented that in using the phrase "routine or exploration" the word 'exploration' is coloured by the word 'routine', and that significant adverse events from exploration drilling such as the Deepwater Horizon incident, while exploration, would not be considered routine.

### **(b)(ii) an activity of brief duration**

- One submission noted that the time taken to drill an exploration well is the same as the time taken to drill any other kind of well, therefore calling into question the justification for using the brief duration of exploration drilling as a justification for its classification as non-notified discretionary.
- One NGO submission noted that it is the probability and consequences of adverse effects, not the duration of the activity, that is relevant when assessing the risk of an activity.

## 8 Submissions on the proposed conditions

The following additional conditions, or changes to proposed conditions, were suggested in submissions:

- require operators to submit data, reports and information to the EPA for public access following the exploration phase of an operation, to determine whether conditions were met and to assist with future assessments
- require consultation with all affected parties and give affected parties the opportunity to make submissions on applications rather than relying on operators to describe the engagement
- impose a limit on the number of wells per marine consent (two submitters considered that the limit should be one well per marine consent, while one submitter did not specify what the limit should be)
- ensure adequate capping devices are present in New Zealand before drilling can begin, rather than planning to have them shipped from overseas in event of emergency
- extend the EPA's processing time from 60 to 90 days to ensure that a thorough investigation of each application can take place
- have mandatory safety measures such as relief wells and on-site cleanup facilities for exploration drilling operations
- require operators to carry out periodic inspections of well caps after drilling is complete, to ensure the continued integrity of cement caps over time.

It was stated by Ngāi Tahu that in the event NND is adopted in spite of concerns with that approach, a Schedule to the proposed regulations should be introduced, similar to Schedule 1 of the permitted activity regulations to ensure that iwi interests and values are considered in every application process.

Submissions from industry also proposed drafting changes to the conditions on geographic boundaries:

- As currently drafted, the regulations have the unintended effect of making exploration drilling discretionary if it occurs in an area covered by a mining permit (rather than an exploration permit). Industry submitted that exploration drilling should be treated in the same regulatory manner regardless of whether it occurs under an exploration or a mining permit
- As currently drafted, a marine consent can only cover wells drilled in a single permit area. Where adjacent fields are being drilled and wells in those fields are in close proximity, industry considers that it should be possible for them to be considered under one marine consent, not two separate ones.

## 9 Matters requiring additional consideration

Some submitters identified matters that they believed the Minister should have, but had not, adequately considered in decision making thus far.

- One NGO submitter considered that the summary of submissions on the August 2013 discussion document had failed to address points they had raised about the need to consult representatives of existing interests when applications are non-notified, as distinct from a general public consultation requirement.
- The same submitter noted that the supporting information document accompanying the exposure draft discusses the impact of other marine management regimes on the oil and gas industry, but does not consider the impacts of the oil and gas drilling regulations on the integrity of other management regimes, including the integrity of the Quota Management System and New Zealand's Deepwater fish stocks. They considered that this one-sided consideration of the nature and effect of existing marine management regimes misinterprets Section 33 of the EEZ Act.
- As noted earlier, one submission commented that the lack of a risk assessment relating to the risk of oil spills, or any comparative analysis of risk/adverse effects between exploration drilling and production drilling, constituted a gap in the information available to the Minister when making a decision on the proposed regulations.



## 10 Information and evidence provided by submitters

Section 34 of the EEZ Act requires that the Minister make decisions using the best available information. Some submitters provided or referred to additional information to assist the Minister in meeting these requirements. This information/evidence included:

- an article 'Trends extracted from 800 Gulf Coast blowouts during 1960-1996'<sup>1</sup> that provides information on the frequency of well blowouts at exploration and commissioning phases compared to other stages of oil and gas operations
- a report produced for the Petroleum Safety Authority of Norway on the integrity of temporarily abandoned wells in the Norwegian Shelf<sup>2</sup>
- online information about the Carbon Tracker Initiative regarding current worldwide fossil fuel reserves<sup>3</sup>.

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<sup>1</sup> <http://www.ipt.ntnu.no/~pskalle/files/TechnicalPapers/1998.BlowOuts.pdf>

<sup>2</sup> *Temporary abandoned well on NCS*, Nils Totland (2011), SINTEF Petroleum Research, produced for the Petroleum Safety Authority of Norway (Petroleumstilsynet, PSA/PTIL)

<sup>3</sup> <http://www.carbontracker.org/carbonbubble>