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Environment
Manatū Mō Te Taiao

Supporting information for the exposure draft of proposed regulations for discharge and dumping activities under the EEZ Act

New Zealand Government

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Background information on the regulation of discharge and dumping activities

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 regulations before they come into force. This process can help identify concerns about workability of the regulations.

The Government is releasing an exposure draft of proposed regulations that classify discharge and dumping activities under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) to ensure the workability of these regulations because they cover quite technical aspects of offshore mining and drilling operations.

Discharge and dumping activities already occur within New Zealand's Exclusive Economic Zone (EEZ) and continental shelf. Maritime New Zealand (Maritime NZ) is responsible for regulating these activities through Parts 180 and 200 of the Marine Protection Rules made under the Maritime Transport Act 1994 (MTA).

In October 2013, the EEZ Act was amended by the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Act 2013 (EEZ Amendment Act). The EEZ Amendment Act transfers the responsibility for managing certain activities from the Marine Protection Rules made under the MTA to the EEZ Act, specifically:

- discharges of harmful substances¹ from offshore structures and production facilities on board mineral mining ships
- dumping of waste.

The functions will be transferred when regulations are made that bring the EEZ Amendment Act into force. As part of the transfer of regulatory functions, the relevant Marine Protection Rules are being amended to coincide with the making of discharge and dumping regulations under the EEZ Act. This is because Part 200 of the Marine Protection Rules is being split into two parts: the management of operational discharges is being transferred to the EEZ Act but the spill contingency planning will remain under the administration of Maritime NZ.

New Zealand's EEZ is the portion of the ocean extending from 12 to 200 nautical miles offshore. The continental shelf is the seabed out to the continental margin (the point where the shelf drops into deep water but not exceeding 350 nautical miles).

The draft regulations are the Government's preliminary decision pending further consultation. Final decisions will be made after submissions on the regulations are considered and officials provide final advice.

¹ Part 200 of the Marine Protection Rules relates to discharges of harmful substances from offshore installations. Only the discharge of *harmful* substances (as opposed to other kinds of substances) will be restricted by the EEZ Act. Regulations will define what constitutes a 'harmful substance'.

What are discharges and dumping?

The EEZ Amendment Act provides definitions of ‘discharge’ and ‘dumping’ that will be inserted into section 4 of the EEZ Act when the regulations come into force.

Discharges

A discharge is defined under the EEZ Amendment Act as “any release, disposal, spilling, leaking, pumping, emitting, or emptying; but does not include dumping.”

The effects of discharges, unless managed, may be as follows:

- *Oil discharges* can coat mammals, seabirds, fish, etc. This coating, along with ingestion, may have toxic effects.
- *Chemical discharges* may have toxic effects on organisms, mammals, seabirds and fish.
- *Tailings from mining* may smother the seabed and harm benthic communities², and can affect the water column and its inhabitants. For example, fine particles can clog the gills of fish.

Dumping

Under the EEZ Amendment Act, dumping:

- a) “means—
 - i) in relation to waste or other matter, its deliberate disposal or storage; and
 - ii) in relation to a ship, an aircraft, or a structure, its deliberate disposal or abandonment; but
- b) does not include—
 - iii) the disposal into the sea of waste or other matter from a ship, an aircraft, or a structure, or the equipment of a ship, an aircraft, or a structure, if the disposal is incidental to, or derived from, the normal operation of the ship, aircraft, structure, or equipment; or
 - iv) the disposal or storage of waste or other matter directly arising from, or related to, a mining activity.”

Dumping activities have the potential to affect the seabed through crushing the benthos (including organisms that live on or near the seabed) and creating sediment plumes. Dumping of waste such as dredged spoil will have similar effects to the disposal of tailings in terms of smothering the benthic environment, effects on the water column, and potential introduction of contaminants. Long-term dumping may have cumulative effects by changing the nature of the seafloor in a particular area.

Dumped material may also have effects on existing interests, such as providing a hazard to trawl nets.

² The community of organisms which live on, in, or near the seabed.

How are discharges and dumping activities currently regulated?

Discharges

Discharges are usually part of a broader marine operation, such as oil and gas drilling activities or mining activities. They include, but are not limited to, discharges from offshore installations and pipelines and discharges from production facilities on ships engaged in mineral mining.

Under the *status quo*, the Marine Protection Rules administered by Maritime NZ regulate discharges from offshore installations, such as drilling platforms and floating production/storage units. These installations cannot operate without an approved Discharge Management Plan.³

The Discharge Management Plan process does not involve national public notification, but does have specific consultation requirements set out in Rule 200.6. The core requirement is for operators to consult with persons whose interests in the vicinity of the installation are likely to be affected by a spill of oil or other harmful substances from that installation. The operator must consult on locations and resources identified as being at risk of a spill.

Part 200 of the Marine Protection Rules prescribes conditions that are set on Discharge Management Plans. These conditions require:

- certain discharges to have prescribed thresholds after which they are only allowed if authorised for geological, technical or safety reasons
- other discharges, which are subject to the MARPOL⁴, to comply with strict thresholds and conditions, outside of which the discharge is prohibited
- the discharge of drilling fluids to be discharged as described, and approved, in the Discharge Management Plan.

In an average year, Maritime NZ receives two to three Discharge Management Plan applications for offshore petroleum installations (depending on the amount of exploration activity). The seven current production installations (off the Taranaki Coast) have five plans between them, which must be renewed every three years. Annually there are around 15 applications for modifications to existing approved Discharge Management Plans, mostly seeking approval for new ecotoxic chemicals.⁵

Dumping activities

Dumping is often a standalone activity, although it is sometimes associated with broader marine operations, such as drilling for oil and gas, and seabed mining. Part 180 of the Marine Protection Rules relates to the dumping of waste or other matter in the ocean.

Under the *status quo*, no one can dump waste or other matter in the EEZ and continental shelf without a dumping permit issued by Maritime NZ. An application must include:

³ Under Part 200 of the Marine Protection Rules.

⁴ International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978.

⁵ Estimates provided by Maritime NZ in November 2013.

- an assessment of the alternatives to dumping
- a waste minimisation audit
- a detailed description and characterisation of the waste to be dumped
- details of the proposed dump site
- an assessment of potential effects of the proposed dumping on the environment
- details of the proposed monitoring programme for compliance with any dumping permit issued.

Part 180 of the Marine Protection Rules provides for national public notification of dumping applications with the ability for the public to make submissions. However, notification is not required if the Director of Maritime NZ considers the application will have a minor adverse effect on the marine environment. Previously, Maritime NZ has received, on average, two to three dumping applications annually.⁶

The applications are generally to dump dredged spoil, and occasionally an application to dump a derelict ship. Maritime NZ does not typically publicly notify small scale applications concerning an authorised dumping site for which associated effects are constrained within that area. However, larger scale applications, and those concerning new dumping grounds, are typically notified.

Why are the discharge and dumping activity regulations being transferred?

The regulation of discharge and dumping under Marine Protection Rules made under the MTA will remain in place until regulations are made and the EEZ Amendment Act is brought into force. Without a transfer of discharge and dumping activities to the EEZ Act regime, activities would continue to be regulated by Maritime NZ while the parent activity causing the discharges or dumping to occur (for example, drilling for petroleum) would be regulated and monitored by the Environmental Protection Authority (EPA) under the EEZ Act. This means that operators would be required to submit the details of their discharge and dumping activities to two regulators,⁷ resulting in regulatory duplication and preventing integrated consideration and management of activities and their effects.

The EPA is best placed to consider the cumulative effects of an activity as a whole. The more flexible consenting framework of the EEZ Act will allow the EPA to holistically consider the effects of discharge and dumping activities in the context of the broader activities to which they relate. The EPA will be able to set consent conditions on a case-by-case basis and take a precautionary approach.

An additional problem identified with maintaining the status quo is that no statutory timeframes are in place for dumping activity decisions under the MTA, which creates uncertainty and may create delays for applicants with no clear environmental benefit.

⁶ Estimates provided by Maritime NZ in November 2013.

⁷ This is because, although Maritime NZ would be regulating discharges and dumping, the EPA would still require information about the effects of an activity to fulfil their role under the EEZ Act.

⁸ Supporting information for the exposure draft of proposed regulations for discharge and dumping activities under the EEZ Act

What is the scope of the regulations?

The regulations only apply to the discharge of ‘harmful substances’ from structures, pipelines and production facilities on board mineral mining ships and to the dumping of waste in the EEZ and continental shelf. Discharges from other sources will continue to be regulated under other regimes (for example, operational shipping discharges and oil spill contingency planning, will continue to be regulated by the Marine Protection Rules under the MTA and enforced by Maritime NZ).

A harmful substance is defined in the draft regulations as:

- a) a substance which is ecotoxic to aquatic organisms and considered hazardous for the purposes of the Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001, or
- b) oil, or
- c) garbage, or
- d) sediments from mineral operations other than petroleum operations, or
- e) tailings from mineral operations other than petroleum operations.

This definition is slightly amended from the definition that was initially proposed, based on feedback received during consultation in August–September 2013. The amended definition clarifies that sediments from petroleum operations are not included in the wider definition of sediments from mineral operations under (d) or (e). However, sediments from petroleum operations will be restricted if they contain ecotoxic components or oil under (a) or (b).

Submissions received were generally supportive of the proposed definition, but concerns and caveats to this support were raised on the basis that the terms used in the discussion document required a greater level of detail. As a result, other terms (such as ‘garbage’ and ‘oil’) have been defined in the draft regulations. More information about the definitions can be found in Appendix 2.

What decisions need to be made?

Decisions need to be made about how discharge and dumping activities will be classified in regulations under the EEZ regime. 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** (except for dumping, as per new section 20G of the EEZ Act, as inserted by the EEZ Amendment Act, which reflects the requirements of the London Protocol), meaning the activity can occur and does not require a marine consent as long as the activity meets certain conditions prescribed in regulations. For example, marine scientific research is a permitted activity provided it meets certain conditions including notifying the 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 *2013 Code of Conduct for Minimising Acoustic Disturbance to Marine Mammals from Seismic Survey Operations*.⁸

⁸ <http://www.doc.govt.nz/conservation/marine-and-coastal/seismic-surveys-code-of-conduct/>.

3. It can be a **non-notified discretionary**⁹ 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**¹⁰ activity, which also means that a marine consent is required. 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 committed to ensuring that New Zealand's EEZ and continental shelf has a regulatory regime that is consistent with international obligations and maintains high environmental integrity. The proposed regulations will classify discharge and dumping activities within this framework.

In some cases, international protocols already establish limits on discharge and dumping activities covered by these regulations. The protocols determine how an activity can be classified within the EEZ framework.

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.

What does the Act require when making regulations?

In considering how to regulate discharges of harmful substances and dumping of waste under the regulations, the EEZ Act has the following requirements:

1. Section 32 of the EEZ Act requires public consultation in determining regulations, and new section 34A(2)¹¹ requires the Minister to have regard to the feedback received in consultation.

How has this requirement been met?

The Minister for the Environment consulted on policy for regulations in August and September 2013, had regard to feedback received in submissions and is, through this document, consulting on an exposure draft of the draft regulations.

2. New section 34A(3) requires the Minister to take into account a number of matters in relation to discharge and dumping activities including the impact on the environment and existing interests, the nature and effect of other marine management regimes,

⁹ 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.

¹⁰ Appendix 3 explains the differences between the non-notified discretionary and discretionary classifications in more detail.

¹¹ Section 34A will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

and New Zealand's international obligations. These matters are set out more fully in Appendix 4.

How has this requirement been met?

A specific account of these matters is provided for each regulated discharge and dumping activity in Appendix 1.

3. Section 34 of the EEZ Act requires the Minister to:

- 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.

How has this requirement been met?

In formulating policy recommendations, Ministry for the Environment officials collaborated with government agencies and other stakeholders to gather the best available information. This has involved drawing on the expertise of Maritime NZ, as the current regulator holding technical process and scientific knowledge, and the EPA, as the expert agency preparing to take on the regulatory functions.

For sediment discharges, which are not currently regulated by Maritime NZ (meaning less information was available), the Ministry for the Environment commissioned the National Institute of Water and Atmospheric Research (NIWA) to provide a technical risk assessment¹², including a literature review, which was used to inform the regulations.

As explained in Appendix 1, caution has been favoured in relation to discharges from petroleum extraction, and sediments from seabed mining, when the effects from the latter are considered to be more than minor.

In addition to these general requirements, there are specific legislative tests that need to be met for an activity to be classified as permitted or non-notified discretionary.

Permitted activities

New section 29A(6) of the EEZ Act¹³ specifies that the discharge of a harmful substance cannot be permitted if, in the Minister's opinion, the activity has or is likely to have adverse effects on the environment or an existing interest that are significant in the circumstances; and it is more appropriate for the adverse effects of the activity to be considered in relation to an application for a marine consent.

In meeting this requirement, the Government considers that the permitted classification should be limited to activities that have an environmental impact that is no more than minor, or that can be controlled through regulations to ensure their effects are no more than minor with appropriate conditions.

¹² MacDiarmid et al. 2013. *Environmental risk assessment of discharges of sediment during prospecting and exploration for seabed minerals*. Wellington: NIWA.

¹³ Section 29A will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Non-notified discretionary activities

New section 29D of the EEZ Act¹⁴ specifies that an activity can only be classified as non-notified discretionary 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.

Purpose statement

The purpose of the EEZ Act (as amended, in section 10¹⁵) is:

- a) to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf; and
- b) in relation to the exclusive economic zone, the continental shelf, and the waters above the continental shelf beyond the outer limits of the exclusive economic zone, to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.

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.

How do the regulations promote the purpose of the Act?

The regulations promote protection of the environment by prohibiting dumping except for certain wastes allowed under the London Protocol which will require a marine dumping consent before the waste can be dumped. The marine dumping consent will be either non-notified discretionary or discretionary depending on the nature of the material and whether the proposed location is an existing authorised dumping site or a newly proposed site.

The regulations promote protection of the environment by only permitting discharges of harmful substances when their effects are considered to be minor or less than minor. All other discharges of harmful substances are either prohibited (where required by international obligations) or classified as requiring a marine consent (either non-notified discretionary or discretionary) before the activity can begin.

Sediment discharges from mineral extraction operations are not currently regulated by Maritime NZ. In assessing how they should be classified expert NIWA advice was commissioned. The regulations propose conditions to minimise adverse effects. The proposals permit discharges where the effects are considered to be less than minor and classify them as discretionary above this threshold. This approach is considered precautionary and promotes protection of the environment.

¹⁴ Section 29D will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

¹⁵ Section 10 of the EEZ Act will be amended by the EEZ Amendment Act when it comes into force.

The marine consent process means:

- the applicant is 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.

Whether the marine consent is non-notified discretionary or discretionary is assessed throughout Appendix 1. Classifications are informed by the principle that the level of regulation should be proportionate to likely effects.

What are 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 relating to the marine environment. New Zealand has relevant international obligations under the United Nations Convention on the Law of the Sea (UNCLOS), the Convention on Biological Diversity (CBD), the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), the Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986 (the Noumea Convention) and the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention) and the subsequent 1996 Protocol (the London Protocol).

These obligations relate to the protection of the marine environment in general, the need for impact assessments, and public participation in decision making.

UNCLOS: With respect to the protection of the marine environment, UNCLOS reiterates that States have an obligation to protect and preserve the marine environment (Article 192). They also have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment (Article 193). Among the requirements of UNCLOS are duties to take measures necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of life (Article 194(5)), and to take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction and control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto (Article 196 (1)).

With respect to impact assessments and public participation, UNCLOS requires that when 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, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and publish reports of the results of such assessments (or provide them to the competent international organisations (Articles 205 and 206)). UNCLOS also includes requirements for ongoing monitoring of the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

The EEZ Act is aligned with the rights and obligations set by UNCLOS. The EEZ Act allows for use of the resources in the EEZ with due regard to the appropriate protection and preservation of the marine environment. These regulations have been developed within this framework.

Convention on Biological Diversity (CBD): The CBD reiterates that States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (Article 3). The CBD requires States to introduce appropriate procedures requiring environmental impact assessment of proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures.

Under the EEZ Act, activities that are likely to have significant adverse effects can only be classified as discretionary (which requires an impact assessment to be made by the applicant and allows for public submission) or prohibited. Activities can only be classified as non-notified discretionary if the activity has a low probability of significant adverse effects. Therefore, the proposed regulations are consistent with the CBD.

MARPOL: New Zealand is party to Annex I, II, III and V of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978. MARPOL Annex I prescribes standards for the prevention of pollution by oil and Annex V sets regulations for the prevention of pollution by garbage. These regulations outline the mandatory thresholds, conditions and reporting requirements. The proposed discharge and dumping regulations under EEZ Act are consistent with the MARPOL regulations.

The London Convention and Protocol: New Zealand is party to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention) and the subsequent 1996 Protocol (the London Protocol). The London Protocol stresses the need to protect the marine environment from all sources of pollution and to promote the sustainable use and conservation of marine resources. Under the London Protocol, dumping of wastes or other matter is prohibited with the exception of those listed in Annex I of the London Protocol.

The London Protocol embodies the precautionary approach to dumping waste at sea. Rather than setting out the wastes that are not allowed to be dumped, the London Protocol defines categories of wastes that may be considered for dumping at sea. All other categories are prohibited from disposal at sea.

The draft regulations have been drafted in alignment with the London Protocol. Only dumping of wastes stated in the London Protocol will be allowed providing the EPA provides consent. The regulations are consistent with London Protocol requirements in that under the framework of the EEZ Amendment Act, dumping cannot be permitted and will require a marine consent or will be a prohibited activity.

Noumea Convention: The Noumea Convention requires Parties to, inter alia, take all appropriate measures to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities (Article 5).

The Noumea Convention requires each Party to, within its capabilities, assess the potential effects of major projects on the marine environment, so that appropriate measures can be

taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention Area. Where appropriate, each Party is to invite public comment on such assessments according to its national procedures, and communicate the results of the assessments to the relevant organisation.

There is no definition of “major project” in the Noumea Convention but, in consultation with the Ministry of Foreign Affairs and Trade, officials have concluded that where the environmental effects of a project are minor and the probability of causing pollution is low, then the activity is unlikely to be considered a major project.

Dumping activities that might constitute a “major project”, such as establishing a new dredged spoil dumping ground, are classified as discretionary in the draft regulations. This will ensure the effects are assessed and the public invited to comment in accordance with the Convention.

How has feedback on the 2013 discussion document been taken into account?

The discussion document released on 28 August 2013 asked for public feedback on both the discharge and dumping activities outlined in this paper, as well as exploratory drilling.

The submission period ended on 25 September 2013 and the Ministry for the Environment (MfE) received 21,221 submissions. While most submissions focused on exploratory drilling, 50 directly addressed proposals relating to discharge and dumping activities.

Submitters raised concerns about several issues:

- A major concern raised was that the level of information provided on activities and their effects was not adequate to understand whether the existing Maritime NZ regime adequately protects the environment. Additional information has been provided in this document to inform readers about the effects of the activities, and the matters that have been considered when making recommendations for regulations.
- A number of submitters were concerned that decisions about notification should be made based on the scale and potential impact of individual applications, rather than being based on the type of activity. In light of these submissions, the proposed activity classifications have been reviewed to ensure that they are effects-based.
- Some submitters commented that certain discharges which were proposed as non-notified discretionary or discretionary should be prohibited. However, because these discharges are not prohibited by international agreements to which New Zealand is party, and will be part of a broader activity, a prohibition would effectively ban the activity of which the discharge is part, and this would be contrary to the Government's intentions. The proposed regulations seek to ensure that there is robust regulatory oversight over discharges that have the potential to have moderate and significant adverse effect and give the EPA the ability to decline applications if the effects, or the proposals for avoiding or mitigating them, are considered to be unacceptable.

Table 1 below summarises how the proposed classifications have changed as a result of feedback received through consultation. Appendix 1 provides more detail about specific feedback received on each proposal, and how this has influenced each of the current proposals.

Summary of the draft regulations

Table 1, below, provides a summary of the draft regulations and compares them against the proposals consulted on in the August 2013 discussion document and the current regime under the Marine Protection Rules which are made under the Maritime Transport Act 1994.

The current management regime, administered by Maritime NZ, relies on the Discharge Management Plan, dumping permit and burial at sea processes.

Discharge Management Plans: Under Part 200 of the Marine Protection Rules operators must apply to Maritime NZ for approval for a Discharge Management Plan covering all likely discharges of their operation. When preparing their plan, operators must consult with the persons whose interests in the vicinity of the installation that are likely to be affected by a spill of oil or other harmful substances from that installation (including, if appropriate, regional on-scene commanders, regional offices of the Department of Conservation, and tangata whenua). The operator must consult on locations and resources identified as being at risk of a spill. Maritime NZ will then carry out an assessment of the proposed discharges and the final plan must be approved by the Director of Maritime NZ.

Dumping permits: Under Part 180 of the Marine Protection Rules anyone wishing to dump waste in the EEZ must apply to Maritime NZ for a permit to dump. Part 180 prescribes that the dumping application will be publicly notified. However, the Director of Maritime NZ can decide to waive the requirement to notify if it is considered the effects of the dumping on the marine environment are likely to be minor.

Maritime NZ will then consider a range of factors including:

- characterising the waste and biosecurity considerations
- the sensitivity of the disposal site
- the environmental effects of the disposal
- alternatives to sea disposal
- conditions that may be applied to a permit if it is to be granted.

The Director of Maritime NZ must grant the permit before dumping can take place.

Burial at sea: Applications for sea burial do not follow the same process as a dumping permit as they are considered simpler and are more administrative in nature. An application for burial at sea places obligations on the applicant to provide copies of a death certificate, an operator's certificate demonstrating appropriate carriage of the remains, evidence that the casket or other containment is suitable for burial at sea and evidence after the disposal that the burial took place in accordance with the conditions of the permit (location). To date Maritime NZ has only allowed burials in certain areas of the EEZ (the 'authorised dumping grounds' as seen in Figure 9, which were historically used to dump explosives).

Table 1: Summary comparison of regulations proposed in the initial discussion document, compared to the currently proposed draft regulations and current management regime under the Maritime Transport Act 1994

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Discharges of garbage	<p>An operator cannot operate an offshore installation without a Discharge Management Plan from Maritime NZ.</p> <p>Maritime NZ will carry out an assessment of the proposed discharges and the Discharge Management Plan must be approved by the Director.</p> <p>The Discharge Management Plan is not publicly notified but it requires the operator to consult with affected parties.</p> <p>Garbage discharges to be prohibited</p> <p>Except for the discharge of food waste with the following conditions:</p> <ul style="list-style-type: none"> • The food waste has been passed through a comminuter or grinder. • The comminuted or ground food waste is capable of passing through a screen with openings no greater than 25 millimetres. 	<p>Garbage discharges to be prohibited</p> <p>Except for the discharge of food waste, which is permitted with the following conditions:</p> <ul style="list-style-type: none"> • The food waste has been passed through a comminuter or grinder. • The comminuted or ground food waste is capable of passing through a screen with openings no greater than 25 millimetres. 	<p>No change</p> <p>It should be clarified that the intent is that emergency or accidental garbage discharges are activities covered by the defence provisions of the EEZ Act as outlined in section 134A, rather than providing explicit exemptions in regulations.</p>	<p>n/a</p>

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Discharges of sediments and/or tailings from mineral mining	<p>Garbage discharges not prohibited if:</p> <ul style="list-style-type: none"> • The discharge is necessary for the purpose of securing the safety of an installation and those on board or saving life at sea; or • The discharge is an accidental loss of garbage resulting from damage to an installation or its equipment, and all reasonable precautions have been taken before and after the occurrence of the damage to prevent or minimise the accidental loss. <p>Not currently regulated</p>	<p>The discussion document indicated proposals for discharges of sediments from mineral operations during prospecting and exploration was still in development pending further information.</p> <p>Discretionary for discharges of sediments and /or tailings from mineral mining operations during the production stage of mineral mining operations.</p>	<p>Permitted with conditions¹⁶</p> <ul style="list-style-type: none"> • Sediment from iron sand prospecting and exploration up to 1000t. • Sediment from phosphate nodule prospecting and exploration up to 1000t. • Sediment from seafloor massive sulphide mining prospecting and exploration up to 100t. <p>The operator must provide:</p> <ul style="list-style-type: none"> • 40 day pre-activity notification to the EPA • 25 day pre-activity notification to iwi 	

¹⁶ The conditions on the discharges vary between the type of mineral mining and the tonnage level, as outlined in Appendix 1.

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
			<ul style="list-style-type: none"> • five day provision of iwi information to the EPA • 24-hour commencement and completion notification to the EPA • 60 day post-activity notification to the EPA. <p>Discretionary</p> <ul style="list-style-type: none"> • Discharges which do not comply with the permitted conditions. • Sediment from other prospecting and exploration for minerals other than iron sands, phosphate nodules and seafloor massive sulphides. • Discharges of sediments and /or tailings from mineral mining operations during the production stage of mineral mining operations. <p>Additional policy considerations</p> <p>The Minister is considering including a condition in the regulations to require, where practical, the discharge of sediments back into the same area of seabed from which sediments were extracted (in particular, for the mining of iron sands, seafloor massive sulphides and phosphates).</p> <p>The condition will likely contribute towards a precautionary approach in regulating the discharge of mineral mining sediments. This would minimise the area of seabed affected by these activities because it would mean the same area is affected by the extraction and discharge of sediments, rather than one area being affected by extraction and another by the discharge.</p>	

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
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Seafloor massive sulphides and phosphate mining are new activities in New Zealand's EEZ waters; therefore, caution is needed until there is greater understanding of their effects.

Questions:

- Do you consider this proposed condition to be an appropriate way of mitigating the effects of sediment discharges from prospecting and exploration?
- Do you consider there are any other conditions that could mitigate the effects of sediment discharge that have not been included in the proposed regulations?

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Discharges from petroleum extraction	<p>An operator cannot operate an offshore installation without a Discharge Management Plan from Maritime NZ.</p> <p>Maritime NZ will carry out an assessment of the proposed discharges and the Discharge Management Plan must be approved by the Director.</p> <p>The Discharge Management Plan is not publicly notified but it requires the operator to consult with affected parties.</p> <p>The discharges approved in the Discharge Management Plan must comply with the following rules:</p> <ul style="list-style-type: none"> • The owner of a controlled offshore installation must, by use of the best practicable option, ensure that the oil content of production water, displacement water or offshore processing drainage discharged before dilution from a controlled offshore installation does not exceed 50 parts per million and averages less than 30 parts per million every calendar month. • The owner must ensure that 	<p>Permitted for discharges of offshore processing drainage and displacement water, provided oil content does not exceed 50 parts per million.</p> <p>Non-notified discretionary for discharges of offshore processing drainage and displacement water that exceed the permitted threshold for geological, technical or safety reasons.</p> <p>Non-notified discretionary for production water discharges.</p>	<p>Discretionary for the discharge of harmful substances (ecotoxic substances and oil) from offshore processing drainage, displacement water, and production water</p> <p>Non-notified discretionary for the discharge of harmful substances (ecotoxic substances and oil) from production water for the purpose of a test flow of an exploration well.</p> <p>Additional policy considerations Ministry for the Environment officials received advice that these discharges do not occur during the exploration phase of operations.</p> <p>A well may be 'test-flowed', to extract formation fluids (water, oil, condensates) in small quantities over a short timeframe to measure flow rates and pressure. The formation fluids are flowed into a tank to be transported to land for analysis, treatment and disposal.</p> <p>However, in the unlikely event these discharges were to occur at the exploration stage, they are proposed to be classified as non-notified discretionary.</p>	<p>The volume of the discharge at the production stage could potentially be large and occur over a long timeframe. The stream could also contain chemical and heavy metals. A discretionary classification will ensure the EPA can holistically consider the effects of this activity alongside the effects of the parent activity of oil and gas production, with input from the public.</p>

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Discharges of oily waste from machinery spaces	<p>the oil content of production water, displacement water, or offshore processing drainage discharged from a controlled offshore installation is measured continuously before dilution by a method in the approved Discharge Management Plan.</p> <p>These specified thresholds can, in specific circumstances, be exceeded for geological, technical or safety reasons if agreed by Maritime NZ.</p> <p>An operator cannot operate an offshore installation without a Discharge Management Plan from Maritime NZ.</p> <p>Maritime NZ will carry out an assessment of the proposed discharges and the Discharge Management Plan must be approved by the Director.</p> <p>The Discharge Management Plan is not publicly notified but it requires the operator to consult with affected parties.</p> <p>The oil content is prescribed to MARPOL standards of 15 parts per million and cannot be exceeded.</p>	<p>Permitted with the following conditions:</p> <ul style="list-style-type: none"> The oil content must not exceed 15 parts per million when processed by oil filtering equipment approved by the Director of Maritime NZ. For offshore installations of 10,000 gross tons or more, the oil-filtering equipment must be fitted with an alarm to indicate threshold breaches and have systems to automatically stop discharging. <p>Prohibited for discharges over 15 parts per million.</p>	<p>Permitted with the following conditions:</p> <ul style="list-style-type: none"> The discharge must be processed by oil filtering equipment that has International Oil Pollution Prevention certification in accordance with the requirements set out in MARPOL Annex I for the purposes of the issue of an IOPP certificate. The oil content of the discharge, without dilution, does not exceed 15 parts per million of the total discharge. An oil record book must be kept and a true copy submitted to the EPA within 15 working days of the end of the month in which it was completed. In the case of a structure of 10,000 gross tons or more, the oil filtering equipment must be fitted with an alarm to indicate 	<p>The new conditions better reflect the management approach of the current Marine Protection Rules and the requirements of MARPOL.</p>

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Discharges of contaminated seawater from operational purposes	The discharge is not restricted in the Marine Protection Rules, and therefore does not require a Discharge Management Plan. However, Maritime NZ restricts it through operational procedures to comply with MARPOL standards.	This type of discharge was not included in the initial proposals in August 2013. The need to classify this activity was identified following consultation.	<p>when the oil content of the effluent exceeds 15 parts per million; and arrangements to ensure that any discharge of oily mixture is automatically stopped when the alarm is activated.</p> <p>Prohibited where the oil content of the discharge exceeds 15 parts per million.</p> <p>Permitted with the following conditions:</p> <ul style="list-style-type: none"> • The discharge must be processed by oil filtering equipment that has International Oil Pollution Prevention certification in accordance with the requirements set out in MARPOL Annex I for the purposes of the issue of an IOPP certificate • The oil content of the discharge, without dilution, does not exceed 15 parts per million • An oil record book must be kept and a true copy submitted to the EPA within 15 working days of the end of the month in which it was completed <p>This activity is proposed to be classified as prohibited where the oil content of the discharge exceeds 15 parts per million.</p>	The need to classify this activity was identified following consultation. The new requirements reflect the standards prescribed in a Unified Interpretation to MARPOL. ¹⁷
Discharges of operational chemicals	An operator cannot operate an offshore installation without a Discharge Management Plan from Maritime NZ. Maritime NZ will carry out an	Non-notified discretionary	No change	n/a

¹⁷ MARPOL Annex I, Regulation 39, Unified Interpretation 63.

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Discharges of drilling fluids	<p>assessment of the proposed discharges and the Discharge Management Plan must be approved by the Director.</p> <p>The Discharge Management Plan is not publicly notified but it requires the operator to consult with affected parties.</p> <p>There are no specific prescriptive rules but chemicals must be specified in the Discharge Management Plan and discharges made in accordance with that plan.</p> <p>An operator cannot operate an offshore installation without a Discharge Management Plan from Maritime NZ.</p> <p>Maritime NZ will carry out an assessment of the proposed discharges and the Discharge Management Plan must be approved by the Director.</p> <p>The Discharge Management Plan is not publicly notified but it requires the operator to consult with affected parties.</p> <p>Rules prescribe general properties of fluids, require specification in the Discharge Management Plan and provide that discharges must be made in accordance with that plan</p>	<p>Non-notified discretionary during the exploratory stage of oil and gas operations</p> <p>Discretionary during the production stage of oil and gas operations.</p>	<p>Non-notified discretionary</p>	<p>Classifying all discharges of drilling fluids as non-notified discretionary will enable operators to change fluids if necessary and potentially adopt lower-impact methods without triggering a fully notified discretionary process after the initial consent has been granted.</p>

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Burial at sea	<p>A person wishing to conduct a burial at sea must apply to Maritime NZ for a permit and applications will be considered within authorised dumping grounds (the list of proposed authorised dumping grounds is specified in Appendix 4). The applicant will need to discuss the process for burial with Maritime NZ.</p>	<p>Permitted with the following conditions:</p> <ul style="list-style-type: none"> • The EPA issues a certificate of compliance that meets New Zealand's international obligations. The applicant must provide the EPA with: <ul style="list-style-type: none"> – copies of a death certificate – an operator's certificate demonstrating appropriate carriage of the remains – evidence that the casket or other containment is suitable for burial at sea – evidence, post-burial, that the disposal took place in accordance with the conditions of the certificate. <p>The location for disposal is an authorised dumping ground (the list of proposed authorised dumping grounds is specified in Appendix 4).</p> <p>The EPA notify relevant iwi of the date and location of burials at sea as soon as practicable following the issuance of a certificate of compliance.</p>	<p>Allowed under section 20J providing the following conditions, which will be set out in regulations, are met:</p> <ol style="list-style-type: none"> a. The person provides the EPA with a copy of the death certificate at least three working days prior to burial. b. The casket or containment is of a nature that will sink to the seafloor on disposal and is unlikely to resurface. c. The location for disposal is an authorised dumping ground (the list of proposed authorised dumping grounds is specified in Appendix 4). d. The proposal for disposal is provided to the EPA for certification at least three working days before the proposed disposal. e. The person provides evidence to the EPA that the disposal took place in accordance with the conditions (b) and (c). <p>As soon as practicable after issuing a certificate of compliance in accordance with section 20J(1)(b) of the Act, the EPA must notify every iwi, hapū, customary marine title groups, and protected customary rights groups whose existing interests the EPA considers may be affected by the activity of the date and location of the burial.</p>	<p>Although the core policy intent remains the same, the conditions have been refined to be clearer and more workable for applicants and the EPA..</p>

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
Dumping of waste	Under Part 180 of the Marine Protection Rules all dumping requires a permit which Maritime NZ can grant or decline. Part 180 requires national public notification but this requirement may be waived if the Director considers the dumping will have "minor adverse effects on the marine environment"	<p>Non-notified discretionary for candidate wastes under Annex I of the London Protocol, except for the dumping of structures during the decommissioning of oil and gas production structures.</p> <p>Discretionary for the dumping of structures during the decommissioning of oil and gas production structures.</p> <p>Prohibited for wastes other than those allowed for in the London Protocol.</p>	<p>Non-notified discretionary for the following types of waste:</p> <ul style="list-style-type: none"> • fish waste, or organic material resulting from industrial fish processing operations • sewage sludge • organic material of natural origin • The dumping of structures that were originally placed for the purpose of mineral exploration. • dredged material on condition that it is dumped within authorised dumping grounds (the list of proposed authorised dumping grounds is specified in Appendix 4) • vessels on condition that they are dumped within authorised dumping grounds. 	The candidate wastes under Annex I of the London Protocol were re-assessed and have been classified according to the expected degree of environmental effects. Only those wastes considered able to meet the criteria for being non-notified discretionary under new section 29D of the Amendment Act have been classified accordingly.

Activity	Current management approach under the Maritime Transport Act's Marine Protection Rules	Proposed classification in the initial discussion document (August 2013)	Currently proposed classification in exposure draft regulations	Rationale for change in policy
			<p>Discretionary for the following types of waste:</p> <ul style="list-style-type: none"> • dredged material that is dumped outside authorised dumping grounds • vessels and structures (excluding the dumping structures that were originally placed for the purpose of mineral exploration) that are not dumped in authorised dumping grounds • structures that were originally placed in relation to mineral production activities • carbon dioxide streams from dioxide capture processes for sequestration • inert, inorganic geological material • bulky solid waste from locations with no practicable access to other disposal options. <p>Prohibited for other types of waste not in the lists above.</p>	

How can I have my say on the draft regulations?

The easiest way to make a submission on the proposed regulations and information in 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 5.00pm on Wednesday 19 March 2014.

Submissions on the draft regulations will be considered once the submission period ends at 5pm on 19 March 2014. A final set of regulations will be drafted once submissions are considered. 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.

Publishing and releasing submissions

The Ministry may publish all or part of any written submission on its website, www.mfe.govt.nz. Unless you clearly specify otherwise in your submission, the Ministry would consider that you have consented to website posting.

Contents of submissions provided to the Ministry may have to be released to the public under the Official Information Act 1982 following requests to the Ministry (including via email). Please advise if you have any objection to the release of any information contained in a submission, and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. The Ministry would take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission would be used by the Ministry only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

Appendix 1: Detailed assessment of proposals

Discharges of garbage

Description of the activity:	<p>This refers to garbage discharged from an offshore installation and includes:</p> <ul style="list-style-type: none">• all kinds of food waste, domestic waste, operational waste, plastic, cargo residue, incinerator ash and cooking oil generated during the normal operation of the ship and liable to be disposed of continuously or periodically; but• does not include—<ol style="list-style-type: none">i) any substance that is defined or listed in any annex to MARPOL other than Annex V; orii) fresh fish and parts of fresh fish generated as a result of fishing activity undertaken during a voyage, or as a result of aquaculture activity that involves the transport of fish including shellfish for placement in an aquaculture facility and the transport of harvested fish including shellfish from such facilities to shore for processing.
Proposed classifications:	<p>All garbage discharges are proposed to be classified as prohibited, except for the discharge of food waste which is proposed to be classified as permitted provided the following MARPOL conditions are met:</p> <ul style="list-style-type: none">• The food waste has been passed through a comminuter or grinder• The comminuted or ground food waste is capable of passing through a screen with openings no greater than 25 millimetres• Disposal of garbage are recorded in a garbage record book (prescribed in the regulations) and reported to the EPA. <p>Discharge of food waste is proposed to be classified as prohibited in cases where it does not meet the above conditions. It should be clarified that the intent is that emergency or accidental garbage discharges are activities covered by the defence provisions of the EEZ Act as outlined in section 134A, rather than providing explicit exemptions in regulations.</p>
What was initially proposed in August 2013:	<p>The activity classifications have not changed from what was proposed in August 2013. Submissions addressing the discharge of food waste were generally supportive of the proposed classifications.</p>

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

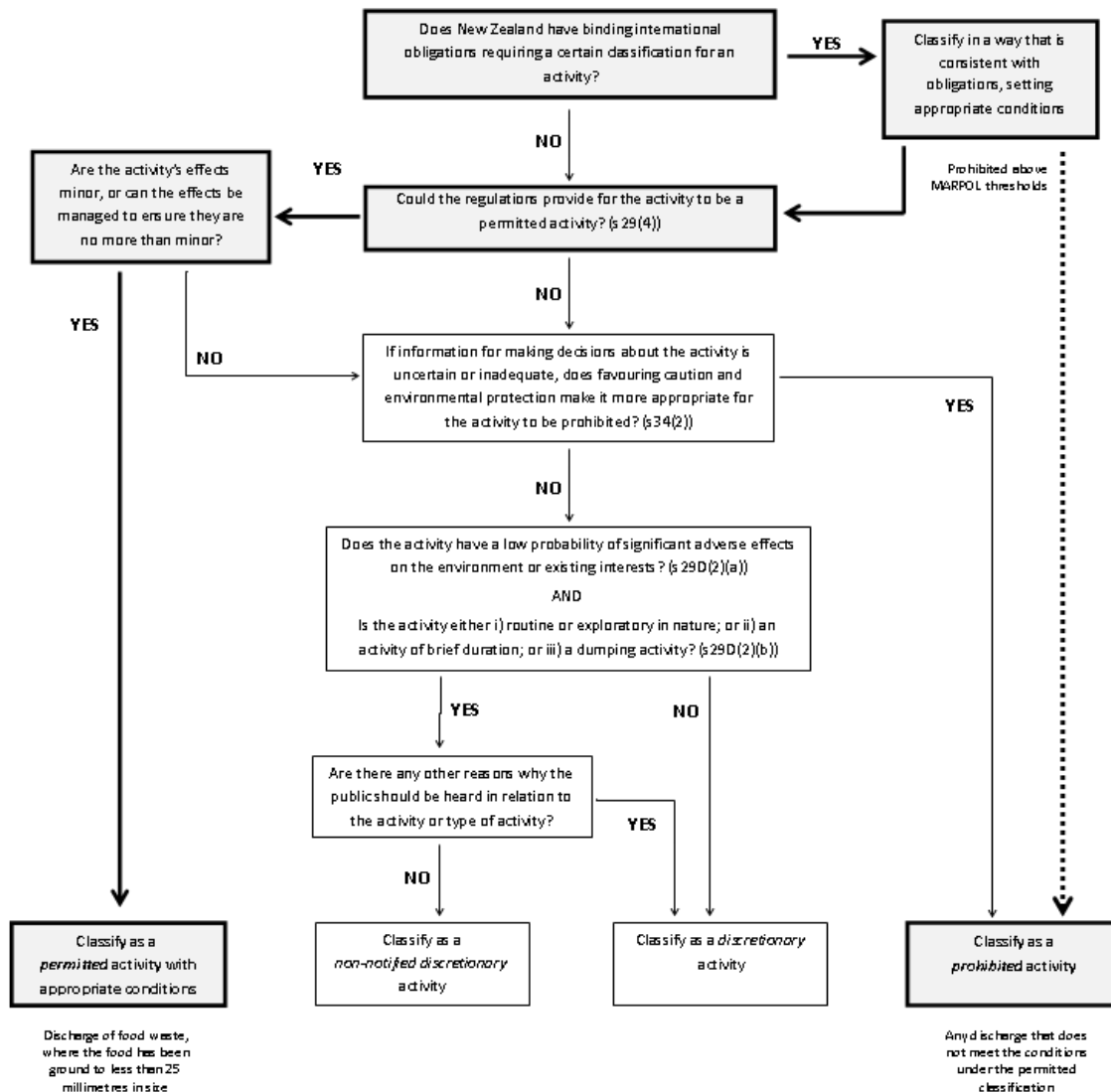
Effects on the environment or existing interests:	<p>The discharge of food waste into the ocean would introduce additional nutrients into the marine environment. It may also attract marine animals to the source of the discharge, which increases their likelihood of being harmed by any activities taking place as part of the broader activity (for example, if a marine animal is attracted to an oil or gas drilling installation by food waste, and then becomes more likely to be affected by discharges of oily water from the drilling operation). Overall the effects on the environment and existing interests of discharging ground food waste into the ocean are considered to be minor or less than minor.</p> <p>The effects of all other garbage have not been assessed as the proposed prohibited classification reflects New Zealand’s international obligations under MARPOL.</p>
Effects of other activities undertaken in the EEZ or on the continental shelf:	<p>The discharge of food waste would be made from installations engaged in broader activities such as oil and gas exploration. These broader activities are likely to have effects on the environment and existing interests that may be cumulative to the effects of discharging food waste; however, these activities are separately defined in the EEZ Act and are subject to regulatory conditions, or require marine consents, which take into account their effects.</p>
Biological diversity and integrity of marine species, ecosystems, and processes:	<p>The discharge of food waste would occur in relation to a broader activity. Where the broader activity is permitted, biological diversity and integrity of marine species, ecosystems and processes will have been taken into account when the activity was classified. Where the broader activity requires a marine consent, the EPA will have the ability to impose appropriate conditions on the activity. The discharge of food waste is likely to have a negligible effect on ecosystems and marine species beyond the effects of the broader activity.</p>
Rare and vulnerable ecosystems and the habitats of threatened species:	<p>The discharge of food waste would occur in relation to a broader activity. Where the broader activity is permitted, the activity would already be subject to conditions relating to sensitive environments. Where the broader activity requires a marine consent, the EPA will have the ability to impose appropriate conditions on the activity. The discharge of food waste is likely to have a negligible effect on sensitive environments beyond the effects of the broader activity.</p>
New Zealand's international obligations:	<p>The proposed classifications and the associated conditions align with New Zealand’s obligations under MARPOL, which prohibits the discharge of garbage from installations other than food waste ground to 25 millimetres or less.</p>
Other marine management regimes:	<p>MARPOL standards apply in both the EEZ and the territorial sea. While these regulations will manage discharges from structures (such as oil and gas rigs), Part 170 of the Marine Protection Rules regulates garbage discharges from ships. The Resource Management (Marine Pollution) Regulations 1998 give effect to these obligations in the territorial sea, and are enforced by regional councils.</p>
The desirability of allowing the public to be heard:	<p>It is not considered desirable to provide a mechanism for the public to be heard on individual cases of discharging food waste because of the controlled and minor nature of the activity.</p>
Effects of the discharge on human health:	<p>Due to the relatively small quantities of food that would be discharged, and the distance from shore, any effects on human health would be negligible.</p>
Any other relevant matter:	<p>The proposed classifications and the associated conditions align with the existing approach set out in part 200 of the Marine Protection Rules under the MTA.</p>

Assessment of the proposed permitted classification

In recommending an activity be classified as permitted the test in section 29A¹⁸ must be satisfied (see page 11).

As per section 29A, the discharge of food waste is considered not to have more than minor effects on the environment or existing interests. This is because the proposal only permits food waste to be discharged under strict conditions on particulate size to manage effects and prohibits discharges beyond these thresholds. The discharge of all other types of garbage is prohibited.

Figure 1: Policy and legislative considerations when making the classification for discharges of food waste and other garbage



¹⁸ Section 29D will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Discharges of sediments and/or tailings from seabed mineral mining

Description of the activity:	Sediments and/or tailings from seabed mineral mining are created when extracted material from the seabed is processed on board a mining ship to remove the desired minerals (eg, iron ore is removed from extracted ironsands). The residual sediment (sometimes known as 'tailings') must then be discharged back into the sea because it has no commercial value and cannot be stored on the vessel.
Proposed classifications:	<p><i>Sediment from iron sand prospecting and exploration:</i></p> <p>A total discharge per permit area¹⁹ up to 1000t (~480m³) is permitted with the following conditions:</p> <ul style="list-style-type: none"> - that no more than 100 tonnes of sediment is discharged in a single event - that no more than one discharge event occurs per hectare for discharges that total between 5 and 100 tonnes <p>Any other frequency is discretionary.</p> <p>A total discharge per permit area above 1000t is discretionary.</p> <hr/> <p><i>Sediment from phosphate nodules prospecting and exploration:</i></p> <p>A total discharge per permit area up to 100t (~65m³) is permitted.</p> <p>A total discharge per permit area of between 100t and 1000t is permitted on condition that it is discharged near the seafloor (i.e. in the bottom 5% of the water column). Any other location is discretionary.</p> <p>A total discharge per permit area above 1000t is discretionary.</p> <hr/> <p><i>Sediment from seafloor massive sulphide prospecting and exploration:</i></p> <p>A total discharge per permit area up to 10t (~8.3m³) is permitted.</p> <p>A total discharge per permit area of between 10t and 100t is permitted on condition that it is discharged at the surface of the water. Any other location is discretionary.</p> <p>A total discharge per permit area above 100t is discretionary.</p> <hr/> <p><i>Sediment from other mineral prospecting and exploration:</i> Discretionary</p> <hr/> <p><i>Sediments and /or tailings from mineral mining operations during the production stage of mineral mining operations:</i> Discretionary</p>
Additional conditions for sediment discharges classified as permitted:	<p>In addition to the conditions outlined above, all permitted sediment discharges will be subject to the following conditions:</p> <ul style="list-style-type: none"> • pre-activity notification must be provided to the EPA 40 days before beginning the activity • pre-activity notification must be provided to iwi 25 days before the activity begins • the outcome of notification to iwi must be provided to the EPA five days before the activity begins • the EPA must be notified within 24 hours of the activity beginning and completing • a post-activity report must be provided to the EPA within 60 days of the activity completing. <p>Explanation: Reporting requirements have been set to allow the EPA to monitor whether regulations are being complied with and to monitor for cumulative effects. Notification to iwi allows iwi the opportunity to be aware of environmental effects</p>

¹⁹ Meaning an area for which a permit for prospecting, exploration or mining has been granted under the Continental Shelf Act 1964 or the Crown Minerals Act 1991.

occurring in areas of interest to them and raise any concern they have about the activity with operators.

Reporting on sediment discharges is intended to be carried out alongside the extraction activities to which they relate. It is anticipated reporting could relate to a collection of extraction and discharge activities, rather than a single event.

What was initially proposed in August 2013:

The discussion document indicated further information was being sought to inform the development of appropriate thresholds for the discharge of sediments and/or tailings.

Additional policy considerations

The Minister is considering including a condition in regulations to require, where practical, the discharge of sediments back into the same area of seabed from which the sediments were extracted (in particular for the mining of iron sands, seafloor massive sulphides and phosphates).

The condition will likely contribute towards a precautionary approach in regulating the discharge of mineral mining sediments. This would minimise the area of seabed affected by these activities, because it would mean the same area being affected by the extraction and discharge of sediments, rather than one area being affected by extraction and another by the discharge.

Seafloor massive sulphides and phosphate mining are new activities in New Zealand's EEZ waters; therefore, caution is needed until there is greater understanding of their effects.

Questions:

- Do you consider this proposed condition to be an appropriate way of mitigating the effects of sediment discharges from prospecting and exploration?
- Do you consider there are any other conditions that could mitigate the effects of sediment discharge that have not been included in the proposed regulations?
- What effects might such a condition have on prospecting and exploration activities?

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:

The most significant potential effects from discharging sediment into the sea include:

- smothering or choking sea floor organisms
- decreased abundance of organisms in the water column
- forcing mobile animals away from the area affected by the discharge²⁰

The effects of the activity will vary according to:

- the receiving environment
- the volume and nature of material discharged
- the location in the water column it is discharged (ie, at the surface or close to the seabed)
- whether it is discharged in one event or multiple smaller events²¹.

The effects on the environment and existing interests will be managed appropriately by the regulations setting the thresholds described above.

NIWA²² identified that moderate effects from sediment discharges can have effects which are "ecologically significant", affecting 5-20% of the habitat in question. Any discharge with effects that are "moderate" or greater are proposed to be classified as discretionary. Discharges with effects that are minor or less than minor are proposed to be classified as permitted.

²⁰ MacDiarmid et al. 2013. *Environmental risk assessment of discharges of sediment during prospecting and exploration for seabed minerals*. Wellington: NIWA.

²¹ Ibid.

Effects of other activities undertaken in the EEZ or on the continental shelf:	<p>The discharge of sediments and/or tailings will occur as part of the broader activities of seabed prospecting, exploration or mining. These activities will have the effect of disturbing the seafloor, removing material and creating near-seafloor sediment plumes.</p> <p>The conditions on permitted discharges are designed to mitigate effects. At discretionary levels the EPA will be able to consider the cumulative effects of the discharge.</p>
Biological diversity and integrity of marine species, ecosystems, and processes:	<p>For any permitted activity the effect of the activity on the biological diversity and integrity of marine species, ecosystems and processes will be minor or less than minor because of the thresholds and conditions set in the regulations. For discretionary activities, the EPA will be able to assess the likely effects when deciding whether to grant a marine consent for the activity.</p>
Rare and vulnerable ecosystems and the habitats of threatened species:	<p>For any permitted activity the effect of the activity on rare and vulnerable ecosystems and the habitats of threatened species will be minor or less than minor. For discretionary activities the EPA will be able to assess the likely effects when deciding whether to grant a marine consent for the activity.</p>
New Zealand's international obligations:	<p>The proposed regulations align with New Zealand's obligations under UNCLOS. They also align with obligations under the Noumea Convention for the public to be able to comment on any major projects. The discharges classified as permitted are considered be less than major.</p>
Other marine management regimes:	<p>The regulations do not interfere with obligations under the Continental Shelf Act 1964 or the Crown Minerals Act 1991. The discharge is not regulated under the Marine Protection Rules.</p>
The desirability of allowing the public to be heard:	<p>It is desirable to allow the public to be heard in relation to large-scale projects that could significantly affect the environment or existing interests. This has been provided for by making discharges with potentially moderate or greater consequences discretionary.</p>
Effects of the discharge on human health:	<p>There are not likely to be any effects on human health from this activity.</p>
Any other relevant matter:	<p>No other relevant matters have been identified.</p>

Assessment of the proposed permitted classification

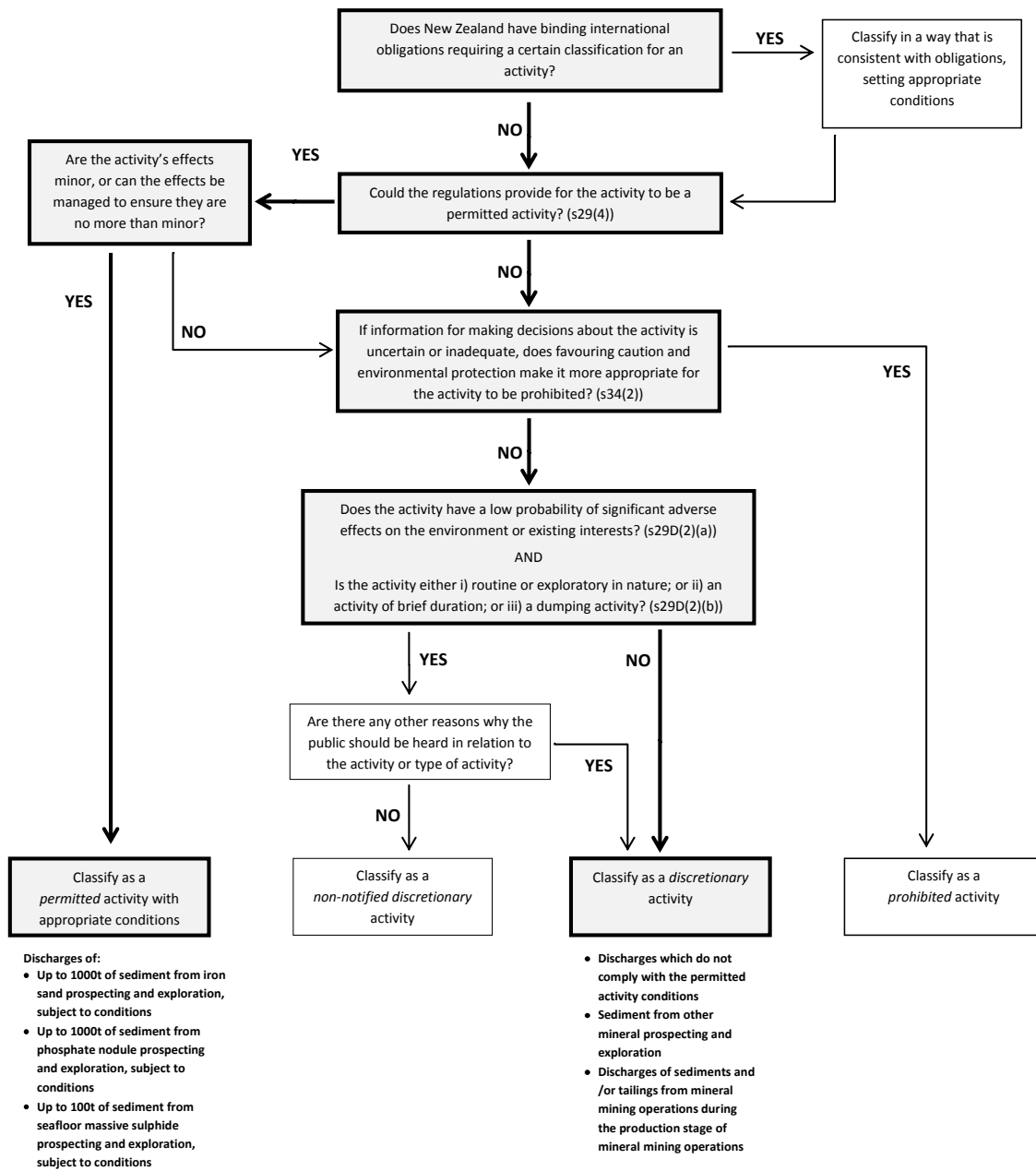
In recommending an activity be classified as permitted, the test in section 29A²³ must be satisfied (see page 11).

The discharge of the three sediments, within the permitted conditions, is considered not to have more than minor effects on the environment or existing interests. This is because NIWA assessed effects of various volumes of discharges and only discharges with effects assessed as being either 'negligible' or 'minor' are classified as permitted in the draft regulations.

²² Ibid.

²³ Section 29A will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Figure 2: Policy and legislative considerations when making the classification for discharges of sediments and/or tailings from mineral mining



Discharges from petroleum extraction

Description of the activity:	<p>This refers to discharges of water that contain diluted oil from oil platforms, drilling ships or floating production/storage units. It includes:</p> <ul style="list-style-type: none">• offshore processing drainage (water from hazardous and non-hazardous deck drains, but does not include oily waste from machinery spaces)• displacement water (water displaced from crude oil tanks during oil transfers to or from the tank)• production water (the water found in reservoirs along with the oil or gas, which may contain oil or hazardous substances that occur naturally in the reservoir).
Proposed classification:	<p>This activity is proposed to be classified as discretionary.</p> <p>The discharge of production water sourced from a test flow of an exploration well is proposed to be classified as non-notified discretionary</p>
What was initially proposed in August 2013:	<p>The discharge of offshore processing drainage and displacement water with an oil content of up to 50 parts per million was initially proposed to be classified as permitted. Discharges exceeding the oil content threshold were proposed to be classified as non-notified discretionary if required for geological, technical or safety reasons.</p> <p>Through consultation, some submitters commented that there was inadequate evidence on which to base the oil content thresholds, and most of these submitters thought that this activity should be discretionary.</p>

Additional policy considerations

An exploration well may be 'test-flowed', to extract formation fluids (water, oil, condensates) in small quantities over a short timeframe to measure flow rates and pressure, although the practice is uncommon. Standard practice is that the formation fluids are flowed into a tank to be transported to land for analysis, treatment and disposal. However, in the unlikely event these formation fluids were to be discharged at the exploration stage they are proposed to be classified as non-notified discretionary.

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests: These discharges will contain oil in low concentrations, and can also contain a number of compounds of changeable and often unknown composition. Chemicals which may naturally occur within the geological formation (or which may be injected) may be extracted and discharged as produced water. Such chemical discharges may have acute toxic effects on organisms in the marine environment.

The activity can be planned for and controlled to ensure concentrations of oil and any other contaminants present are at a level that is unlikely to cause significant environmental effects when it is discharged.

At the production stage the activity can continue for several years, which increases the likelihood of significant cumulative effects; however, the marine consent process will allow the EPA to consider discharges holistically and to consider cumulative effects when making decisions on applications for marine discharge consents. A marine consent process is also best suited to monitoring and managing the discharge of chemicals and heavy metals potentially associated with produced water, which cannot be easily accounted for within a permitted classification. The large quantities and long duration, in addition to the unknown effects of chemicals present in this discharge, makes it more appropriately classified as discretionary.

If production water sourced from a test flow of an exploration well is discharged, it is only likely to occur over a short duration. Therefore, it carries a low probability of significant effects to the environment and existing interests.

Effects of other activities undertaken in the EEZ or on the continental shelf: This activity will occur as a result of a broader activity (namely, oil or gas drilling) which will have its own effects on the environment and existing interests. The proposed classification will enable the EPA to holistically consider the effects of the discharge activity alongside the effects of the broader drilling activity.

Other activities such as commercial fishing, shipping, seabed mining and seismic surveying will also have effects that will be cumulative to the effects of oily water discharges. These types of effects will be considered by the EPA alongside the effects of the discharge activity when considering applications for marine discharge consents.

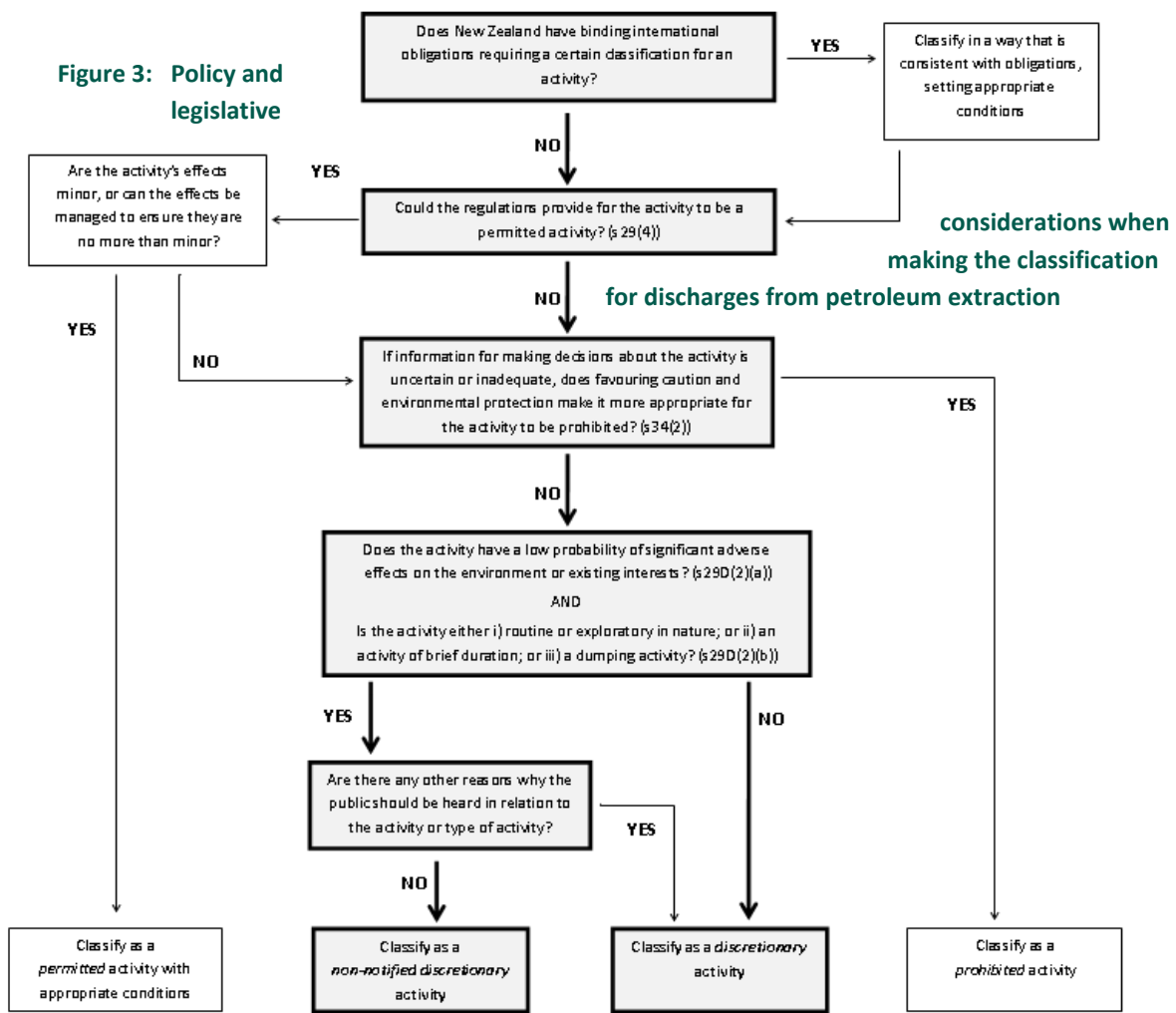
Biological diversity and integrity of marine species, ecosystems, and processes: When considering an application for a marine discharge consent, the EPA is required to take into account the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes. The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

Rare and vulnerable ecosystems and the habitats of threatened species: The marine consent process will allow the EPA to impose appropriate conditions on a case-by-case basis to address the potential effects on vulnerable ecosystems.

New Zealand's international obligations: New Zealand has international obligations under UNCLOS and the Noumea Convention, to take measures to prevent, reduce and control pollution of the marine environment. This includes a requirement to minimise pollution from installations and devices used in exploration or exploitation of natural resources. New Zealand also has obligations under the Noumea Convention to endeavour to ensure sound environmental management and development of natural resources and where a “major project” is occurring to invite public comment where appropriate. Under the CBD, New Zealand has obligations 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, to allow for public participation in such procedures. However, New Zealand does not have any specific international obligations relating to the amounts or concentrations of this particular type of discharge, or the specific operational conditions under which it can be discharged.

Other marine management regimes:	The oil and gas industry in New Zealand has to meet a number of regulatory requirements before operations can begin. You can find out more about these requirements in Appendix 6.
The desirability of allowing the public to be heard:	<p>Due to the potentially long duration of the activity and the significant volumes involved during production, there is cause for the public to be heard in relation to each marine consent application. As this activity occurs at the production stage of oil and gas operations, the publicly notified process for the discharge activity would occur alongside the publicly notified process for the oil and gas production activity itself.</p> <p>If production water sourced from a test flow of an exploration well is discharged it is only likely to occur over a short duration and carry a low probability of significant adverse effects. Therefore, it is not desirable for the public to be heard in relation to the activity.</p>
Effects of the discharge on human health:	<p>Human health could be affected through the consumption of seafood that had been contaminated. Given distance from shore, and the ability for the EPA to set conditions ensuring a low concentration of oil and other contaminants contained in the discharge, the likely effects on human health arising from this activity are considered to be low.</p> <p>Effects on human health will be considered by the EPA when considering applications for marine discharge consents, and the EPA can set conditions it considers appropriate to avoid, remedy, or mitigate these types of effects.</p>
Any other relevant matter:	Although the effects of offshore processing drainage and displacement water are likely to be much lower than the effects of production water, these types of discharges may be mixed together and discharged from a single point. Therefore, it is appropriate for them to be classified and regulated together.

Figure 3: Policy and legislative



Supporting information for the proposed regime: Discharges of offshore processing drainage and displacement water, and discharges of production water other than for the purpose of a test flow of an exploration well. 39

Discharges of production water for the purpose of a test flow of an exploration well

Discharges of oily waste from machinery spaces

Description of the activity:	This refers to the discharge of water that has accumulated in machinery spaces on board an offshore installation, or production facilities on board a mineral mining ship.
Proposed classifications:	<p>This activity is proposed to be classified as permitted, provided the following conditions are met:</p> <ul style="list-style-type: none"> • The discharge must be processed by oil filtering equipment that has International Oil Pollution Prevention certification in accordance with the requirements set out in MARPOL Annex I for the purposes of the issue of an IOPP certificate. • The oil content of the discharge, without dilution, does not exceed 15 parts per million • An oil record book (as required by, and prescribed in, Appendix III of MARPOL Annex I) must be kept for three years after the last entry and a true copy submitted to the EPA within 15 working days of the end of the month in which it was completed. • In the case of a structure of 10,000 gross tons or more, the oil filtering equipment must be fitted with an alarm to indicate when the oil content of the effluent exceeds 15 parts per million; and arrangements to ensure that any discharge of oily mixture is automatically stopped when the alarm is activated. <p>This activity is proposed to be classified as prohibited where the oil content of the discharge exceeds 15 parts per million. If the oil content is below the proposed limit but other conditions are not met, the operator would be considered to have breached the conditions of the EEZ Act.</p>
What was initially proposed in August 2013:	<p>This proposed classification for this activity has not changed from what was initially proposed; however, the conditions have been slightly amended by:</p> <ul style="list-style-type: none"> • specifying that the oil filtering equipment must have International Oil Pollution Prevention certification, rather than being approved by Maritime NZ • including a requirement for an oil record book • specifying that the oil content limit must be without dilution.

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:	Oil contained in discharges can coat animals in the marine environment. This coating, along with ingestion, may have toxic effects. However the proposed oil content limit, and the ability of operators to control and measure quantities and concentrations of these discharges, mean that the effects of this activity on the environment and existing interests are likely to be minor or less than minor.
Effects of other activities undertaken in the EEZ or on the continental shelf:	<p>This activity will occur as a result of a broader activity (namely, oil or gas drilling) which will have its own effects on the environment and existing interests.</p> <p>Other activities such as commercial fishing, shipping, seabed mining and seismic surveying will also have effects that will be cumulative to the effects of oily waste discharges.</p>

Biological diversity and integrity of marine species, ecosystems, and processes:	This activity will occur as a result of a broader oil or gas drilling activity, which will only be able to take place if it has obtained a marine consent. 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 considers appropriate.
Rare and vulnerable ecosystems and the habitats of threatened species:	Because of the proposed oil content limit and the ability for operators to control and measure quantities and concentrations of these discharges the effects on rare and vulnerable ecosystems and threatened species are likely to be minor.
New Zealand's international obligations:	The proposed conditions are required to comply with MARPOL.
Other marine management regimes:	The oil and gas industry in New Zealand has to meet a number of regulatory requirements before operations can begin. You can find out more about these requirements in Appendix 6.
The desirability of allowing the public to be heard:	The MARPOL standards align most closely with a split permitted/prohibited classification meaning that public input through a discretionary consent is not desirable. The discharge is also routine and strictly controlled in accordance with MARPOL standards.
Effects of the discharge on human health:	Human health could be affected through the consumption of seafood that had been contaminated. The condition in proposed regulations ensuring a low concentration of oil contained in the discharge would ensure the likely effects on human health arising from this activity are considered to be low.
Any other relevant matter:	The proposed classification reflects the current approach under Part 200 of the Marine Protection Rules under the Maritime Transport Act, with some minor modifications.

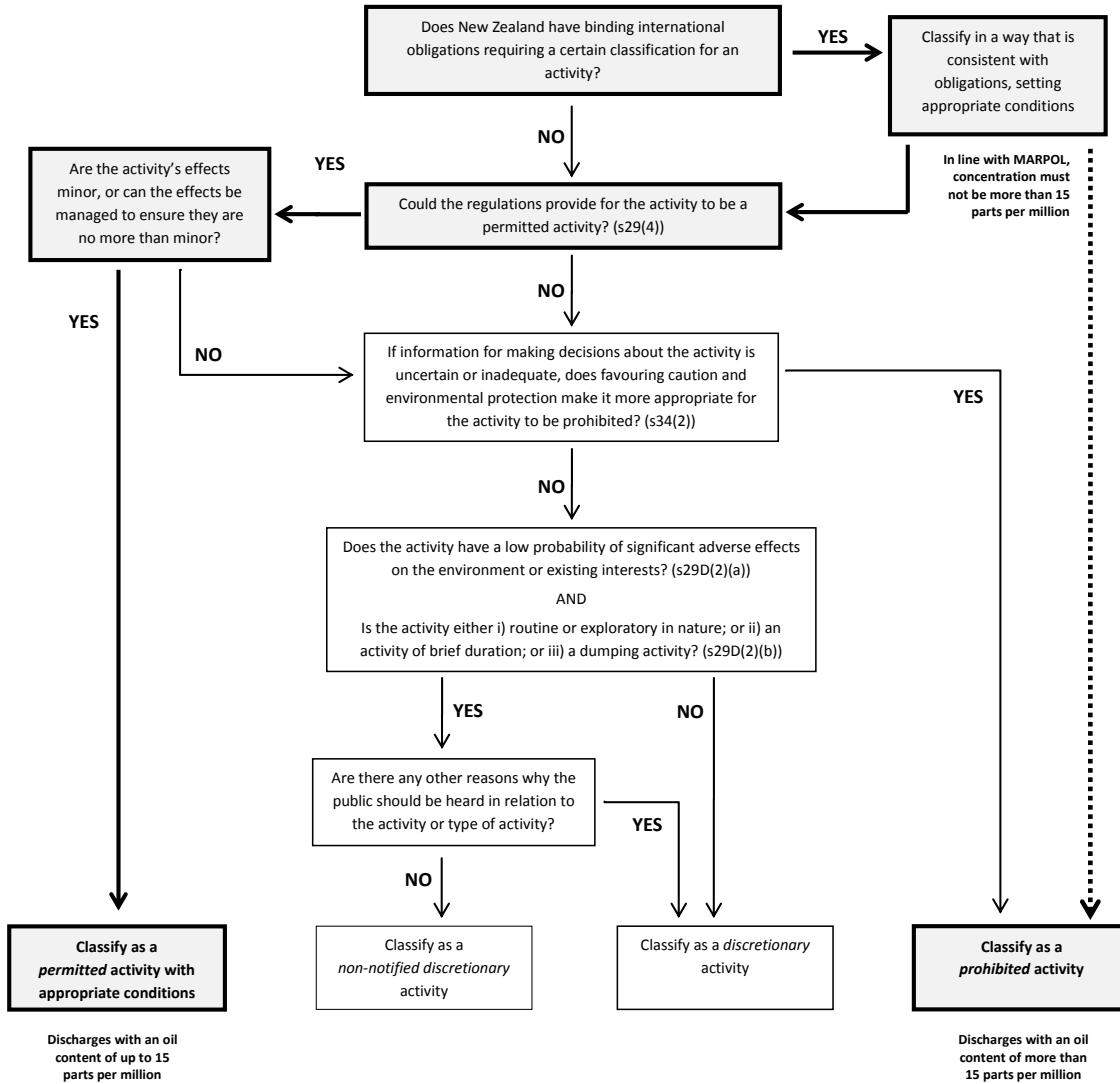
Assessment of the proposed permitted classification

In recommending an activity be classified as permitted the test in section 29A²⁴ must be satisfied (see page 11).

As per section 29A, the discharge of oily waste from machinery spaces is considered not to have more than minor effects on the environment or existing interests. This is because the proposal only permits the discharge under strict conditions on oil content to manage effects and prohibits discharges beyond these thresholds.

²⁴ Section 29A will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Figure 4: Policy and legislative considerations when making the classification for discharges of oily waste from machinery spaces



Discharges of oil-contaminated seawater from operational purposes

Description of the activity:	This refers to oil tank cleaning water, produced oil tank hydrostatic testing water, and water from ballasting of produced oil tank to carry out inspection by rafting.
Proposed classifications:	<p>This activity is proposed to be classified as permitted, provided the following MARPOL-prescribed conditions are met:</p> <ul style="list-style-type: none"> • The oil content of the discharge, without dilution, does not exceed 15 parts per million. • An oil record book must be kept and a true copy submitted to the EPA within 15 working days of the end of the month in which it was completed • The discharge must be processed by oil filtering equipment that has International Oil Pollution Prevention certification. <p>This activity is proposed to be classified as prohibited where the oil content of the discharge exceeds 15 parts per million.</p>
What was initially proposed in August 2013:	This activity was not consulted on in the previous discussion document. It has been included in the draft regulations because the need to classify this activity was identified through consultation with other agencies following the initial consultation period.

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:	Oil contained in discharges can coat animals in the marine environment. This coating, along with ingestion, may have toxic effects. However the brief duration of this activity, the proposed oil content limit, and the ability of operators to control and measure quantities and concentrations of these discharges, mean that the effects of this activity on the environment and existing interests are likely to be minor or less than minor.
Effects of other activities undertaken in the EEZ or on the continental shelf:	<p>This activity will occur as a result of a broader activity (namely, oil or gas drilling) which will have its own effects on the environment and existing interests; however, these activities are separately defined in the EEZ Act and are subject to regulatory conditions, or require marine consents, which take into account their effects.</p> <p>Other activities such as commercial fishing, shipping, seabed mining and seismic surveying will also have effects that will be cumulative to the effects of oily water discharges.</p>
Biological diversity and integrity of marine species, ecosystems, and processes:	The brief duration of this activity, the proposed oil content limit, and the ability of operators to control and measure quantities and concentrations of these discharges, mean that the effects of this activity on biological diversity and integrity of marine species, ecosystems, and processes are likely to be minor or less than minor.
Rare and vulnerable ecosystems and the habitats of threatened species:	The brief duration of this activity, the proposed oil content limit, and the ability of operators to control and measure quantities and concentrations of these discharges, mean that the effects of this activity on the rare and vulnerable ecosystems and the habitats of threatened species are likely to be minor or less than minor.

New Zealand's international obligations:	The proposed conditions are required to comply with the Unified Interpretation to Annex I of MARPOL ²⁵ . Unified Interpretations, while not strictly binding, form guidance on international best practice. Diversion from these interpretations therefore requires strong justification.
Other marine management regimes:	The oil and gas industry in New Zealand has to meet a number of regulatory requirements before operations can begin. You can find out more about these requirements in Appendix 6.
The desirability of allowing the public to be heard:	This discharge is only likely to become necessary from time to time and would occur over a brief duration. Because it may not be a planned discharge, any regulatory requirements should be proportionate in terms of timing requirements. These factors mean it is not desirable for public consultation.
Effects of the discharge on human health:	Human health could be affected through the consumption of seafood that had been contaminated. The condition in proposed regulations ensuring a low concentration of oil contained in the discharge means the effects on human health arising from this activity are considered to be low.
Any other relevant matter:	<p>This activity may only become necessary for a brief duration during an operation. In cases where it was not originally intended to take place but later becomes necessary with little warning, the marine consent process is unlikely to allow for decisions on this activity to be made in a timely manner.</p> <p>Under the current regime Maritime NZ is able to process applications for this discharge to the standard of the Unified Interpretation within short timeframes and without public notification.</p>

Assessment of the proposed permitted classification

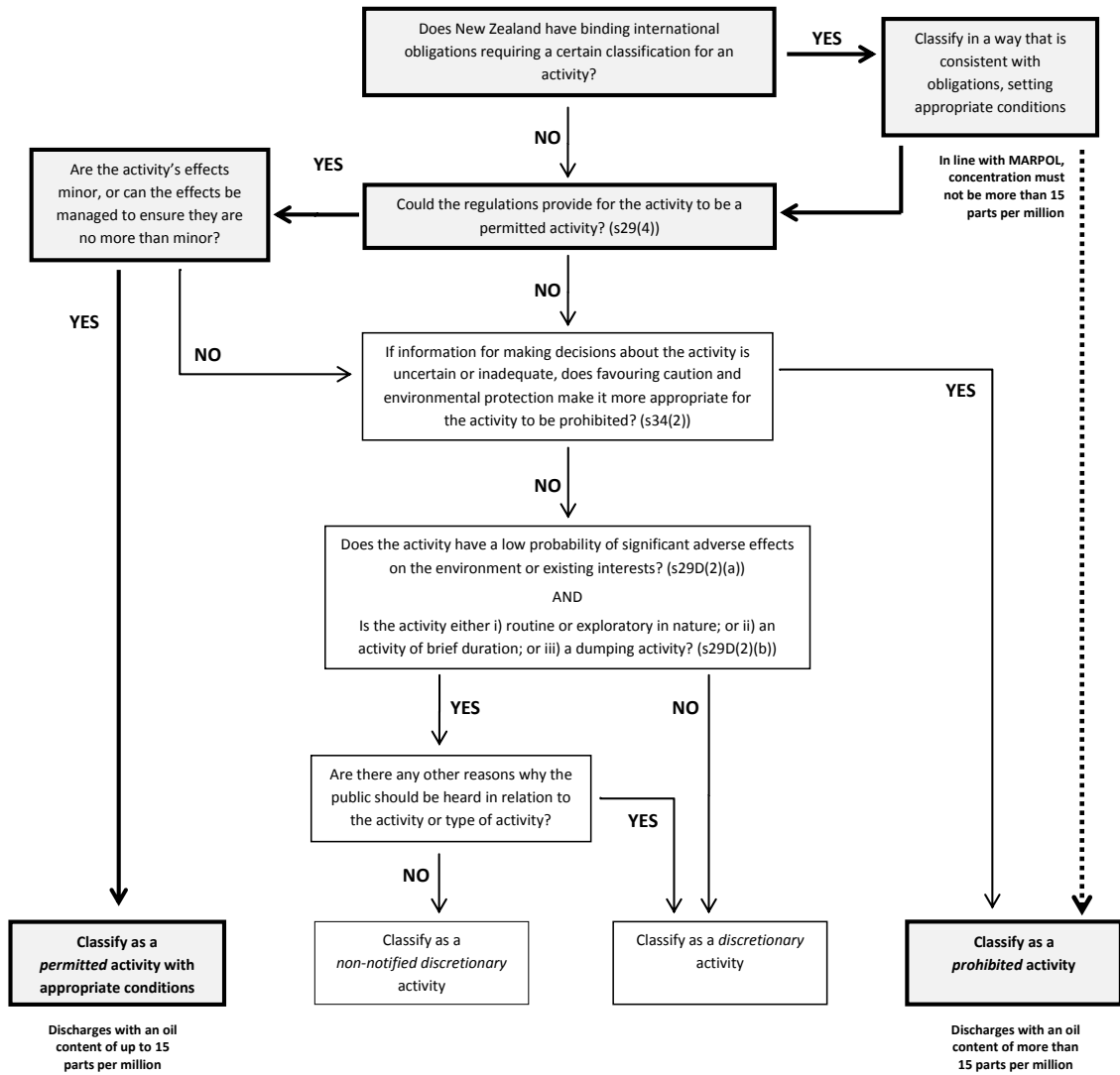
In recommending an activity be classified as permitted the test in section 29A²⁶ must be satisfied (see page 11).

As per section 29A, the discharge of oil-contaminated seawater from operational purposes is considered not to have more than minor effects on the environment or existing interests. This is because the proposal only permits the discharge under strict conditions on oil content to manage effects and prohibits discharges beyond these thresholds.

²⁵ MARPOL Annex I, Regulation 39, Unified Interpretation 63

²⁶ Section 29A will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Figure 5: Policy and legislative considerations when making the classification for discharges of contaminated seawater from operational purposes



Discharges of operational chemicals

Description of the activity:	This refers to the discharge of chemicals used in mineral extraction operations.
Proposed classification:	This activity is proposed to be classified as non-notified discretionary .
What was initially proposed in August 2013:	The proposed classification of this activity has not changed from what was initially proposed.

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:	<p>Chemicals may have ecotoxic and bio-accumulation effects on ocean habitats, fish and other creatures, depending on the type of chemical and the quantity and concentration of the discharge. This may affect existing interests' use of ocean resources.</p> <p>However, the activity can be planned and controlled to a degree that makes the likelihood of significant adverse effects low. The proposed classification enables the EPA to thoroughly assess the effects on the environment and existing interests on a case-by-case basis, and to impose appropriate conditions on marine discharge consents.</p>
Effects of other activities undertaken in the EEZ or on the continental shelf:	<p>Other activities such as commercial fishing, shipping, oil and gas operations, seabed mining and seismic surveying will have effects that will be cumulative to the effects of operational chemical discharges.</p> <p>These types of effects will be considered by the EPA alongside the effects of the discharge activity when considering applications for marine discharge consents.</p>
Biological diversity and integrity of marine species, ecosystems, and processes:	When considering an application for a marine discharge 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 discharge consent or apply conditions it deems appropriate before granting a marine consent.
Rare and vulnerable ecosystems and the habitats of threatened species:	The marine consent process would identify effects in particular locations and methods to mitigate those effects. The proposed classification enables the EPA to impose conditions on a marine discharge consent to mitigate any adverse effects on sensitive environments.
New Zealand's international obligations:	New Zealand has international obligations under UNCLOS and the Noumea Convention, to take measures to prevent, reduce and control pollution of the marine environment. This includes a requirement to minimise pollution from installations and devices used in exploration or exploitation of natural resources. New Zealand also has obligations under the Noumea Convention to endeavour to ensure sound environmental management and development of natural resources and where a "major project" is occurring to invite public comment where appropriate. Under the CBD, New Zealand has obligations 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, to allow for public participation in such procedures. However, New Zealand does not have any specific international obligations relating to the amounts or concentrations of this particular type of discharge, or the specific operational conditions under which it can be discharged.

Other marine management regimes:	<p>The seabed mineral industry in New Zealand has to meet a number of regulatory requirements before operations can begin. Specifically:</p> <ul style="list-style-type: none"> • Under the Crown Minerals Act 1991, operators must obtain a permit from New Zealand Petroleum and Minerals (NZP&M), a branch of the Ministry of Business, Innovation and Employment. NZP&M assess the financial and technical capability of an operator and high level health, safety and environmental ability. • Other legislation applicable in the EEZ includes the Biosecurity Act 1993, Continental Shelf Act 1964, Marine Mammals Protection Act 1978, the Wildlife Act 1953, and the Fisheries Act 1996. <p>The oil and gas industry must also meet the regulatory requirements outlined in Appendix 6.</p>
The desirability of allowing the public to be heard:	<p>A discretionary classification would make it overly difficult, costly and time-consuming to change chemicals or potentially to introduce innovative and low-impact chemicals over the life of the operation.</p> <p>A non-notified discretionary classification will still allow the EPA to thoroughly assess the effects of new chemicals on a case-by-case basis.</p>
Effects of the discharge on human health:	<p>Human health could be affected through the consumption of seafood that had been contaminated. The ability for the EPA to set conditions relating to the type of chemicals contained in the discharge and their concentration means the effects on human health arising from this activity are considered to be low.</p> <p>Effects on human health will be considered by the EPA when considering applications for marine discharge consents, and the EPA can set conditions it considers appropriate to avoid, remedy, or mitigate these types of effects.</p>
Any other relevant matter:	<p>The proposed classification facilitates the introduction of innovative low-impact technologies by allowing operators to adopt lower-impact chemicals during the life of their operation without a change in chemicals triggering the need for a publicly notified marine consent process, while still enabling the EPA to thoroughly assess the effects of new chemicals on a case-by-case basis.</p>

Assessment of the proposed non-notified discretionary classification

In recommending an activity be classified as non-notified discretionary the test in section 29D²⁷ must be satisfied (see page 12).

As required under section 29D(2)(a), this discharge of operational chemicals is considered to have a low probability of significant adverse effects on the environment or existing interests.

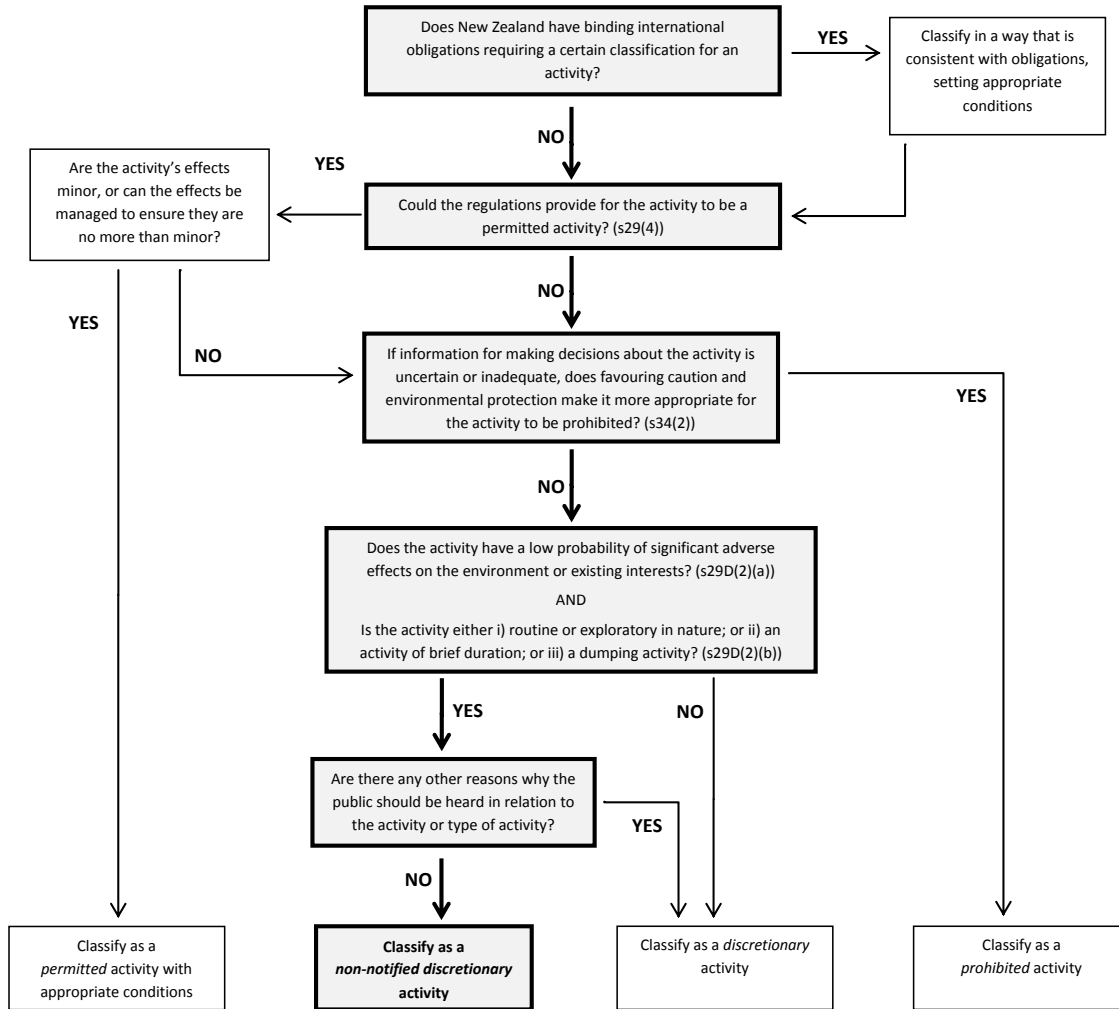
This is because while chemicals may have ecotoxic and bio-accumulation effects on ocean habitats and, by extension, effects on existing interests who use the ocean, the activity can be planned and controlled to a degree that makes the likelihood of significant adverse effects low.

The proposed classification enables the EPA to thoroughly assess effects on a case-by-case basis, and to impose appropriate conditions on marine discharge consents, if granted.

As required under section 29D(2)(b), the discharge of operational chemicals is a routine part of seabed mineral and oil and gas operations.

²⁷ Section 29D will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Figure 6: Policy and legislative considerations when making the classification for discharges of operational chemicals



Discharges of drilling fluids

Description of the activity:	Drilling fluids, or ‘drilling muds’, are used to lubricate a drill and to maintain pressure in the formation to prevent formation fluid flowing into the well. Fluids can either be water-based, synthetic-based or oil-based, although the latter is used only rarely.
Proposed classification:	This activity is proposed to be classified as non-notified discretionary .
What was initially proposed in August 2013:	<p>This activity was initially proposed to be classified as non-notified discretionary at the exploratory stage of oil and gas drilling, and discretionary at the production stage.</p> <p>Through consultation, submitters from the petroleum industry noted their reservation about the proposed discretionary classification for drilling fluids, as operational practicalities mean applicants are unlikely to have full information about all chemicals used in an operation at the time of lodging an application for the broader activity of which the discharge is part.</p> <p>Submitters also commented that it was important to incentivise the adoption of lower-impact, less harmful drilling fluids; the non-notified discretionary classification allows for the adoption of lower-impact drilling fluids following a time-bound period of regulatory scrutiny. The marine consent process still enables the EPA to thoroughly assess the environmental effects of new drilling fluids and to impose conditions to ensure compliance with industry best practice or decline an application if granting consent would fail to promote the purpose of the Act.</p>

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:	<p>Drilling fluids may have ecotoxic effects on ocean habitats, fish and other creatures, depending on the type of chemical and the quantity and concentration of the discharge. This may affect existing interests’ use of ocean resources.</p> <p>However, the ability of operators to plan for, control and measure quantities and concentrations of these discharges to meet conditions set by the EPA means they have a low probability of significant adverse effects. The proposed classification enables the EPA to thoroughly assess the effects on the environment and existing interests on a case-by-case basis, and to impose appropriate conditions on marine discharge consents.</p>
Effects of other activities undertaken in the EEZ or on the continental shelf:	<p>Other activities such as commercial fishing, shipping, seabed mining and seismic surveying will have effects that will be cumulative to the effects of drilling fluid discharges.</p> <p>These types of effects will be considered by the EPA alongside the effects of the discharge activity when considering applications for marine discharge consents.</p>
Biological diversity and integrity of marine species, ecosystems, and processes:	<p>When considering an application for a marine discharge 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 discharge consent or apply conditions it deems appropriate before granting a marine consent.</p>

Rare and vulnerable ecosystems and the habitats of threatened species:	The marine consent process would identify effects in particular locations and methods to manage those effects. The proposed classification enables the EPA to impose conditions on a marine consent to mitigate any adverse effects on sensitive environments.
New Zealand's international obligations:	New Zealand has international obligations under UNCLOS and the Noumea Convention, to take measures to prevent, reduce and control pollution of the marine environment. This includes a requirement to minimise pollution from installations and devices used in exploration or exploitation of natural resources. New Zealand also has obligations under the Noumea Convention to endeavour to ensure sound environmental management and development of natural resources and where a “major project” is occurring to invite public comment where appropriate. Under the CBD, New Zealand has obligations 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, to allow for public participation in such procedures. However, New Zealand does not have any specific international obligations relating to the amounts or concentrations of this particular type of discharge, or the specific operational conditions under which it can be discharged.
Other marine management regimes:	The oil and gas industry in New Zealand has to meet a number of regulatory requirements before operations can begin. You can find out more about these requirements in Appendix 6.
The desirability of allowing the public to be heard:	<p>A discretionary classification would make it overly difficult, costly and time-consuming to change drilling fluids or potentially to introduce innovative and low-impact fluids over the life of the operation.</p> <p>A non-notified discretionary classification will still allow the EPA to thoroughly assess the effects of new drilling fluids on a case-by-case basis.</p>
Effects of the discharge on human health:	<p>Effects on human health will be considered by the EPA when considering applications for marine discharge consents, and the EPA can set conditions it considers appropriate to avoid, remedy, or mitigate these types of effects.</p> <p>Human health could be affected through the consumption of seafood that had been contaminated. The ability for the EPA to set conditions ensuring a low concentration of oil contained in the discharge means the effects on human health arising from this activity are considered to be low.</p> <p>Effects on human health will be considered by the EPA when considering applications for marine discharge consents, and the EPA can set conditions it considers appropriate to avoid, remedy, or mitigate these types of effects.</p>
Any other relevant matter:	<p>The discharge of drilling fluids is a routine part of mineral mining operations (including oil and gas operations).</p> <p>The proposed classification allows for the adoption of lower-impact drilling fluids without triggering the need for a public consultation process, while the marine consent process still enables the EPA to thoroughly assess the environmental effects of new drilling fluids to reflect industry best practice.</p> <p>Part 200 of the Marine Protection Rules currently allows drilling fluids to be discharged in accordance with the conditions agreed in the Discharge Management Plan. This closely resembles the proposal for drilling fluids to be non-notified discretionary under the EEZ Act.</p>

Assessment of the proposed non-notified discretionary classification

In recommending an activity be classified as non-notified discretionary the test in section 29D²⁸ must be satisfied (see page 12).

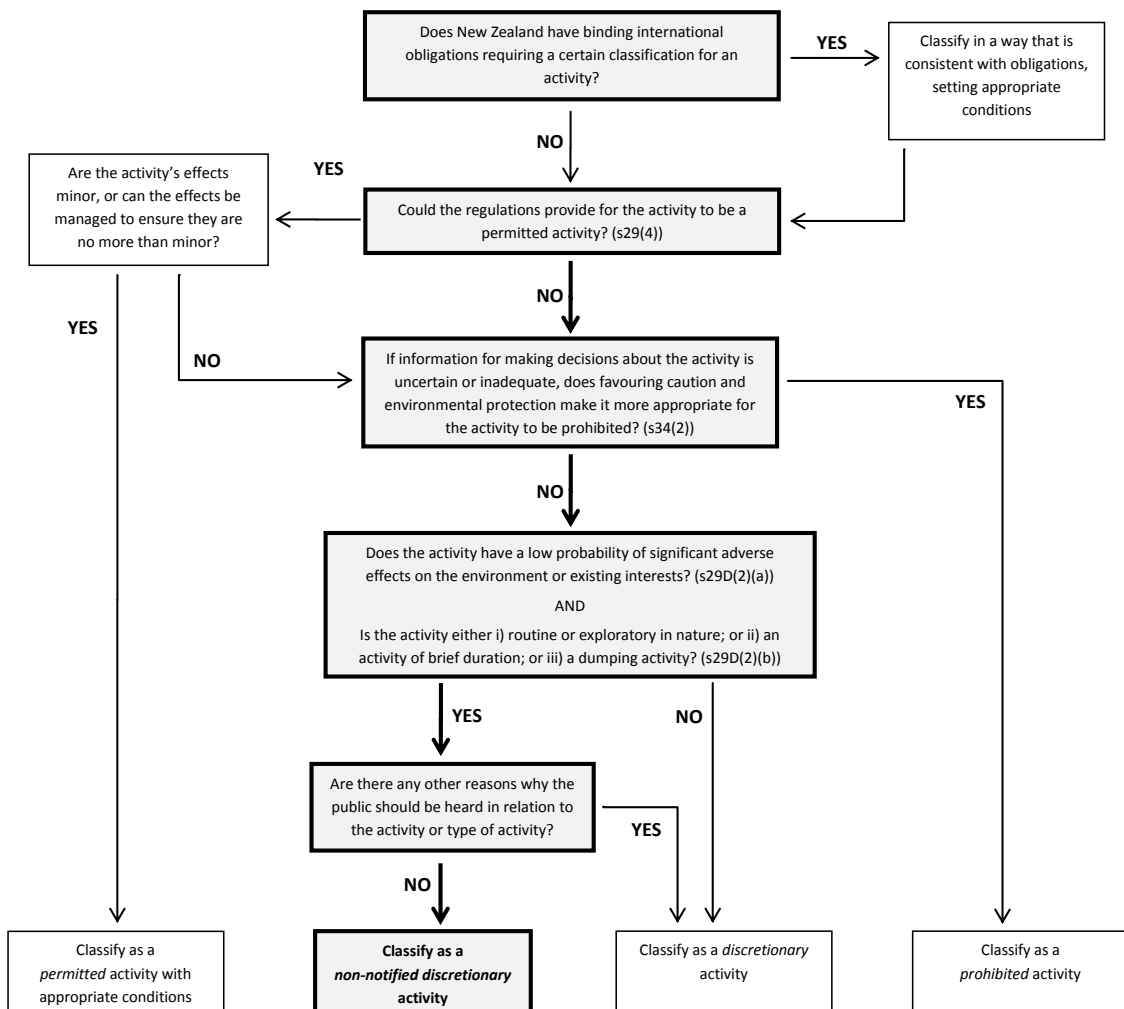
As required under section 29D(2)(a), this discharge of drilling fluids is considered to have a low probability of significant adverse effects on the environment or existing interests.

This is because while chemicals may have ecotoxic and bio-accumulation effects on ocean habitats, and consequential effects on existing interests by extension, the activity can be planned and controlled to a degree that makes the likelihood of significant adverse effects low.

The proposed classification enables the EPA to thoroughly assess effects on a case-by-case basis, and to impose appropriate conditions on marine discharge consents, if granted.

As required under section 29D(2)(b), the discharge of used drilling fluids (whether to ship, sea or reinjection into a formation) is a routine part of oil and gas operations.

Figure 7: Policy and legislative considerations when making the classification for discharges of drilling fluids



²⁸ Section 29D will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

Burial at sea

Description of the activity:	This refers to the burial of human remains at sea. It does not include the scattering of ashes at sea, as this is not covered by the EEZ Act.
Proposed conditions:	<p>This activity is allowed under section 20J of the EEZ Act provided conditions, set in regulations, are met and the EPA certifies that the proposed disposal complies with the regulations. Proposed conditions are:</p> <ol style="list-style-type: none"> 1. The person disposing of remains provides the EPA with a copy of the death certificate at least three working days prior to burial. 2. The casket or containment is of a nature that will sink to the seafloor on disposal and is unlikely to resurface. 3. The location for disposal is an authorised dumping ground (the list of proposed authorised dumping grounds is specified in Appendix 4). 4. The proposal for disposal is provided to the EPA for certification at least three working days before the proposed disposal. 5. The person provides evidence to the EPA that the disposal took place in accordance with conditions 2 and 3. <p>It is proposed that the EPA notify relevant iwi of the date and location of burials at sea as soon as practicable following the issuance of a certificate of compliance.</p>
What was initially proposed in August 2013:	<p>The proposed classification of this activity has not changed from what was initially proposed; however, the conditions have been amended to clarify what constitutes a suitable casket or containment.</p> <p>Submissions from iwi groups during the initial consultation period commented that the EPA should be required to notify the relevant iwi before a burial occurs. However, this is not considered a practicable requirement because of the necessity of a quick process and because the proposed certificate of compliance cannot be issued until after the burial.</p>

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:	<p>Burials at sea may result in very minor and discrete disturbances to the seabed, but would have minimal effects on the environment in any location.</p> <p>The effect on existing interests would be minimal when carried out subject to the conditions set in regulations, as these conditions would make it unlikely for human remains to come into contact with other users of the marine environment.</p>
Effects of other activities undertaken in the EEZ or on the continental shelf:	The condition requiring burials at sea to occur in authorised dumping grounds will limit any effects on this activity by other activities occurring in the marine environment.
Biological diversity and integrity of marine species, ecosystems, and processes:	Burials at sea, being very minor in scale, will have negligible effects. They are proposed to only occur in specified dumping grounds, which have been zoned for such purposes.
Rare and vulnerable ecosystems and the habitats of threatened species:	Burials at sea, being very minor in scale, will have negligible effects. They are proposed to only occur in specified dumping grounds, which have been zoned for such purposes.
New Zealand's international obligations:	The certificate of compliance will comply with the requirement of the London Protocol that dumping cannot occur unless the relevant state issues a permit.

Other marine management regimes:	Nil
The desirability of allowing the public to be heard:	There is little benefit in allowing the public to be heard in relation to individual applications for burial at sea. The short timeframe between a person’s death and their burial would also generally make it unfeasible to allow the public to be heard.
Effects of the dumping on human health:	Due to the depth and distance from shore, any effects on human health from burials at sea would be negligible.
Alternative methods of disposal, or opportunities to reuse, recycle or treat waste	Given that there is very little demand for burials at sea, it is not considered necessary to require alternative methods of burial.
Any other relevant matter:	<p>Section 20J of the EEZ Act provides that burial at sea be “allowed” when certain conditions are met, but does not require this activity to be assigned a particular classification. Therefore, there are no legislative tests (such as the ones under section 29A or 29D) that need to be applied for this activity.</p> <p>The scattering of ashes is not covered by these proposed regulations and is exempt from restrictions under the EEZ Amendment Act.</p>

Dumping of waste

Description of the activity: This refers to the dumping of a range of types of wastes set out under the London Protocol, which are explained more fully in Appendix 2. It includes wastes or other matter loaded onto vessels for the purpose of sea disposal. It does not include operational disposals of wastes if the disposal is part of the normal operation of a ship, aircraft or structure. It also does not include the disposal of wastes directly arising from, or related to, a mining activity. The wastes excluded from dumping regulations may however be regulated as a restricted *discharge*.

Proposed classifications: The dumping of the following types of waste is proposed to be classified as **non-notified discretionary**:

- fish waste, or organic material resulting from industrial fish processing operations
- sewage sludge
- organic material of natural origin
- dredged material dumped within authorised dumping grounds (the list of proposed authorised dumping grounds is specified in Appendix 4)
- vessels dumped within authorised dumping grounds
- dumping of structures that were originally placed for the purpose of mineral exploration.

The dumping of the following types of waste is proposed to be classified as **discretionary**:

- dredged material that is dumped outside of authorised dumping grounds
- vessels that are not dumped in authorised dumping grounds
- structures that were originally placed in relation to mineral production activities
- carbon dioxide streams from dioxide capture processes for sequestration
- inert, inorganic geological material
- bulky solid waste from locations with no practical access to other disposal options.

The dumping of other types of waste not specified above is proposed to be classified as **prohibited**.

What was initially proposed in August 2013:

It was initially proposed that the dumping of all wastes in the lists above would be classified as non-notified discretionary, except for the dumping of structures during the decommissioning of oil and gas structures. These were proposed to be classified as discretionary.

Through consultation, submitters commented that an effects-based classification would be more appropriate than one based on the stage of oil and gas activities. The proposed regulations do this by basing the classification on the scale of the activities and the locations in which they take place.

Submitters also commented that the regulations needed to provide incentives to remove waste rather than to dump it. The proposed regulations do this by requiring a publicly notified marine consent process for the types of dumping activities with the greatest potential effects.

Reasons for the proposed classification, and matters considered under section 34A of the EEZ Act

Effects on the environment or existing interests:

Dredged material and inert, inorganic material has the potential to physically harm the marine environment by smothering marine life on the seafloor. Dredged material may also contain toxins but under the London Protocol wastes must be audited by the relevant authority (in New Zealand this will be the EPA) to ensure any toxic components are identified and removed. If the waste cannot be satisfactorily cleaned it cannot be dumped.

Sewage sludge tends to concentrate a wide range of substances by absorbing or binding them to the organic matrix of the sludge. It has a high bio-chemical oxygen demand and may be contaminated by pathogens and parasites.

The organic components of fish waste have a high biological oxygen demand and, if not managed properly, can pose environmental and health problems.

Dumped vessels, platforms and structures, and bulky solid waste, can smother marine life on the seafloor and pose an obstacle to fishing or navigation, and can release oil and chemicals into the ocean if not properly cleaned. Material from a vessel, platform or structure can create floating debris if not removed before dumping.

Material dumped in authorised dumping grounds is likely to have a negligible effect on existing interests, as these dumping grounds are too deep to be used for other purposes that come into contact with the seafloor, such as trawling.

By classifying the dumping of vessels and dredged material differently depending on whether they are dumped in an authorised dumping ground, an incentive is created for operators to dump these types of waste in areas where they will have a lesser impact on the environment and existing interests.

The marine consent process will enable the EPA to thoroughly assess the effects of the activity and to consider cumulative effects.

Effects of other activities undertaken in the EEZ or on the continental shelf:

Other wastes may be discharged or dumped in the same proximity and other activities such as fishing or shipping could have effects that become cumulatively significant. Through the proposed marine consent process the EPA would be required to consider such cumulative effects and set conditions if appropriate.

Biological diversity and integrity of marine species, ecosystems, and processes:

When considering an application for a marine dumping 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 dumping consent or apply conditions it deems appropriate before granting a marine dumping consent. In addition, the proposals incentivise the dumping of certain wastes within the existing dumping grounds which are already modified.

Rare and vulnerable ecosystems and the habitats of threatened species:	The proposed classification enables the EPA to impose conditions on a marine dumping consent to mitigate any adverse effects on sensitive environments.
New Zealand's international obligations:	The proposed classifications align with New Zealand's obligations under the London Protocol, which require the dumping of all types of waste, other than those proposed to be classified above, to be prohibited.
Other marine management regimes:	Disposal of wastes from fishing and discharges from shipping is managed under the Fisheries Act 1996 and the Maritime Transport Act 1994 respectively.
The desirability of allowing the public to be heard:	The proposed split between notified and non-notified discretionary classifications is designed to provide for public input on activities that will have significant effects or limit future use of the marine environment. The proposed classifications allow for the public to be heard in relation to types of dumping that are more likely to have greater environmental effects.
Effects of the dumping on human health:	Dumped wastes must be audited to check for toxic components and must be cleaned to a satisfactory level in accordance with the London Protocol. In considering applications, the EPA must consider effects on human health including cumulative effects.
Alternative methods of disposal, or opportunities to reuse, recycle or treat waste	<p>The requirement for a marine dumping consent to dump waste enables the EPA to consider whether other options, such as removal or recycling, would be more appropriate.</p> <p>The publicly notified discretionary classification for dumping structures in relation to mineral production activities provides an incentive for operators to remove structures, or plan for their disposal before they begin their production operation.</p>
Any other relevant matter:	<p>The current regime under the MTA requires that operators obtain a dumping permit from Maritime NZ. Part 180 of the Marine Protection Rules provides for national public notification of applications with the ability for interested parties to make submissions. However, notification is not required if the Director of Maritime NZ considers the application will have a minor adverse effect on the marine environment. It is considered that the proposed distinction between the non-notified discretionary and discretionary classifications approximates the approach taken under the existing regime.</p> <p>Some submissions from the previous round of consultation noted the need to ensure the right incentives are set up for dumping and removal of structures, bearing in mind the adverse effects that both dumping and removal can have on existing users and the environment.</p>

Assessment of the proposed non-notified discretionary classification

In recommending an activity be classified as non-notified discretionary the test in section 29D²⁹ must be satisfied (see page 12).

As required by section 29D(2)(a), this dumping of the following wastes is considered to have a low probability of significant adverse effects on the environment or existing interests.

1. fish waste, or organic material resulting from industrial fish processing operations
2. sewage sludge
3. organic material of natural origin
4. dredged material dumped within authorised dumping grounds (the list of authorised dumping grounds is specified in Appendix 4)
5. vessels dumped within authorised dumping grounds
6. dumping of structures that were originally placed for the purpose of mineral exploration.

²⁹ Section 29D will be inserted into the EEZ Act by the EEZ Amendment Act when it comes into force.

This is because the first three items are organic in nature and as such will dissipate over time so as to not have long-term effects on future use of the dumping site. The waste audit, which the EPA will undertake in assessing applications, is intended to identify toxic constituents and prevent them from being dumped.

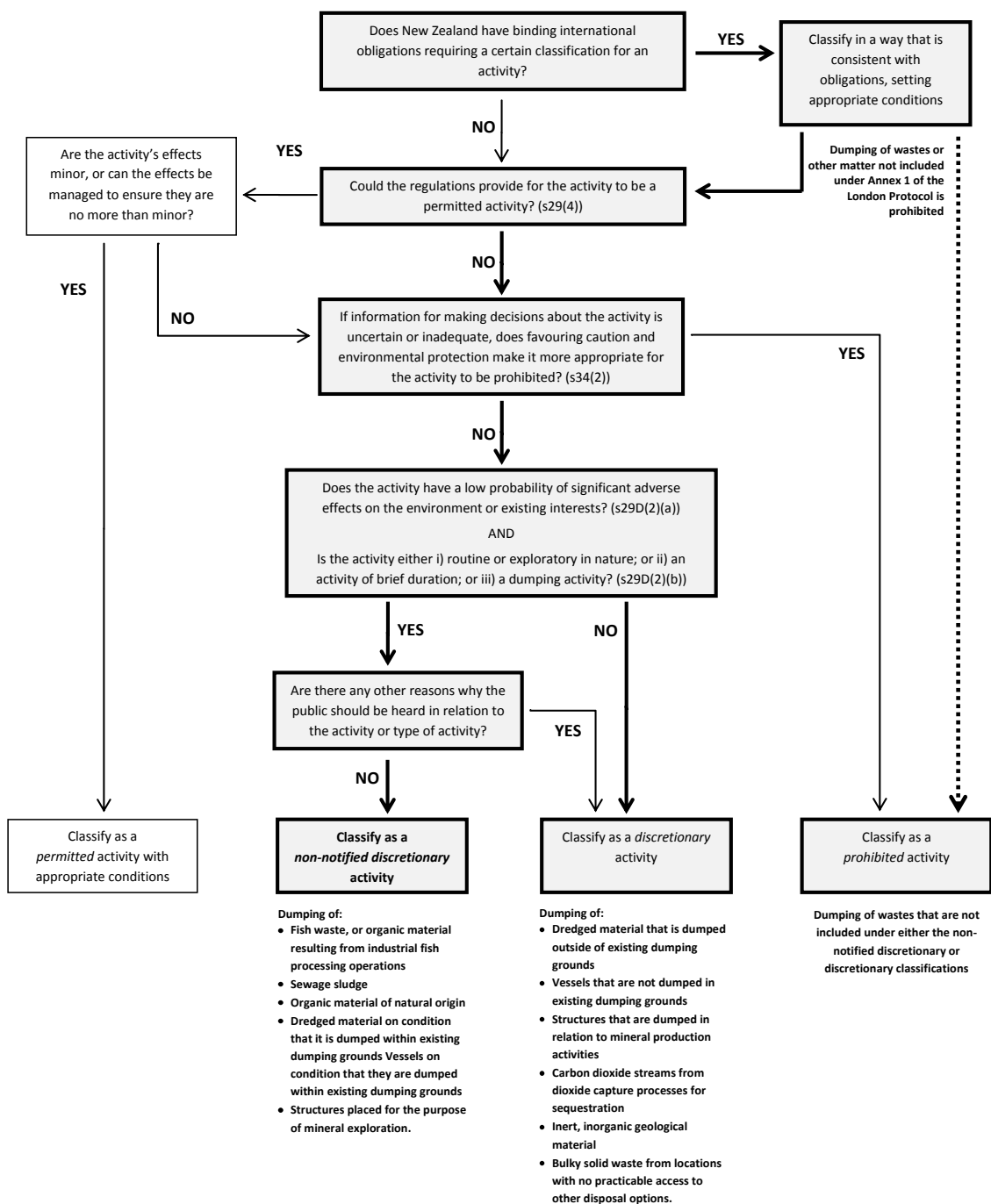
The authorised dumping grounds were used historically for dumping explosives and are already modified. In addition, trawling and anchoring cannot take place at these locations, meaning that the dumping of dredged material and vessels will not have adverse effects on existing interests.

The dumping of structures that were originally placed for the purpose of mineral exploration are likely to be items such as anchors or other arrays and due to their relatively small size would not have significant effects. Also, once an anchor is in place its removal may cause more disturbance than its abandonment.

More generally, the effects on the environment will be managed through the EPA's ability to thoroughly assess effects on a case-by-case basis, and to impose appropriate conditions on marine dumping consents, if granted. The dumping of waste meets the test under section 29D(2)(b), as this section provides for an activity to be classified as non-notified discretionary if it is a dumping activity.

Lastly, dumping is a discrete and planned activity meaning that uncontrolled quantities of disposal would not occur.

Figure 8: Policy and legislative considerations when making the classification of dumping of waste



Appendix 2: Definitions and explanations

The following terms are defined in the draft regulations.

Displacement water means water displaced from crude oil tanks during oil transfers to or from the tank.

Food waste means any spoiled or unspoiled food substance, and includes any fruit, vegetable, dairy product, poultry, meat product, and food scraps generated aboard a ship.

Garbage:

- a) means all kinds of food waste, domestic waste, operational waste, plastic, cargo residue, incinerator ash and cooking oil generated during the normal operation of the ship and liable to be disposed of continuously or periodically; but
- b) does not include—
 - i. any substance that is defined or listed in any annex to MARPOL other than Annex V; or
 - ii. fresh fish and parts of fresh fish generated as a result of fishing activity undertaken during a voyage, or as a result of aquaculture activity that involves the transport of fish including shellfish for placement in an aquaculture facility and the transport of harvested fish including shellfish from such facilities to shore for processing.

International Oil Pollution Prevention certification means of a design approved by the Director of Maritime New Zealand or the Administration of another State party to MARPOL.

Oil:

- a) means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals subject to the provisions of Part 140 of the Marine Protection Rules);
- b) includes any substance declared to be oil in the Appendix to Part 120 of the Marine Protection Rules and any oily mixture.

Offshore processing drainage means water from hazardous and non-hazardous deck drains, but does not include oily waste from machinery spaces.

Production water means any water extracted from the reservoir.

The following terms for the dumping of waste, are defined in guidance issued by the International Maritime Organisation (IMO).

Dredged material: sediments which are excavated under water, which consist of alluvial deposits, ie, boulder, sand and mud, and which may contain toxic chemicals from land-based sources.

Sewage sludge: the residue remaining from the treatment of municipal sewage. It is an organic-rich waste produced primarily by physical processes. Sewage contains aqueous domestic waste as well as surface drainage and, in many cases, a component of treated and untreated industrial effluent.

Fish waste, or organic materials resulting from industrial fish processing operations: particles of flesh, skin, bones, entrails, shells or liquid stickwater.

Vessels: defined in Article 1.6 of the London Protocol as: “waterborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft, whether self-propelled or not”.

Platforms or other man-made structures at sea: facilities designed and operated for the purpose of producing, processing, storing, or supporting the production of mineral resources.

Inert, inorganic geological material: Inert, inorganic geological material is not defined in the IMO guidelines. However, it is generally understood, that the focus is on waste resulting from mining activities.

Organic material of natural origin: animal and vegetable matter predominantly of agricultural origin. These guidelines will also be relevant to the dumping of spoilt cargoes at sea when such cargoes consist of organic materials of natural origin. In recent years, dumped spoilt cargoes included beef, agricultural crops eg, potatoes, rice, corn, beans, grain and bananas, as well as sugar.

Bulky solid waste: bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.

Appendix 3: EEZ Act marine consent process

Sections 38 - 45 and 87A - 87G of the EEZ Act explain what happens when an applicant applies for a marine consent. These steps can for both discretionary and non-notified discretionary classifications 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.
- The Environmental Protection Authority (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.

Discretionary activities

Under a discretionary classification activities may be undertaken if applicants obtain a marine consent from the EPA. The EPA may decline or grant an application and place conditions on the consent. The consent application will be publicly notified, submissions will be invited, and hearings will be held if requested by the EPA, applicant or submitters. The discretionary process has statutory timeframes adding up to 140 working days (excluding appeals).

Non-notified discretionary activities

The EPA would assess the application in the same way 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 section 27³⁰ of the EEZ Amendment Act, the EPA can conduct a hearing for a non-

³⁰ Which inserts new section 44B of the Amendment Act but is not yet in force.

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.

The EEZ Act and other relevant regulations

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 EEZ Act added to existing regulatory regimes by providing an extra layer of environmental oversight³¹ 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 mineral mining and oil and gas operations works effectively as a whole. Related reform processes were:

- establishing a High Hazards Unit within the Ministry of Business, Innovation and Employment to improve capability and capacity to operate effectively in the mining, petroleum, and geothermal industries
- the Ministry of Business, Innovation and Employment's review of the Crown Minerals Act 1991 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.

³¹ The extra layer of environmental oversight is provided by ensuring a full assessment of impacts and conditions to mitigate impacts if required.

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.

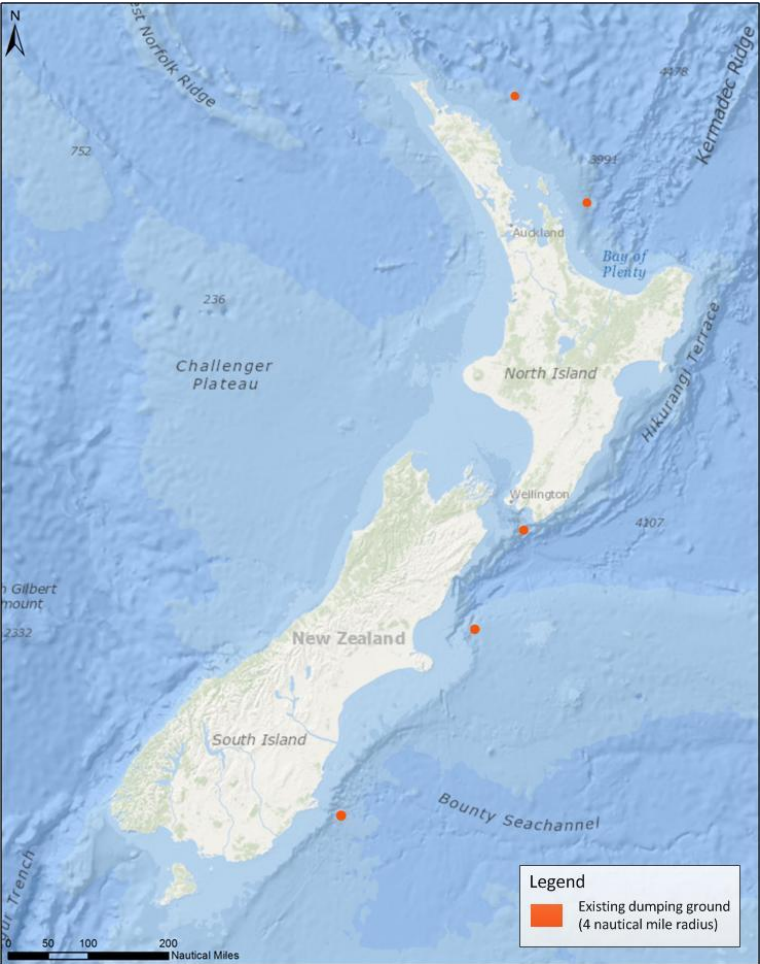
Appendix 4: Proposed locations for burials at sea and the dumping of waste

For the purposes of regulating burial at sea, and for the dumping of types of waste that are classified based on whether or not they are dumped within existing authorised dumping grounds, existing authorised dumping grounds are:

- 1. within a circle of four nautical miles centred on position 34° 40’ S 174° 50’ E (38 nautical miles northeast of Cape Brett)
- 2. within a circle of four nautical miles radius centred on position 36° 28’ S 176° 20’ E (27 nautical miles east of Cuvier Island)
- 3. within a circle of four nautical miles radius centred on position 41° 44’ S 175° 01’ E (30 nautical miles south of Wellington)
- 4. within a circle of four nautical miles radius centred on position 43° 15’ S 174° 00’ E (55 nautical miles northeast of Lyttelton)
- 5. within a circle of four nautical miles radius centred on position 46° 00’ S 171° 13’ E (25 nautical miles southeast of Otago Harbour).

Figure 1 below shows these locations on a map.

Figure 9: Authorised dumping grounds



and dumping activities under the EEZ Act

Appendix 5: Matters that must be considered when classifying activities

Section 34 – Information principles

1. When developing regulations 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.
2. 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.
3. If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary.
4. In this section, best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

Section 34A(3) – Matters that must be taken into account

Discharges of harmful substances

Under new section 34A of the EEZ Act (inserted by the EEZ Amendment Act), when making regulations regarding the discharge of harmful substances the Minister must take into account—

- a) any effects on the environment or existing interests of allowing an activity with or without a marine consent, including—
 - i. cumulative effects; and
 - ii. 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; and
- 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, including—
 - i. the effects of activities that are not regulated under this Act; and
 - ii. 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; and
- c) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
- d) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
- e) New Zealand’s international obligations; and
- f) the nature and effect of other marine management regimes; and

- g) in relation to whether an activity is classified as permitted or discretionary, the desirability of allowing the public to be heard in relation to the activity or type of activity; and
- h) the effects of the discharge or dumping on human health if the discharge or dumping takes place; and
- i) any other relevant matter.

Dumping of waste

Under new section 34A of the EEZ Act (inserted by the EEZ Amendment Act), when making regulations regarding the dumping of waste the Minister must take into account—

- a) any effects on the environment or existing interests of allowing an activity with or without a marine consent, including—
 - i. cumulative effects; and
 - ii. 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; and
- 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, including—
 - i. the effects of activities that are not regulated under this Act; and
 - ii. 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; and
- c) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
- d) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
- e) New Zealand's international obligations; and
- f) the nature and effect of other marine management regimes; and
- g) in relation to whether an activity is classified as permitted or discretionary, the desirability of allowing the public to be heard in relation to the activity or type of activity; and
- h) the effects of the discharge or dumping on human health if the discharge or dumping takes place; and
- i) in relation to the dumping of waste or other matter,—
 - i. any alternative methods of disposal that could be used; and
 - ii. whether there are practical opportunities to reuse, recycle, or treat the waste; and
- j) any other relevant matter.

Appendix 6: Regulatory requirements before exploratory drilling may be undertaken

- 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 Crown Minerals Act 1991, operators must obtain a permit from New Zealand Petroleum and Minerals (NZP&M), a branch of the Ministry of Business, Innovation and Employment. NZP&M assess the financial and technical capability of an operator and high level health, safety and environmental ability.
- 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, and this must be accepted by the Ministry of Business, Innovation and Employment's High Hazards Unit. Well operators must ensure independent examination of working wells throughout the life cycle of the well. Risks to well integrity are identified on a case-by-case basis through the safety case regime.
- Under Part 200 of the Marine Protection Rules operators must complete a Discharge Management Plan 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. Following the transfer of functions, Maritime NZ will retain responsibility for spill contingency planning.
- Other legislation applicable in the EEZ includes the Biosecurity Act 1993, Continental Shelf Act 1964, Marine Mammals Protection Act 1978, the Wildlife Act 1953, and the Fisheries Act 1996.