

In-Confidence

Office of the Minister for the Environment

Chair, Cabinet Environment, Energy and Climate Committee

Approval to consult on amendments to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013

Proposal

- 1 This paper seeks agreement to publicly consult on changes to charge-out rates under the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the Regulations).

Executive Summary

- 2 Under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), the Environmental Protection Authority (EPA) is required to recover the direct and indirect costs incurred in performing its functions and services not provided for by Crown appropriations, from those who benefit from them.
- 3 The Regulations give effect to section 143 of the EEZ Act and prescribe a 'variable' model for charging. The charge-out rates are applied 100 per cent to consenting functions, such as processing marine consent applications, as they deliver private benefits. For compliance monitoring, 80 per cent of the charge-out rates is applied, as these activities deliver public and private benefits.
- 4 The charge-out rates have not been updated since 2013. The current rates are not sufficient to cover all relevant direct and indirect costs. This is supported by analysis carried out by MartinJenkins in 2020.
- 5 Maintaining the current charge-out rates would result in Crown funding meant for other purposes being used to pay for functions and services that should be paid for by organisations conducting activities in the Exclusive Economic Zone (EEZ).
- 6 I propose to consult on increasing the charge-out rates and making minor amendments to the staff categories in the Regulations. These proposals were developed in line with cost recovery guidelines issued by the Treasury, and the Office of the Auditor-General.
- 7 To ensure new rates do not become outdated quickly, I propose to increase the charge-out rates for each of the following three financial years (2023/24, 2024/25 and 2025/26). The 2025/26 rates would continue to apply until the EEZ Fees Regulations are reviewed again at some point in the future.
- 8 The charge-out rates will need to increase between 47 and 82 per cent to recover the EPA's relevant direct and indirect costs. Total fees paid by operators will not typically increase by the same margin. This is because the EPA charges for other actual and reasonable expenditure (such as costs for external technical advice, venue hire or travel), which are not impacted by the increase in charge-out rates for EPA staff time.
- 9 The proposed rates could recover an additional \$0.292m to \$0.377m per annum, predominantly from the five main consent holders in the EEZ.

- 10 As required by the EEZ Act, I propose to release a discussion document for public consultation that outlines a proposal to make the necessary changes, which will apply from 1 July 2023 (Appendix 1).

Background

- 11 Sections 143(1)-(4) of the EEZ Act requires the EPA to recover the direct and indirect costs of its functions and services not provided for by Crown appropriations, from those who benefit from them.
- 12 The Regulations give effect to the EEZ Act and prescribe a 'variable' model of charge-out rates. The charge-out rates are applied 100 per cent to EEZ consenting functions (for example, EPA staff time processing marine consent applications), which reflects that they deliver private benefits to the operators. For compliance monitoring, 80 per cent of the charge-out rates is applied to recognise the public and private benefits they deliver.
- 13 The rates prescribed in the Regulations have not been updated since 2013. They do not accurately reflect all relevant direct and indirect costs, and the current EPA staff categories (job titles) have changed. Despite clear statutory authorisation to recover these costs, cost recovery is currently significantly lower than the actual costs of performing EEZ functions and services.
- 14 In 2020, MartinJenkins undertook an independent review (the Review) of the EPA's cost recovery settings.¹ The Review identified charge-out rates for EEZ functions and services were not set to recover all relevant direct and indirect costs. The Review also identified inefficiencies in the EPA's recording system and the EPA has worked to resolve these issues.
- 15 As a result of this under-recovery, the EPA has had to use Crown funding meant for other purposes to pay for its functions and services under the EEZ Act that should be paid for by operators. This means the Crown is effectively subsidising the activities (and private benefit) of operators.

Proposed changes to the Regulations

- 16 The attached discussion document sets out proposals to address the EPA's under-recovery under the EEZ Act, and take into account the Review's findings. They have been developed in accordance with the EEZ Act and in line with the cost recovery guidelines issued by the Treasury and the Office of the Auditor-General.
- 17 The overall approach and options analysis is described in detail in the attached Cost Recovery Impact Statement (CRIS, Appendix 2), which includes:
- 17.1 continuing to use the current 'variable' charge model which is based on who is performing a function and who benefits from the function. Options for a 'fixed' and 'hybrid' fee model (a mix of fixed and variable charging) were considered, but the 'variable' model was found to best suit the low-volume and variable nature of EEZ work

¹ MartinJenkins was asked to assess 1) whether the existing variable fee design is appropriate and, if necessary, update the hourly rates to reflect the actual cost of carrying out EEZ activities, and 2) the EPA's proposal to introduce new 'fixed' fees to recover the cost of EEZ monitoring activities.

- 17.2 updating charge-out rates in the Regulations to better cover all relevant direct and indirect costs
 - 17.3 updating the staff categories in the Regulations to reflect current EPA staff positions.
- 18 To ensure the charge-out rates do not quickly become outdated, the discussion document proposes step increases over three years in line with current salary inflation expectations. These rates are presented below, exclusive of GST. Compliance monitoring would continue to be charged at 80 per cent of these rates.

Staff position	Current	2023/24	2024/25	2025/26
Principal technical advisor	\$290.00	-	-	-
Principal advisor/officer/investigator and team leader	-	\$301.00	\$310.00	\$319.00
Authority to accept decommissioning plan	\$257.04	-	-	-
Project leader/senior compliance officer/investigator	\$140.80	\$251.00	\$259.00	\$266.00
Senior advisor/officer/investigator	\$116.12	\$211.00	\$218.00	\$224.00
Advisor/officer/investigator	\$103.75	\$181.00	\$186.00	\$192.00
Administrator	\$97.43	\$143.00	\$148.00	\$152.00

- 19 The 2023/24 year (first year) would see an increase in charge-out rates ranging from 47 to 82 per cent. Total fees paid by operators will not necessarily increase by the same margins. This is because the EPA will continue to recover the actual and reasonable costs of external suppliers (such as contracted technical advice, hearing venue hire, and travel). These costs can make up a significant part of the total costs be recovered and are not affected by the proposed changes.
- 20 Other charge-out rate options presented in the attached CRIS (Appendix 2) and discussion document (Appendix 1) include using a single rate for each staff position and applying either the 2023/24 or 2024/25 rate for all future periods. I consider these options would result in fairness issues. This is because the variable nature of EEZ applications would likely result in under or over-recovery, leading to cross-subsidisation between fee payers and/or potentially subsidisation with Crown funding. The charge-out rates would also become outdated sooner.
- 21 As required by section 32 of the EEZ Act, I intend to notify the public, iwi authorities, regional councils, and persons with existing interests likely to be affected by the proposals, and to establish a process that allows them adequate time and opportunity to comment.

Implementation

- 22 The proposed changes to the Regulations will need to be made by the end of May 2023 for new charge-out rates to apply in the 2023/24 financial year. I intend to report back on consultation and seek policy decisions in early March 2023, and seek authorisation to submit amended Regulations to the Executive Council from the Cabinet Legislation Committee in May 2023.

Financial Implications

- 23 The potential financial impact to the EPA of the preferred proposed charge-out rates is an increase in annual cost recovered revenue of between \$0.292m and \$0.377m. This will predominantly be recovered from the five main existing consent holders in the EEZ

(OMV, Beach Energy, Marina Consents Ltd, Ports of Auckland and the Ministry of Business, Innovation and Employment).

Legislative Implications

- 24 Amendment will be required to the Regulations to implement the proposals. Consequential amendment will also be required of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Decommissioning Plans) Regulations 2021 to remove the staff role for determining decommissioning plans.

Impact Analysis

Regulatory Impact Statement

- 25 An interim CRIS has been prepared to accompany the discussion document. This is attached in Appendix 2.
- 26 The Ministry for the Environment's regulatory impact assessment (RIA) panel has reviewed the Stage 2 Interim Cost Recovery Impact Statement (CRIS) to support the attached discussion document titled Proposed changes to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013. The RIA panel consider it meets the RIA requirements and will support effective consultation. The document is clear and relatively concise given the technical nature of subject matter and is complete in that it covers all the necessary CRIS elements. The CRIS meets the 'convincing' criteria for its identification and assessment of options for updating the level of EEZ charge out rates. These have not been adjusted in nearly 10 years, contributing to (but not fully accounting for) the under-recovery of costs by the EPA.

Climate Implications of Policy Assessment

- 27 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consultation

- 28 The attached discussion document and interim CRIS were developed in collaboration with the EPA.
- 29 The following agencies were consulted, with feedback taken into consideration in the development of this paper: the Treasury, Ministry of Business, Innovation and Employment, The Office for Māori Crown Relations - Te Arawhiti, Department of Conservation, Ministry for Primary Industries, Ministry of Transport, Maritime New Zealand, and WorkSafe New Zealand. The Department of the Prime Minister and Cabinet was informed.

Communications

- 30 I propose to release the discussion document in November 2022 and invite feedback until approximately mid-January 2023.
- 31 Officials from the Ministry for the Environment will inform iwi authorities, regional authorities, and other parties with existing interests including Energy Resources Aotearoa (the industry body, formerly known as Petroleum Exploration and Production Association New Zealand, who represents the regulated parties most likely affected by these proposals) on my behalf of the forthcoming consultation. I propose to make the

discussion document available on the Ministry website, alongside a redacted version of the MartinJenkins review report and the interim CRIS.

- 32 Public consultation will be announced through the Ministry for the Environment website.

Proactive Release

- 33 I intend to proactively release this paper as soon as practical following Cabinet's approval.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **Note** the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the Regulations) set out a cost-recovery framework for the Environmental Protection Authority (EPA) to recover costs of undertaking certain functions and services under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act)
- 2 **Note** the EPA is required to recover the costs not provided for by Crown appropriations, and to recover costs from those who benefit from them
- 3 **Note** the rates prescribed by the Regulations have not been updated since 2013, and are not sufficient to cover all relevant direct and indirect costs
- 4 **Note** that maintaining the current charge-out rates would result in Crown funding meant for other purposes being used to pay for functions and services that should be paid for by organisations conducting activities in the Exclusive Economic Zone
- 5 **Note** that the attached discussion document outlines options for updating the Regulations through amendments to the charge-out rates and staff categories, and includes a recommended approach to:
 - 5.1 continue with a 'variable' charge model which is based on who is performing a function and who benefits from the function
 - 5.2 update charge-out rates in the Regulations to better cover all relevant direct and indirect costs
 - 5.3 update the staff categories in the Regulations to reflect current EPA staff positions
- 6 **Agree** to consult on the proposed amendments to the Regulations
- 7 **Approve** the release of the discussion document attached to this paper (Appendix 1)
- 8 **Note** the proposed charge-out rates are between 47 and 82 per cent higher than current rates
- 9 **Note** that the expected increase in annual EPA revenue from the proposals is between \$0.292m and \$0.377m and the financial impact of the proposals will predominantly fall on the five main existing consent holders in the Exclusive Economic Zone

- 10 **Note** Section 32 of the EEZ Act requires the Minister for the Environment to notify the public, iwi authorities, regional councils, and persons likely to be affected by proposed changes to the Regulations, and to establish a process that allows them adequate time and opportunity to comment
- 11 **Invite** the Minister for the Environment to report back on the outcome of consultation and any finalised proposed changes to the Regulations in early 2023, in time for the changes to be applied from the 2023/24 financial year
- 12 **Authorise** the Minister for the Environment to make minor or technical changes to the discussion document prior to release.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Proactively released

Appendix 1: Draft discussion document *Proposed changes to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013*

Proactively released

Appendix 2: Interim Cost Recovery Impact Statement

Proactively released