

**In-Confidence**

**Office of the Minister for the Environment**

**Cabinet Environment, Energy and Climate Committee**

**Final policy decisions on amendments to the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013**

**Proposal**

- 1 This paper seeks Cabinet approval of final policy decisions to:
  - 1.1 update the charge-out rates in the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the Regulations)
  - 1.2 issue drafting instructions to the Parliamentary Counsel Office.

**Executive Summary**

- 2 The Environmental Protection Authority (EPA) is required under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) to recover the direct and indirect costs of its functions and services under the Act that are not already funded by the Crown.
- 3 The hourly charge-out rates that recover staff time spent on these functions and services have not been revised since they were established in 2013, and do not enable the EPA to recover all its relevant direct and indirect costs. 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 the operators. The Crown has effectively been subsidising the activities of private operators.
- 4 In November 2022, Cabinet approved consultation on proposals to update the Regulations to better enable the EPA to recover its costs in line with the EEZ Act [ENV-22-MIN-0055 refers]. I have considered the feedback received during the consultation that occurred over December and January 2023. I consider that no changes to the proposals are necessary.
- 5 I recommend increasing the hourly charge-out rates in the 2023/24 financial year and making minor changes to the EPA staff categories that could be cost recovered for. To recover the EPA's relevant direct and indirect costs, the proposed hourly charge-out rates will need to increase by 47 to 82 per cent. To ensure the new rates do not become outdated quickly, I also recommend small step increases in these hourly rates occur in 2024/25 and 2025/26.
- 6 While the proposed increase in hourly charge-out rates is 47 to 82 per cent, the total fees paid by operators will not typically increase by the same margin. This is because the EPA also charges for other actual and reasonable expenditure (such as costs for external technical advice, venue hire or travel). These are not impacted by the proposed increase to the charge-out rates.

- 7 The proposed charge-out rates could recover an additional \$0.292m to \$0.377m annually, predominantly from the main consent holders in the EEZ (OMV, Beach Energy, Marina Consents Ltd, and Ports of Auckland).
- 8 I seek Cabinet approval for final policy decisions to amend the Regulations and to issue drafting instructions to the Parliamentary Counsel Office. In May 2023 I intend to seek authorisation from the Cabinet Legislation Committee to submit amended Regulations to the Executive Council. This will allow the new hourly rates to be applied in the 2023/24 financial year for the first time.

## Background

### *The EPA's role in sustainable management of natural resources in the exclusive economic zone and continental shelf*

- 9 The EPA is responsible for various functions and services under the EEZ Act related to the sustainable management of the natural resources of the Exclusive Economic Zone (EEZ) and continental shelf. These functions include deciding applications for marine consents, monitoring compliance, enforcement, promoting public awareness of EEZ Act requirements, and providing advice and secretarial support to boards of inquiry.
- 10 Current marine activities regulated by the EPA under the EEZ Act include exploration and prospecting for oil and other minerals, oil and gas drilling and extraction, dumping dredged materials, debris deposits from rocket launches, and laying, maintaining, and removing seafloor cables.

### *The EEZ Act requires the EPA to recover costs not funded by Crown appropriation*

- 11 Section 143 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.
- 12 The Regulations give effect to section 143 by prescribing hourly charge-out rates for EPA staff, which are to be charged at 100 per cent for consenting functions (eg, processing marine consent applications) and 80 per cent for compliance monitoring activities (to recognise the public and private benefits they deliver). The Regulations also enable recovery of actual and reasonable costs for other expenses reasonably incurred.

### *The Regulations need to be updated to allow cost recovery consistent with the EEZ Act*

- 13 The hourly charge-out rates have not been updated since 2013, and do not reflect all relevant direct and indirect costs. As a result, the EPA has been unable to recover the actual costs of its functions and services. This is inconsistent with the statutory requirement to recover these costs.
- 14 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 the operators. The Crown has effectively been subsidising the activities of private operators.
- 15 I consider the charge-out rates need to be updated to allow the EPA to better recover costs in line with the EEZ Act.

*Consultation has occurred on proposals to update the Regulations*

- 16 In November 2022, Cabinet Environment, Energy and Climate Committee approved the release of a discussion document on proposed changes to the Regulations [ENV-22-MIN-0055 refers]. Cabinet invited me to report back on consultation and present final changes to the Regulations in early 2023, in time for the changes to be applied in the 2023/24 financial year and onwards.
- 17 Consultation was open for seven weeks from 1 December 2022. As required by section 32 of the EEZ Act, iwi authorities, councils, and those undertaking activities regulated under the EEZ Act were informed of the consultation and invited to comment. The discussion document and interim cost recovery impact statement were made available on the Ministry for the Environment website.

**Analysis**

*Objective of the proposed amendments*

- 18 I seek to amend the Regulations by updating the staff categories for which the EPA can cost recover, and to increase the hourly staff charge-out rates.
- 19 The intent of the proposed amendments is to enable the EPA to continue to provide its functions and services at a level of quality that supports the EPA’s regulatory objectives, while recovering the costs of those functions and services in line with the EPA’s statutory obligations under the EEZ Act.

*Amend staff categories to reflect EPA staff positions*

- 20 The Regulations stipulate the hourly rates to be used by specific staff categories when recovering the costs of EEZ Act functions and services. These staff categories require amendment to better reflect the EPA’s staffing practices.
- 21 I recommend making the following minor technical changes to staff categories detailed in the Regulations:

<b>Current staff categories</b>	<b>Recommended staff categories</b>	<b>Comment</b>
Principal technical advisor	<i>Remove</i>	Role no longer exists at the EPA
Delegated authority to determine acceptance of a decommissioning plan	<i>Remove</i>	Not required if other charge-out rates increased
<i>New staff category</i>	Principal advisor/officer/investigator and team leader	Time currently charged at lower rate of project leader
Project leader	Project leader/senior advisor 1 /compliance officer/investigator	Reflects current job titles
Senior advisor	Senior advisor 2 /officer /investigator	Reflects current job titles
Advisor	Advisor/officer/investigator	Reflects current job titles
Administrator	Administrator	<i>No change</i>

22 The staff category for those with the delegated authority to determine whether to accept a decommissioning plan was added to the Regulations in 2021 through the Exclusive Economic Zone and Continental Shelf (Environmental Effects–Decommissioning Plans) Regulations 2021 (Decommissioning Regulations). This specific rate will no longer be needed if the hourly charge-out rates are increased as proposed. I recommend that the specific decommissioning rate be consequentially removed from the Decommissioning Regulations.

*One minor change has been made to the proposals since public consultation*

23 No comment was raised in submissions on the proposed changes to staff categories during consultation. The EPA has subsequently requested a minor change of dividing the senior advisor role in two to reflect a senior advisor 1 role and senior advisor 2 role. The senior advisor 1 role reflects that some senior advisors are remunerated at the same level as a project leader.

*Increase hourly charge-out rates*

24 I recommend that the hourly charge-out rates be increased from the start of the 2023/24 financial year, with step increases to occur in 2024/25 and 2025/26 to ensure they do not quickly become outdated. These steps reflect current salary inflation expectations. This will allow the EPA to recover all relevant direct and indirect costs when performing its function and services and will ensure that the rates do not become outdated in the near term.

25 I recommend the following hourly charge-out rates apply from 1 July 2023 (exclusive of GST):

Staff category	Current rates	2023/24 (financial year)	2024/25 (financial year)	2025/26 and out years
Principal advisor/officer/investigator and team leader	NA	301.00	310.00	319.00
Project leader/senior advisor 1/ compliance officer/investigator	140.80	251.00	259.00	266.00
Senior advisor 2/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

26 The rates apply to the applicable financial years (beginning 1 July and ending 30 June the following year), and the 2025/26 rates will continue to apply until the Regulations are next updated. Compliance monitoring activities will continue to be charged at 80 per cent of these rates, which reflects the element of public good that these activities provide.

27 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 applicants and duty holders will not increase by

the same margin.<sup>1</sup> 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 recovered and are not affected by the proposed changes. A typical notified marine consent costing \$0.626m may increase by \$0.177m (or 27 per cent) as a result of the proposed charges.

*Matters raised in consultation not supported by policy objective or cost recovery principles*

- 28 Three submissions were received, all from industry. Two submitters were in the energy (oil and gas) sector, and one submitter identified it had an interest in the EEZ (although it currently holds no marine consents).
- 29 All submitters were supportive of the policy objective and the cost recovery principles used to assess policy options (equity, efficiency, justification, transparency, effectiveness, simplicity, and accountability).
- 30 Key matters raised in submission and my response are detailed below:

Submitter suggestions	Response
Other direct staff costs (ACC, KiwiSaver, and training course costs) should not be recovered	Such costs are required for the EPA to deliver the functions and services it provides, and they are appropriately accounted for in the hourly rate calculation
Time indirectly recovered for training, meetings, and general administration should either not be counted for at all benchmarked to the private sector	
Staff should be capped at charging a maximum of eight hours per day	EPA staff occasionally need to work overtime, and although they are not paid overtime, they may take time off in lieu, which means this overtime creates costs for the EPA that should be recovered
Lower the rates, benchmarked to the private sector	The EPA's functions and services do not have equivalent comparisons in the private sector, and the average of the proposed rates falls within the range of other government entities
Using a hybrid charging method (a base fixed fee and with additional hourly charges if more staff time is required)	The proposed variable charging method is fairer than a hybrid approach and will allow the EPA to better recover its costs

- 31 I consider that the suggestions raised by submitters will lead to lower fees and less costs recovered than is proposed. As a result, they would not allow the EPA to recover all the relevant direct and indirect costs that are not provided for by Crown funding, as required by the EEZ Act.
- 32 All three submitters commented that the EPA could be more efficient and accountable for delivering its functions and services under the EEZ Act. I note that the EPA has an

<sup>1</sup> Duty holders include consent holders and those undertaking permitted activities in the EEZ such as marine scientific research or jettisoning material from rocket launches.

established cost recovery policy that, amongst other things, ensures its charging is aligned with the cost recovery principles of efficiency and effectiveness. For example, the EPA will use the appropriate staff for the task at hand, will not charge for administrative errors and will provide cost estimates and report performance against estimates.

- 33 I have considered the feedback received during consultation and for the reasons set out above, I consider no changes to the proposals are necessary.

*The proposals will not have a significant impact on applicants and duty holders*

- 34 The proposals will increase the fees paid by applicants and duty holders. The most affected by the proposals will be the main existing consent holders (OMV, Beach Energy, Marina Consents Ltd, and Ports of Auckland). These increases are likely to be very small compared to their total project costs and annual revenues. As a result, I consider that the proposals will not have a significant impact on fee payers.

### **Implementation**

- 35 I intend to seek authorisation from the Cabinet Legislation Committee to submit the draft amended Regulations to the Executive Council in May 2023. This will enable the Regulations to be in force by 30 June 2023 and the amended charge-out rates could be applied in the 2023/24 financial year for the first time.

### **Financial Implications**

- 36 The potential financial benefit to the EPA of the amended 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 main existing consent holders in the EEZ (OMV, Beach Energy, Marina Consents Ltd, and Ports of Auckland).

### **Legislative Implications**

- 37 I am seeking Cabinet approval to instruct the Parliamentary Counsel Office to draft the amended Regulations that reflect the policy recommendations set out in this paper. Consequential amendment of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Decommissioning Plans) Regulations 2021 will also be required to remove the staff category related to determining whether to accept decommissioning plans.

### **Impact Analysis**

*Cost recovery impact statement*

- 38 A stage 2 cost recovery impact statement has been prepared and is attached.
- 39 A quality assurance panel with members from Ministry for the Environment's delegated Regulatory Impact Statement Review Panel has reviewed the Regulatory Impact Statement.
- 40 The panel assessed this using assessment criteria (complete, convincing, clear & concise and consulted), for all relevant sections of the impact statement (ie, problem definition, objectives, options analysis and implementation, monitoring, evaluation & review).

41 The panel considers that it meets the Quality Assurance criteria.

#### *Climate Implications of Policy Assessment*

42 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.

#### **Population Implications**

43 There are no specific implications for particular population groups.

#### **Human Rights**

44 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

#### **Consultation**

45 The policy proposals have been developed in collaboration with the EPA.

46 The following agencies were consulted 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.

#### **Proactive Release**

47 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:

#### *Background*

- 1 **Note** that the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the EEZ Act) requires the Environmental Protection Authority (EPA) to recover direct and indirect costs that are not provided for by Crown appropriation
- 2 **Note** that fees have not been updated since the Exclusive Economic Zone and Continental Shelf (Fees and Charges) Regulations 2013 (the Regulations) were established in 2013
- 3 **Note** that the Regulations need to be updated to enable the EPA to better cost recover in line with EEZ Act requirements
- 4 **Note** that in November 2022, Cabinet approved the release of a discussion document on proposals to increase the hourly charge-out rates and update staff categories contained in the Regulations [ENV-22-MIN-0055 refers]

Policy decisions

- 5 **Agree** to amend the staff categories to better align with current EPA staffing practices, as follows:

Current staff categories	Recommended staff categories
Principal technical advisor	Remove
Delegated authority to determine acceptance of a decommissioning plan	Remove
<i>New staff category</i>	Principal advisor/officer/investigator and team leader
Project leader	Project leader/senior advisor 1/compliance officer/investigator
Senior advisor	Senior advisor 2/officer/investigator
Advisor	Advisor/officer/investigator
Administrator	Administrator

- 6 **Agree** to increase the hourly charge-out rates (exclusive of GST) to allow the EPA to better recover its direct and indirect costs of performing functions and services under the EEZ Act from 1 July 2023, as follows:

Staff category	2023/24 (financial year)	2024/25 (financial year)	2025/26 and out years
Principal advisor/officer/investigator and team leader	301.00	310.00	319.00
Project leader/senior advisor 1/compliance officer/investigator	251.00	259.00	266.00
Senior advisor 2/officer/investigator	211.00	218.00	224.00
Advisor/officer/investigator	181.00	186.00	192.00
Administrator	143.00	148.00	152.00

- 7 **Agree** to consequential amendment of the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Decommissioning Plans) Regulations 2021 to remove the specific rate of recovery for a staff member with the delegated authority to determine whether to accept a decommissioning plan

Consultation

- 8 **Note** that three submissions were received during consultation. They were all supportive of the policy objective and cost recovery principles (equity, efficiency, justification, transparency, effectiveness, simplicity, and accountability)
- 9 **Note** that I have considered submissions received

- 10 **Note** the submissions included suggestions to reduce the costs that are recovered, creating a daily cap on hours charged, benchmarking rates to the private sector, and using other charging methods
- 11 **Note** that I consider lowering the fees would not allow the EPA to recover all the direct and indirect costs that are not provided for by Crown funding, so I do not propose reducing the fees below those consulted on

*Legislative requirements*

- 12 **Invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to draft the proposed amendments to the Regulations based on the above policy decisions
- 13 **Authorise** the Minister for the Environment to approve minor policy changes during drafting of the amended Regulations
- 14 **Agree** the Minister for the Environment may consult with, and provide Parliamentary Counsel Office drafts of the regulations to, the EPA as a directly affected party in respect of the amended Regulations.

Authorised for lodgement

Hon David Parker

**Minister for the Environment**

Proactively released