Ministry for the Environment
Manatū Mō Te Taiao

Activity classifications under the EEZ Act

Summary of submissions

New Zealand Government

This report may be cited as: Ministry for the Environment.2013. *Activity Classification under the Exclusive Economic Zone Act: Summary of submissions*. Wellington: Ministry for the Environment.

Published in December 2013 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-0-478-41233-8
Publication number: ME 1138

This document is available on the Ministry for the Environment's website: www.mfe.govt.nz.

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1 Introduction

On 28 August 2013, the Government released a discussion document, *Activity Classification under the EEZ Act*, on proposals to regulate:

- exploratory drilling for oil and gas
- discharges of harmful substances from offshore structures and production facilities on board mineral mining ships
- dumping of waste.

Submissions and feedback were sought on questions in the discussion document including whether:

- the assessment of issues was correct
- the definition of 'harmful substance' is correct
- the proposals would deliver effective and efficient oceans management, or there were better alternatives
- there are any unintended consequences that may arise from the proposals.

The submission period ended on 25 September 2013 and the Ministry for the Environment (the Ministry) received 21,221 submissions. This included:

- 21,102 submissions from submission templates with minor or no amendments, predominantly from Greenpeace and the Green Party
- 36 submissions that used templates as a starting point but added substantial amendments
- 42 original submissions from individuals (not using a template)
- 10 submissions from environmental/community groups
- two submissions from legal organisations
- eight submissions from local government bodies
- 12 submissions from iwi organisations / Māori representative groups
- one submission from a policy organisation
- eight submissions from private companies / industry organisations including:
  - three from the petroleum industry
  - three from the mineral mining industry
  - two from other industries.

The Ministry used an online analytical tool to lodge and analyse submissions. Below is a summary of the findings. The submissions and analysis of submissions was considered during the development of regulations.

Online form submissions

Greenpeace and the Green Party ran online campaigns that allowed people to send a pre-written template submission from their websites. Of these, 19,199 submissions were received via Greenpeace and 1921 via the Green Party.

The form submissions opposed exploratory oil drilling being non-notified discretionary and argued that it should be prohibited. The reasons stated were:

- the risks associated with deep sea drilling and the effects of an oil disaster on oceans, coastal communities, the economy, and New Zealand's reputation
- public interest and the right of the public to be able to oppose deep sea drilling, which they argue is supported by international law
- the need to promote clean industries that will reduce pollution.

An additional template from an unknown source was used by 18 people, and raised further points which have been incorporated into the summary below.

1.1 General issues raised

Non-notified discretionary classification

A number of submissions commented on the non-notified discretionary classification itself. These comments are relevant both to the exploratory drilling and the discharge and dumping classifications, and are considered below.

Public participation

A large number of submitters were critical of the non-notified discretionary classification because of the implications for public participation. The following concerns were expressed:

- Stopping the public from having a say is inconsistent with democratic principles.
- Transparency and public input would help communities to challenge the practices and processes used by operators to make sure they are safe.
- Public input is important as it recognises the limitations of government expertise and ensures that any relevant expert information can be provided as part of marine consent applications.

Iwi consultation

A number of iwi organisations considered the consultation requirements under the non-notified discretionary classification insufficient. In particular the following concerns were raised:

- The requirement to describe the consultation that has taken place with iwi, rather than a specific requirement to carry out consultation, is insufficient.
- The lack of consultation appears dismissive of iwi knowledge and understanding of the issues affecting the marine environment and their ability to contribute to the process.
- The process allows for matters of interest to be considered without iwi having the ability to present evidence.

- The discretion accorded to the EPA in the proposed process may provide iwi with less involvement in non-notified discretionary applications than they would have in permitted activity applications.
- When other pressures come to bear (such as economic considerations and government directives) there is no guarantee that provision will be made for adequate iwi consultation.

2 Exploratory drilling for oil and gas

All 21,221 submitters addressed exploratory drilling for oil and gas. Of them, 21,146 (approx. 99.6%) wanted exploratory drilling to be prohibited.

The majority of these (21,102) were from online template forms with little or no modification. An additional 97 submissions that were unique in nature (those that were not from an online form or had made substantial amendments to an online form template) opposed the proposed classification. Four submitters supported the proposed classification, while three supported it with amendments. The remaining five did not express a clear view.

Of the 97 unique submissions that opposed the proposed non-notified discretionary classification, 85 proposed an alternative classification for exploratory oil and gas drilling:

Proposed classification	Number of submitters
Prohibited	35
Prohibited (with the caveat that if it cannot be prohibited it should at least be discretionary)	9
Discretionary	18
Discretionary at depths of up to 200m and prohibited at depths beyond 200m	6
Other	17

Of those who proposed 'other', their suggestions included:

- further public debate and/or a referendum before making a decision
- giving discretion to the EPA to assess activities on a case-by-case basis, and making decisions on notification based on this assessment.

Of those who supported the proposal with amendments, the amendments proposed were to:

- also include infill production wells in existing fields, and exploration/appraisal wells close to or associated with existing fields, in the non-notified discretionary classification
- classify drilling in depths of up to 200m as non-notified discretionary, while keeping the discretionary classification for drilling operations in deeper waters
- allow iwi to provide formal recommendations on non-notified discretionary applications.

2.1 Specific proposals relating to exploratory drilling

The following key themes were raised by submitters who opposed the proposed classification of exploratory drilling as non-notified discretionary.

The risk of an oil spill or well blowout

Almost two thirds of unique submissions, and almost all template submissions, raised the issue of risk in relation to exploratory drilling for oil. The key concerns raised in these submissions were:

- Exploratory drilling presents an unacceptable risk of an oil spill or well blowout, and that the level of risk is as high, if not higher, than in the production phase.
- Unique weather and seismic conditions exist in New Zealand waters which would increase the likelihood of a serious incident.
- The risk increases in deeper water due to the pressure, temperature and ability to reach the sea floor to plug a well. This led some submitters to feel that a depth limit would be appropriate.
- The oil industry cannot be relied upon to follow robust processes and practices to avoid the risk of a serious incident.
- New Zealand does not have the capacity or capability to deal effectively with a serious incident, due to the limited equipment held by Maritime New Zealand and the time and distance involved in sourcing suitable equipment from overseas.
- The cost of cleaning up from a serious incident would likely outweigh any economic gain from having allowed oil drilling in the first place.
- Some dispersants widely used in oil spill responses present a further risk to the environment.
- A serious incident would be significant in terms of its impact on:
  - the coastal environment
  - marine wildlife, including at risk seabird and marine mammal species
  - the tourism and fisheries industries, which collectively contribute more to the economy that oil exploration would
  - aesthetic, cultural and recreational values placed on marine environments by New Zealanders
  - customary practices relating to the use of marine resources.
- Certain specific areas would be particularly vulnerable to the effects of a serious incident due to their biodiversity value. These include:
  - the area off the Kaikoura coast, due to the importance of marine mammals to the local economy
  - the area off the Otago coast, because of the impact on at risk seabird species
  - the Pegasus Basin (East Coast, South Island).

The impact of oil exploration on climate change

Approximately one quarter of unique submissions raised the issue of climate change. The general feedback identified that fossil fuels are the main contributor to greenhouse gas emissions, and New Zealand should focus on cleaner technology rather than further contributing to climate change. Some submitters also noted that extreme weather events brought about by climate change have the potential to increase the risk of oil infrastructure damage and therefore the risk of a serious incident.

Public participation in the decision-making process

In addition to the general comments above on public participation, a large number of submitters were critical of exploratory drilling being classified as non-notified discretionary because of the implications for public participation in consent decision-making for this activity.

The following concerns were raised:

- Classifying exploratory drilling as non-notified discretionary shows disregard for public opinion on deep sea drilling.
- The discovery of petroleum reserves during the exploratory phase would tip the balance of the 'environment vs economy' debate at the production phase. By this point the Government would be aware of the potential revenue from the well, which would mean the consent process would become a 'rubber stamp' despite the ability for the public to be involved at this stage.
- The reduction in compliance costs for industry was not sufficient to outweigh the value of public participation in the decision-making process.
- The reduced level of transparency raises concerns that the EPA could become 'captured' by the industry.

Consistency with New Zealand law and international obligations

Concern was expressed by some submitters that classifying exploratory drilling as non-notified discretionary would not meet international obligations under the United Nations Convention on the Law of the Sea 1982, Convention on Biological Diversity 1992, The Convention for the Protection of Natural Resources and Environment of the South Pacific Region 1986 (Noumea Convention), and with international norms such as the 'precautionary principle'. Concern was also raised around compliance with international human rights obligations, such as under the International Covenant on Civil and Political Rights 1966, and the United Nations Universal Declaration of Human Rights 1948.

2.2 Other themes in exploratory drilling submissions

Submissions from petroleum industry groups generally described the proposed classification as appropriate and in line with international best practice in other petroleum-producing nations. Industry submitted that requiring a notified discretionary process would impose greater uncertainty and costs on applicants without achieving any environmental benefit. The industry also submitted that the timeframe issues resulting from a notification process would effectively amount to a decision not to have offshore oil and gas production in New Zealand.

The industry submissions raised some specific points about the proposed non-notified discretionary classification:

- Having separate 'marine consents' and 'discharge and dumping consents' creates potential for confusion in interpreting the scope of each consent.
- Some information required as part of a marine consent may not be available at the time the consent is made, and it was suggested that regulatory certainty could be provided by identifying the conditions that would be applied to drilling activities in regulations.
- There needs to be further work on some of the specific details of how the proposal will be implemented, and in particular how the transitional provisions will work.

2.3 Additional issues

The following additional issues were raised in submissions:

- The lack of scientific knowledge and understanding about the marine environment which creates uncertainty about the effects of oil exploration activities, and the need to apply caution when considering allowing activities.
- The lack of clarity about how exploratory drilling is defined and which specific activities would fall within this definition – some of which may be minor and appropriately classified as non-notified, while others may be much more significant.
- The apparent bias towards economic considerations and a lack of weight given to environmental concerns.
- Fisheries industry organisations opposed the non-notified discretionary classification due to the risk presented to fish stocks and fisheries operations.
- Local government submissions generally highlighted the issue of public consultation and participation, and in particular recommended that councils be notified and consulted with on any exploratory drilling applications.

3 Discharges and dumping

Of the 21,221 submissions received, 50 addressed the proposals relating to discharges and dumping.

3.1 General comments

The following general comments were made about discharges and dumping proposals:

- The purpose of transferring functions from the Maritime Transport Act (MTA) to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) is to manage these activities more efficiently. The proposed classifications under the EEZ Act closely resemble the way they were managed under the MTA; however, the discussion document has not addressed whether the existing regime under the MTA adequately protects the environment.
- There is not enough information about activities and their effect to make informed judgements about whether the proposed classifications are appropriate.
- It is unclear whether the discharge of drill cuttings is provided for as an activity under the regulations.
- There is insufficient information about the monitoring and reporting requirements associated with activities.
- There are limited mechanisms to facilitate the adoption of innovative low-impact technologies.
- Rather than simply being consistent with international law, regulation should match or exceed requirements under international law in terms of minimising waste and pollution.
- It should be recognised that discharges are generally part of a broader marine activity, and as such their discharges will generally have already been considered as part of the marine consent process for these activities.
- Insufficient attention has been given to the dumping of structures or parts of structures. There is a need to ensure that there are no incentives to leave structures behind rather than removing them, and to recognise the effect that dumped structures may have on fishing operations. However, there are also situations where dumping of structures may be the option with the least environmental effect on a particular location.
- Discharges of biofoul should also be considered in regulations.

3.2 Specific proposals relating to discharges and dumping

The discussion document proposed classifications for a number of discharge and dumping activities. The following sections summarise comments that were made about specific proposals.

Harmful substances definition

The discussion document asked whether submitters agreed with the proposed definition of harmful substances (question 3, page 17 of the discussion document). Twenty-six submissions addressed this question, and of these 11 agreed with the definition and a further 11 agreed subject to amendments. One submitter considered the proposed definition relies on certain measures of ecotoxicity (such as LC50 and LD50), but in reality such data does not exist for many toxic chemicals involved in oil and gas drilling, and thought needs to be given to the numerous and increasing number of drilling and fracking chemicals entering the sea.

The remainder commented or proposed changes without being specific about whether they supported the definition in general. Proposed amendments were wide ranging, including:

- being more specific about the term 'ecotoxic' and whether this covers sublethal or cumulative effects, and whether it covers substances that are ecotoxic to seabirds and marine mammals
- being more specific about the types of sediment discharges that are harmful, as opposed to those that are not
- being more specific about what is covered by the term 'garbage'
- rewording section D to specify mineral mining operations (not just mineral operations) and specifically excluding petroleum operations
- including a number of other substances to align with the Resource Management (Marine Pollution) Regulations 1998.

Proposed permitted activities

The discussion document proposed that five activities be classified as permitted activities, subject to conditions and thresholds (question 4, table 4, page 17-18 of the discussion document). Twenty-nine submissions addressed these proposals. The following table outlines the five activities and general themes from responses to these proposals.

Activity	Submitter comment
Discharges of food waste	Submitters generally agreed with the proposed classification.
Discharges of offshore processing drainage and displacement water with oil content of 50 ppm or under, and a monthly of average of less than 30 ppm	Submitters who addressed this issue disagreed with the proposed classification and most thought that this activity should be discretionary.
Discharges of oily waste from machinery space that meet MARPOL requirements	Responses on this subject varied. Of the five who addressed this issue, two opposed the proposal, one supported the proposal, and one recommended that an evidential basis be provided for the proposed threshold.
Discharges of sediments and/or tailings from mineral operations during prospecting and exploration	In general those who addressed this were opposed to the proposed classification, or felt that changes and/or further consideration were required.
Burials at sea	Around half of submitters who addressed this proposal supported it. Three iwi groups considered that notification should occur before burial, and one iwi group considered that further consultation was necessary.

Proposed non-notified discretionary activities

The discussion proposed that a number of activities be classified as non-notified discretionary (question 5, table 5, page 19 of the discussion document), including:

- offshore processing drainage and displacement water exceeding the permitted thresholds
- production water discharges
- operational chemical discharges
- discharges of drilling fluids from exploratory oil and gas operations
- candidate wastes under the London Protocol (except for the dumping of structures during decommissioning of oil and gas production structures).

Forty-three submissions addressed these proposals. Other than submissions from the petroleum industry, the majority of submissions were generally opposed to the proposed classifications.

The following key themes were identified by submitters who opposed all or some of the proposed classifications:

- The non-notified discretionary classification is not appropriate for any activities due to the lack of public consultation involved, which means that by default all the proposed activities should be classified as discretionary.
- Dumping of fish wastes or material resulting from industrial fish processing operations should not be a non-notified discretionary activity as it is already covered by Marine Protection Rules.
- Submitters who argued against the classification of exploratory drilling as non-notified discretionary consider that discharges relating to exploratory drilling operations should be classified the same way as the main drilling operation (either discretionary or prohibited).
- 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. This may mean that some individual applications from the proposed list are classified as non-notified discretionary while others may be classified as discretionary.
- The provision excluding the dumping of structures appears inconsistent with the intention to treat activities based on their environmental effects, and it is suggested that this exclusion be removed.
- If discharges are over the permitted threshold they should be prohibited.
- Where effects can be managed so they are minor or less than minor, activities in the proposed list should be permitted.
- Activities should be classified as non-notified discretionary when undertaken in relation to an existing operation, and in accordance with the classification of the broader operation when undertaken in relation to a new operation.
- Discharges of human waste in a mahinga kai gathering area would be considered culturally offensive to Māori, but has been proposed as non-notified discretionary.
- Applications for the dumping of structures should be non-notified discretionary when taking place in an existing explosives dumping ground, but discretionary in any other locations. This would incentivise the use of existing dumping grounds for dumping large structures, which would reduce impacts on commercial fishing from dumped structures.

Proposed discretionary activities

The discussion document proposed that a number of activities be classified as discretionary (question 6, table 6, page 20 of the discussion document) including:

- discharges of sediments and/or tailings from mineral operations
- discharges of drilling fluids from oil and gas drilling during the production stage
- dumping of structures during decommissioning of oil and gas production structures.

Twenty-six submissions addressed these proposals. Of these, 11 supported the proposed classifications. Of those who did not support the classifications, the majority considered that all or some of the proposed activities be considered prohibited. However:

- one industry submitter considered that discharges of sediments and/or tailings from mineral operations should be permitted or non-notified discretionary, as the effects of the discharges would have been considered as part of the marine consent application for the wider activity
- one petroleum industry submitter considered that discharges of drilling fluids from oil and gas drilling during the production stage, and dumping of structures during decommissioning of oil and gas production structures where the effects are minor, should be considered non-notified discretionary.

Proposed prohibited activities

The discussion document proposed that a number of activities be classified as prohibited (table 7, page 20 of the discussion document). Three submitters responded to this issue, and all supported the proposed classifications, one with the caveat that more work was required to determine whether the MARPOL requirements used to determine the thresholds for dumping and discharge regulations are also consistent with UNCLOS.